

✱

✱

\*

\* \* \* \* \*

Zoning Board Case 1118M arises from a Petition brought by Erickson Living Properties II, LLC (Petitioner), asking that the Zoning Board approve a development concept plan and designate certain properties located as described under “Location” in the March 7, 2019, Technical Staff Report (“TSR”) of the Howard County Department of Planning and Zoning for Case ZB-1118M (“hereinafter the Property”) as a Community Enhancement-Floating (“CEF”) District, pursuant to Howard County Zoning Regulations (“HCZR”), Section 121.0. Petitioner filed its request, which seeks a CEF-M District, based upon a proposal that included redevelopment of a parcel that contains an existing convenience store and gas station conditional use into a motor vehicle fueling facility and convenience store as a permitted of right use on a parcel zoned B-2, as well as the development of a continuing care retirement community on land used for agriculture that is zoned RC-DEO. Subsequent modification to the plan as approved by the Zoning Board (the “Board”) does not approve the application of the CEF-M to the land on which the gas station and convenience store are located, removing that parcel from the scope of the development plan approved by the Board, after determining that the only use proposed by the petition for the property, motor vehicle fueling facility, is not a permissible use under CEF-M.

The case was heard by the Board over the course of multiple dates: March 4, June 17, July 15, September 2 and 16, October 7 and 28, and December 2, 2020; January 13, February 10, March 10, April 7 and 14, June 9 and 23, July 27, September 9 and 29, October 27, and November 10, 2021. The Board voted at its November 10, 2021 hearing to approve the Petition, as modified and with conditions imposed by the Board, pursuant to the HCZR 121.0.J.8.b, including hearing from the parties on the modifications and conditions, pursuant to HCZR 121.0.J.8.c. This Decision and Order approves the Petition with modifications and conditions, based upon the evidence adduced during the hearing and the applicable law.

The criteria applicable to a petition for a CEF District, in pertinent part, are set forth in HCRZ 121.0.I:

1. The proposed CEF District is located within the planned service area for both public water and sewer service.
2. A proposed CEF-R or CEF-M District shall have frontage on and access to an arterial or collector roadway, or a local road if access to the local road is safe based on road conditions and accident history and the local road is not internal to a residential development.
3. For all properties, the minimum development size for any CEF District shall be five acres.
4. The proposed CEF District is not located in an existing M-2, TOD, NT, MXD, or PGCC District.
5. The proposed CEF District is not permitted within the interior of a neighborhood comprising only single-family detached dwellings.

6. A CEF development at the proposed location shall be compatible with surrounding residential neighborhoods, existing land uses in the vicinity of the site in terms of providing a transitional use between different zoning districts and/or land uses and the scale, height, mass, and architectural detail of proposed structures.
7. The proposed CEF development shall include enhancements as provided in Section 121.0.G. Enhancements shall be proportionate to the scale of the CEF development.
8. The proposed CEF District shall meet the criteria of the purpose statement.
9. The proposed CEF Development does not comprise parcels that were added to the Planned Service Area to achieve Bay Restoration goals articulated in Plan Howard 2030.

### **FINDINGS OF FACT**

The Property is 62.116 acres in size, parts of which are in the RC-DEO (Rural Conservation – Density Exchange Option), and B-2 (Business: General) zoning districts, and, as noted above, located as described in the TSR, which is a part of the record and incorporated herein as if fully set forth. Based upon the scope of the plan approved by this Decision and Order, the facts related to the B-2 parcel and the conditional use located on that parcel are largely not relevant and will be largely omitted from detailed herein. The facts applicable to that portion of the plan are accurately described in the TSR.

The Director of the Department of Planning and Zoning (“DPZ”), Amy Gowan, presented the TSR on the Petition and testified under oath and subject to cross-examination. Her testimony, including responses to cross-examination, addressed the criteria applicable to the Petition and her Department’s analysis of the Petition in relation to those criteria.



Based upon Director Gowan's testimony, as well as the exhibits admitted into evidence, including but not limited to the TSR and the Petition and its supporting documents, the proposal as presented to the Board is for the approval of a CEF-M floating zone petition for approximately 62 acres across three parcels of land. The parcels are zoned RC-DEO as to approximately 61 acres and B-2 as to the remainder. They have frontage on Maryland Route 108 and Sheppard Lane. At all times relevant to the Petition, the properties are included in the Planned Service Area for water and sewer, designated Tier 1 and part of a targeted growth and revitalization area, for General Plan purposes.

The Petition seeks approval to develop a Continuing Care Retirement Community ("CCRC"), as regulated by Md. Code Ann., Human Services Art., Title 10, Subtitle 4, a motor vehicle fueling facility and convenience store, and to provide public amenities, including: an amphitheater, dog park, park area, and certain transportation infrastructure. The proposal had been amended in response to suggestions made by the Design Advisory Panel, including relocation of buildings, the entrance to the site, the frontage and certain views, and extension of pathways.

