

IN THE MATTER OF	:	BEFORE THE
SOUTH TROTTER, LLC	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 22-007C

DECISION AND ORDER

On July 25, 2022, 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 South Trotter LLC (Petitioner) for an Age-Restricted Adult Housing, General (ARAH) Conditional Use in a R-20 (Residential: Single) Zoning District, filed pursuant to Section 131.0.N.1 of the Howard County Zoning Regulations (HCZR).

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. William Erskine, Esq. represented the Petitioner. Chris Malagari (civil engineer) and Monty Rahman (traffic engineer) testified in support of the Petition. Nancy Parlette, Rodger Jones, Marjorie Egana Anderson, Josyula Rao, Theresa Fodel, Edward Thomas, Tonya Grice and Ricky Cohen testified in opposition to the Petition.

Petitioner introduced into evidence the following Exhibits:

1. Aerial and 5 photos

2. Benchmark March 23 letter in response to Design Advisory Panel (DAP)
3. April 4, 2022, Department of Planning and Zoning (DPZ) endorsement

Opposition introduced into evidence the following Exhibits:

1. Parlette written testimony
2. Jones April 2021 PreSubmission Letter
3. Jones Memo to DAP

FINDINGS OF FACT

Based upon the evidence of record, the Hearing Examiner finds the following facts:

1. Property Identification. The subject Property is located on the east side of South Trotter Road, south of its intersection with Swimmer Row Way, and north of its intersection with Old Guilford Road. It is in the 5th Election District, identified as Tax Map 35, Grid 20, Parcel 338, Lots 1 and 2, and is also known as 6479 and 6485 South Trotter Road, Clarksville, Maryland (the Property).

2. Property Description. The Property consists of 9.75 acres, being two rectangular shaped lots, and contains a farm pond and several mature trees, all of which are included in the Conditional Use area. A single-family detached dwelling has been removed from the Property. The environmentally sensitive areas on the Property include wetlands associated with the streams and farm pond, the farm pond, and several mature trees. The site rises from an elevation of 443 feet at the northeast corner to 463 feet at the southwest corner.

3. Vicinal Properties.

Direction	Zoning	Land Use
North	R-20	Single-Family Detached Residences
South	R-20	Public School (Clarksville MS)
East	R-20	Single-Family Detached Residences
West	R-20	Single-Family Detached Residences

4. Roads. South Trotter Road has two travel lanes within a 60-foot right-of-way. Swimmer Row Way has two travel lanes within a 50-foot right-of-way. The speed limit for both roads is 25 miles per hour. Traffic count data is not available for this portion of South Trotter Road or Swimmer Row Way.

5. Water and Sewer Service. The Property is within the Planned Service Area for Water and Sewer. The Property is not within the County's Metropolitan District.

6. The General Plan. PlanHOWARD 2030 designates the Property as Established Community on the Designated Place Types Map. The Plan's Functional Road Classification Map depicts South Trotter Road as a Major Collector and Swimmer Row Way as a Local Road.

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

8. Reported Agency Comments. There are no Agency or Department comments in objection to the Petition. The Department of Fire and Rescue noted that the entrance to the circle is 22 feet wide and decreases to 16 feet wide. This road must maintain a minimum of 20 feet clear unobstructed width and be marked as no parking.

9. Design Advisory Panel (DAP). DAP reviews and makes recommendations

on developments of Age-Restricted Adult Housing pursuant to Title 16, Subtitle 15 of the Howard County Code. HZRA §131.O.N.a.18 requires that “the Conditional Use Plan and the architectural design of the building(s) shall have been reviewed by the Design Advisory Panel...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.” Section 16.1504 sets forth the recommendations the Panel shall make consistent with the compatibility criteria for Age-Restricted Adult Housing including, but not limited to, the design for buildings, vehicular circulation and access, pedestrian access and linkages, parking, existing trees, landscaping, and walls and fences. The Panel shall also address scale, massing, and compatibility of building in relation to the surrounding area as well as the architectural style, materials, entrances, windows, roof design, and colors of the proposed structures. Proposed open space including pathways, public spaces, amenity areas, and similar features are also to be considered by the Panel.

