

IN THE MATTER OF	:	BEFORE THE
Rock Realty, Inc.	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 20-002C

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DECISION AND ORDER

On September 10, 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 Rock Realty, Inc. (Petitioner) for an Age-Restricted Adult Housing, General (ARAH) Conditional Use in an R-R DEO (Rural Residential Density Exchange Option) Overlay 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, Esquire represented the Petitioner. Brandon Rowe and Mickey Cornelius testified in support of the Petition. J. Dirk Schwenk, Esquire represented an adjoining property owner, Gail Gee. Christopher Woltemade and Daniel O'Leary appeared in opposition to the Petition.

Petitioner introduced into evidence the following Exhibits:

1. Petition for Conditional Use Approval with Exhibits (1/27/20)
2. Amendment to Conditional Use Supplement
3. Conditional Use Plan (6/19/20) (3 sheets)
4. Supplemental Landscape Plan (5/19/20)
5. Sight Distance Analysis Revision 1 (8/28/20)

6. DPZ Endorsement of DAP Motions & Applicants Response (2/19/20)
7. DPZ Universal Design Guidelines
8. DPZ Technical Staff Report with Agency Comments
9. Draft Declaration of Covenants and Restrictions
10. Existing Conditions Plan (9/4/20)
11. Illustrative Plan (9/8/20)
12. Sidewalks and Pathways Plan (9/9/20)

Opposition introduced into evidence the following Exhibits:

1. Christopher Woltemade CV
2. Daniel O'Leary CV

FINDINGS OF FACT

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

1. Property Identification. The subject property is located on the north side of Lime Kiln Road approximately $\frac{3}{4}$ miles west of its intersection with MD 216, and is bounded to the north by PEPCO electrical transmission lines and to the east, south, and west by residential single family detached dwelling unit developments in the R-R Zoning District. The subject Property is in the 5th Election District. It is identified as Tax Map 0040, Grid 0024, Parcel 135, Lot PAR 1, Lot PAR 2, and Lot PAR 3, Lyhus Property SP-17-010 and known as 12170 Lime Kiln Road, Fulton, Maryland (the Property).

2. Property Description. The Property consists of 71.09 acres, all of which are included in the conditional use area. The Property is currently improved with a single-family detached dwelling and several accessory out buildings all of which are located on PAR 1. The majority of PAR 1 and PAR 2 is cleared and is currently used for residential and agricultural

purposes. The residence and outbuildings on PAR 1 will be removed at the time of development. PAR 3 is mostly forested and is otherwise unimproved. Historically, timber has been harvested from PAR 3 from time to time using the same stream crossing as proposed in the instant Petition. The net acreage of the Property is 62.71 acres, exclusive of steep slopes (1.12 acres) and floodplain (7.26).

The environmentally sensitive areas on the Property consist of 7.26 acres of floodplain, 1.12 acres of steep slopes, two intermittent streams, and wetlands. The site rises from an elevation of 350 feet along the south property line to 450 feet along the north property line with sloping topography in the middle of the property rising to an elevation of between approximately 400 feet and 430 feet. Dense vegetation covers the entirety of Lot PAR 3. Vegetation also exists in the middle, southern and western portions of Lot PAR 1.

3. Vicinal Properties.

Direction	Zoning	Land Use
North	RR-DEO	Potomac Electric Power Lines
South	RR-DEO	Single Family Residences / Undeveloped Land / Agricultural / Lime Kiln Road
East	RR-DEO	Single Family Residences / Undeveloped Land, Nicolar Drive
West	RR-DEO	Single Family Residences

4. Roads. Lime Kiln Road has two travel lanes within a 50-foot right-of-way. The speed limit is 30 miles per hour. Traffic count data is not available for this portion of Lime Kiln Road.

5. Water and Sewer Service. The Property is not located within Planned Service Area for Water and Sewer. The Property is served by private well and septic.

6. The General Plan. PlanHOWARD 2030 designates the Property as Low Density Development on the Designated Place Types Map. The Plan's Functional Road Classification Map depicts Lime Kiln Road as a Minor Arterials.