After setting out the criteria in the HCZR, Director Gowan reviewed her Department's analysis of the Petition under the criteria. The full analysis is contained in the TSR and is incorporated by reference herein, as if fully set forth. Among the DPZ conclusions are that the proposal would consolidate parcels, allow for flexible design choices, emphasize environmental considerations in its design, address transportation issues, add amenities above what is required by the County Code and the HCZR, provide a transition between residential and commercial areas, and take advantage of the topography of the site. The DPZ recommended approval of the Petition, with certain conditions, including the remaining Design Advisory Panel recommendations,



provision for remaining technical approvals such as that of the State Highway Administration, and provision for ongoing maintenance that may be required.

Director Gowan answered questions on cross-examination. She explained the basis for the recommended Moderate Income Housing Unit ("MIHU") plan, its relation to the 10% MIHU requirement for a CEF where the underlying base zoning does not contain a higher MIHU requirement, and the role of the County Department of Housing and Community Development in reaching the proposed MIHU solution. She explained the evaluation of the proposed public amenities, including that the TSR found the Petition to propose amenities that would be free and open to the general public and would provide more than what is required by existing County law. She also addressed questions raised regarding the Adequate Public Facilities Ordinance, traffic studies, economic factors, and the impact of the underlying comprehensive zoning districts.

Scott Templin, an employee of Petitioner, testified, explaining the proposal. Mr. Templin, both on direct examination and in response to cross-examination addressed how the proposal would satisfy the MIHU requirements. He explained that based upon discussions with Kelly Cimino, the Director of Housing and Community Development for the County, if the proposal were approved, the Petitioner would provide 96 MIHU slots for applicants found to be eligible and would fund, administer, and maintain a \$2 million "scholarship," principally to enable otherwise eligible applicants to reside in the CCRC who lacked sufficient assets to pay the entrance fee. The proposal also calls for the entrance fee, which would otherwise be a refundable \$350,000 payment against which a resident could draw down if the need arose, to be a non-refundable \$200,000 payment for MIHU applicants, with alternative arrangements if a draw down situation occurred.

He explained that the basis for this approach, instead of simply providing the 10% of units as MIHUs as required by the HCZR, derives from prior reported experience with individuals who

qualify for the lower monthly cost of an MIHU being unable to occupy them in a CCRC setting because of a lack of assets. He explained that while a typical CCRC applicant can fund the significant, but refundable, entrance fee with assets such as the sale of a home they own but are leaving to move to the CCRC, based upon discussions with Ms. Cimino, MIHU applicants may lack such assets even when they can afford the monthly costs of the unit once they are in one. This has resulted previously in MIHUs remaining unoccupied and being converted to market-rate units, based on Petitioner's discussions with Ms. Cimino. Petitioner proposes, as an alternative method of complying with the MIHU requirements to providing 10% of units as MIHU and nothing additional, to provide 8% of independent living units as MIHUs, to fund and maintain the "scholarship" to enable MIHU applicants to meet the entrance fee requirement, and to require the MIHU to remain MIHU only and never be convertible to market rate.

Much of Mr. Templin's direct examination, as well as cross-examination, focused on the need for the CCRC in Howard County and the amenities it would provide to the surrounding community. He addressed the existing 551 CCRC units at two locations in Howard County, the County's population of 50,000 seniors, and the hundreds of formerly Howard County residents who have already moved to Petitioner's CCRC communities in nearby counties. He pointed to projections of a 20,000 person increase in Howard County's senior population over the next decade and a projected lack of age-in-place housing and transportation to serve that increase.

He explained that the proposed amenities that would be provided by the development were based upon input at multiple community meetings, and address transportation improvements, community connectivity, and park spaces. The transportation construction would include road and signal improvements designed to reduce congestion on Maryland Route 108. The connectivity would be addressed principally by construction of approximately 8,000 feet of pathways for



pedestrians and cyclists, pursuant to the County's Clarksville Pike Streetscape Plan. The amenities would include an amphitheater, a park, and a dog park. Additional cross-examination of Mr. Templin touched on various other aspects of the plan, including infrastructure and layout and the likely demand for the community.

Mr. Templin explained that the amenities would all be free and open to the public. Exhibits admitted during his testimony included documentation that helped set out the scope, location and nature of the amenities proposed by the Petitioner.

