

| | | |
|--------------------------|---|---------------------|
| IN THE MATTER OF | : | BEFORE THE |
| Trotter 5857, LLC | : | HOWARD COUNTY |
| Petitioner | : | BOARD OF APPEALS |
| | : | HEARING EXAMINER |
| | : | BA Case No. 25-019C |

.....
.....

DECISION AND ORDER

On December 17, 2025, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, held the evidentiary hearing for the Petition of Trotter 5857, LLC (Petitioner) for an Age-Restricted Adult Housing, General (ARAH) Conditional Use in a R-ED (Residential: Environmental Development) 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. Tom Coale, Esq. represented the Petitioner. Chris Ogle, civil engineer, and Nick Aello, architect, testified on behalf of the Petitioner. Chris Hennigan, Audra Hennigan, Josh Filson, Pamela Voulalas-Depireux, Don Pressler, and Didier Depireux testified in opposition. Jacob Hikmat raised legal issues.

Petitioner introduced into evidence the following Exhibits:

1. Revised Conditional Use Site Plan (12/25)
2. Revised Floor Plan with dimensions
- 3 a. Building Elevations
- 3 b. Site Sections

FINDINGS OF FACT

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

1. Property Identification. The Property consists of 13.05 acres, is located in Council District 5, Tax Map 16, Grid 23, Parcel 416, Lot 106, and is identified as 3173 St. Charles Place, Ellicott City, Maryland. The Conditional Use site is comprised of one (1) subdivided lot that is zoned R-ED (Residential: Environmental Development). The subject Property is an improved lot with frontage along Baltimore National Pike (Rt. 40) but has no approved access to Baltimore National Pike, and is developed with a burned-out single-family dwelling, a driveway, and site landscaping.

The property is forested and has a large stormwater management pond and other environmental features. The site is currently accessible from St. Charles Place via an access drive but development access will be limited to Baltimore National Pike (Rt. 40). There is existing tree cover that encumbers the site along with a stream buffer/wetland area that traverses the western and southern portions of the Property. The site rises from an elevation of 438 feet at the western boundary to 496 feet at the eastern border.

2. Vicinal Properties

| Direction | Zoning | Land Use |
|-----------|--------|--|
| North | R-ED | Baltimore National Pike |
| South | R-ED | Single-Family Detached Dwellings |
| East | R-ED | Single-Family Detached Dwellings |
| West | R-ED | Undeveloped/Single-Family Detached Dwelling Land Use |

3. Roads. St. Charles Place has two travel lanes within a 50-foot width right-of-way. The speed limit is 25 miles per hour.

Baltimore National Pike (Rt. 40) has four travel lanes within a variable width right-of-way. The speed limit is 55 miles per hour. There is no Average Annual Daily Traffic count for this portion of Baltimore National Pike; however, approximately 0.82-miles to the west the AADT was 15,741 vehicle trips.

4. Water and Sewer Service. The Property is within the Planned Service Area for Water and Sewer and is served by public water and sewer.

5. The General Plan. The Property is designated Single-Family Neighborhood on the Future Land Use Map of HoCo By Design.

Baltimore National Pike is designated as an Intermediate Arterial.

6. Reported Agency Comments.

The Health Department stated that "Health has no objections to the proposal. The existing house has an existing, buried private well and a septic system that was installed in 2005 via a repair perc. All existing well & septic components shall be properly sealed, disconnected and abandoned with documentation sent to the HD prior to final approvals."

State Highway Administration stated "Please note SHA maintains access controls along US 40. SHA right-of-way plats indicate these controls of access by the notations such as "Right of Way Line of Through Highway". Please coordinate with SHA District office regarding access to US 40".

The Development Engineering Division "takes NO EXCEPTION to the request for 62 unit Age-Restricted Adult Housing Units and related parking subject to meeting all design criteria for APFO, road improvements along Rte 40 and stormwater management based on the justification presented in the application."

