

IN THE MATTER OF : BEFORE THE
H & H ROCK COMPANIES : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 17-030C

.....

DECISION AND ORDER

On April 16, 2018, 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 H & H Rock Companies (Petitioner) for an Age-restricted, Adult Housing, General (ARAH) conditional use in an R-12 (Residential: Single) zoning district pursuant to § 131.0.N.1 of the Howard County Zoning Regulations.

The Petitioner certified to compliance with the notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure. Sang Oh, Esq., represented the Petitioner. Fred Dorsey, Frank Manalansan, and Mark Levy testified in support of the petition. No one appeared in opposition to the petition.

Petitioner introduced into evidence the exhibits as follows.

- 1. Fred Dorsey, resume
- 2. Revised conditional use plan

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, the Hearing Examiner finds the following facts:

- 1. Property Identification. The subject property is located in the southwest corner of the

Eden Brook Drive intersection with Guilford Road in the 6th Election District. It is identified as Tax Map 0042, Grid 0005, Parcel 269 and known as 8580 Guilford Road (the Property).

2. Property Description. The 4.96-acre Property is improved with an historic residence, Wildwood (HO-267). Some of the architectural elements of Wildwood date to the 18th and 19th centuries, according to the historic survey. The Property is predominately open lawn with mature trees. The area close to Wildwood is relative flat; from here, the topography drops about 18 feet toward the northeast corner.

3. Vicinal Properties. To the north, across Guilford Road, is an R-SC (Single Family: Cluster) zoned property improved with a religious facility. The other vicinal properties are zoned NT (New Town). Immediately to the east, south and southwest is Columbia Association owned-Open Space Lot 289. The eastern section of Lot 289 contains a sidewalk running along Eden Brook Drive. Further east, across Eden Brook Drive is the King's Contrivance Village Center. Lot 289's south and southwesterly section contains a portion of the Columbia Association pathway/trail system. Beyond Lot 289 to the southwest is a single-family attached dwelling complex. To the Property's west are residential properties, each of which is improved with a single-family detached dwelling fronting on Single Wheel Path.

4. Roads. Guilford Road has 2 travel lanes, an eastbound left-turn lane to Eden Brook Drive in front of the site, and about 44 paving feet within an existing 75-foot wide right-of-way (ROW). The speed limit is 35MPH. The Department of Planning and Zoning (DPZ) reports the estimated sight distance from the proposed driveway entrance on Guilford Road is about 350 feet to the northwest and more than 500 feet to the southeast. According to State Highway Administration

data, the traffic volume on Guilford Road from Old Columbia Road to Gerwig Lane was 7,974 AADT (Annual Average Daily Traffic) as of 2016.

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

6. The General Plan. PlanHOWARD 2030 designates the Property as “Established Community” on the Designated Pace Types Map. The Plan's Functional Road Classification Map depicts Guilford Road as a Major Collector.

7. Zoning History. There is no record of any Board of Appeals, Zoning Board, or DPZ zoning case for the Property.

8. Design Advisory Panel (DAP) Comments. DAP's September 27, 2017 comments are attached to DPZ's technical staff report (TSR). DPZ reports DAP recommended buffering along the western edge of the property with a heavy, informal row of shade trees and evergreens; reducing the scale of the central cul-de-sac; placing medium-sized street trees in the spaces between the garages in every other island to create a street tree effect; relocating the gazebo from the central cul-de-sac; reviewing the run of townhomes to see if the end units can be refined to allow a small front porch and windows on the sides; including a small T-turnaround for units 6 and 16; providing relief from the sidewalk to the existing historic home, and; working with Columbia Association and the County to build a crosswalk from the pathway between units 10 and 11 to the village center.

9. Historic Preservation Commission (HPC) Review. The HPC positively reviewed the proposal on December 7, 2017, made advisory recommendations to enhance Wildwood as a development focal point, and recommended Petitioner retain an historic smoke house.

10. The Conditional Use Proposal. Pursuant to HCZR § 131.0.N.1.a, the Petitioner is seeking conditional use approval for an ARAH conditional use comprising 24 single-family attached dwelling units on individual lots, a 1,452sf community center, and multiple open space areas with pathways and benches (Part III in the below Conclusions of Law further discusses the proposed pathway and shows the conditional use plan). The conditional use plan (CUP) (Exhibit 2) presents the dwellings grouped in five sections around the cul-de-sac. Clockwise from the north are two 141-foot long, five-unit "packs," two 168-foot long six-unit packs, and a two-unit pack to the west of Wildwood. A new entrance is proposed on Guilford Road and a private internal road terminating in a cul-de-sac will provide access to each lot. The cul-de-sac will be bordered by parking spaces and landscaped areas and its interior will feature a gazebo with sidewalk access.