Mr. Templin was recalled subsequent to his initial testimony to address questions raised by the Board regarding paratransit plans with respect to the proposal. In response to comments by the County staff that the CCRC could produce 1134 paratransit trips each month, he stated that based upon other communities owned by the Petitioner, he would estimate a far lower number of trips (237 paratransit trips per month) would be generated. He pointed out that whether a senior lived on campus at an Erickson CCRC or in the community, they would have paratransit needs and thus the projected trips were not a product of the CCRC. He acknowledged that the shuttle transit service that Petitioner normally offers is driven by community demand but would not likely provide every individual trip residents may desire, leaving residents dependent at times on making their own transportation plans, including by use of County paratransit.

Carl Wilson, an engineer, testified for Petitioner to address the traffic improvements proposed as part of the development. He demonstrated the present traffic problems that exist in the area of the property. These include congestion, especially during peak periods including those related to schools in the area, which lead to burdensome or dangerous driver behavior and traffic conditions, such as limited sight distance, delayed traffic due to turning vehicles, cutting through surrounding residential areas, and late merge from turn lanes into the ongoing travel lane.



He explained how the Petitioner's proposal implements solutions to these problems, as reflected in the exhibits admitted as part of his testimony. Mr. Wilson explained the new road construction, road widening, road realignment, improved traffic signalization, and pedestrian improvements to reduce traffic congestion and improve safety for vehicular and pedestrian traffic. These are depicted in the exhibits he presented during his testimony. Cross-examination questioned Mr. Wilson's analysis. Mr. Wilson also responded to cross-examination questions by explaining how the proposal would address vehicular and pedestrian safety issues. Mr. Wilson identified certain of the traffic improvements that he asserted would not be required by existing regulations based upon the proposed development and could therefore constitute community enhancements offered uniquely by the proposal.

Brandon Rowe, a civil engineer, testified regarding the proposed design of the site itself. He explained that the proposal provides unification of the existing parcels and consistent streetscape improvements, including pathways, sidewalks, trees, and lighting, consistent with the County's streetscape plans. He testified that the underlying zoning for the parcels would not mandate these same results if development occurred pursuant to those requirements. He explained how the exhibits admitted in Petitioner's case, including his own presentation, document how the proposal meets the criteria of the regulations, including the provision of community enhancements. He discussed a proposed 5-acre public park space that would be developed and the streetscape improvements, including pathways and pedestrian signalization, that would be constructed. He explained the transition that the proposal would provide between present surrounding conditions, including from surrounding commercial and higher density residential areas to lower density residential areas. He described the proposal as comparable to an institutional use and a mixed use, for purposes of compatibility, which he said provides a step down in density between surrounding

areas. He pointed to the buffers the development would include as supporting the community transition and opined that the perimeter portions of the plan are most important for transition purposes. He also discussed the proposed motor vehicle fueling facility, the layout of which is in the Petitioner's exhibits, but which the Board has not approved.

Mr. Rowe's testimony addressed discussions between Petitioner and the County Department of Recreation and Parks regarding the need for the park to be developed as an enhancement. He stated that Petitioner is willing to work with the County on the amenities and the design of the layout, giving the County final approval of both. Petitioner is also willing to provide a source of funds for the maintenance of the park for a period of time, while also turning over ownership of the park to the County.

Mr. Rowe explained that much of the parking for the proposed development would be underground, to increase the green space that will exist in the development. He explained how the increase in forested area detailed on the Petitioner's exhibits above what is currently present would be achieved.

He pointed out that the sidewalk construction the proposal would provide is above what is required by County regulations applicable to the underlying zoning. Using exhibits offered into evidence by Petitioner, he explained the access drive and signal construction that the development would provide, which crosses onto the property utilized by the existing gas station, including the potential connection of surrounding properties via a new section of roadway to be constructed as a part of Petitioner's proposal.

In response to cross-examination, Mr. Rowe explained the neighborhood boundary set by the proposal as based upon proximity to the site, existing and potential community connectivity, and the opportunities presented with respect to infrastructure, including the proposed pathways



and road improvements. He further explained that the plan layout, including the location of the second access road, was driven significantly by community feedback and the Design Advisory Panel process. He described the various wetland and stream buffers proposed and confirmed that the stream is categorized as a Class 4 stream.

Mr. Rowe's testimony in response to cross-examination additionally explained various aspects of the plan documents, including the location of a wastewater pumping station, a perimeter fence, and the meaning of various other indicators on the plan documents. He discussed the location and size of the amphitheater, which he said was in part based upon the topography and the other amenities to be included in the park and explained that the layout of the park and the included park facilities such as a dog park, playground, and amphitheater, are based upon community input.

Mark Heckman, an architect, testified for Petitioner. His testimony and exhibits covered the details of the architectural plan for the community. He explained that the plan was tailored to the unique circumstances of the site. It factored in the surrounding community as well as environmental and sustainability considerations.

