

IN THE MATTER OF : BEFORE THE  
Elm Street Development : HOWARD COUNTY  
Petitioner : BOARD OF APPEALS  
: HEARING EXAMINER  
: BA Case No. 17-018C

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**DECISION AND ORDER**

On May 28, August 3, 4, 10 and 14, 2020, 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 Elm Street Development (Petitioner) for an Age-Restricted Adult Housing, General (ARAH) Conditional Use in an R-20 (Residential: Single) Zoning District, filed pursuant to Section 131.0.N.1 of the Howard County Zoning Regulations (HCZR).

On May 28, 2020 a hearing was held before the Hearing Examiner for the limited purpose of receiving into the record Petitioners Amended Conditional Use Plan (5/8/20), which constituted a substantive amendment to the original Petition. This Amended Conditional Use Plan was remanded to the Department of Planning and Zoning for evaluation and recommendation. Upon receipt of the responsive revised Technical Staff Report, an evidentiary hearing on the merits of the amended Petition was held.

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, Esquire represented the Petitioner. Jason Van Kirk, Brandon Rowe, Carl Wilson, Hank Alinger and Mark Bobotek testified in support of the Petition. Suzanne Jones, Lisa Soto, Kris Juffer, Carolyn Weibel, and Pinar Miski appeared in opposition to the Petition.

Petitioner introduced into evidence the following Exhibits:

1. Amended Conditional Use Plan (5/8/20) (including revised Sheets 4 (8/11/20), 6 (8/11/20), 15 (8/3/20), and 16 (8/3/20))
- 2a. Conditional Use Petition
- 2b. Supplement to Conditional Use Petition
3. Declaration of Covenants
4. Technical Staff Report 7/6/20
5. Guest Parking Plan
6. PowerPoint
7. DPZ's Universal Design Guidelines
8. DAP 12/7/19 memo
9. Petitioners Response to DAP memo
10. DPZ (Gowan) 8/6/20 response to Guest Parking Plan
11. Fire Department Referral

Opposition introduced into evidence the following Exhibits:

1. Queuing Photo
2. Old Frederick Road/MD 99 Corridor Graph
3. Average daily traffic md.gov
4. Average daily traffic Bethany Lane md.gov
5. PowerPoint (redacted, 11 pages)
6. Thumb drive of queuing
7. Testimony of Suzanne Jones (redacted in accordance with evidentiary rulings)

**FINDINGS OF FACT**

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

1. Property Identification. The northern portion of the subject property is located on the north side of I-70, on the east side of Bethany Lane, and on the south side of Old Frederick Road/MD 99, and the southern portion is located on the south side of I-70, and on the east side of Bethany Lane. Both portions of the subject Property are in the 2<sup>nd</sup> Election District. It is identified as Tax Map 0017, Grid 0015, Parcel 34 and known as 9891 Old Frederick Road, Ellicott City, Maryland (the Property).

2. Property Description. I-70 divides the Property into a 20.77-acre section north of the interstate and a 47.79-acre section south of the interstate. Both sections are irregularly shaped, heavily forested, and vacant, except for a single-family dwelling at the northwest corner of the north section. The low point is approximately 410 feet in elevation, at the southeast corner of the site. The site rises to the northwest to an elevation of approximately 480 feet. A stream, wetlands, and floodplain area bisect the southern section. There are 43 specimen trees many of which are in poor condition. Twenty-one of the specimen trees are proposed to be retained.

3. Vicinal Properties.

North Section

Direction	Zoning	Land Use
North	R-20	Single Family Detached / Open Space
South	R-20	I-70 Right-of-way
East	R-20	Station 8 – Bethany Fire Station
West	R-20	Single Family Detached

South Section

Direction	Zoning	Land Use
North	R-20	I-70 Right-of-way
South	R-20	Single Family Detached
East	R-20	Undeveloped
West	R-20	Bethany Lane Right-of-way / Undeveloped

4. Roads. Old Frederick Road/MD 99 has two travel lanes but widens with additional lanes at the intersections with Bethany Lane, Litter Drive and Weatherstone Drive. The right-of-way has a variable width and the speed limit is 40 miles per hour.

Bethany Lane has two travel lanes within a variable width right-of-way. The speed limit is 30 miles per hour.

According to Maryland Department of Transportation data, traffic volume on Old Frederick Road/MD 99 from Bethany Lane to US 29 was 18,521 AADT (annual average daily trips) as of 2019 and 7,495 AADT on Bethany Lane from Old Frederick Road to Baltimore National Pike as of 2019.

4. Water and Sewer Service. The Property is located within the Metropolitan District and the Planned Service Area for water and sewer.

