

DPZ office use only:

BA Case No.: BA-26-008C

Date Submitted: 8/19/26

**PETITION OF APPEAL OF
HEARING EXAMINER DECISION
TO THE HOWARD COUNTY BOARD OF APPEALS**

A person who wishes to appeal a decision of the Hearing Examiner to the Board of Appeals must use this petition form. A person must have been a party to the original case before the Hearing Examiner in order to file an appeal. In addition, it is recommended that a person determine whether he/she can be acknowledged as being an aggrieved person.¹ The appellant must submit the completed form to the Department of Planning and Zoning within 30 days of the issuance of the Hearing Examiner decision.

1. **Name of Case** In the Matter of ESC Triadelphia, LLC
BA Case No. 26-008C
Date Decision and Order Mailed July 21, 2026

2. **Reason for Appeal** See Attached.

3. **Name of Appellant** See Attached.
Trading as (if applicable) _____
Mailing address _____
Phone number(s) _____
Email _____
Name of principal contact (if different) _____

4. **Counsel for Appellant** _____
Mailing Address _____
Phone number(s) _____
Email _____
Secondary contact for counsel (if any) _____

¹ As a brief explanation of this concept; "Generally speaking, ... a person 'aggrieved' ... is one whose personal or property rights are adversely affected by the decision The decision must not only affect a matter in which the protestant has a specific interest or property right, but his interest therein must be such that he is personally and specifically affected in a way different from that suffered by the public generally." The Department of Planning and Zoning does not advise persons on whether they may or may not qualify as being aggrieved. Persons intending to file an appeal may want to obtain separate legal advice on this issue because it may have an impact on the validity of the appeal.

5. Declaration of Interest

- ☐ The Appellant is the original petitioner
- ☒ The Appellant was a party to the original case

6. Amended Petition (This section is to be completed only if the Appellant was the petitioner in the original case before the Hearing Examiner and the case was other than an administrative appeal)

If the original petition was substantively amended during the hearing before the Hearing Examiner, the appeal will proceed on the amended petition unless the original petitioner elects to proceed on the original petition. If you are the original petitioner, complete one of the following:

- ☐ I elect to proceed on the original petition
- ☐ I agree to proceed on the amended petition

Note: This section does not apply to a case that came before the Hearing Examiner as an appeal of an administrative decision.

7. Copies: The Appellant must submit **one signed original and nine copies of the signed original**, for a total of **10 copies**, of this petition. If supplementary documents or other materials are included, **10** complete sets must be submitted.

8. Public Notice Requirements

a. Posting: If the Appellant is the owner or has a beneficial interest in the subject property, the Appellant must (i) post the property in accordance with Section 2.203(b) of the Rules of Procedure of the Board of Appeals and (ii) file an Affidavit of Posting as required by Section 2.203(c).

If the Appellant is not the owner or does not have a beneficial interest in the subject property, the posting of the property is not required; however, the Appellant must send copies of the petition and notification of the public hearing to the property owner and the adjoining property owners in accordance with Section 2.203(e) of the Rules of Procedure of the Board of Appeals.

b. Advertising: The Appellant must (i) advertise the date, time and place of the initial public hearing of this appeal petition before the Howard County Board of Appeals in accordance with Section 2.203(a) of the Rules of Procedure of the Board of Appeals and (ii) file a Certificate of Advertising as required by Section 2.203(c).

c. Responsibility for Compliance: In accordance with Section 2.203(g), the Appellant is responsible for assuring compliance with the advertising and posting requirements of the Board of Appeals.

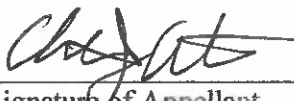
9. On The Record Appeals

The appellant is advised to consult the Rules of Procedure of the Board of Appeals. In accordance with Section 2.210(b) of that document, an "on the record" appeal requires that within 30 days of filing an administrative appeal, the appellant file a record transcript of the hearing being appealed. In addition, within 15 days of filing the transcript, the appellant must file a memorandum addressing the points of law upon which the appeal is based.