Mr. Heckman testified how the proposal would serve as a transition between surrounding commercial and residential areas, serving as a bookend to the commercial corridor. He highlighted existing natural resources of the site, including topography, and the manner it was factored into the proposal design. He emphasized the use of the sloping topography to reduce both the impact of taller buildings in the proposal as well as the extent of the necessary disturbance for construction. He pointed out that the plan and its use of the sloping topography also aids with the underground parking facility that is included in the plan.



Mr. Heckman described the testing that he has overseen to measure the potential visibility of proposed structures and to assure their minimal impact on surrounding properties. He discussed the process used to study the local architecture of the area and to better design the proposal to fit in with the community, including with respect to building elements, forms, and colors.

Mr. Heckman answered questions regarding sound mitigation possibilities to protect both the surrounding communities and the occupants of the buildings to be located on site. He also responded to inquiry regarding the shuttle service likely to be provided by the community.

Rene Dubois testified on behalf of the River Hill Community Association. Her comments were also submitted in writing. The River Hill Community Association supported the petition. It believes the criteria for approval are met, satisfies a community need for senior housing, contributes amenities including community connectivity and needed park space, and helps transition commercial to residential areas. Ms. Dubois also expressed appreciation for the traffic improvements the proposal offers, including the lane improvements and signalization.

Several other witnesses also spoke in support of the proposal. Charlotte Stoughton, Rosemary Mortimer, Patricia Goodman, Atal Enalp, Ron Briggs, and Emily Kendall expressed favorable impressions of Erickson CCRCs and felt it would contribute needed senior housing opportunities. Brian Jolies explained that he services planning clients who are seniors and that the project would be a great addition to the community. He also expressed positive prior experience with Erickson CCRCs. John VanOosten, Pamela VanOosten, and Richard Wissing all stated that the proposal would provide a housing opportunity of which each wishes to take advantage based upon their favorable impressions of Erickson. Gayle Annis-Forder favored the proposal because of the park amenities that would be included and the pedestrian and traffic improvements. Karol Hess opined that the proposal would make better use of the land at issue than commercial

development that she was concerned would otherwise occupy it. Joan Lancos and Stephen Sprecher expressed views that the proposal fulfills goals of the General Plan, including transportation and housing policies. Lou Ulman, Steven Lee, Jim Sanders, Ellen Flynn Giles, Steve Mendelson, and Richard Smith spoke in support based in part upon the need for senior housing in the County as well as the amenities it would provide for the community. Patricia Cosgrove supported the proposal based largely upon the traffic improvements it would contribute. Duane St. Claire supported the proposal based upon the park amenities.

Kelly McLaughlin spoke on behalf of the Howard County Housing Affordability Coalition. She expressed the organization's conditional support for the proposal. While the organization supported the need for the senior housing, it emphasized the need for appropriate arrangements for MIHUs. She expressed the view that the proposed solution for MIHUs contained in the plan was satisfactory, if the conditions proposed by her organization were met. She opposed non-refundability of any portion of an entrance fee paid by the MIHU residents themselves.

A number of witnesses spoke in opposition. Included among these were James M. Guaneri, who testified that more information was needed by the Board to decide on the petition. He disagreed with the Petitioner's position regarding the County's need for the CCRC and expressed the concern that residents might be drawn from other Counties rather than Howard County. He disputed the notion that the housing as proposed could be affordable.

Grace Kubofcik opposed the petition based upon the treatment of MIHU, as proposed. She suggested that every building be required to include MIHUs, that the overall requirement should be 15%, that the MIHUs be a mix of unit type, that the scholarship fund be required, that units she described as "live where you work" be required, and that any transit Petitioner provides for its residents also be available to its employees.



Stu Kohn testified that he opposed the petition based upon the Petitioner not having met its burden to show that the HCZR criteria were met. He stated that stormwater quantity would be less of a concern if the project was denied. He also questioned whether the evidence presented was sufficient to support the modifications the Board was making to the plan.

Hiruy Hadgu testified in opposition on behalf of the Howard County Citizens Association. The principal basis for the opposition was the potential inclusion of the motor vehicle fueling facility, which the Board has not approved with this Decision and Order. He also expressed opposition based upon the conduct of the hearing in a virtual format. He testified regarding traffic concerns based upon the development being added to the existing level of service provided by the roads. He expressed the view that the MIHU proposal was inadequate because it provided less than a 10% level of MIHUs. He stated that the paratransit plans of the proposal are inadequate, because he rejected the Petitioner's testimony regarding the number of paratransit trips that the community would generate.

Michael Glasgow opposed the Petition based upon the impact he anticipates it would have on the two existing CCRCs in the County. His concerns included the impact he foresees upon wages for CCRC employees having an additional employer competing for their services and the ability of existing CCRC residents to sell their CCRC interests if they wished to move out, with more units available in the community.