The petition includes a revised elevation of the proposed two-story townhouses presented to DAP at Petitioner's second, September 27, 2017 presentation. According to the September 27, 2017 DAP summary (pg. 1) included with the TSR, these more "cottage-like" townhouses would feature a no-step entry, first floor owner unit, and additional bedrooms on the second floor. All units will feature universal housing design, a two-car garage, and two parking spaces in the driveway. Additionally, four community center parking spaces and ten visitor parking spaces are proposed. A homeowners association will maintain common areas and enforce age-restricted and other covenants. In response to DAP recommendations, the CUP includes enhanced landscaping along the western lot line in common with single-family residential lots, additional landscaped open space areas along the perimeter of the site, and medium-sized trees along Road "A" and between garages and landscape islands.

11. Reported Agency Comments.

Division of Land Development (DLD).

1. It is recommended improvements have sufficient setback from property lines to allow for access for maintenance. Open space lots behind single-family residential lots must be wide enough to accommodate maintenance access and plantings for perimeter landscaping. This will be further evaluated with the future site development plan.
2. Any existing specimen trees located on the property should be preserved and protected during construction. Impacts to specimen trees requiring their removal will require approval of an Alternative Compliance Request to Section 16.1205(a)(7) of the Howard County Subdivision and Land Development Regulations. This requirement will need to be addressed at the Site Development Plan (SDP) stage.
3. Forest Conservation will be required for the property and addressed per Section 16.1200 of the Howard County regulations will need to be addressed at the Site Development Plan (SDP) stage.
4. The Moderate Income Housing Units (MIHU) requirements must be addressed at the Site Development Plan stage in accordance with Section 131.0.N.1.14 of the Howard County Zoning Regulations.
5. Please note that offsite improvements such as the connection to the pathway in Martin Road Park will require written authorization from the Columbia Association. Proposed improvements will need to be coordinated with the Columbia Association and will need to meet County Standards at the Site Development Plan stage.

12. Fred Dorsey, President of Preservation Howard County, testified in support of the petition. Wildwood has been on the Preservation Howard County Endangered List for several years and the organization is pleased the historic house will be preserved.

13. When questioned by the Hearing Examiner, Frank Manalansan testified the cul-de-sac as shown on the CUP has the smallest radius and that the smokehouse is being retained. The site design also incorporates DPZ and DAP recommendations. He also testified to the landscape plan having a more natural perimeter design as DAP recommended.

14. Mark Levy testified the dwelling would comply with the county's universal guidelines.

CONCLUSIONS OF LAW

I. General Criteria for Conditional Uses (§ 131.0.B)

Based upon the foregoing Findings of Fact, the Hearing Examiner concludes as follows:

1. The proposed Conditional Use plan will be in harmony with the land uses and policies in the Howard County General Plan which can be related to the proposed use.

The Howard County General Plan designates the area in which the Property is located as "Established Community." Age-restricted adult housing developments are commonly found in residential areas and are presumptively compatible with residential land uses. The TSR identifies two policies encourages housing options for residents at diverse income levels and life stages. Policy 9.2: "Expand full spectrum housing for residents at diverse income levels and life stages, and for individuals with disabilities, by encouraging high quality, mixed income, multigenerational, well designed, and sustainable communities." Policy 9.4: "Expand housing options to accommodate the County's senior population who prefer to age in place and people with special needs." Chapter 10 of PlanHoward 2030, Community Design identifies four issues relevant to Established Communities areas, one of which applies to the BA-17-030C Conditional Use proposal: "Opportunities for limited, compatible, infill development such as senior housing for residents wishing to downsize but stay in their communities."

2. 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 are such that the overall intensity and scale of the use(s) are appropriate for the site.

HCZR § 131.0.B.2 is an on-site evaluation of the proposed Conditional Use. The 4.96-acre Site will be accessed from Guilford Road, a Major Collector, which can accommodate the proposed increase in traffic associated with an ARAH conditional use. Landscape buffering, rights-of-way, and roadways will separate and buffer the development from the adjacent single-family attached and detached developments and the religious facility.