10. Signatures *See Attached.**

By signing below, the Appellant hereby affirms that:

- The Appellant has read the instructions on this form and has filed herewith all of the required accompanying information.
- All of the statements and information contained in or filed with this petition are true and correct.
- The Appellant agrees to furnish such additional plats, reports, plans, or other materials the Department of Planning and Zoning and/or the Board of Appeals may require in connection with the filing of this petition.
- The Appellant agrees to pay all costs in accordance with the current schedule of fees.

 8/19/26
Signature of Appellant Date

Christopher Eutenewer
Print Name of Appellant

 8/19/26
Signature of Appellant Date

Susan Eutenewer
Print Name of Appellant

Signature of Attorney (If any)

Make checks payable to "Director of Finance."

For DPZ use only: Filing Fee is \$2,050.00 plus \$50.00 per poster if required.

Hearing fee: \$ _____
Poster fee: \$ _____
TOTAL: \$ _____

Receipt No. _____

PLEASE CALL 410-313-2350 FOR AN APPOINTMENT TO SUBMIT YOUR APPLICATION

County Website: www.howardcountymd.gov

2. Reason for Appeal:

The Hearing Examiner erred in granting the Petition for Conditional Use because the Petitioner failed to meet its burden of establishing that the proposed high-density use in the Rural West region of Howard County satisfies the applicable requirements for approval. In particular, the Petitioner failed to meet its burden of proof that its proposed shared well and community septic systems will not have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses.

Appellants own and reside on properties adjacent to or in close proximity to the proposed development. These are vicinal properties under the Code. Appellants' homes rely on groundwater wells in the same geologic formation for potable water, which could be adversely impacted by the proposed development.

Appellants reserve the right to raise additional arguments.

3. Appellants:

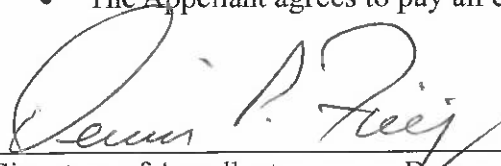
- 1) Christopher and Susan Euteneuer
3501 Garratt Court, Ellicott City, Maryland 21042
(443) 794-0777
euteneuer@verizon.net
- 2) Dennis and Pamela Failing
12665 Triadelphia Road, Ellicott City, Maryland 21042
(410) 531-2710
dpfailing@gmail.com
- 3) Donald Hibbard
3525 Lakeway Drive, Ellicott City, Maryland 21042
(856) 408-4420
hibbarddonald@yahoo.com
- 4) Becky Merrill
3518 Lakeway Drive, Ellicott City, Maryland 21042
(410) 499-3330
beckymerrill@mac.com

10. Signatures

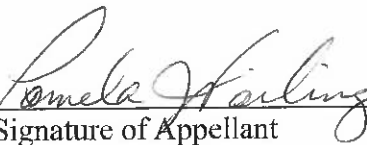
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- The Appellant agrees to pay all costs in accordance with the current schedule of fees.


Signature of Appellant Date

Dennis P. Failing
Print Name of Appellant

 8/19/26
Signature of Appellant Date

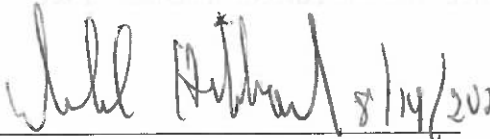
Pamela J. Failing
Print Name of Appellant

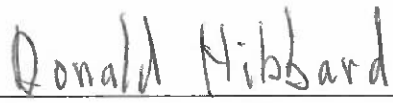
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- The Appellant agrees to pay all costs in accordance with the current schedule of fees.


Signature of Appellant Date


Print Name of Appellant

10. Signatures

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- The Appellant agrees to pay all costs in accordance with the current schedule of fees.

Signature of Appellant

Date

Print Name of Appellant

10. Signatures

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- The Appellant agrees to pay all costs in accordance with the current schedule of fees.