Barbara Fagan testified in opposition based upon the assertion that there is no need for the senior housing it would provide. She stated that seniors prefer to remain in their own homes and the proposed facility would hurt the CCRCs (including Vantage House, a CCRC where she resides) that already exist, by reducing demand for the units at the existing CCRCs and by creating additional demand for nursing staff.



Ginny Thomas testified that the Petition does not meet the HCZR criteria. She stated that it is contrary to the General Plan, particularly the needs of senior citizens, who she stated wish to remain in their own homes, not move to a CCRC. She expressed concern that the amenities would create burdens on the County budget for maintenance and are inadequate. She felt the MIHU approach proposed was insufficient. She also testified that the negative impact on CCRCs located in the County would be significant.

Mark Bobotek testified that the Petition proposes too many additional CCRC housing units. He urged that this proposed increase in CCRC-housing units will undermine the ability of residents of existing CCRCs to get their deposits back out of existing CCRCs where they are presently living, when new residents are available to move in. He also disputed the sufficiency of the proposed amenities proposed to be provided.

Mark Molin testified that he feels that the scale of the project is too large for what is needed by Howard County alone.

David Elsaesser testified that he does not feel the proposed traffic improvements are community enhancements. He testified that in order for the community enhancements to be proportionate to the Petitioner's proposal that traffic improvements needed to be greatly increased from what the Petitioner is offering. He agreed that traffic in the area presently is more dangerous than it should be.

Fred Tutman testified about environmental concerns, including runoff and erosion, he has with respect to the development. The focus of his concern centered on the potential impact on the Patuxent River, based upon the Property's location at the headwaters of the river and the property's contribution to erosion on an already degraded site due to increased pavement. He stated that a

problematic environmental project, which includes significant hardened paved areas cannot be redeemed and sets the stage for additional erosion and flooding.

Chris Alleva testified, principally expressing concerns about how the HCZR might be applied if the Petition is approved. Mr. Alleva explained what the land records show regarding the Property, and he discussed the motor vehicle fueling facility use which, as noted herein, is not approved by the Board by this Decision and Order.

Brent Loveless stated that the proposal does not appropriately transition the surrounding areas, due to the scope and size of what is proposed. He also testified the development would be a net loss of amenities, due to the loss of agricultural land and potential environmental impact.

Alan Schneider testified that the CEF criteria would not be met if the Petition were granted, largely due to the density of what is proposed. He testified that the design features and amenities are not sufficient. He agreed that traffic in the area requires improvement but disputed the testimony of Petitioner's traffic engineer as to whether the proposal offers an adequate solution. He expressed concerns about the potential environmental impact.

Joel Hurewitz testified regarding the motor vehicle fueling facility and the related property, which use has been denied and the property excluded from the application of the CEF floating zone. He testified extensively regarding the proposed amenities, in particular the dog park portion of the public park area, questioning the adequacy of the planned size, materials, and location.

The Board found the testimony of the witnesses in support to be more persuasive as to the relevant facts, including but not limited to the provision of amenities by the development plan including the park space and streetscape improvements. The Board credits both the witnesses presented by Petitioner as well as the testimony of Director Gowan as to the facts relevant to the HCZR criteria, as further set forth in this Decision and Order.

The Board accepted evidence in document form in addition to testimony, including the entirety of the Petition and other records received as part of the Board's adoption of the DPZ file as a part of the record of the case.

Based upon the evidence in the record of this case, the Board makes the following findings of fact, in reference to the applicable criteria:

1. **The proposed CEF District is located within the planned service area for both public water and sewer service.**

The Property, identified as: Tax Map 34, Parcel 185; the portion of Tax Map 28, Parcel 100 identified as part of the Petition; and Tax Map 35, Parcel 259 is within the planned service area for public sewer and water and the Metropolitan District, as reflected in the exhibits and the documents on file with the Board, including the DPZ TSR. The Property is also designated Growth Tier I and a Growth and Revitalization area.

2. **A proposed CEF-M District shall have frontage on and access to an arterial or collector roadway or a local road if access to the local road is safe based on road conditions and accident history and the local road is not internal to a residential development.**

As shown by the DPZ TSR as well as the documents submitted by Petitioner, the Property fronts and has direct access to Maryland Route 108, which is a minor arterial.

3. **For all properties, the minimum development size for any CEF District shall be five acres.**

As shown by the exhibits, including the TSR, and by Director Gowan's and Mr. Rowe's testimony, the Property consists of 62.116 acres, of which



approximately 61 acres is within the CEF floating zone approved by this Decision and Order.

4. **The proposed CEF District is not located in an existing M-2, TOD, NT, MXD, or PGCC District.**

As shown by the TSR and Director Gowan's testimony, the Property is zoned RC-DEO and B-2, and not in a M-2, TOD, NT, MXD, or PGCC District.