DAP reviewed the proposed Conditional Use Plan at its July 21, 2021 meeting and by unanimous (5-0) vote recommended that Petitioner provide an amended Plan (1) reducing the units along South Trotter Road to more reflect the condition of the community on the opposite side of South Trotter Road, (2) enhance the pathway to create a full loop both north and south so the residents and community can enjoy the stream, (3) that the private street off Swimmer Row Way have more separation between units and have a real cul-de-sac at the end, (4) that the Petitioner lobby the zoning commission not to require a community building that is proposed on the site but instead connect to the school and encourage the connection, (5) that there is a closer look at the internal green space area, particularly where the stream is shown to determine

if a stream is feasible, (6) consideration of a more organic street network, and (7) that a new plan be provided in consideration of these comments and allow DAP to have a second review.

Petitioner provided an amended Plan which was reviewed by DAP at its October 27, 2021, meeting. The amended Plan addressed some, but not all, of DAP's concerns. At the conclusion of DAP's second review, by unanimous (4-0) vote, DAP recommended the following changes (1) consider the removal of two units along South Trotter Road, (2) shorten the service road along South Trotter Road to move further away from the intersection at Swimmer Row Way, and (3) the creation of a step pool in the stream through the site.

By letter dated March 23, 2022, Petitioner provided a point-by-point response to the DAP's October 27, 2021, meeting summary. This response was provided to DPZ. The Division of Land Development reviewed Petitioner's response and accepted the following:

1. The applicant after careful consideration, has determined that the removal of two homes along South Trotter Road would not be consistent with the policies and goals set forth in the Howard County General Plan. The applicant has determined that there are alternative methods provided in the Zoning Regulations to address the concern expressed by DAP. The applicant's design responds to the concern by incorporating only single family detached homes along South Trotter Road, providing a parallel service drive away from the intersection, and by providing enhanced perimeter buffering along both road frontages.

2. The service driveway has been moved 48 feet further away from the intersection as suggested. It is now 74 feet between intersections and the County minimum is 50 feet.

3. As part of the stream reconstruction/restoration, a plunge pool is being considered at the head of the stream/channel rather than a step pool.

This will be more beneficial to the functioning stream channel.

10. Conditional Use Proposal. The Petitioner proposes an Age-Restricted Adult Housing (ARAH) development consisting of a maximum of 25 single-family detached dwellings that will be approximately 2,800 square feet in net lot area, a 500 square foot community building, and a pedestrian walking path. All dwellings will incorporate features from the DPZ Universal Design Guidelines. A condominium/homeowners association will be responsible for maintaining the common areas and enforcing covenants.

11. Opposition. The persons testifying in opposition were united in their concerns and therefore will be summarized here collectively. (1) The neighborhood has enjoyed the Scott's generosity in sharing the farm pond with the schools, scouts, and families and the pond should not be removed and the current owner should continue this generosity. Unfortunately, the current property owner has stated that regardless of the status of the instant ARAH Conditional Use Petition, the property owner will not continue to maintain the farm pond up to current Maryland Department of the Environment (MDE) standards, as is their right, and will instead remove the pond pursuant to the MDE permitting process. (2) Traffic safety concerns involving school activity parking in the travel lanes of South Trotter Road, school walkers and families walk in South Trotter Road to go to and from school, the speed and number of cars at

the intersection of Old Guildford Road and South Trotter Road, and the driver reaction time of the potentially older residents of the proposed ARAH. (3) Residents downstream of Swimmer Row Way noted that flooding problems did not exist prior to the construction of these 13 homes, removal of the farm pond will exacerbate existing flooding problems as will the development of the subject Property (as proposed or with permitted single-family dwellings), and that the connection of the Property to public sewer will also exacerbate flooding and erosion issues. (4) Residents want the subject Property to be developed with single family detached homes to be sold to young families with school age children so as to take advantage of the "walkability" of the subject Property and the elementary and middle schools. There is a need for single- family detached housing in proximity to schools as opposed to ARAH single-family detached housing which will not benefit from the subject Property's proximity to these schools.

BURDEN OF PROOF

The Court of Appeals of Maryland has frequently expressed the applicable standards for judicial review of the grant or denial of a Conditional Use. The Conditional Use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The Conditional Use is a valid zoning mechanism that delegates to an administrative body a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating this presumption. The legislative body has statutorily determined that a Conditional Use is compatible in a particular zoning district absent specific facts adduced to the contrary at a particular location. The duties given the

hearing body are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the Zoning Plan.

The Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the zoning body that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden.

The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the zoning body to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a Conditional Use is arbitrary, capricious, and illegal. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Rockville Fuel & Feed Co. v. Board of Appeals of Gaithersburg, 257 Md. 183, 187-88, 262 A.2d 499, 502 (1970); Montgomery County v. Merlands Club, Inc., 202 Md. 279, 287, 96 A.2d 261, 264 (1953); Anderson v. Sawyer, 23 Md. App. 612, 617, 329 A.2d 716, 720 (1974).

These standards dictate that if a requested Conditional Use is properly determined to have an adverse effect upon neighboring properties in the general area,

it must be denied. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1325 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

The appropriate standard to be used in determining whether a requested Conditional Use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed and the particular location proposed would have any adverse effects above and beyond those inherently associated with such a Conditional Use irrespective of its location within the zone. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31; 214 A.2d 146, 153 (1965); Anderson v. Sawyer, 23 Md. App. 612, 617-18, 329 A.2d 716, 720, 724 (1974). Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1331 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A2d 1253 (1995).

CONCLUSIONS OF LAW

1. General Criteria for Conditional Uses (Section 131.0.B)

HCZR Sections 131.0.B.1-3 require the Hearing Authority to evaluate whether the proposed Conditional Use will be in harmony with the landscape uses and policies indicated in the Howard County General Plan for district in which it is located through the application of three standards: harmony with the General Plan, overall intensity and scale of use, and atypical adverse impacts.

A. Harmony and Intensity of Use

Section 131.0.B.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.

While Howard County General Plan policies are not directly related to Conditional Use requests for ARAH, the proposed single-family detached dwellings are compatible in character with the surrounding residential areas. Additionally, the development is in harmony with following policies that encourage 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."

Section 131.0.B.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.

The proposed development consists of 25 dwelling units on 9.24 net acres, which equates to 2.7 dwelling units per net acre. This is less than the maximum density of four (4) dwelling units per net acre allowed for an ARAH development in R-20, which would allow 36 dwelling units. The development complies with all bulk regulations and provides 71% open space, which exceeds the 35% requirement. Additionally, a 500 square foot community building is proposed, which meets the 500 square foot minimum requirement.

The Functional Road Classification Map of *PlanHoward 2030* depicts South Trotter Road as a Major Collector and Swimmer Row Way as a Local Road,

which are an appropriate classification for the types and number of vehicles associated with the proposed use.

The nature and intensity of the use, the size of the Property in relation to the use, and the location of the site, with respect to streets that provide access, are such that the overall intensity and scale of the use are appropriate.

B. Adverse Impacts (Section 131.0.B.3)

Unlike HCZR Section 131.0.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, or Section 131.0.B.2, which concerns the on-site effects of the proposed use, compatibility of the proposed use with the neighborhood is measured under Section 131.0.B.3's six off-site, "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading; (d) access; (e) environmentally sensitive areas; and (f) impact on the character and significant historic sites.

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 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-20 Zoning District. The proper question is whether there are facts and circumstances showing the particular use 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*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below and as conditioned, Petitioner has met its burden of presenting sufficient evidence under HCZR Section 131.0.B.3 to establish the proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with an Age-Restricted Adult Housing, General, in the R-20 Zoning District.

Section 131.0.B.3.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.

The proposed development will consist of single-family detached dwellings. There is no evidence of atypical adverse effects such as noise, dust, fumes, odors, vibrations, increased lighting, hazards, or other physical conditions that would be greater at the subject site than generally elsewhere.

Section 131.0.B.3.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.

The proposed buildings and structures comply with all setback and height requirements in §131.0.N.1.7. The proposed development will include landscaping along the perimeter, street trees along South Trotter Road, and extensive on-site landscaping. A restored stream and accompanying habitat and forest conservation easement plantings will be in the center of Property. The adjacent properties consist of similar or more intense uses. No variances are requested. Thus, the proposed use

will not hinder or discourage the development and/or use of adjacent land and structures more at the subject Property than generally elsewhere.