Becky L. Merrill 8/19/2026
Signature of Appellant Date

Becky L. Merrill
Print Name of Appellant

IN THE MATTER OF	:	BEFORE THE
ESC Triadelphia, LLC	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 26-008C

.....
.....

DECISION AND ORDER

On June 24, July 14 and July 16, 2026, 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 ESC Triadelphia, LLC (Petitioner) for an Age-Restricted Adult Housing, General (ARAH) Conditional Use in a RR (Rural Residential) DEO (Density Exchange Option) Zoning District, filed pursuant to Section 131.0.N.1 of the Howard County Zoning Regulations (HCZR). The Subject Property is in Council District 5, at Tax Map 22, Grid 5, Parcel 109, Lot 2 and is identified as 12668 Triadelphia Road, Ellicott City, Maryland.

The Petitioner certified to compliance with the notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure. William Erskine, Esq. represented the Petitioner. Jason Van Kirk, David Thompson, and Mark Keeley testified in support of the Petition. Susan Euteneuer, Esq. represented Christopher Euteneuer in opposition to the

Petition. Thomas Hilton, Gillian Rines, Nirmal Kedia, James Hagan, Brian Brzezicki, Dennis Failing, Chris Euteneuer, Lav Gandhi, Wendy Feaga, Ann Kedia, Jennifer Hutnik, Diane Miller, Donald Hibbard, Bob Marchegiano, Jennifer Sonnenleiter, Becky Merrill, Kathleen Brzezicki, Charles Greene, Alexandra Crisostomo, Pamela Failing, and Duncan Woodbury, citizens living near or adjacent to the subject Property, testified in opposition primarily due to concerns about the potable water/well situation but also discussed traffic safety, environmental concerns and density, and cross-examined Petitioners witnesses. The record remained open at the conclusion of the evidentiary hearing for proposed conditions, which were received on July 20, 2026 and the record was closed.

Petitioner introduced into evidence the following Exhibits:

Pet. 1. Spot Speed Study

Pet. 2. MDOT Crash Data/Analysis

Pet 3. Pugh Well Completion Report

Opposition introduced into evidence the following Exhibits:

Opp.1. Petitioners' application to MDE to Appropriate and Use Waters of the State

Opp.2. Aerial of the Subject Property

Opp.3. Aerial of the Subject Property with the instant proposal superimposed

Opp.4. Portion of Concept Plan

Opp.5. Open sources acreage analysis of neighboring properties

Opp.6. Open sources distance analysis of neighboring properties

Opp.7. Failed well report prepared by Brian Brzezicki

MOTIONS

At the conclusion of Petitioners case in chief, Ms. Euteneuer made a Motion to Deny Petitioners Petition, which was opposed by Petitioner. The Motion to Deny was predicated on Petitioners failure to meet its burden of proof especially concerning the adequacy of the proposed wells. Petitioner argued that it had met its burden of proof on each of the Code requirements precedent to approval of a Conditional Use for ARAH. After argument, the Motion was denied.

At the conclusion of the evidentiary hearing, the Motion to Deny was renewed, argument was held, and the Motion was taken under advisement. Opposition argued that it was Petitioners burden to prove that the use of the wells proposed for the 26 ARAH homes would not adversely affect the surrounding homes. Petitioner argued that the adequacy of the proposed wells was not at issue at this stage of the development process and that it was a decision solely in the hands of the County Health Department and Maryland Department of the Environment. Petitioner argued that the County Council adopted legislation that allowed ARAHs in the RR zoning district, recognizing that much of the RR zoning was located in rural western Howard County, which was dependent on private well and septic. The Council recognized that there is no inherent harm in providing wells for ARAH homes any different than providing wells for other housing types. The legislative body has statutorily determined that a Conditional Use for ARAHs is compatible in a particular zoning district (here the RR zone) absent specific facts adduced to the contrary at a particular location. This shifts the burden to the opposition to produce specific facts that the proposed wells will

directly affect their wells, supposition or expressed fears unsupported by fact are insufficient. Proof is required that the proposed wells will adversely affect these neighbors differently than other homes with wells in the RR zoning district. This is a very difficult burden as the Piedmont region underlies most, if not all, of Howard County.