5. **The proposed CEF District is not permitted within the interior of a neighborhood comprising only single-family detached dwellings.**

As reflected in the TSR and shown in Petitioner's exhibits, the Property is not interior to a neighborhood of single-family detached dwellings.

6. **A CEF development at the proposed location shall be compatible with surrounding residential neighborhoods, existing land uses in the vicinity of the site in terms of providing a transitional use between different zoning districts and/or land uses and the scale, height, mass, and architectural detail of proposed structures.**

The surrounding properties include commercial uses within B-1 and B-2 zoning districts to the south and east, and low-density (3-acre lot single family) residential uses to the northeast, as well as a cemetery and agricultural preservation parcels, as detailed in the TSR and Petitioner's exhibits, and Director Gowan and Mr. Rowe's testimony. As explained in the testimony of Director Gowan, the TSR, and testimony of Petitioner's architect Mark Heckman, and civil engineer, Brandon Rowe, the Petition plan provides uses compatible to the area, which transition the

area from the commercial and some high density residential to low density residential.

The plan accomplishes the transition by including buildings scaled and situated in the topography to minimize their visual impact, as explained and tested by Mr. Heckman, with architectural detail derived from his survey of the surrounding areas. The building heights vary from one to three stories along Sheppard Lane to four stories on Maryland Route 108, as depicted in Petitioner's exhibits and explained in the TSR. The plan was further adapted in response to comments from the County Design Advisory Panel, including by moving structures away from Maryland Route 108 and placing the park amenities along that frontage, and as further detailed in the analysis by DPZ in its TSR.

The campus-style setting, together with the park amenities that it will add to the area, along with the pathway connectivity it will contribute to completion of the Clarksville Pike Streetscape Plan, will help tie the surrounding community together.

**7. The proposed CEF development shall include enhancements as provided in Section 121.0.G. Enhancements shall be proportionate to the scale of the CEF development.**

The proposed CEF development, as amended, includes:

- Funds as required herein to assist MIHU-eligible CCRC applicants to afford application and certain other fees and costs;
- On-site management to the level of a 100-year storm water quantity;



- Transportation, park, and streetscape improvements arranged for, funded, and constructed by the Petitioner and not the public;
- Construction of park amenities to the County's specifications and transfer of ownership of them to the County;
- Funding for paratransit services that exceed the threshold established by this Decision and Order.

The Board finds that with the exception of certain aspects of the transportation improvements, these improvements all constitute enhancements that exceed what would be required for development of these properties based upon the underlying zoning and existing County regulations and meet all of the requirements to qualify as enhancements, as set out in HCZR 121.0.G.

**8. The proposed CEF District shall meet the criteria of the purpose statement.**

The Petition proposes the consolidated development of what is presently agricultural property falling between commercial and low-density residential surroundings. Presently, development pursuant to the underlying zoning would allow extension of the low-density residential to abut directly against the commercial. The application of the floating CEF zone to permit this development plan enables a smoother transition, as described in the factual findings above.

This transitional development, by applying the CEF district, brings with it public amenities needed by the community, including a park, with both playground and dog park facilities, and a variety of traffic improvements to an area that opponents and supporters alike agree is troubled with congestion and safety issues.

The enhancements are further set forth in section 7 of this Decision and Order, immediately above.

The proposed development includes environmental features, community enhancements, and site design of a higher quality than the regulations would require for the RC-DEO district. It develops the property with connectivity increased, traffic improved, amenities contributed, and growing senior- and moderate-income housing needs met beyond what would be provided by development as RC-DEO.

The architecture and utilization of existing topography is consistent with the context of the surrounding area and locates structures that will be developed in a way that favorably situates them on the Property. The design in relation to the topography makes use of the sloping site to locate parking underground to a significant extent, thereby increasing available maximizing green space. It expands on the architectural forms that already exist in the area, such that this property will speak the same architectural language as its environs, as demonstrated by the testimony of Mr. Heckman.

Use of the CEF District to allow this development will enable adjacent parcels to be consolidated into a cohesive community that contributes amenities both in the forms of needed recreation and improved infrastructure, while providing senior housing that will allow a rapidly increasing share of the County population demographics to remain in their home county.

9. **The proposed CEF Development does not comprise parcels which were added to the Planned Service Area to achieve Bay Restoration goals articulated in Plan Howard 2030.**

As noted in the TSR and Director Gowan's testimony, the affected parcels were not added to the Planned Service Area to achieve Bay Restoration goals articulated in Plan Howard 2030.