5. 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 both Old Frederick Road/MD 99 and Bethany Lane as Minor Arterials.

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

7. Design Advisory Panel (DAP) Comments. DAP's December 7, 2016

comments were accepted and endorsed by DPZ on January 3, 2017 as follows:

1. That the Applicant reconsider the Site Plan for the northern parcels along Route 99 to address building orientation, site design, and development character.

Petitioner's Amended Conditional Use Plan (5/8/20, with revised sheets 4, 6, 15 and 16) reconsidered the land plan on the northern section to provide building orientation variety, increased buffer areas along Old Frederick Road/MD 99 and to provide better pedestrian access to enhance the character of the community.

2. That the Applicant maximize the preservation of existing trees and vegetation along buffers with existing neighborhoods, particularly for the section south of I-70.

Petitioner's Amended Conditional Use Plan has redesigned much of the southern section to maximize existing vegetation and preservation of the buffers with the most mature trees.

3. That the Applicant assess the entrance to the development off Bethany Lane, paying particular attention to the proximity of the club house and pool to the road, and the location, layout, and orientation of the model units. As part of that assessment, consider an alternate location for the club house and pool that may be better located for the community to access. Also consider a street connection to Michael's Way.

Petitioner's Amended Conditional Use Plan has relocated the club house and eliminated the pool (in response to complaints regarding potential noise issues). A pedestrian walkway is to be provided to Michael's Way however a vehicular connection to Nollwich has been removed in accordance with community requests to limit vehicular connections.

4. That the Applicant assess the sufficiency of storm water management to mitigate flooding issues and to provide calculations or other documents in support.

The Amended Conditional Use Plan includes a flood mitigation plan that will reduce downstream flooding from the current conditions. Design and engineering will be reviewed and permitted by the Maryland Department of the Environment and Howard County.

5. That the Applicant consider the appropriateness of the proposed townhomes, given the concerns raised by the DAP, as a means of achieving residential densities.



The Amended Conditional Use Plan provides a residential density of 2.37 DUA which is less than half the 5 DUA density permitted. As such, the mix of single family detached, single family attached townhomes and single family attached duplexes are appropriate.

9. Conditional Use Proposal. The Petitioner proposes an Age-Restricted Adult Housing (ARAH) development consisting of 131 single family attached dwellings, 19 single family detached dwellings, 4 single family semi-detached dwellings, two outdoor recreation areas, and two community centers totaling 2,910 square feet. All dwellings will incorporate features from the Universal Design Guidelines, as described in pages 13 and 14 of the Petitioner's Supplement. A homeowner's association (HOA) will be responsible for maintaining the common areas and enforcing covenants.

I-70 divides the development into a 19.65-acre section north of the interstate and a 47.79-acre section south of the interstate. The following summarizes the proposed use of each section:

#### North Section

The north section is divided by two existing residential lots on Old Frederick Road/MD 99. The western portion will be accessed by a private road that aligns with Litter Drive and will contain 34 single family attached dwellings, 4 single family semi-detached dwellings, and a recreation open space lot with a 760 square foot community center. A 1.12-acre lot at the southeast corner of Old Frederick Road and Bethany Lane is to remain undeveloped. This lot is included in the total acreage of the project but is excluded from the Conditional Use area. A five-foot wide sidewalk is proposed along Old Frederick Road/MD 99. A type "C" buffer is proposed along the perimeter of the 38 dwellings.

The eastern portion will be preserved as a forest conservation area.

#### South Section

The south section is divided into three areas by a stream and floodplain. The western portion adjacent to Bethany Lane will contain 18 single family attached dwellings, a

recreational open space lot, and a forest conservation open space lot. The central portion consists of 6 single family detached lots, 4 single family attached lots and a recreational open space lot with a 2,150 square foot community center. The eastern portion contains 52 single family attached dwellings. The southern portion consists of 13 single family detached dwellings, 23 single family attached dwellings, two open space lots, and two forest conservation open space lots. Two internal public roads will provide access to the lots and will connect Bethany Lane to Longview Drive at the southern boundary.

10. Reported Agency Comments.

- (a) The Division of Land Development reminds that the proposed development must be in accordance with certain local reviews and laws. This project was reviewed by DAP in 2016 and this Division finds that the Amended Conditional Use Plan is consistent with and further addresses the recommendations made by DAP relating to site design, unit layout, and planted buffer areas. Therefore, the proposed changes do not necessitate further DAP review at this time.
- (b) Development Engineering Division, Department of Planning and Zoning found no adverse engineering impacts on adjoining properties, that sight distance for proposed intersections is acceptable, and that APFO and 100-year and 2016 storm event peak flow management must be met.
- (c) Department of Recreation and Parks, Department of Planning and Zoning request that “all flood plains, forest conservation areas, stream buffers and wetlands be available for fee simple transfer to the Department”. Petitioner is agreeable to this request.