The Motion to Deny is denied.

FINDINGS OF FACT

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

1. Property Identification. The irregular-shaped Property is currently improved with three single-family detached dwellings and multiple detached accessory structures. The environmentally sensitive areas on the Property consist of two ponds on the east and west sides of the Property with stream buffers and 0.2 acres of floodplain. The site rises from an elevation of 520 feet on the rear property line to 580 feet along the South property line. Dense vegetation covers about half of the Property.

2. Vicinal Properties.

Direction	Zoning	Land Use
North	RR-DEO	Single Family Residences
South	RR-DEO	Single Family Residences / Triadelphia Road
East	RR-DEO	Single Family Residences
West	RR-DEO	Single-Family Residences

3. Roads. Triadelphia Road has two travel lanes within a 50-foot public right-

of-way. The speed limit is 30 miles per hour.

Traffic count data is not available for this portion of Triadelphia Road.

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

5. The General Plan. The Property is designated Rural Living on the Future Land Use Map of HoCo By Design adopted in 2023.

Triadelphia Road is a major collector road.

6. Reported Agency Comments. There are no Agency or Department comments in objection to the Petition. However, comments were provided regarding the need for further analysis in certain areas should the Conditional Use be approved.

The Health Department commented: This development is proposing to use a shared sewer system. The Maryland Department of the Environment must review and issue a groundwater discharge permit and approve the shared system design plans. This will state the approved number of housing units. The developer is in the preliminary stages of that process. The proposed wells on this plan have not yet been reviewed and approved by the Health Department or MDE. It may be possible that the well locations may need to change or the property converts to a community well system based on MDE review and well yield or setback concerns.

The Development Engineering Division stated that it takes no exception to the request for a conditional use for a residential development for adults 55 or older subject to meeting all current design criteria for stormwater management, road improvements to Triadelphia Road, Sight Distance and APFO.

The Department of Fire and Rescue Services has no comment on, nor objection to, this request.

The Department of Inspections, Licenses and Permits states that the community center must include accessible route and EV Charging stations shown on the SDP at time of review.

The Division of Land Development stated:

CRITERIA: Potential to comply with all technical requirements in subsequent Subdivision and Site Development Plan stages of Review:

- A site development plan (SDP) for this development will be required should the conditional use be granted. As shown on the plan exhibit, the development has the potential to comply with the technical requirements in subsequent plan stages. Proposed site improvements and features shall be evaluated by DPZ staff and county review agencies as part of the SDP submission requirements, including access requirements, parking, landscaping, forest conservation, etc.
- Consult with Historic Preservation Commission to determine if their review is required for the removal of the existing structures on the site.
- This development is subject to the County's Forest Conservation requirements in accordance with Section 16.1200 of the County Code and will be evaluated at the site development plan stage.
- A forest stand delineation will be required to determine the existing forest resources on the site. If the site contains specimen trees, the approval of an alternative compliance application is required for the removal of any specimen trees, if applicable.
- 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. 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.

CRITERIA: 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:

- Landscape Requirements will be reviewed and evaluated at the SDP phase of the development process.
- The conceptual landscape plan proposes credit for existing trees on site. The landscape planting requirement may be met by preserving existing trees, except for invasive species. Individual trees may be credited toward meeting part or all of the landscape edge requirements. The existing trees under consideration for preservation shall be an equivalent tree type as required in the applicable landscape edge table. An existing landscape buffer may completely satisfy the landscape edge requirements if the existing buffer contains an equal number and type of trees as required in the applicable landscape edge table. Existing trees intended to satisfy the landscape edge requirements must be in good or excellent condition (as determined by a licensed arborist, forester, Certified Professional Horticulturist, or Landscape Architect) and must not be an invasive species.
- A type-A landscape perimeter edge will be required for the proposed single-family detached adult housing units to all abutting residential properties. The Landscape and screening requirements will be reviewed and evaluated at the SDP stage.