### **CONCLUSIONS OF LAW**

The Board concludes that the Petition, with the amendments and modifications approved by the Board, and as set forth in this Decision & Order:

**(1) Will accomplish the purposes of the CEF District.**

This proposed development, with the amendments approved and modifications made by the Board, is a creative development of what is presently RC-DEO agricultural land, located in an area between commercial and low-density residential uses. The development, as approved, contributes park amenities much desired by the community that surrounds it, greater transportation connectivity for the immediate area, and improved traffic safety and efficiency. It incorporates the array of living arrangements common to a Continuing Care Retirement Community and the required moderate-income housing units with a novel solution to support successful occupation of MIHUs in a CCRC setting, which has been shown in the past to be problematic by the testimony of Mr. Templin and Director Gowan.

The plan, as approved, makes use of the greater design flexibility permitted by the CEF overlay district and the broader range of development alternatives allowed thereby, than the underlying RC-DEO would permit, particularly in light of the topography of the Property.



The plan, as approved, provides features and enhancements which are beneficial to the community in accordance with HCZR Section 121.0.G.3, including connectivity, recreation space, and traffic improvements. Similarly, it provides a higher quality of site design and amenities than is possible to achieve under the standard provisions of existing zoning district requirements.

The plan, as approved, more favorably arranges the site than would be possible under the underlying zoning, based on the sloped physical site characteristics, the existing roadway conditions, and the transition it accomplishes between the surrounding uses.

The development as approved will serve as a transitional area, stepping down the intensity from commercial and higher density residential areas to low density residential. As testified by Petitioner's witnesses, it will be an end cap to the commercial area, moving it more gradually into the low-density residential areas that the underlying zoning would allow to expand until it directly abutted the commercial areas.

The development as approved makes effective use of aggregation of the parcels it includes, which are presently underutilized, by permitting a cohesive development of the interwoven parcels into a better organized addition to the community than would otherwise be possible by following the RC-DEO underlying zone.

**(2) Complies with the criteria for a CEF District in Section 121.0.I**

Based upon the facts found by this Board, above, this Petition, as modified, meets the criteria in the HCZR.

**(3) Meets the Moderate Income Housing Unit ("MIHU") requirements.**

RC-DEO does not require moderate income housing, accordingly under CEF at least 10% of dwelling units must be MIHUs. The Petition as modified and approved will include at least 10% of the residential units in the development, as approved, as MIHUs, and therefore satisfies the 10% minimum in the HCZR.

Additionally, Petitioner will make provision such that residents of the MIHUs be able to remain in the CCRC, proceeding along the continuum of care as other CCRCs residents may, up to and including the advanced care units, in part by a scholarship fund provided by Petitioner totaling \$2,500,000.00 and Petitioner funding \$500,000 into a benevolent care fund as described in Petitioner's witness, Scott Gensler's testimony, responding to the Board's additions and modifications to the development plan, as petitioned. The monthly fee for the MIHUs shall be as determined by the Department of Housing and Community Development Board as a part of their existing MIHU public process.

Any remaining personal assets of MIHU residents shall be refundable to the former residents or their estates once they cease residing in the CCRC. Petitioner shall execute an alternative compliance agreement applicable to MIHUs regarding the monthly fee, along with recordation of a covenant or memorandum that documents accommodations in perpetuity.

Petitioner shall satisfy the MIHU requirements with respect to every phase of the development before they may proceed to any further phase, with MIHU units equally distributed throughout all residential buildings and phases of the development.

Petitioner shall not and by accepting this approval and proceeding with development waive any right or opportunity to convert or seek to convert MIHU units to market rate units at any time.

The Board approves the Petition subject to the following modifications and additional requirements to the Development Concept Plan, including, but not limited to: uses, bulk regulations, days and hours of business, or other operational issues including removal of facilities in the event of closure.

Accordingly, the Board **HEREBY ORDERS:**

- (a) A CEF District is created covering the land in the Petition, excluding the parcel that includes the present gas station and convenience store;
- (b) The Development Concept Plan, as modified pursuant to this Decision and Order, is approved;
- (c) The bulk regulations shall be as set forth in the Development Concept Plan, as modified herein. Modification of the Development Concept Plan includes, but is not limited to, provision of 100-year storm water quantity management on site.
- (d) The permitted uses shall be those proposed by the Petition.
- (e) The community enhancements as set forth in this Decision and Order are approved, as amended and modified herein, specifically Petitioner shall:
  - 1. Make provision for at least 10% of all dwelling units to be MIHUs, which is a requirement and not an enhancement, and do so such that residents of the MIHUs are able to remain in the CCRC, proceeding along the continuum of



care as non-MIHU CCRCs residents may, up to and including the advanced care units, in part by a scholarship fund provided by Petitioner totaling \$2,500,000.00 and \$500,000.00 benevolent fund.