The Division of Land Development made the following comments:

1. Certification that the development shown on the plan has the potential to comply with all technical requirements in subsequent Subdivision and Site Development Plan stages of review.
 - a. Prior to the approval of the Condition Use Petition, a decision concerning the parcel development potential should be investigated as the acreage for this parcel supports the Terra Maria subdivision.
In addition, the applicant must demonstrate access from Route 40 is permitted.
 - b. If the Conditional Use Petition is approved, the applicant will be required to obtain approval of a Site Development Plan from the Department of Planning and Zoning prior to the issuance of building permits for the proposed use. As shown on the plan exhibit, the development has potential to comply with the technical requirements in subsequent plan stages. The project details will be reviewed for access requirements, parking, landscaping, forest conservation, etc. in subsequent plan stages.

The Terra Maria subdivision excluded this parcel from forest conservation requirements. At the site development plan phase, compliance with forest conservation requirements will be required.

- c. Advisory: The proposed conditional use plan shows access being obtained by the Route 40/Baltimore National Pike SHA right-of-way. It is the Division of Land Development's understanding that previous attempts to investigate access at or near this location encountered complicating factors based on frontage ownership and environmental features adjacent to that location. It is recommended that a meeting be scheduled with DPZ and SHA early in the process to identify any potential issues with the proposed access point.
2. 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.
- a. Landscape requirements will be reviewed and evaluated at the SDP phase of the development process.
 - b. The conceptual landscape plan proposes credit for existing vegetation located within proposed forest conservation easements.
 - i. The Howard County Landscape Manual allows the landscaping requirements to be met by preserving existing vegetation. A minimum buffer width of 25 feet of existing vegetation must be preserved in apartment developments. For preservation areas of

lesser widths, a tree preservation plan showing the location of trees within the preserved area must be provided. In any case, the Department of Planning and Zoning may require the applicant to Provide supplemental planting if existing vegetation cannot provide adequate screening or buffering.

- c. Internal landscaping is required within all new apartment developments. One shade tree is required for every three (3) units. A minimum of 15-foot-wide landscaped area shall be provided between common parking areas and any adjacent residential structure.

3. The number of parking spaces will be appropriate to serve the particular use.

Parking areas, loading areas, driveways and refuse areas will be appropriately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

- a. The Zoning Regulations require 1 parking space per apartment unit in an age-restricted adult housing development, and an additional 0.3 spaces per dwelling unit must be provided for visitor parking (81 total parking spaces). Community centers that are in a separate building from the residential units should provide 10 parking spaces per 1,000 SF of building (an additional 44 parking spaces). The plan does not appear to meet the community center parking requirement. Details of the visitor parking spaces will be reviewed in detail at the SDP stage.
- b. The plan exhibit indicates a refuse collection area will be provided in the apartment building.

4. The proposed use will not have greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere (streams,

wetlands, floodplain, forest conservation, etc.).

- a. A pathway, SWM and other structures appear to be within the limits of the proposed forest conservation easement. Adjustments to this easement may be required at the site development plan phase.
- b. There do not appear to be environmental impacts within the Limit of Disturbance as shown on the conditional use exhibit. An Environmental Concept Plan for the site must be approved prior to the site development plan to identify any impacts to streams, wetlands, and their buffers, floodplain, steep slopes and specimen trees on site which are protected from disturbance per the Subdivision and Land Development Regulations.
 - i. The natural environmental conditions of the subject site must be thoroughly accessed by an environmental professional, and findings must be provided with the forthcoming site development plan.
 - ii. Storm water management and suitable drainage requirements will be reviewed at both the ECP and SDP phase.
- c. This project must comply with Section 16.1200 of the Howard County Code for Forest Conservation. The project will be reviewed for compliance with the forest conservation regulations at the site development plan stage as this parcel was excluded from the forest conservation obligation for the Terra Maria subdivision.
 - i. Residential developments with more than one acre of obligation shall meet a minimum of 75% of their forest conservation obligation on site by reducing lot sizes, clustering lots and maximizing open space to the maximum extent permitted by the Subdivision and Land Development

Regulations.

- ii. Approval of an alternative compliance application is required for the removal of any specimen tree if needed. If approval is granted, the required mitigation will be determined as part of the alternative compliance application.
- iii. Please be informed that approval of a Conditional Use plan and specific site design does not serve as unwarranted hardship justification for any potential alternative compliance requests to the Subdivision and Land Development Regulations. Future review of the site development plan for compliance with the Forest Conservation regulations may cause changes to the plan layout. If such changes do not constitute "minor modifications" as defined in Section 131.0.1.2.c, these changes may require a new hearing by the Hearing Authority, unless otherwise specified in the Decision and Order.