Importantly, the proposed ARAH conditional use is required to provide a community

center, which in this case will be the conversion of Wildwood into a community center. As detailed in the above Findings of Fact, Petitioner revised the CUP in response to DAP and HPC commission recommendations to make the historic residence a focal point. To ensure protection of this historic resource, given the nature of the proposed ARAH development, Petitioner shall be required to retain the smokehouse and to push back lots 23 and 24 further from the road to open the view from the road to the historic house. As a result, the nature and intensity of use, as well as the scale of the use, and the location of streets providing access, are appropriate for the site, subject to all conditions of approval, and as further evaluated in Part III below.

3. The proposed use at the proposed location will not have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses. In evaluating the proposed use under this standard, the Hearing Authority shall consider whether or not:

Unlike §§ 131.0.B.1 and 2, which concern the proposed use's harmony or compatibility with the General Plan and the on-site characteristics of the proposed use, compatibility with the neighborhood is measured under § 131.0.B.3's six "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading; (4) access; (5) impact on environmentally sensitive area, and; (6) impact on the character and significance of historic sites. These six adverse impact tests gauge the off-site effects of the proposed conditional use.

Inherent in the assessment of a proposed conditional use under these criteria is the recognition that virtually every human activity has the potential for adverse impact. The assessment therefore accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before the Hearing Examiner is not whether the proposed use would have adverse effects in an R-12

district. The proper question is whether there are facts and circumstances showing the particular uses proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception [conditional] use irrespective of its location within the zones. *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008); *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, and as conditioned, the Petitioner has met its burden of presenting sufficient evidence under HCZR § 131.0.B.3 to establish the proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with an ARAH conditional use development in the R-12 zoning district.

a. The impact of adverse effects such as, but not limited to, noise, dust, fumes, odors, intensity of lighting, vibrations, hazards or other physical conditions will be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning districts.

There is no evidence of record regarding atypical adverse effects on vicinal properties from dust, fumes, and odors, noise, intensity of lighting, or hazards.

b. The location, nature and height of structures, walls or fences, and the nature and extent of the existing and/or proposed landscaping on the site are such that the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.

No wall or fences are proposed. All structures will meet district zoning setback and height requirements. The longer length groupings will be located away from residential uses. Importantly, the proposed single-family attached housing provides a transition between the single-family neighborhood to the west and the commercial Village Center to the east. The use will not hinder or discourage the development and/or use of adjacent land and structures more

at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.

c. The number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas will be appropriately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

HCZR § 133.0 requires 2.0 parking spaces per ARAH dwelling unit and 0.3 spaces per dwelling unit for visitors (55 spaces/24 units). The CUP shows 110 parking spaces, 96 for dwellings, ten for visitors, and four for the community center. Visitor and community center parking is appropriately proposed inside the cul-de-sac. The interior private road is centrally located and buffered from adjacent public roads and residential uses by distance. Parking will be appropriately screened and buffered from surrounding areas. There is no dedicated refuse area.

d. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate. For proposed Conditional Use sites which have driveway access that is shared with other residential properties, the proposed Conditional Use will not adversely impact the convenience or safety of shared use of the driveway.

The proposed conditional use will be accessed from Guilford Road. DPZ reports the sight distance appears to provide reasonable access. There is no shared driveway access.

e. The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.

There are no known environmentally sensitive areas in the vicinity.

f. The proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.

Because this is an off-site test, the impact of the development on historic Wildwood is not evaluated here. There are no historic sites in the vicinity.

II. Specific Criteria for Age-Restricted Adult Housing, General (§ 131.0.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 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.

The Property is zoned R-12 and 24 single-family attached units are proposed, in accordance with § 131.0.N.1.a(1).

(2) In the R-ED, R-20, R-12, R-SC, R-SA-8, R-H-ED, R-A-15, or R-APT Districts the development shall have a minimum of 20 dwelling units.

Twenty-four dwelling units are proposed on the R-12 zoned Property, in accordance with § 131.0.N.1.a(2).

(3) The maximum density shall be as follows:

Zoning District	No. of Dwelling Units	Max. Units Per Net Acre
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-H-ED	20 or more	10
R-A-15	20 or more	25
R-APT	20 or more	35

The Property is zoned R-12 and 24 units are proposed, making the maximum density 5 units per acre and 4.83 units per acre is proposed, in accordance with § 131.0.N.1.a(3).

(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.