7. Zoning History. On March 1, 2019 DPZ and the Planning Board approved WP-18-070 for market rate housing for the Property. MDE reviewed and approved the stream crossing at the same location as proposed in the instant Petition. This proposed location was previously used during the on-site logging operation.

8. Reported Agency Comments

- (a) The Division of Land Development reminds that the proposed development must be in accordance with certain local reviews and laws and permits.
- (b) Development Engineering Division, Department of Planning and Zoning found no adverse engineering impacts on adjoining properties, a waiver must be approved for the number of users on a use-in-common drive, roadways servicing more than 200 ADT must terminate in a cul-de-sac, the Health Department must approve the use of private septic, 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.
- (d) Bureau of Environmental Health found that the proposal for two dwelling units per lot with each sharing a single sewage disposal area and well area within the lot is in violation of COMAR and must be revised to conform with State and County regulations for construction, ownership, and operation. The Conditional Use Plan was amended to correct this violation.

9. Design Advisory Panel (DAP)

DAP's January 8, 2020 comments and Petitioners responses are as follows:

1. That Applicant explore opportunities to close loop trails and tie the homes into the trail systems and connect the trail system to the community center.

The Applicant has reviewed the trail system and has revised the proposed trail system within the community to loop around Public Road 'A'. This loop will allow the lots on the southern portion of the community to have direct access to the trail system.

2. That the Applicant explore the option of relocating clubhouse to a more central location and relocating units to where the clubhouse currently is located.

The concept of relocating the clubhouse to be more centrally located was carefully studied by the Applicant and deemed not to be feasible due to location of percable soils which underlies nearly all aspects of the site configuration. There is only one (1) isolated individual septic reserve area on the northern side of the stream which bisects the property. That isolated septic reserve area was not conducive to a residential building, but it could be used for the community building which has slightly more site configuration flexibility with a smaller building footprint and small parking lot. Additionally, builders with whom the Applicant has spoken about the DAP suggestion indicated that if the community building is located to the south of the stream (where the majority of the homes are located) it would physically isolate the homes/residents on the north side of the stream from those on the south. They felt the community will actually be more centralized and cohesive if the community center gives all residents a reason to cross to the north side of the stream.

3. That the Applicants be more responsive to the natural topography of the site with the design of the northern portion of the property.

The Applicant has carefully reviewed the proposed layout on the northern portion of the property and deemed adjustments to the layout to be more responsive to the natural topography of the site to not be feasible due to the location of the percable soils and Health Department Well & Septic Program separation requirements. The Health Department Well & Septic Program separation requirements identify restrictions on the locations of the private well and septic facilities. These locations are driven by the location of the percable soils on a property. The Applicant has worked extensively with the Health Department to identify the percable soils and corresponding septic easements and private well locations on the subject property, which results in the current layout of the community.

4. That the Applicants allow the existing conditions of the site to give them clues on how to use landscaping throughout the site and to look at the conditions of the existing environmental areas to see if there needs to be any invasive plant material control or management

The Applicant will utilize the existing conditions of the property to provide natural buffers with surrounding properties and will complement that existing vegetation with proposed landscaping accordingly. The Applicant will propose only native species throughout the community and will propose that any invasive planting material be managed during the construction process.

10. Conditional Use Proposal. The Petitioner proposes an Age-Restricted Adult Housing (ARAH) development consisting of 58 single family semi-detached dwellings, a dog park, a 1,200 square foot community center, and walking trails. All dwellings will incorporate features from the Universal Design Guidelines.

11. Opposition. Opposition concerns included:

- (a) The environmentally sensitive nature of the property which includes wetlands, floodplains, a stream and stream crossing, impervious surface, erodible soils and similar environmental features which are not unique to this area of the County. Many of the issues attempted to be discussed were not within your Hearing Examiners limited jurisdiction over the Conditional Use Petition but will be within the jurisdiction of other reviewing bodies, both local and State, later in the development process should the instant Petition be approved. It was noted that more specimen trees are proposed to be saved pursuant to the instant Petition than the prior approval for market rate housing on the Property.