7. Zoning History.

Case Number: BA-10-014C

Petitioner: Great Multitude Presbyterian Church, Inc.

Petition: Conditional Use of existing and proposed structures for religious services

Outcome: Dismissed

8. Design Advisory Panel (DAP). DAP reviews and makes recommendations on developments of Age-Restricted Adult Housing pursuant to Title 16, Subtitle 15 of the Howard County Code. HCZR §131.O.N.a.18 requires that "the Conditional Use Plan and the architectural design of the building(s) shall have been reviewed by the Design Advisory Panel...prior to the submission of the Conditional Use petition to the Department of Planning and Zoning. The Petitioner shall provide documentation with the petition to

show compliance with this criterion.” Section 16.1504 sets forth the recommendations the Panel shall make consistent with the compatibility criteria for Age-Restricted Adult Housing including, but not limited to, the design for buildings, vehicular circulation and access, pedestrian access and linkages, parking, existing trees, landscaping, and walls and fences. The Panel shall also address scale, massing, and compatibility of building in relation to the surrounding area as well as the architectural style, materials, entrances, windows, roof design, and colors of the proposed structures. Proposed open space including pathways, public spaces, amenity areas, and similar features are also to be considered by the Panel.

DAP reviewed the proposed Conditional Use Plan at its January 8, 2025 meeting.

Background

The 13.05 acre project site is listed as Parcel 416, Lot 106 with direct frontage along Route 40, zoned Residential Environmental Development (R-ED). R-ED zoning was established along Route 40 to promote residential development and maintain beneficial environmental areas. The project site is currently improved with an existing house, driveway, site landscaping, forest, pond, and environmental elements. Direct access to the property is currently provided from St Charles Place via an access drive. The applicant proposes to create a 62-unit age restricted community building and associated site amenities. The 4-story building will span roughly 69,000 square feet and will sit in the center of the site adjacent to the pond with associated parking area immediately north of the building. Access is proposed directly to Route 40 opposite Turf Valley Road. The project will also include a pool, pedestrian pathways and landscaped areas. The project

proposes to utilize the existing facility for onsite stormwater management. The project will require a Conditional Use petition to be approved to permit the age restricted development on the R-ED Zoned property.

Staff Presentation

The property is 13.05 acres listed as Parcel 416, Lot 106, and has direct frontage along Route 40. The R-ED Zoning does support age restricted residential uses with the approval of a conditional use permit to permit the use on the specific property. Through that process, density would be confirmed and the permitted amount determined. There is also a known access restriction along the Route 40 frontage to the property which will require SHA approval in order to utilize the proposed access.

Staff requested the DAP The DAP evaluate and make recommendations on the orientation, layout, and configuration of the site plan and asked if the proposed configuration and layout of the proposed age restricted apartment development fit well within the context of the surrounding neighborhood or if an alternate layout should be considered. Staff also requested the DAP evaluate and make recommendations on proposed open and amenity spaces for the community, pedestrian circulation and connectivity, and the proposed architecture design for the proposed apartment building.

DAP Questions and Comments

Site Design

DAP appreciated the building orientation in relation to the existing pond, as well as the woodland walking paths. It was questioned whether the adjacent Terra Maria neighborhood could use these as well.

The applicant responded that they would look into the public options and that they would likely address the issue at the eventual Pre-Submission Community Meeting.

DAP questioned whether a dog park was considered.

The applicant responded that it had not but nonetheless could easily be integrated into the refined future designs.

DAP inquired about a potential access road to the south of the property to tie into Old Frederick Road.

The applicant stated that it had been investigated but was rejected due to road width constraints.

DAP recommended that the existing driveway be repurposed as a pedestrian/bicycle connection to the adjacent neighborhood.

DAP commented on the traffic logistics of the intersection where the proposed point of access is located and determined that a connection from Route 40 makes the most sense at the proposed intersection.

DAP inquired whether the existing house has any historical references.

The applicant responded that the house had fallen into disrepair over the past 15 years but there were no historic references.