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, which include the five single-family detached residential properties to the northwest, the two residential properties just beyond the northwesterly corner of the Property, and the adjacent single-family attached residential properties on the other side of Open Space Lot 289. These include a landscape buffer along the westerly lot line, scattered landscaping throughout the site, street trees along Road "A," and trees in the spaces between the garages and every other landscape island to create a street tree effect. This landscape character will be compatible with and blend with vicinal residential development, in accordance with § 131.0.N.1.a.4 (a).

- (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.**

Based on the September 17, 2017 townhouse elevation presented to DAP and submitted with the petition, the cottage-like townhouses will feature staggered setbacks, changes in elevation through roofline and façade treatments, similar muted exterior colors, and changes in materials. As a condition of approval, the townhouse end units shall include a small front porch and windows on the side facades as a condition of approval to blend in with the neighboring single-family detached dwellings. Unit groupings exceeding 120 feet will be sited away from neighboring residences, next to an Open Space Lot and toward the village center. The petition accords with § 131.0.N.1.a.4(b).

(c) For projects with less than 50 dwelling units in the 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.

The NT-zoned adjacent public street (Guilford Road) is subject to a Final Development Plan (FDP-178-A-4 Part 2) requiring a 30-foot setback. The development therefore proposes a 30-foot setback along Guilford Road, in accordance with § 131.0.N.1.a.(4)(c).

(5) Bulk Requirements

(a) Maximum Height:

- (i) Apartments 40 feet
Except in R-SA-8 and R-A-15 and R-APT..... 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

The CUP complies with all setback requirements.

(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, R-A-15, and R-APT or 200 feet in other districts, based on architectural design that mitigates the visual impact of the increased length.

For the reasons set forth above, and as conditioned, the proposed conditional use comports with § 131.0.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 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, R-H-ED, R-A-15 and R-APT 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-12, 35 percent of the Site must be open space (4.35 acres) and the CUP shows 1.98 acres of open space, about 39% of the Property. The open space areas include benches, pathways, and a gazebo. The proposed pathway and approval conditions specific to it are discussed in Part III below. The petition accords with § 131.0.N.1.a(6).

Concerning the proposed gazebo, the Hearing Examiner agrees with DAP and other reviewers that it should be relocated from the cul-de-sac to preserve Wildwood as the focal point. In the Hearing Examiner's view, a gazebo mostly surrounded by parking spaces is not an "amenity space." Therefore, as a condition of approval, Petitioner shall consult with DPZ staff, including particularly, Historic Preservation staff, about its relocation west of the area where the CUP (Exhibit 2) notes what appears to be a bio-retention pond (in the general area of an existing garage proposed to be razed). If properly placed, the view from the gazebo will be directed

toward Wildwood. The blue octagon shown on the CUP, reproduced on pg. 17 indicates the general relocation area.

As a further 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 all conditions of approval, the proposed conditional use accords with § 131.0.N.1.a(6).

(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 24-unit development, Wildwood will be converted to a 1,452sf community center, exceeding the 500sf minimum, in accordance with § 131.0.N.1.a(8).

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

According to the CUP, 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.

Mark Levy testified a homeowners association shall be established to enforce age restrictions, in accordance with § 131.0.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.

Petitioner has declared that open space, common areas, and related improvements will be maintained by the homeowners association, in accordance with § 131.0.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, including floor plans showing a master bedroom on the first floor, optional soaking tub or oversized shower, and pathways between parking area, dwelling units and on-site common areas, in accordance with § 131.0.N.1.a(13) and as further evaluated in Part III below.

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

Ten percent of the units (three) shall be moderate housing units to accord with § 131.0.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.

DAP reviewed the CUP and building design on August 9 and September 27, 2018. The meeting summaries were attached to the TSR. The petition accords with § 131.0.N.1.a(16).