Section 131.0.B.3.c. The number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas will be approximately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

The parking requirement for ARAH single-family detached dwellings is two (2) parking spaces per dwelling unit plus 0.3 parking spaces per dwelling unit for visitors. Additionally, the parking requirement for the community building is 10 spaces per 1,000 square feet. Each dwelling unit will have four (4) parking spaces and there will be six (6) parking spaces for the 500 square foot community building, which exceeds the five (5) required. As shown on the Landscape Plan, a portion of the community building parking lot may be visible from residential properties to the east. Additional vegetation may be needed to screen the parking spaces. The Petitioner is not proposing any loading or refuse areas.

The parking spaces are screened from the public roads and adjacent properties by proposed landscaping. Waste will be collected in individual residential trash receptacles, which will not be visible from the public right-of-way or adjacent properties.

Section 131.0.B.3.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 ingress and egress for the dwelling units on South Trotter Road will be achieved via a proposed private access drive. Neither acceleration nor deceleration lanes are warranted due to the low traffic volumes and low speeds on South Trotter and Swimmer Row Way. The ingress and egress off Swimmer Row Way is designed to be a combination of a private access drives with five (5) of the dwelling units having direct driveway access onto Swimmer Row Way. The Conditional Use Plan further provides for the frontage improvements as required by Howard County.

While precise sight distance measurements can only be determined by a Detailed Sight Distance Analysis, which is typically conducted during Site Development Plan review, the Development Engineering Division (DED) provided comments that that the two access points on South Trotter Road and the one access point on Swimmers Row Way shown on the Conditional Use Plan would likely meet sight distance requirements based on the review of an 85th percentile speed study and sight line profiles. The use will not share access with any other properties.

.Section 131.0.B.3.e The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.

The Property contains environmentally sensitive areas including wetlands, several mature trees and an obsolete farm pond. This farm pond was not designed for storm water management purposes. Further, it is not in compliance with current Maryland Department of the Environment standards. Accordingly, the Petitioner intends to drain and remove the farm pond structure and then restore the natural stream in its place. This stream restoration project will include a plunge pool, pocket ponds and a submerged gravel wetland will be incorporated as part of the stormwater management design for the site. The structure and use areas associated with the

Conditional Use have been designed to appropriately buffer all environmentally sensitive areas in the vicinity and will not have a greater potential for adversely impacting those areas than it would elsewhere.

Section 131.0.B.3.f. The proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.

The closest historic site (HO-210) (E. Walter Scott Farmhouse) is located on an adjacent property located at 6725 Walter Scott Way. The project design, including the setbacks of the proposed dwellings and the perimeter landscaping, will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.

2. Specific Criteria for Age-restricted Adult Housing (Section 131.0.N.1.a)

1.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-20 and the development proposes 25 single-family detached dwellings, in accordance with Section 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-five single-family detached dwelling units are proposed on the R-20 zoned Property, in accordance with §131.0.N.1.a(2).

- (3) Only detached and semi-detached units are permitted in the RC and RR Districts.**

The Property is zoned R-20 and therefore this criterion does not apply.

(4) The maximum density shall be as follows:

Zoning District	No. of Dwelling Units	Max. Units Per Net Acre
R-20	20-49	4

The Property is zoned R-20 and 25 dwelling units are proposed on 9.24 net acres, making the maximum density 2.7 unit per acre, in accordance with § 131.0.N.1.a(4).

(5) If the development results in increased density according to subsection (4) above, the site must have frontage on or direct access to a collector or arterial road designated in the General Plan.

The R-20 zoning district allows a maximum density of approximately 2 dwelling units per acre. The proposed development has a density of 2.7 dwelling units per acre and has frontage and direct access on South Trotter Road, a Major Collector.

(6) 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 existing neighborhood.

The vicinal properties to the Property are predominately R-20 zoned single-family detached homes with the Clarksville Middle School campus to the south. The Petitioner proposes 6.5 acres of open area to be retained constituting 71% of the site. Over two (2) acres of this open area will be devoted to a stream restoration project that will bifurcate the Property from south to north. The proposed development includes perimeter landscaping that will include street trees along South Trotter Road and will maintain the existing street trees along Swimmer Row Way. A berm has been introduced in between the private drive and South Trotter Road and will be heavily landscaped.