CRITERIA: The number of parking spaces will be appropriate to serve the particular use. Parking areas loading areas, driveway and refuse areas will be appropriately located and

buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties:

- The Zoning Regulations require 2 parking spaces per single-family dwelling unit in an age restricted adult housing development, and an additional 0.3 spaces per dwelling unit must be provided for visitor parking. Community centers that are in a separate building from the residential units should provide 10 parking spaces per 1,000 SF of building. The plan appears to meet the overall parking requirement; however, details of the parking spaces will be reviewed in detail at the SDP stage.
- The plan exhibit does not indicate a refuse collection area, and it is unclear how trash and recycling will be collected for the proposed private road community.

CRITERIA: The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere:

- 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. The existing natural environmental conditions of the subject site must be thoroughly assessed by an environmental professional and findings must be provided with the forthcoming plans.
- The conditional use plan does show the removal of an existing pond and the installation of a stormwater outfall pipe within a wetland buffer. This will require an alternative compliance submission and approval prior to the site development plan approval.

CRITERIA: Design Advisory Panel review

- This plan was reviewed by the Design Advisory Panel on December 17, 2025. There have been some improvements to the plan to accommodate the additional landscape plantings and housing orientation as recommended by the committee. The site layout will be fully analyzed with the DAP recommendations in future plan submissions.

The Department of Recreation and Parks takes no exception to the requested Conditional Use.

The Resource Conservation Division (RCD) has the following advisory comments:

- It appears there are historic structures on-site, but photographs of all buildings and outbuildings should be submitted to RCD for verification. If there are historic structures on-site, advisory comments from the Historic Preservation Commission will be needed, per Section 16.603A of the County Code, "prior to the initial submittal of an application for subdivision or site development plan approval on a site...that contains a historic structure, the applicant shall request review by the Commission to identify all historic resources on the site and obtain advice from the Commission regarding the design of development."

- Per Section 16.606(d)(2) of the County Code, "The Commission may perform the following advisory functions:

(i) Review applications for zoning text amendments, map amendments, conditional use, or variance approvals and make recommendations to the Zoning Board, Planning Board, County Council, or Hearing Examiner for:

(a) Areas located within a historic district or (b) A historic structure listed on the historic sites inventory."

- Since the petition involves demolition of all existing structures on the property, which may include historic resources, the Resource Conservation Division recommends the Petitioner seek advisory comments from the Historic Preservation Commission prior to or concurrently with the Conditional Use Petition, if a subdivision or site development plan will be required or if the Hearing Examiner requests a recommendation from the Commission.

- The applicant is encouraged to provide a layout which maximizes the retention of existing forest and specimen trees on-site.

7. Zoning History.

There are no previous zoning cases for this Property.

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.

The proposed development is subject to the Design Advisory Panel (DAP) review as the project proposes construction of an age restricted adult housing community pursuant to a conditional use. The project was reviewed at the October 10 and December 17, 2025 DAP meetings. The following recommendations were made at the December 17 meeting:

1. The applicant should explore opportunities to link the three park and garden spaces and explore the opportunity to expand the linear park to enhance visibility.

Response: The linear park, the land in the center of the loop cul-de-sac, is 35 feet in width as presented to the DAP. Expansion of this area would result in relocation of the house units and their well boxes which would expand the limits of disturbance creating additional clearing of the existing forest. One of the Applicants goals is to preserve as much of the existing forest on-site as possible. This forest serves as a buffer between the proposed development and the surrounding properties. Therefore the Applicant has opted to have the linear park remain 35 feet in width. The Applicant will explore any feasible way to further "link" the three park and garden areas.

DZP accepted the Petitioners response.

2. Between the back areas of the homes that are on the private driveways that if possible to look at beefing up the landscaping in terms of evergreen plantings, and some ornamental native trees to allow a little bit more buffer between the rears of those homes.