DAP expressed concern about the lack of storm water management for the design, especially given the size of the proposed parking lot area. DAP suggested some of the parking lot islands into stormwater management facilities to help address the issue.

DAP asked if the entrance drive was private or public and noted the slope of the entrance

drive and thought it was about 13%. DAP thought this was worrisome given the age restricted use of the property. DAP suggested that it be under 10% to keep it safer for users and within the Regulations.

The applicant responded that the drive would most likely be private and would be maintained by property maintenance.

DAP inquired whether the woodland paths could extend around the pond on its southwest side and potentially create a loop; however, wetlands and wetland buffers exist there and paths extending to this area were thus avoided to limit environmental disturbance as much as possible.

DAP inquired whether the trails were paved or natural. Discussion ensued exploring the advantages and disadvantages of the proposed materials such as crushed gravel, mulch, or paved. Factors such as the community age restriction, ground porosity, maintenance, and potential environmental disturbances were considered.

DAP commented on the potential for issues with private and public amenity designations as features such as the proposed pickle ball courts may have a wide community draw.

DAP commented on the inclusion of Terra Maria neighborhood regarding connectivity.

Architecture

DAP noted that they liked the aesthetic of the proposed community building, especially the natural colors and materials of the building architecture. DAP liked the overall architectural fenestration of the proposed building façade and liked the pattern.

DAP inquired about the proposed materials for the main entry and suggested the white

mass of the front be more refined. This was seconded and the visual effects to the neighboring Terra Maria residents were considered to suggest a muted façade that could potentially be remedied by considering other materials. Another consideration was made to the visual intrusiveness of the roof but was ultimately determined that the amount of space between the buildings and greenery would mediate this.

DAP recommended considering keeping the gable roof to bring down the overall building mass given the proposed structure's height.

Landscape

DAP inquired about the pond being used recreationally and suggested that tree variety on the property be considered an important amenity. Distance markers on the trail were also suggested.

DAP appreciated the applicant's consideration of using native plant materials and landscape integration with the proposed amenities and suggested enhancing the entry drive and islands with native plantings.

DAP suggested supplementing the existing vegetated buffering to provide additional screening to buffer the proposed building from the neighboring community views. DAP noted that the buffer was substantial and would provide some screening but worried that views would increase especially during the winter months when deciduous vegetation goes dormant. Supplemental plantings along the trails and buffer areas were suggested.

DAP Motions for Recommendations

1. The applicant further explore the connectivity of this project to the existing

Terra Maria neighborhood, especially in terms of what the neighborhood does or does not want.

2. The applicant ensure that all imagery and references to native plant materials be carried through into the formal landscape plan and plant list.
3. That the design team look at the design materials again in terms of color, tone, and texture to keep in line with the natural intent of the project.

9. Conditional Use Proposal. The Petitioner proposes a 62-unit Age-Restricted Adult Housing (ARAH) apartment building with associated parking and amenity areas that is accessed from Baltimore National Pike. The development includes a 4,400-square-foot community area that is within the apartment building. All units will incorporate features from the Universal Design Guidelines. The property management company will be responsible for maintaining the common areas and enforcing the age restriction through a Declaration of Covenants.

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. These prescribed standards and requirements are conditions precedent to the approval of a conditional use. If he shows to the satisfaction of the zoning body that the conditions precedent have been met and that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest to a greater extent than if the proposed use were located elsewhere, 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 A.2d 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 use is in harmony with the following *HoCo by Design* policies that encourages housing options for residents at diverse life stages:

Policy DN 12: "Provide a range of affordable, accessible, and adaptable housing options for older adults and persons with disabilities." Implementing Action #3 states "Encourage Age-Restricted Adult Housing (ARAH) developments to build small- to medium-scale housing units to include apartments, condominiums, townhomes, and missing middle housing."

Section 131.0.B.2. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site are such that the overall intensity and scale of the use(s) are appropriate for the site.

