

IN THE MATTER OF	:	BEFORE THE
<b>Williamsburg Group, LLC.</b>	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 18-025C

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**DECISION AND ORDER**

On July 30, 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 Williamsburg Group, LLC (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).

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. Thomas Coale, Esquire represented the Petitioner. Timothy Madden, Mickey Cornelius and Bruce Harvey testified in support of the Petition. Gail Williams, Rodgers Stanley and Tonya Spann Roche appeared in opposition to the Petition.

Petitioner introduced into evidence the Exhibits as follows:

1. Amended Conditional Use Plan 7/23/20
2. Red Line Conditional Use Plan
3. HPC February 7, 2019 minutes
4. Site Distance Analysis
5. Landscape Plan (sheet 6 of 6)
6. Declaration of Covenants

Opposition introduced into evidence the following Exhibit:

1. Leishear Knoll's power point slide presentation.

### **FINDINGS OF FACT**

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

1. Property Identification. The subject property is located on the north side of Scaggsville Road approximately 2,059 feet west of Leishear Road in the 6<sup>th</sup> Election District. It is identified as Tax Map 0046, Grid 0011, Parcel 5 and known as 10752 Scaggsville Road, Laurel, Maryland (the Property).

2. Property Description. The 15.72 net acre Property is an active farm and is improved with two single-family detached dwellings, a barn, and a steel garage. The lowest elevation is approximately 330 at the north lot line rising to an elevation of 380 feet at the south lot line. There are five specimen trees, all in poor condition, and a small portion of an emergent non-tidal wetland on the eastern side of the Property.

3. Vicinal Properties. To the north is the Route 216 right-of-way, to the east are single-family detached dwellings, to the south is a Religious Facility and single-family detached dwellings, and to the west are single-family detached dwellings, all in the R-20 Zoning District.

4. Roads. Scaggsville Road fronts the Property, has 2 travel lanes, and the speed limit is 35 mph. Access to the Property is via a 28-foot-wide drive. The Petitioner submitted a sight distance analysis showing that the intersection sight distance complies with the requirement of 485 feet to the left and 411 feet to the right. Stopping sight distance analysis was not provided and will be reviewed during Site Development Plan (SDP) review. Traffic count data is not available for this section of Scaggsville Road.

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

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 Scaggsville Road as a Minor Collector.

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

8. Design Advisory Panel (DAP) Comments. DAP's June 13, 2018 comments are attached to DPZ's Technical Staff Report (TSR). DPZ reports DAP recommended:

1. The applicant shorten most of the attached townhouse clusters from six to four units to break up long elevations.

Consistent with the DAP recommendation, the Petitioner has shortened four of the eight townhome clusters from six units down to four units and the remaining 2 clusters down to five units in order to reduce the length of the townhome elevations. The Petitioner has added four additional single detached units to the current plan.

2. The applicant add street trees in front of the townhouses to match the street trees adjacent to the single-family homes. Landscaping should be added between the townhouses and the sound wall should be softened with landscaping.

The Petitioner has not added street trees in front of the townhomes per the DAP recommendation. The Petitioner has noted that Howard County Landscape Manual requirements make conformance with this recommendation difficult. Per the director's endorsement, DCCP would like to see additional street trees located in front of at least every other townhome. DPZ is willing to work with the Petitioner to determine tree locations and species appropriate for the site and will review at SDP phase should the conditional use be granted.

The Petitioner has not included trees in the spaces between the townhomes (sides and rear) per the DAP recommendation. Staff will require landscaping in these areas on the SDP should the conditional use be granted.

The Petitioner has added landscaping along the sound wall, consistent with the DAP recommendation.

3. The applicant include a variety of exterior materials, like brick and stone, to the facades of townhouses and single-family homes.

The Petitioner includes a variety of exterior materials as options for the various housing models. It is DCCP's understanding that exterior materials will be selected by the individual buyers of each dwelling unit. Conformance with this DAP recommendation will be dependent on selection choices of home purchasers.

4. The applicant add evergreen trees to the perimeter buffer to screen the new community from existing neighborhoods.

Consistent with the DAP recommendation, the Petitioner has increased the number of evergreen trees along the perimeter of the development where it abuts existing neighborhoods to provide a stronger landscape buffer. Along perimeter 1 (west side of the property), the number of evergreen trees has increased from 12 to 16. Along perimeter 3 (east side of property), the number of evergreen trees has increased from 12 to 16.