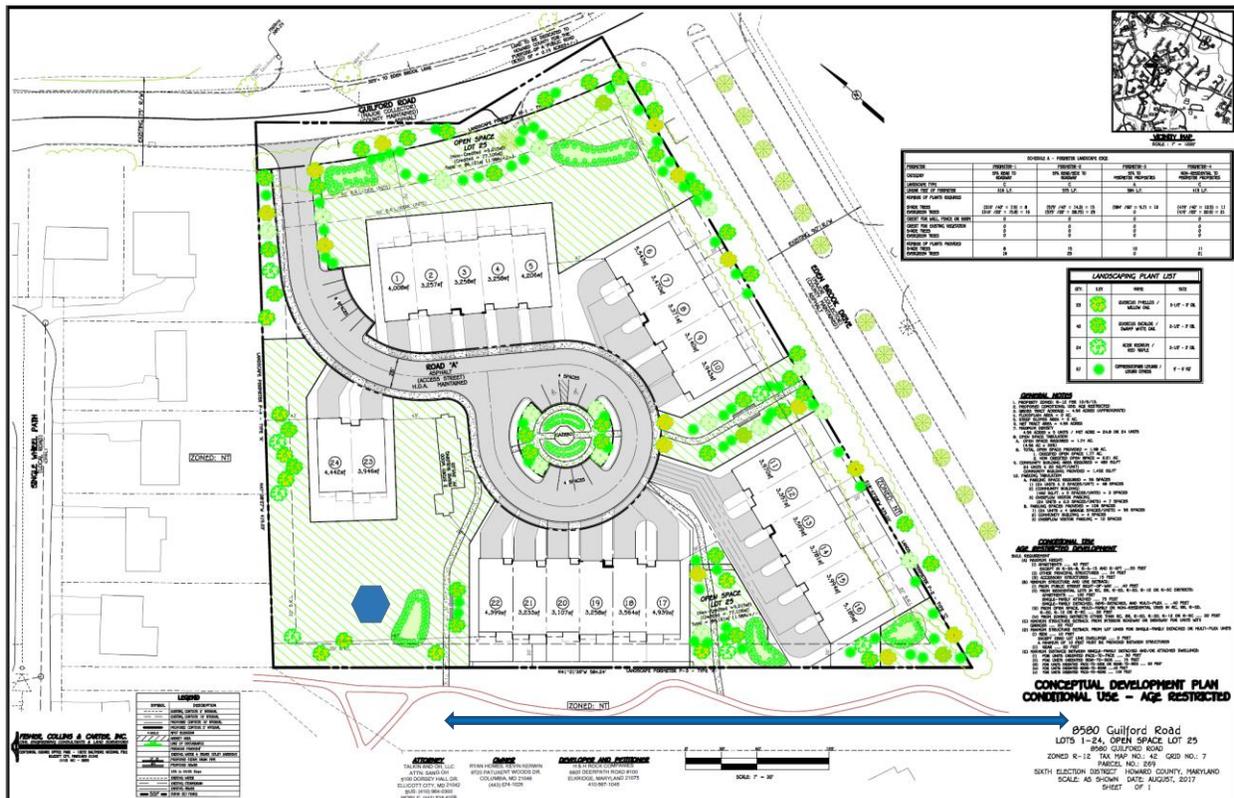
III. Connecting the Partial, Internal ARAH Pathway to the Adjoining Open Space Lot 289 Pathway, Columbia Association Pathways, & Sidewalks, and a Crosswalk over to the Village Center

The CUP showing the ARAH pathway amenity (Exhibit 2) appears on pg. 17. HCZR § 131.0.N.1.a(6) requires ARAH open spaces or open areas to include amenities such as pathways, seating areas and recreation areas for the residents. When a pathway is proposed, it must be internal to the site and operate as a cohesive functional loop, which is not proposed here. That the proposed pathway lacks both features is grounds for denying the petition. It is also a signal the proposed use may be too intense for the site.¹

Still, the Hearing Examiner recognizes Petitioner's manifest intent is to connect the ARAH partial pathway to external paths/sidewalks; that is, Petitioner seeks to partially meet the HCZR § 131.0.N.0.6 amenity requirement with off-site improvements. This will require written

¹ Also signaling an inappropriate intensity is DLD's comment that open space lots behind single-family residential lots must be wide enough to accommodate maintenance access and plantings for perimeter landscaping. Although DLD notes this will be further evaluated with the future site development plan. It is Petitioner's burden of production and persuasion to show, through the CUP, that the intensity is appropriate.

authorization from the Columbia Association, Petitioner coordination with the Columbia Association, and appropriate conditions of approval to ensure the Site Development Plan as approved includes the pathway extension and crosswalk.



The Conditional Use Plan

 Area of relocated gazebo
 Petitioner is responsible for improving this area of Columbia Association pathway to ADA and county standards

The CUP is Petitioner's acknowledgement it cannot otherwise meet the ARAH amenity standard owing to the intensity and scale of use. Hearing Examiner Rule of Procedure 10.5 authorizes the Hearing Examiner to grant a petition with modifications or conditions. Such

conditions must relate back directly to the Hearing Examiner's review of the HCZR § 131.0.B general approval standards for all conditional uses (see Part II of these Conclusions of Law) and the HCZR § 131.0.N.1.a standards specific to ARAH conditional uses (See Part III of these Conclusions of Law).