The proposed development will consist of a 62-unit ARAH apartment building on 12.562 net acres, which equates to 4.93 dwelling units per net acre. This is less than the maximum density of five (5) dwelling units per net acre allowed for an ARAH development within the R-ED district developing 50 or more units. The development provides 8 acres or 61% of the Property as open space, which exceeds the 50% requirement. The Petitioner proposes a 4,400 square-foot community center,

which meets the 1,240 square-foot minimum requirements. The Functional Road Classification Map of HoCo By Design designates Baltimore National Pike as an Intermediate Arterial, which is an appropriate classification for the types and number of vehicles associated with the proposed use however there is no approved access to Baltimore National Pike (Rt. 40). SHA has the sole authority to approve access from the Property to Baltimore National Pike (Rt. 40). Historically SHA has failed to approve access from the Property. Therefore, 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 Baltimore National Pike (Rt. 40) to which there is no access from the Property, are such that the overall intensity and scale of the use are not 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-ED 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, Petitioner has not 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-ED 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 a 62-unit ARAH apartment building with associated parking, community areas, and open space in a residential zoning district. Some existing tree cover will be retained that will buffer adjacent uses. 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 in the R-ED zoning district. Outdoor lighting of the communal parking lot must comply with Section 134.0 of the Zoning Regulations and will be evaluated at the site development plan stage.

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 apartment building has been reduced to 40 feet in height in accordance with the maximum height requirement. The landscape plan has been revised to include all Type C landscape buffers. The landscape buffers will be confirmed and evaluated at the site development plan stage. Forest conservation easements are proposed along most of the northern, eastern and southern property lines and along half of the western property line. The proposed and existing landscaping and forest conservation easement will buffer parking areas from adjacent residential properties. The proposed dwellings comply with all setback and height requirements. Therefore, the use will not likely hinder or discourage the development and/or use of adjacent land and structures more at the subject Property than generally elsewhere in the R-ED zoning district.

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 require one (1) space per dwelling unit plus an additional 0.3 spaces per dwelling unit for visitor parking. A total of 81 spaces is required, and 112 spaces are provided. The proposed design will utilize landscaping around the entire perimeter of the Property and internal to the development to buffer and screen the parking areas from adjoining properties. The Conditional Use plan shows a trash room interior to the building.

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 will be via a new private road connecting to Baltimore National Pike at the signalized intersection for Baltimore National Pike and Turf Valley Road. The posted speed limit on Baltimore National Pike is 55 mph. The proposed conditional use will not share access with other residential properties. Precise sight distance measurements can only be determined by a detailed sight distance analysis, which Petitioner has failed to provide. Access is a condition precedent and MDOT SHA maintains access control of Baltimore National Pike and approval by SHA is required. Historically SHA has not approved access from the subject Property to Baltimore National Pike (Rt. 40) and SHA has not granted access from the subject Property in the instant Petition.

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 southern portion of the Property contains existing tree cover, a perennial stream, wetland area and steep slopes. The Conditional Use plan does not show impacts to these environmental areas. The remainder of the property consists of open area for the proposed apartment building. With these elements, the proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere in the R-ED zoning district.

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 St. Charles College (HO-993) is located 700 feet east of the proposed structure. Given the setback distances and proposed and existing landscaping on the Property, the proposed use does not have the potential to diminish the character and significance of any historic sites in the vicinity. Therefore, the proposed use will not have

a greater potential to diminish the character and significance of historic sites in the vicinity than elsewhere in the R-ED zoning district.

**2. Specific Criteria for Age-restricted Adult Housing (Section 131.0.C.2)
(Additional Standards Required in Certain Residential Districts):**

The following standards shall apply to Conditional Uses proposed on land within Residential developments in the R-ED, R-SC, R-SA-8, R-H-ED, R-A-15, R-APT, R-MH or R-VH Districts:

1. The Hearing Authority shall not approve a Conditional Use on land which was included in the density calculation for a residential development and which has no remaining residential development potential, based on the maximum density allowed in the zoning district.

The Property is part of the Terra Maria subdivision. Plat No. 14323 is the most recent subdivision plat for Terra Maria and provides a density calculation for the entire subdivision. The calculation indicates that Terra Maria subdivision is allowed 104 units and includes 105 units; therefore, the development has no remaining residential density or subdivision potential. The Property, Lot 106, is a buildable residential lot and permits one single family dwelling unit under the R-ED by right zoning.

2. The Hearing Authority may approve a Conditional Use on land which was included in the density calculation for a residential development, and which has development potential for at least one dwelling unit, if the Hearing Authority finds that:

a. The combination of uses within the development, including the residential, Conditional Use and open space uses, will result in an overall intensity of development which is in harmony with vicinal land uses and the policies of the Howard County General Plan.