Response: Additional landscaping including evergreens and ornamental native trees shall be provided between the rears of the back-to-back units (Units 4-11 and Units 1-3, 12-14).

In addition to the motion response above, the Applicant also incorporated the one DAP comment that was not made an official motion. Units 19 and 22 shall be rotated to be more radial to the loop cul-de-sac.

DPZ accepted the DAP recommendation and accepted Petitioners response.

The subsequent designs and plans address the DAP comments and motions made at the DAP meeting.

9. Historic Preservation Commission. The Historic Preservation Commission reviewed the Petition (HPC-26-26) on May 7, 2026 and issued a letter dated June 4, 2026 stating :

On May 7, 2026 the Historic Preservation Commission provided Advisory Comments for the proposed Age-Restricted Adult Housing project. The property is not listed on the Historic Sites Inventory but contains historic structures. A summary of the Commission's comments are provided below and more detail can be found in the attached minutes.

The plan will involve the demolition of 10 structures on the site. The Commission questioned whether any outbuildings could be retained. The Commission advised the Applicant to consider retaining some historic outbuildings, such as well/spring house and barn (Barn #8 as identified in the HPC application), and incorporating them into the community along pathways or other areas.

The Commission commented that the American Foursquare building proposed for demolition was over 100 years old and that the architectural type is not as commonly found in the County due to demolition. The Commission appreciated that the development team looked into the history of the site and recommended preserving as many architectural features from the buildings as possible and reusing them; or donating them to reclamation businesses, such as Second Chance in Baltimore.

The Commission questioned the lack of sidewalks along the homes located on the use-in-common driveways. The Commission explained that it was understood that

sidewalks are not usually located on shared driveways, but said the only way to get to the shared sidewalk and trails from those homes would be to walk in the use-in-common driveway or along the edge of the driveway, and recommended more thought on the pedestrian connectivity.

10. Conditional Use Proposal. The Petitioner proposes to construct an Age-Restricted Adult Housing (ARAH) development, in accordance with the Conditional Use Plan, "the Plan". The proposed ARAH development consists of twenty-six (26) single-family detached condominium dwelling units, an approximate 550 square-foot community center, nature trail, meditation garden, and bocce court. Each dwelling unit has an approximate footprint of 40' by 70' with all units having an attached two-car garage. Access to the ARAH development will be from Triadelphia Road. Vehicular access inside the development will be via a 24' private road and four use-in-common driveways. A condominium association 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.

The Howard County General Plan, HoCo By Design, provides the following policies for ARAH in the Rural West:

Policy DN 9: "Create opportunities to increase the diversity of home choices in the Rural West, especially missing middle housing types, that preserve the character of the Rural West." **Implementing Action 3:** "Determine if there are strategic locations in the Rural West where it is feasible to accommodate increased housing development on shared or community well and shared or multi-use sewerage systems while balancing other priorities such as environmental concerns, historical context, and agricultural preservation goals, while maintaining rural character."

Policy DN-10: "Facilitate the use of shared and/or multi-use sewerage system technologies to create more diverse housing options in the Rural West."

The proposed ARAH development is in harmony with the General Plan because it will increase the diversity of home choices in the Rural West by

providing County residents with an opportunity to live in a condominium style ARAH community. The proposed community will afford active adults a diverse housing type that provides the ability to age in place and to downsize to more easily maintained and affordable housing units as they age. The proposed ARAH development is to be served by a multi-use sewerage system and up to five (5) shared wells.

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 26 dwelling units on 26.72 acres of land with a net acreage of 26.52 acres. In the RR zoning district, an ARAH development with 20 or more dwelling units may be approved up to a maximum residential density of 1 dwelling unit per net acre. The Petitioner is proposing 26 units, which is the maximum density permitted. The development complies with all setbacks, environmental buffers, and provides more than the required 50% open space.

The proposed ARAH development would provide one point of access on Triadelphia Road, a major collector road, which is an appropriate classification for the types and number vehicles associated with the proposed use. The internal vehicular circulation will be implemented by one private cul-de-sac road with four use-in-common driveways, as illustrated on the Plan.