5. The applicant add seating throughout the community and outdoor recreation uses such as pickleball or exercise stations.

Consistent with the DAP recommendation, the Petitioner has significantly increased the number of seating areas throughout the community. Additionally, the Petitioner has added a pickleball court to enhance recreational opportunities for residents.

9. Historic Preservation Commission (HPC) Review. The HPC reviewed the instant proposal on February 7, 2019. The Property is located on the Historic Sites Inventory as HO-709, 10756 Scaggsville Road. According to the inventory form, the house was probably constructed circa 1890. The neighborhood was assessed for the possibility of a Historic District but given the alterations to the exterior and removal of historical architectural items of significance, it has been determined that the historic value has been removed. The HPC accepted Staff's recommendation and recognized the diminished character of the subject parcel (HO-709) and its adjacent neighbors (HO-708, HO-710, and HO-711) based on the alterations or removal of the architecture that had once made each of these structures significant. Demolition of the house will allow further documentation of the history of the building.

10. Conditional Use Proposal. The Petitioner proposes an Age-restricted Adult Housing (ARAH) development consisting of 34 townhomes, 29 single-family detached dwellings, and 2,592 square-foot clubhouse. The townhomes are 30 feet wide and 2,245 square feet with

front facing two car garages. Five single-family house models are proposed and range in size from 1,492 square feet to 2,534 square feet. All models are two stories and have an attached front facing garage. The clubhouse contains a meeting room, library, exercise room, and a pickle ball court.

In response to community input, the revised Conditional Use Plan (July 23, 2020), provides the sole ingress/egress via a loop road, Road "A", a public road, accessing Scaggsville Road. There is no connectivity to Jandy Road (to the west) or to Tipton Road (to the east)

11. Reported Agency Comments. The majority of the department/agency's responded with "no comment" with the exception of the Development Engineering Division and the Division and the Land Development, Department of Planning and Zoning, which both recommended the removal of the tee turnarounds and the connection of the internal road network to both Jandy Road and Tipton Road.

12. All of the citizens testified in opposition to connecting Road "A" to either Jandy Road or Tipton Road. Opposition to this connectivity represented the overwhelming majority of the opposition's concerns. Other water related issues will be addressed at SDP or subdivision.

## **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 land uses and policies indicated in the Howard County General Plan for the Zoning 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 or unique 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.**

The proposed use is in harmony with Policy 9.4 which encourages housing options for the county's aging population:

**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 development with 50 or more dwelling units may be approved up to a maximum residential density of five dwelling units per net acre. Therefore, up to 78 dwelling units may be approved on the subject 15.72-acre site. The Petitioner proposes 63 dwelling units at a density of 4.0 dwelling units per net acre. Furthermore, the development provides 36% open space, which exceeds the required 35%, and complies with all setbacks.

**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, the 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 Age-restricted Adult Housing 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 site.

**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 be elsewhere in the same zoning district or other similar zoning districts.**

All buildings and structures comply with the setback and height requirements. Single-family detached dwellings abut the Property to south, east, and west. The Property is separated from the existing residential neighborhoods to the north by Route 216 and screened by a noise wall. The proposed single-family detached dwellings along the perimeter provide a transition between the adjacent single-family detached neighborhoods and the townhouses in the center of the Property.

Additionally, a 20-foot landscape buffer will adequately screen the development from adjacent homes. In response to the Design Advisory Panel (DAP), the Petitioner proposes to increase the number of evergreen trees along the perimeter abutting existing neighborhoods to provide a stronger landscape buffer and to add landscaping along the sound wall.

Therefore, the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site 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 for occupants and 0.3 spaces per dwelling unit for visitors. Therefore, 145 spaces are required for the 63 dwelling units and 290 spaces are provided. The 20-foot landscape buffer and proposed single-family detached homes along the perimeter will provide an appropriate screen between the parking spaces/driveways and adjacent residential properties. Significant landscaping is proposed along the front of the Property to screen the development from Scaggsville Road.

Outdoor refuse and loading areas are not proposed.