The Petitioner states HoCo By Design supports providing more housing Modalities for Howard County's aging population. The Petitioner states that land use Policies suggest that parcels at the corner of a signalized intersection of a state Highway should be used for higher intensity land use. The Petitioner believes providing direct access from Baltimore National Pike provides the best use of the land

without imposing intensity on the neighboring residential area. However, SHA has yet to allow direct access from the Property to Baltimore National Pike (Rt. 40)

b. The Conditional Use will not infringe on open space or result in damage or lack of protection for environmentally sensitive areas of the development.

The Petitioner states that the property is not currently designated as open space and that the development will not harm environmentally sensitive areas.

c. No more than 30% of the parcel on which the Conditional Use is located will be covered by structures or impervious surface, including roads, parking lots, loading or storage areas, and sidewalks.

The total impervious area of the proposed development is 2.1 acres, which is 16% of the parcel.

3. 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-ED, and the Petitioner is proposing a 62-unit ARAH apartment building. Therefore, this criterion is satisfied. §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.**

The Property is zoned R-ED, and the Petitioner is proposing a 62-unit apartment building. Therefore, this criterion is satisfied.

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

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

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

The Property is zoned R-ED, and the proposed density is 4.93 dwelling units per net acre (62 apartment units/12.562 net acres). Therefore, this criterion is met.

Therefore, the proposal is in accordance with § 131.0.N.1.a(4).

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

The density of the proposed development is 4.93 dwelling units per net acre and exceeds the maximum density of two (2) dwelling units per net acre in the R-ED zoning district. The Property has frontage on Baltimore National Pike but does not have direct access to Baltimore National Pike, which is designated as an Intermediate Arterial.

- (6) Site Design:**

The landscape character of the site must blend with adjacent residential properties. To achieve this:

- (a) Grading and landscaping shall retain and enhance elements that allow the site to blend with existing neighborhood.**

The vicinal properties are zoned R-ED and are single-family detached homes. The revised landscape plan depicts a Type C landscape buffer along the northern perimeter along Baltimore National Pike and a Type C landscape buffer along the eastern, western and southern perimeters. Apartment development adjacent to single-family

detached land uses, including open space for such land use, requires a Type C buffer. The landscape buffers will be confirmed and evaluated at the site development plan stage. The Landscape Plan has been revised to comply with the Landscape Manual requirements. Therefore, the landscape character of the site will blend with the adjacent residential properties.

(b) The project shall be compatible with residential development in the vicinity by providing either:

- (i) An architectural transition, with buildings near the perimeter that are similar in scale, materials, and architectural details to neighboring dwellings as demonstrated by architectural elevations or renderings submitted with the petition; or**

The Design Advisory Panel (DAP) reviewed the design for this development on January 8, 2025, and made three motions for the Petitioner to consider as the project moves through the design process. These comments will be further reviewed at the subsequent plan stage.

- DAP Motion #1: The applicant further explore the connectivity of this project to the existing Terra Maria neighborhood, especially in terms of what the neighborhood does or does not want.
- DAP Motion #2: The applicant ensure that all imagery and references to native plant materials be carried through into the formal landscape plan and plant list.
- DAP Motion #3: That the design team look at the design materials again in terms of color, tone, and texture to keep in line with the natural intent of the project.

- (ii) Additional buffering along the perimeter of the site, through retention of existing forest or landscaping,**

enhanced landscaping, berms, or increased setbacks.

The Petitioner proposes to retain eight (8) acres of the Property as open space, which will consist of existing forest, stream buffers/wetlands and proposed landscaping. Landscaping will be required per the Howard County Landscape Manual and will be reviewed and evaluated at the site development plan stage. Forest conservation easements are proposed along most of the northern, eastern and southern property lines, and along half of the western property line.

(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 Petitioner proposes 62 units; therefore, this criterion does not apply.

(7) Bulk Requirements

(a) *Maximum Height for Apartment structures ...40 feet*

The Petitioner is proposing one 40-foot-high apartment building.