11. Opposition. Opposition concerns included:

- (a) Sidewalk connectivity: In response to concerns raised regarding sidewalk connectivity, Petitioner revised the Amended Conditional Use Plan to ensure sidewalk connectivity.

- (b) Transportation safety along Bethany Lane and Old Frederick Road/MD 99: The Department of Engineering Division found that the sight distance for all proposed intersections were acceptable based on Petitioner's intersection and stopping site distance studies. The development will be required to meet County APFO requirements and obtain SHA permits and APFO requirements for access to Old Frederick Road/MD 99. Further APFO approval will be reviewed at subdivision and SDP.
- (c) Flooding/stormwater management: Development must meet Howard County design criteria for stormwater management, including 100-year and 2016 storm event peak flow management. This review will also occur at subdivision and SDP.
- (d) Specimen trees: Specimen trees may not be removed without approval of a petition for alternative compliance.
- (e) On-Site environmental features and buffers: No regulated environmental features or buffers may be disturbed unless DPZ approves a petition for alternative compliance and/or an essential disturbance request are approved during subdivision approval.

### **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 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.

In the R-20 District, an ARAH with 50 or more dwelling units may be approved up to a maximum residential density of 5 dwelling units per net acre. Therefore, the 64.9 net acres of the Property may be approved for up to 322 dwelling units. However, the Petitioner only proposes 154 dwelling units at a density of 2.37 dwelling units per acre. Furthermore, the development complies with all setbacks and provides 61% open space, which exceeds the required 35%.

The Functional Road Classification Map of Plan Howard 2030 depicts Old Frederick Road/MD 99 and Bethany Lane as Minor Arterials. According to PlanHoward 2030, a Minor Arterial provides interconnection between principal and intermediate arterials, as well as access to or through high density residential, commercial, retail, or industrial land areas. Therefore, it is 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 attached and 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.

Therefore, 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 are appropriate for the Property.

**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, structures, and fences comply with all setback and height requirements.

The northern section will be separated from the existing residential neighborhoods to the north and west by road right-of-way and screened by a type "C" vegetative buffer (Perimeters 11 and 13). A type "C" buffer and a 6-foot opaque fence are proposed along the perimeter of the two existing residential lots that divide the north section (Perimeter 10). The development will be screened from I-70 by a type "C" buffer and a berm or noise wall (Perimeter 7). The eastern portion of the north section will be conserved as forest conservation area.

The southern section will be screened from I-70 by a type "C" buffer and a berm or noise wall (Perimeter 5). A type "C" buffer is proposed along Bethany Lane (Perimeter 6). A type "A" buffer is proposed along the west, south, and east property lines (Perimeters 2, 3, 4). Additionally, a 6-foot opaque fence is proposed along the west lot line (Perimeter 2) from Open Space Lot 19 to Open Space Lot 158. A type "C" buffer and a 6-foot opaque fence are proposed between the entrance drive and the single-family detached neighborhood to the south (Perimeter 1). The proposed single family detached lots provide a transition between



the single-family neighborhoods to the south and the single family attached units within the project.

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.**

Pursuant to Sec. 133.0 of the Zoning Regulations, ARAH single-family detached and attached dwellings require two parking spaces per dwelling unit and 0.3 spaces per dwelling unit for visitors. Additionally, the club houses require 10 parking spaces per 1,000 square feet of gross floor area.

As shown in the following table, a total of 308 parking spaces are required for the dwelling units and 616 are provided. Each dwelling unit will have four parking spaces, two in the garage and two in the driveway. A total of 47 parking spaces are required for guests/visitors and 52 are provided. The Community Center in the northern section requires 8 parking spaces and 8 are provided. The Community Center in the south section requires 22 spaces and 22 are provided.

Parking For:	North Section Required	North Section Provided	South Section Required	South Section Provided	Difference
Dwelling Units	76 spaces	152 spaces	232 spaces	464 spaces	+308
Guests/Visitors	12 spaces	17 spaces	35 spaces	35 spaces	+5
Community Center	8 spaces	8 spaces	22 spaces	22 spaces	0

The Amended Conditional Use Plan does not include a Parking Schedule for the Community Centers. Petitioner Exhibit 5 is an updated parking plan which identifies guest



parking spaces and includes a Parking Schedule for the Community Centers. The Amended Conditional Use Plan should be revised to include a Parking Schedule for the Community Centers.