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.

The Petitioner is proposing 58 dwelling units on 71.09 acres. In the R-R Zoning District, an ARAH with 50 or more dwelling units may be approved up to a maximum residential density of 1 dwelling units per net acre. Therefore, the 62.7 net acres of the Property may be approved for up to 62 dwelling units. However, the Petitioner only proposes 58 dwelling units at a density of 0.925 dwelling units per acre. Furthermore, the development complies with all setbacks, environmental buffers, and provides 50% open space.

The Functional Road Classification Map of PlanHoward 2030 depicts Lime Kiln Road as a minor collector, which is an appropriate classification for the types and number of vehicles associated with the proposed use.

As requested by DPZ, DPW and Fire Department, the Petitioner is proposing two points of access, one off Lime Kiln and a second point on Nicolar Drive. This second access point is needed for safe ingress/egress for fire or emergency vehicle rescue, trash and recycling collection and snow removal. Nicolar Drive is a local road with an existing terminus: a new intersection is not being created therefore sight distance analysis is not required.

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-R 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-R 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 semi-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.

The levels of noise and lighting generated by the proposed development would be well below the limits permitted by the Howard County Noise Ordinance (Howard County Code Section 8.900) and Zoning Regulations section 134.0 (governing outdoor lighting and light trespass)

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. A type "A" vegetative buffer is proposed along the north property line adjacent to the overhead power lines. A type "C" buffer is proposed along the east and south property lines. The existing dense vegetation along the west property line will remain. 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 Zoning Regulations do not contain a parking requirement for age-restricted adult housing semi-detached structures; however, the closest parking use category is age-restricted adult housing single family attached structures, which requires two spaces per unit and an additional 0.3 spaces per unit for guest parking. Additionally, 10 parking spaces per 1,000 square feet are required for the community building. Therefore, 134 spaces are required for the 58 units and 12 are required for the 1,200 square foot community building for a total of 146 parking spaces. The Conditional Use Plan shows 244 proposed parking spaces.

The parking spaces are screened from the public roads and adjacent properties by proposed landscaping. Waste be will collected in 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 Petitioner submitted a sight distance analysis for an ingress/egress point on Lime Kiln Road. The results of the sight distance analysis are shown in the following table. However, precise sight distance measurements can only be determined by a detailed sight distance analysis, which is typically conducted during Site Development Plan review. Petitioner submitted Revision 1 to its Sight Distance Analysis (8/28/20) to include stopping sight distance in addition to intersection sight distance, which is deemed adequate pursuant to the 85% speed study.

The Development Engineering Division reviewed the sight distance analysis and commented that “based on the information provided there appears to be adequate intersection sight distance. With further review, additional information such as a speed study verification and a site visit stopping sight distance would also be evaluated and confirmed.” Revision 1 to the Sight Distance Analysis was prepared subsequent to the Engineering Division’s review.

Entrance	ISD to Right Required (Direction)	ISD to Right Provided (Direction)	ISD to Left Required (Direction)	ISD to Left Provided (Direction)
Exit Left	441 feet (west)	>441 feet (west)	382 feet (east)	>382 feet (east)
Exit Right	n/a	n/a	382 feet (east)	>382 feet (east)
Entrance Left	n/a	n/a	324 feet (east)	>324 feet (east)

(ISD = Intersection Sight Distance)

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 environmentally sensitive areas on the Property consist of 7.26 acres of floodplain, 1.12 acres of steep slopes, two intermittent streams, and wetlands. The streams and wetlands will be protected by 100- and 25-foot buffers, respectively. Additionally, the proposed layout of the southern section results in 35.55 acres (50%) of open space.

The environmentally sensitive areas are likely to be disturbed by any type of development given their location in the middle of the site and the location of the stream along the frontage of the Property. The proposed layout and configuration minimizes the impact on these areas except for one stream crossing for the internal road, which is necessary for access to the Property. 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 one-quarter mile to the south west of the Property and is buffered from the proposed development by significant distance and dense forest. 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-R and the development proposes single-family semi-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.**

Fifty-eight dwelling units are proposed on the R-R 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-R and 58 single-family semi-detached dwelling units are proposed.