(b) *Minimum structure and use setback:*

The placement of the proposed structure complies with the required 40-foot setback from a public street right-of-way, the 100-foot setback for Apartments from residential lots, and the 30-foot setback from open space lots in the R-ED zoning district.

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

The Petitioner is not proposing structures with garages; therefore, this criterion does not apply.

(d) *Minimum structure setback from lot lines for single-family detached units*

The proposed ARAH project does not include single-family detached dwellings; therefore, this criterion does not apply.

(e) *Minimum distance between single-family detached and/or attached dwellings:*

The proposed ARAH project does not include single-family detached or attached dwellings; therefore, this criterion does not apply.

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

The development proposes one (1) apartment building. The proposed ARAH project is compliant with the 100-foot setbacks between apartment buildings and single-family dwellings.

(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.*

The proposed ARAH includes an apartment building with lengths of approximately 192 feet and 223 feet. The proposed 62-unit apartment building does not comply with this criterion; however, the Hearing Authority may approve a length up to a maximum of 200 feet in the R-ED zoning district if the architectural design mitigates the visual impact of the increased length. The greatest length of the apartment exceeds 200 feet and both lengths exceed 120 feet. The Hearing Authority does

not have jurisdiction to exceed the 200 feet length as requested by the Petitioner. Mr. Aello, Petitioners architect, stated that the calculation of the length measurement is subject to interpretation and your Hearing Examiner finds that the lengths of the building are approximately 192 feet and 223 feet and not approximately 174.8 and 193.1 feet as argued by the Petitioner. The proposed apartment building does not comply with this criterion.

- (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 13.05 gross acres and is zoned R-ED. The required open space is 6.53 acres or 50%, and the Petitioner proposes eight (8) acres or 61% of open space. This open space includes forest areas, pathways, and outdoor recreational areas.

- (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.**

No accessory uses 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**

The Petitioner is proposing 62 ARAH units requiring a 1,240-square-foot community space. As shown on the Conditional Use Plan, the Petitioner is proposing a 4,400 square foot community center within the proposed apartment building. Therefore, the proposed community space complies with this criterion.

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

This proposed development consists of 62 units; this criteria does not apply.

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

As indicated in the Conditional Use Plan, refuse collection will be within trash rooms on each floor of the apartment building. The plans do not depict an outdoor dumpster enclosure area. The Petitioner should specify if there will be dumpsters located outside on the site or within the apartment building.

(12) For a development that will be built in phases, open space areas, recreational facilities and other accessory facilities shall be provided in each phase to meet the needs of the residents. The developer shall provide a schedule for the installation of facilities at the time the Conditional Use is approved.

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

(13) The petition shall establish how the age restrictions required under the definition of this use will be implemented and maintained over 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.

The age restriction will be established, implemented and maintained through a Declaration of Covenants administered by the condominium or homeowners association.

- (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 states that the property management company will manage and maintain open space, common areas, and related improvements.

- (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 proposed development will incorporate all of the required Universal Design Guideline features. In particular, the Petitioner proposes to incorporate the following universal design features in all units:

- No-step front access to the front entrance
- 36" wide front door with exterior lighting
- All exterior doorways at least 32" wide
- Hallways at least 36" wide
- Lever handles on interior and exterior doors
- Blocking for grab bars in bathroom walls near toilets and shower
- Slopes of ramps on the exterior of units shall be

in accordance with current Howard County regulations.

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

The Property is zoned R-ED, thus 10% of the 62 apartment units shall be Moderate Income Housing Units ("MIHU"). The Petitioner indicated that 7 on-site units will be provided.

- (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 Design Advisory Panel (DAP) reviewed the Conditional Use Plan and the

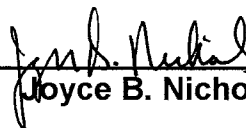
architectural designs on January 8, 2025. The Petitioner submitted the meeting

summary in the record as documentation of compliance with this criterion.

ORDER

Based upon the foregoing, it is this 22th day of December, 2025, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Trotter 5857, LLC for Age-Restricted Adult Housing, General, Conditional Use, in a R-ED (Residential: Environmental Development) Zoning District, Tax Map 16, Grid 23, Parcel 416, Lot 106, Council District 5, identified as 3173 St. Charles Place, Ellicott City, Maryland, be and is hereby **DENIED**.

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.