Parking areas, loading areas, driveways and refuse areas will be appropriately located and buffered or screened from public roads and residential uses by the buffer.

**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.**

Ingress/egress is proposed along Old Frederick Road/MD 99 and Bethany Lane. The Petitioner is proposing a dedicated left turn lane and deceleration lane for each entrance. The Petitioner submitted a sight distance analysis for these locations. The results of the sight distance analysis are shown in the table below.

The Development Engineering Division reviewed the sight distance analysis and commented that sight distance for all proposed intersections appears acceptable. Access points located on Old Frederick Road/ MD 99 shall be approved under the jurisdiction of the State Highway review.

Entrance	ISD to Left Required (Direction)	ISD to Left Provided (Direction)	ISD to Right Required (Direction)	ISD to Right Provided (Direction)
Liter Drive Exit	410 feet (west)	> 800 feet (west)	475 feet (east)	595 feet (east)
Liter Drive Entrance	347 feet (west)	>800 feet (west)	n/a	n/a
Bethany Lane Exit	419 feet (south)	> 500 feet (south)	420 feet (north)	> 500 feet (north)
Bethany Lane Entrance	355	> 500 feet (south)	n/a	n/a

(ISD = Intersection Sight Distance)

The development will not share a driveway with other residential properties.

**Section 131.0.B3.e The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.**

The environmentally sensitive areas on the Property consist of a 2.1-acre floodplain, 0.44 acres of steep slopes, an intermittent stream, and wetlands in the southern section. The stream and wetlands will be protected by 100- and 25-foot buffers, respectively. Additionally, the proposed layout of the southern section results in 28.35 acres (59%) of open space, which exceeds the 16.72-acre (35%) requirement by 11.63 acres.

The environmentally sensitive areas are likely to be disturbed by any type of development given their location in the middle of the site. However, the proposed layout and configuration minimizes the impact on these areas except for three stream crossings for internal roadways, which are necessary for access. The Development Engineering Division reviewed the proposed layout and commented that stormwater management will consist of 100-year and 2016 storm event peak flow management (approximately 1,000-year storm event).

Therefore, the proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than 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 is approximately 1,500 feet from the Property, therefore the proposed use 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 single family detached and attached units, 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.**

One-hundred fifty-four dwelling units are proposed on the R-20 zoned Property, in accordance with Section 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-ED and R-20	20-49	4
	50 or more	5

The Property is zoned R-20 and 154 units are proposed, making the maximum density 5 units per acre and 2.37 units per acre is proposed, in accordance with Section 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 proposed development is below the maximum density permitted and therefore, this criterion is not applicable.

- (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.**

Single-family detached neighborhoods are located to the north, west, and south of the Property. A type "C" vegetative buffer is proposed along Old Frederick Road/MD 99 to screen the single family attached homes from the dwellings to the north.

Single-family detached dwellings are proposed adjacent to the subdivisions to the south to blend with the existing neighborhoods. Single family attached dwellings are proposed adjacent to single family dwellings to the south and are screened by a type "C" vegetative buffer and six-foot opaque fence.

The proposed layout and landscaping will allow the development to blend with the character of surrounding neighborhoods.

**(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.**

The property is surrounded by single family detached neighborhoods to the north, west, and south. The project will be compatible with residential development in the vicinity since it provides dense landscaped buffers and fencing along the perimeter of the site.

Additionally, the Design Advisory Panel (DAP) recommended that the Petitioner consider a different mix and grouping of housing types, with more single-family detached homes along the perimeter of the southern parcel and Old Frederick Road/MD 99. The Conditional Use Plan was amended accordingly to include more single-family detached dwellings along the southern boundary to blend with existing neighborhoods.

Furthermore, the DAP suggested a different orientation of buildings along Old Frederick Road/MD 99, to be more compatible with the rural character of the area. They questioned the initial site layout, which had the sides of townhome buildings oriented toward Old Frederick Road/MD 99. The Conditional Use Plan was amended to re-orient some of the attached units to face Old Frederick Road/MD 99 and roadways were re-designed to allow for more green space along the northwest portion of the site.

While Forest Conservation requirements are not applied at Conditional Use stage, the Petition included a Preliminary Forest Conservation Plan showing the location and size each proposed forest conservation easement area. The northern portion of the site (Easement #3) proposes eight acres of forest conservation land along I-70, which had previously been proposed for development.

The southern portion of the site contains forest conservation land along most of the I-70 perimeter, to include approximately one acre of retention and 1.9 acres of reforestation (Easements #4, #5, and #6). Along the southern-most perimeter, 3.1 acres of forest conservation (Easements #12 and #10), will screen the development from the single-family homes to the south and west, with an additional .8 acres of forest conservation (Easements #1 and #2) along the central perimeter, screening the homes to the west.