The Court of Appeals in *Halle Companies v. Crofton Civic Ass'n*, 339 Md. 131, 140-41, 661 A.2d 682, 686 (1994) said this about the power to condition the grant of a conditional use petition to affirm the Anne Arundel Board of Appeals' power to impose conditions or limits necessary to the protection of the public health, safety and welfare, including, in pertinent part, *off-site* access to the project site via a county road and the acquisition of the necessary rights-of-way from private property owners.

The power to impose conditions upon the grant of a variance or special exception is one which is implicit in the power to grant a variance or special exception. "This is so because the whole basis for the exception is the peculiar hardship to the applicant, and the Board is justified in limiting the exception in such a way as to mitigate the effect upon neighboring property and the community at large." [*Baylis v. Mayor & City Council of Baltimore*, 219 Md. 164 (1959)] at 169, 148 A.2d at 432. See also *Skipjack Cove Marina, Inc. v. Board of County Comm'rs of Cecil County*, 264 Md. 381, 287 A.2d 49 (1972); 3 *Yokley*, *Zoning Law and Practice*, § 21-12. Both a variance and a special exception authorize uses which otherwise would not be permitted. Having been given the power to authorize such unusual uses, the Board must also have the power to limit those uses to protect the health, safety, and welfare of the community. See *Skipjack Cove Marina, Inc.*, 264 Md. at 386, 287 A.2d at 51 (The board is justified in limiting the special exception in such a way as to mitigate its effect upon neighboring property and the community at large.); 3 *Rathkopf*, *The Law of Zoning and Planning*, § 40.02 ("Even in the absence of any specific provision therefor in the ordinance, the board would thus have inherent power to condition a variance. If this were not so, the board, for lack of such right, might be forced, at times, to deny a variance and thus perpetuate the hardship which the restrictions have imposed upon the landowner.")

In line with *Halle*, the Hearing Examiner in this petition for an ARAH conditional use in an existing community is requiring Petitioner as a condition of approval to extend and tie in the proposed on-site pathway to the off-site Columbia Association pathway/sidewalk system and to

work with the Association and the County to build a crosswalk from the pathway between units 10 and 11 over Eden Brook Drive to the village center. Petitioner shall obtain all Columbia Association approvals, including all necessary easements. All required Columbia Association approvals, including easements, shall be incorporated into and shown on the Site Development Plan. Petitioner shall also be responsible for making necessary improvements to those portions of the Columbia Association pathway/sidewalk system to meet current County and ADA standards, as indicated by the arrow shown on the CUP reproduced on pg. 17.

ORDER

Based upon the foregoing, it is this **29th day of May 2018**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of H & H Rock Companies for a conditional use to construct a 24-unit Age-restricted, Adult Housing General in an R-12 (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 described in the petition and depicted on the revised Conditional Use Plan (Exhibit 2) and not to any new structures or uses on the Site or any additions thereto.
2. Petitioner shall retain the smokehouse and push back lots 23 and 24 further from the road to open the view from the road to Wildwood.
3. The dwelling design approved is the September 17, 2017 townhouse elevation presented to DAP showing cottage-like townhouses and submitted with the petition.
4. The gazebo shall be relocated west of the area indicated by the octagonal shape where the CUP (Exhibit 2) notes appears to be a bio-retention pond (in the general area of an existing garage proposed to be razed). Petitioner shall consult with DPZ staff, including, particularly, Historic Preservation staff, about its orientation to maximize the view from the gazebo toward Wildwood.
5. 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.
6. All routes between parking areas, sidewalks, dwelling units, and common areas, including the proposed pathways, shall be ADA complaint.
7. Petitioner shall extend and tie in the proposed on-site pathway to the off-site Columbia Association pathway/sidewalk system and work with the Association and the County to build a crosswalk from the pathway between units 10 and 11 over Eden Brook Drive to the village center.

Petitioner shall obtain all Columbia Association approvals, including all necessary easements. All required Columbia Association approvals, including easements, shall be incorporated into and shown on the Site Development Plan.

8. Petitioner is responsible for making all necessary improvements/modifications to those portions of the Columbia Association pathway/sidewalk system to meet current County and ADA standards, as indicated by the arrow shown on the CUP reproduced on pg. 17 of this decision and order.

9. Petitioner shall comply with all agency comments.

10. Petitioner shall obtain all required permits.

11. Petitioner shall comply with all federal, state, and local laws and regulations.

**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.