This will improve the view from South Trotter Road for the neighbors across the street and people driving on the road. The Petitioner proposes to exceed the minimum planting requirements for the perimeter plants and in the interior of the site. A considerable number of trees throughout the interior will create a wooded atmosphere along the trail and the stream bed. Therefore, the landscape character of the site will blend with the adjacent residential properties

(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

The revised Conditional Use Plan incorporated a mix of dwelling types and sizes with architecture and scale which is compatible with the neighborhood.

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

The Petitioner proposes to install enhanced perimeter landscaping to ensure adequate screening of the proposed development from the neighboring residential dwellings. Including internal landscaping, perimeter landscaping, street trees, and forest conservation obligations, the Petitioner proposes to plant approximately 426 trees on the Property. The DAP advised that they preferred the private road with the berm and landscaping and felt it would make the development more compatible with the surrounding community. The DAP commended the landscape presentation and the proposed use of mostly native plants.

- 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 proposed ARAH community as well as the adjacent residential properties are zoned R-20. Because the ARAH community consists of single-family detached dwellings, the R-20 bulk regulations are applicable and require a 50- foot front or side structure setback and no use setback from an arterial or collector public street right-of-way. The setback from Swimmers Row Way right-of- way is 30 feet and the use setback is 0 feet, as the ARAH community consists of single-family detached dwelling units. All structures meet these bulk requirements.

(7) Bulk Requirements

(a) Maximum Height:

(ii) Other principal structures34 feet

The height of the proposed two story single-family detached dwellings will not exceed 34 feet.

(b) Minimum structure and use setback:

(i) From public street right-of-way40 feet

***(ii) From residential lots in RC, RR, R-ED, R-20, R-12 or R-SC Districts:
Single-family detached, semi-detached, and multi- plex40 feet***

All buildings comply with the 40-foot setback from an external public street right-of-way and 40-foot setback from lots in the R-20 Zoning District.

(c) Minimum structure setback from interior roadway or driveway for units with garages20 feet

All dwellings along the interior roadway contain garages and comply with the 20-foot setback.

(d) Minimum structure setback from lot lines for single-family detached or multi-plex units

(i) Side 10 feet

A minimum of 10 feet must be provided between structures

(ii) Rear 20 feet

Single-family detached units are in compliance with this criterion. Multi-plex units are not proposed and therefore, this criterion does not apply.

(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-side15 feet**
- (iii) For units oriented face-to-side or rear-to-side 20 feet**
- (iv) For units oriented rear-to-rear40 feet**
- (v) For units oriented face-to-rear100 feet**

Single-family detached units are in compliance with this criterion. No attached dwellings are proposed and therefore, this criterion does not apply.

(f) Minimum distance between apartment buildings or between apartment buildings and single-family dwellings:

- i. For units oriented face-to-face30 feet**
- ii. For units oriented side-to-side15 feet**
- iii. For units oriented face-to-side or rear-to-side30 feet**
- iv. For units oriented rear-to-rear60 feet**
- v. For units oriented face-to-rear100 feet**

Apartments are not proposed; therefore, this criterion does not apply.

(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.

Neither apartments nor single-family attached buildings are proposed therefore, this criterion does not apply.

- (8) At least 50% of the gross site area in the RC, RR, R-ED Districts, at least 35% in the R-20, R-12, and R-SC Districts, and at least 25% in the 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.**

The Property is zoned R-20 and 71% of the site (6.5 acres) is proposed for open space. This open area will provide amenities such as park benches, a recreation area and a pathway for residents and their guests.

- (9) 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.**

A community center, park benches, a recreation area, and walking trails are proposed for on-site residents and their guests.

- (10) 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.**

A 500 square foot on-site community building, or interior community space, is required and a 500 square feet ADA compliant community building that is limited to on-site residents and their guests is proposed.

- (11) Loading and trash storage areas shall be adequately screened from view.**

Trash removal for the dwelling units fronting on Swimmer Row Way will be public curbside pick-up. Trash pick-up for the dwelling units accessed by internal private roads will be by private contractor. No central trash storage area is proposed in connection with the dwelling units or the community building.

- (12) 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.

The development will not be constructed in phases therefore this criterion does not apply.