- (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 project proposes 154 dwelling units; therefore, this criterion does not apply.

**(7) Bulk Requirements**

*(a) Maximum Height:*

- (i) *Apartments* ..... 40 feet
- Except in R-SA-8, R-A-15 and R-APT* ..... 55 feet
- (ii) *Other principal structures* ..... 34 feet
- (iii) *Accessory structures* ..... 15 feet

The height of the proposed single family detached and attached dwellings will not exceed 34 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*

All buildings comply with the 40-foot setback from an external public street right-of-way. The 6 single family attached dwellings in the north section and the 18 in the south are located more than 75 feet from residential lots in the R-20 zoning district. The single-family detached dwellings are located more than 40 feet from residential lots in the R-20 zoning district.

*(c) Minimum structure setback from interior roadway or driveway for units with garages ..... 20 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*

*Except zero lot line dwellings ..... 0 feet*

*A minimum of 10 feet must be provided between structures*

- (ii) Rear ..... 20 feet*

All single-family detached dwellings comply with the 10-foot side and 20-foot rear setbacks

*(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*



The minimum distances between single family detached and attached dwellings comply with these 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.*

All groups of single family attached dwellings are less than 120 feet in length.

- (8) At least 50% of the gross site area in the 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.**

As shown in the following chart, the development provides 61% open space, exceeding the 35% minimum in the R-20 zoning district. The open space areas include pathways/sidewalks, recreation areas, benches, and outdoor seating areas.

	Gross Acres	Required %	Required Acres	Provided %	Provided Acres
North Section	19.65	35%	6.88	66%	13.11
South Section	47.79	35%	16.72	59%	28.35
CU Area	67.44*	35%	23.60	61%	41.46

- (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.**

Two community centers and two recreation areas are proposed for onsite 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.**

The development is divided into two sections by I- 70. The Petitioner is proposing one community center in each section. The north section provides a 760 square foot community center for the 38 dwelling units. The south section provides a 2,150 square foot community center for the 116 dwelling units.

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

Trash and recycling containers will be kept at each dwelling. Trash storage and recycling bins for the community centers will be stored inside and collected curbside.

**(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 be constructed in phases. Open space, recreational facilities, and a community center are proposed in each section to meet the needs of the residents. To meet this criterion, the Petitioner will need to provide a schedule for the installation of facilities at the time of approval.

**(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 HOA will maintain and enforce the age restriction requirements through covenants and restrictions. Petitioner Exhibit 3 is a copy of the "Declaration of Covenants, Conditions and Restrictions" and contains additional details on implementing age 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 HOA will be responsible for the maintenance of open space and common areas.

Petitioner Exhibit 3 is a copy of the "Declaration of Covenants, Conditions and Restrictions" and contains additional details on this issue.

- (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 universal design features including handicap ramp crossings that meet the ADA design code at all intersections, ADA parking, and universal access to the clubhouse. The development will incorporate the universal design features identified on pages 13 and 14 of the Petition Supplement.

- (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.**

Sixteen (10%) of the 154 dwelling units will be Moderate Income Housing Units.

- (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 December 7, 2016. The Petitioner provided the meeting minutes and materials submitted at the meeting as documentation of compliance with this criterion.



**ORDER**

Based upon the foregoing, it is this 2nd day of September 2020, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of Elm Street Development for Age-Restricted Adult Housing, General in an R-20 (Residential: Single) Zoning District, is hereby **GRANTED;**

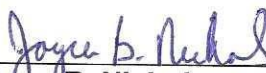
**Provided, however, that:**

1. The Conditional Use shall be conducted in conformance with and shall apply only to the uses as described in the Petition and depicted on the Conditional Use Plan (May 8, 2020, including updated Sheets 4 (8/11/20), 6 (8/11/20), 15 (8/3/20) and 16 (8/3/20)) and not to any other activities, uses, structures, or additions on the Property.
2. Petitioner shall obtain all required permits.
3. Petitioner shall revise the Amended Conditional Use Plan to provide two additional benches to the recreation open space in neighborhood "C".
4. Petitioner shall revise the Amended Conditional Use Plan to include a Parking Schedule for the Community Centers and ensure that all required parking spaces are correctly noted on the Plan.

The Approved Conditional Use Plan is the Conditional Use Plan (5/8/20) with updated Sheets 4 (8/11/20), 6 (8/11/20), 15 (8/3/20) and 16 (8/3/20).

**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.