- (4) **The maximum density shall be as follows:**

Zoning District	No. of Dwelling Units	Max. Units Per Net Acre
R-C and R-R	20 or more	1

The Property is zoned R-R and 58 dwelling units are proposed, making the maximum density 1 unit per acre and 0.92 units per acre are 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 R-R zoning district allows a maximum density of approximately 0.33 dwelling units per acre. The proposed development has a density of 0.92 dwelling units per acre and has frontage and direct access on Lime Kiln Road, a minor 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.**

Single-family detached homes adjoin the Property on all sides, including north of the power transmission lines. A type "A" vegetative buffer is proposed along the north property line adjacent to the overhead power lines. A type "C" buffer is proposed along the east and south property lines. The existing dense vegetation along the west property line will remain.

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**

The buildings are designed to resemble single family detached homes with an approximate footprint of 80 ft x 60 ft and will be separated vertically into two units. The buildings will be similar to adjacent single-family dwellings in scale, materials, and architectural details.

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

This criterion is not applicable as the Petition complies with (i) above.

(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 Petition proposes 58 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 semi-detached 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 and 40-foot setback from lots in the R-R 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*

Neither single-family detached nor multi-plex units are 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-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*

Neither single-family detached nor attached dwellings are proposed 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-face 30 feet*
 - ii. *For units oriented side-to-side 15 feet*
 - iii. *For units oriented face-to-side or rear-to-side 30 feet*
 - iv. *For units oriented rear-to-rear 60 feet*
 - v. *For units oriented face-to-rear 100 feet*

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-R and 50% of the site (35.55 acres) is proposed for open space.

- (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, dog park, and walking trails 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**

The Petitioner is required to provide 1,160 square feet of floor area (20 square feet per unit x 58 units = 1,160 square feet) for on-site community buildings or interior community space. The Petitioner satisfies this requirement by providing a 1,200 square foot community building that is limited to on-site residents and their guests.

- (b) 10 square feet of floor area per dwelling unit for each additional unit above 99.**

A 1,160 square foot (20 square feet per unit x 58 units = 1,160 square feet) on-site community building, or interior community space, is required and a 1,200 square foot 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 and recycling pickup within the development will be curbside pickup at each dwelling and no central trash storage area is proposed in connection with the dwelling units or the community building under this Petition. Trash pick-up from the community building, dog park, and trash receptacles along the walking path/trail will be the responsibility of the condominium association and/or a professional management company hired by the condominium.

- (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 time. 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 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 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:

- an accessible path between parking, dwelling units, and common areas that meet ADA standards
- a "no-step" access to the front door entrance to all dwelling units and community buildings.
- 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
- clear floor space of 30" x 48" inches centered on appliances
- reinforced walls to allow for the later installation of grab bars around the toilet, tub, and shower stall.
- maneuvering space within the bathroom to permit a person using a mobility aid to enter the room, close and reopen the door, with a clear floor space of 30" x 48" outside of the door swing. In addition, a clear floor space of 30" x 48" should be provided at each fixture and centered on each fixture. the 30" x 48" floor spaces can overlap each other
- wall mounted light switches, electrical outlets, or environmental controls mounted for a reaching range of minimum 15" off the floor and maximum 48" above the floor."

- (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.**

Six (10%) of the 58 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 January 8, 2020. 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 22nd day of September 2020, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of Rock Realty, Inc. for Age-Restricted Adult Housing, General in an R-R DEO (Rural Residential Density Exchange Option) Zoning District, be and is hereby **GRANTED;**

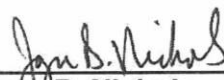
Provided, however, that:

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 Conditional Use Plan (June 19, 2020), and not to any other activities, uses, structures, or additions on the Property.
2. Petitioner shall obtain all required permits.

The Approved Conditional Use and Landscape Plan is the Conditional Use Plan (6/19/20) and Landscape Plan (5/19/20)

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.