- (13) 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 homeowner's association shall be established to maintain and enforce the age restrictions in addition to County enforcement of zoning regulations.**

A condominium/homeowners association will be established which will enforce age restriction requirements through covenants and restrictions.

- (14) 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 homeowner's association.**

A condominium/homeowners association established by the Petitioner will be responsible for the maintenance of open space, open areas and common areas and related improvements in perpetuity.

- (15) 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 development will incorporate the following universal design features:

- No-step access to the front entrance or

no step side or garage entry to the first floor

- 36" wide front door with exterior lighting at the entrance
- all interior doorways at least 32" clear width in the open position
- 36" wide fully accessible route must connect throughout the first floor of the dwelling unit.
- complete living area including master bedroom & bath on first level floor
- lever handles on interior and exterior doors
- slopes of ramps on the exterior of units shall be in accordance with current Howard County regulations
- reinforced walls to allow for the installation of grab bars around the toilet, tub, and shower stall.

(16) At least 10% of the dwelling units in the R-ED, R-20, R-12 and R-SC Districts, and at least 15% in the R-SA-8, R-H-ED, R-A-15 and R-APT Districts, shall be Moderate Income Housing Units.

The Property is zoned R-20, thus 10% of the 25 dwelling units shall be Moderate Income Housing Units ("MIHU"). Fractional units are rounded up; therefore, three (3) MIHU are required. The Conditional Use Plan does not indicate that any units will be MIHU. The Petitioner indicates that they may pursue a fee-in-lieu option. If approved, specifics regarding the MIHU requirement will be addressed at the site development plan stage.

(17) 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.

A special exception (Conditional Use) for housing for the elderly has not been approved by the Board of Appeals for this Property, therefore, this criterion does not apply.

- (18) 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.**

The Conditional Use Plan and architectural design of the buildings were reviewed by the Design Advisory Panel on July 21, 2021 and October 27, 2021. The minutes of the meetings and recommendations are in the record as documentation of compliance with this criterion. Also included is the DPZ endorsement of April 4, 2022.

ORDER

Based upon the foregoing, it is this 1st day of August, 2022, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

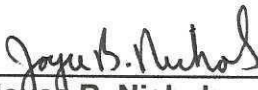
That the Petition of South Trotter, LLC. for Age-Restricted Adult Housing, General, Conditional Use, in a R-20 (Residential: Single) Zoning District, Tax Map 35, Grid 20, Parcel 338, Lots 1 and 2, identified as 6479 and 6485 South Trotter Road, Clarksville, Maryland, be and is hereby **GRANTED**;

Provided, however, that:

1. The Conditional Use shall be conducted in conformance with and shall apply only to the uses as described in the Petition and depicted on the revised Conditional Use Plan (March 2022), and not to any other activities, uses, structures, or additions on the Property.
2. Petitioner shall obtain all required permits.
3. An Environmental Concept Plan for the site must be approved prior to the Site Development Plan in order to identify any impacts to streams, wetlands and their buffers, floodplain, steep slopes and specimen trees on site which are protected from disturbance per the Land Development Regulations.
 - a. Specimen Trees must be shown with their Critical Root Zones in order to evaluate the level of disturbance.
4. An approved Site Development Plan for the proposed Age-Restricted Adult Housing development will be required prior to the issuance of grading and building permits.
5. The proposed landscape screening must meet the requirements of the Landscape Manual to effectively screen the proposed development from the neighboring properties and roadway.
6. This development will be subject to and must comply with the Forest Conservation Act, per Subtitle 12 of the County Code, prior to Site Development Plan approval.

- a. Approval of Alternative Compliance is required for the removal of any specimen tree. If the approval is granted, the required mitigation will be determined as part of the evaluation of this Application.
7. There shall be no on-street parking in the cul-de-sac.
8. Petitioner shall (1) construct a sidewalk connecting the sidewalk on the subject Property to the sidewalk on the school property or (2) if permission is not granted for the Petitioner to construct the connecting sidewalk, Petitioner shall pay a fee in lieu to cover the complete cost of the connecting sidewalk on the school property. Construction of the connecting sidewalk or fee in lieu payment shall be completed prior to the issuance of the first use and occupancy permit.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER



Joyce B. Nichols

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.