**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 and egress is proposed through a 28-foot wide driveway from Scaggsville Road. The access point on Scaggsville Road appears to provide safe access and adequate sight distance. The Petitioner submitted a sight distance analysis showing that the intersection sight distance complies with the requirement of 485 feet to the left and 411 feet to the right. However, stopping site distance will need to be evaluated during site development plan review.

The Petitioner proposes to dedicate 0.09 acres along Scaggsville Road for acceleration and deceleration lanes.

The proposed 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 in the vicinity consist of an emergent non-tidal wetland on the east side of the Property and an intermittent stream just east of the wetland area. All buildings and uses are located outside of the required wetland and stream buffers. 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.**

According to Resource Conservation Division comments, the Property contains a historic home (HO-709) and several historic outbuildings. Historic Preservation Commission advisory review is required for subdivision and site development of the Property. Additionally, several historic structures are located directly across Scaggsville Road- HO-711, HO-710, and HO-708. HPC minutes indicate that the HPC has found no remaining historical significance to any of these sites due to demolition by neglect or removal of historically significant architecture. Single-family detached dwellings are allowed by-right in R-20 and are proposed along the Scaggsville frontage.

The area between the homes and the right-of-way is adequately buffered by landscaping. 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 29 single-family detached units, and 34 single-family attached units are proposed, 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.**

Sixty-three 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 in the R-20 District and therefore this criterion is not applicable.

- (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 63 units are proposed. The maximum density is 5 units per acre and 4.0 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 dwellings are located to the south, east, and west of the Property and are proposed along the perimeter. A 20-foot wide landscaped buffer is proposed along the perimeter of the site and significant landscaping is proposed along Scaggsville Road. The proposed landscaping and building placement 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 dwellings to the south, east and west. The proposed site design provides an architectural transition by locating townhomes in the center and single-family detached around the perimeter. This transition, in addition to enhanced landscaped buffers is compatible with residential development in the vicinity. The Petitioner replaced some shade trees with evergreen trees at a 2:1 ratio in response to the Design

Advisory Panel's recommendation for more evergreen trees to better screen the edge buffers between adjacent communities.

- (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 63 dwelling units; therefore, this criterion does not apply.

**(7) Bulk Requirements**

\* \* \* \* \*

The development complies with the bulk requirements, except for the 120-foot maximum length for single-family attached buildings. The Petitioner is requesting to increase the length of two rows of single-family attached buildings with five units to 150 feet.

The Hearing Authority may approve a greater length, up to a maximum of 200 feet in the R-20 District, based on architectural design that mitigates the visual impact of the increased length. The increased building length will be mitigated through staggered facades, contrasting rooflines, varying fenestration, and a variety of exterior materials. Additionally, the single-family attached dwellings are proposed in the center of the site and are screened from adjacent residential properties by single-family detached dwellings and a 20-foot landscape buffer.

- (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.**

The Property is zoned R-20 and the development provides 36% open space, exceeding the 35% minimum. The open space areas provide benches, recreation areas, and protect the wetland/stream on/near the Property.

- (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 and recreation areas are proposed.

- (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 2,592 square foot community center exceeds the 1,380 square foot requirement for 63 dwelling units.

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

Trash collection for the dwellings and community center will be curbside pickup.

- (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.**

The Petitioner indicates that the development will have a condominium association that will maintain and enforce the 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.**

The Petitioner indicates that the development will have a condominium association that will be responsible for the maintenance of open space and common areas.

- (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 dwellings will contain levered door handles on all interior doors, 3-foot 6-inch wide interior hallways, no step entry, height elongated toilets, and roll in showers.

- (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.**

Seven (10%) of the 63 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 June 13, 2018. 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 17<sup>th</sup> day of August 2020, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

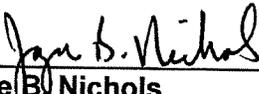
That the Petition of Williamsburg Group, LLC for an Age-restricted Adult Housing in an R-20 (Residential: Single) Zoning District, is hereby **GRANTED;**

**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 (July 23, 2020) and not to any other activities, uses, structures, or additions on the Property.
2. Petitioner shall obtain all required permits.

**HOWARD COUNTY BOARD OF APPEALS**

**HEARING EXAMINER**

  
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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.