2. Charge a monthly fee for the MIHUs no greater than as shall be determined by the Department of Housing and Community Development Board as a part of their existing MIHU public process.
3. Provide that any remaining personal assets of MIHU residents that remain at the conclusion of their residence at the CCRC shall be refundable to the former residents or their estates. Petitioner shall execute an alternative compliance agreement and operating agreement applicable to MIHUs regarding the monthly fee, along with recordation of a covenant or memorandum that documents accommodations in perpetuity.
4. Satisfy the MIHU requirements with respect to every phase of the development before they may proceed to any further phase, with MIHU units equally distributed throughout all residential buildings and phases of the development. Petitioner shall not and by accepting this approval and proceeding with development waives any right or opportunity to convert or seek to convert MIHU units to market rate units at any time.
5. The size of the dog park community enhancement shall be at least three quarters of an acre in size, be located away from the playground community enhancement, and utilize environmentally and “dog friendly” surfacing, as approved by the County through its Department of Recreation and Parks.

6. Provide for hours of operation for the dog park community enhancement at least until 7:30 p.m. each day.
7. Provide the transportation and streetscape improvements and enhancements, as proposed in the Petition and discussed in the TSR, as modified herein. Petitioner has agreed and is required as a condition of accepting the approval granted by this Decision and Order, to provide for all enhancements and/or improvements, including the traffic improvements, even to the extent they require use and/or encumbrance of land that is excluded herein from the scope of the CEF as part of the gas station and convenience store parcel. All legal arrangements and all costs associated with such enhancements and/or improvements shall be solely the responsibility of Petitioner.
8. Prior to beginning any construction of the development plan, provide bonds that are sufficient, to the County's satisfaction, to complete construction of all streetscape, park, and transportation improvements and enhancements.
9. Complete the construction of all streetscape, park, and transportation improvements and enhancements prior to the occupancy of any residential unit.
10. In the event that the petitioner is unable to construct a required streetscape improvement because of an approval or permission that cannot be obtained, an alternative improvement must be constructed by the petitioner that is commensurate with the improvement that cannot be constructed, including in its proportion to the scope of the approved CEF plan. A bond sufficient to cover the cost of the alternative improvement must be provided by the petitioner just as with the improvements and enhancement approved herein.

11. Reimburse the Regional Transportation Agency of Central Maryland ("RTA") or any successor(s) entity for all paratransit trips provided to residents or employees of the CCRC, if any, beyond the first 2,855 paratransit trips each year.

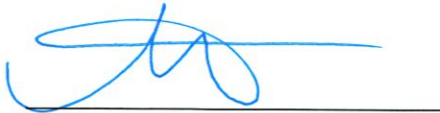
12. Build and construct the park community enhancements, including all amenities, as proposed by the Petitioner and modified herein to the specifications and standards of the County, including its Department of Recreation and Parks and provide for the transfer of park space (not inclusive of the meeting space of in the "welcome center") to County ownership, if the County will accept it. The park community enhancements include: the public use recreation area park and playground, outdoor amphitheater adjacent to Route 108, pavilion, dog park, pickle ball courts, 48-space parking lot, and provision for public reservation and usage of the meeting space in the "welcome center" as identified in the Petition.

13. Provide storm water management on site to the 100-year storm water quantity.

(f) A copy of the amended Development Concept Plan and Criteria shall be provided by the Petitioner for certification as approved by the Zoning Board and a verified copy of the same shall be forwarded to the Department of Planning and Zoning and the Petitioner.



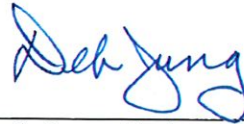
ATTEST: ZONING BOARD OF HOWARD COUNTY



Ashley Aguilar  
Board Administrator

2 March 2022

PREPARED BY HOWARD COUNTY  
OFFICE OF LAW  
GARY W. KUC  
COUNTY SOLICITOR



Deb Jung, Chairperson\*

Liz Walsh, Vice Chairperson\*



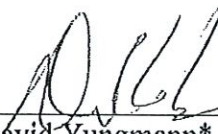
Opel Jones\*



Christiana Mercer Rigby\*



David R. Moore  
Senior Assistant County Solicitor



David Yungmann\*

\*Each Board member noted attests by their signature that they have listened to the recording of the hearing and reviewed the exhibits presented during all portions of the proceeding for which they were absent.

Erickson Living Properties II, LLC

\*

Before the Howard County Zoning Board

Petitioner

\*

Zoning Board Case No. 1118M

\*

\* \* \* \* \*

### DISSENTING OPINION

There was no due process, neither rules applicable nor consistently enforced, throughout the interminable hours of hearings—flung in whole, then in part, to a virtual realm. There were no sufficient evidentiary bases for the findings and conclusions here stated—not as a majority originally voted upon, even less so as subsequently modified. I entirely dissent.



---

Liz Walsh, Vice Chair