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 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, Petitioner has met its burden of presenting sufficient evidence under HCZR Section 131.0.B.3 to establish the proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with Age-Restricted Adult Housing, 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 twenty-six (26) single-family detached condominium dwelling units. There is no evidence of atypical adverse effects such as noise, dust, fumes, odors, vibrations, increased lighting, hazards or other physical conditions (including the use of wells or water adequacy) that would be greater at the subject site than generally elsewhere in the RR zoning district.

The lighting generated by the proposed Conditional Use will be regulated by HCZR Section 134.0 and light trespass must be under the permitted allowances.

Section 131.0.B.3.b. The location, nature and height of structures, walls or fences, and the nature and extent of the existing and/or proposed landscaping on the site are such that the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.

The proposed buildings, structures, and fences comply with all setback and height requirements. The perimeter of the Property and proposed units will be screened by existing or proposed landscaping. Parking areas and the community building are screened from adjoining properties with vegetation and are located internal to the development. The proposed buildings, structures, and fences comply with all setback and height requirements. The perimeter of the property is screened by existing or proposed landscaping. Parking areas and the community building are screened from adjoining properties with vegetation. The proposed ARAH use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than generally elsewhere in the RR 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.

Parking requirements for single-family detached ARAH developments are 2 spaces per dwelling unit. Additionally, 10 parking spaces per 1,000 square feet of assembly area are required for the Community Center. The total requirement for this project is 57 spaces (52 spaces for units, 5 spaces for community building). Each ARAH unit will include a two-car garage and a driveway which could accommodate two additional vehicles. The Community Center also includes 5 parking spaces. The development will also include 6 guest parking spaces. In total, the entire ARAH development will contain approximately 115 parking spaces.

Section 131.0.B.3.d. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate. For proposed Conditional Use sites which have driveway access that is shared with other residential properties, the proposed Conditional Use will not adversely impact the convenience or safety of shared use of the driveway.

The ingress and egress for the development is from Triadelphia Road, a major collector. The proposed ARAH development will provide one point of access on Triadelphia Road via a 24-foot-wide private road. The proposed access will not be shared with other residential properties. The Petitioner has provided a sight distance analysis from Triadelphia Road demonstrating safe access. The sight distance analysis will be additionally reviewed for compliancy at the Site Development Plan stage.

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 0.2 acres of floodplain and two existing ponds with associated stream buffers. The Howard

County Soil Conservation District will evaluate the existing ponds for safety during the Site Development Plan stage. The Petitioner expects at least one of the two ponds to be removed in exchange for a submerged gravel wetland.

The property is located outside of the Planned Service Area (PSA) and is served by private water and sewer/septic. The Bureau of Environmental Health provided comments regarding sewage disposal requirements.

The proposed use will not have greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere in the RR 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 Division of Resource Conservation (RCD) submitted advisory comments regarding possible historic structures located on the Property which would be removed with the proposed development. In response, the Petitioners attended the Historic Preservation Commission (HPC) meeting on May 7, 2026.

The closest historic site (HO-646) on the Historic Sites Inventory is located approximately 0.55 miles to the north 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 in the RR zoning district.

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 RR, and the Petitioner is proposing 26 single-family detached dwellings, in accordance with § 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 RR and 26 dwelling units are proposed, in accordance with §131.0.N.1.a(2).

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

The Property is zoned RR, and the Petitioner is proposing only single-family detached dwellings. Therefore, this criterion is satisfied.

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

The Property is zoned RR which has a maximum Conditional Use density of 1 dwelling unit per acre. The Property is 26.52 net acres. The Petitioner is proposing 26 units, which is the maximum density permitted. The proposed residential density is 0.98 dwelling units per net acre. Therefore, this criterion is satisfied, 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 proposed development has direct access on Triadelphia Road, a major collector road.

(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. The development will be buffered by existing and proposed landscaping. There is existing vegetation along the property lines which allow the development to blend with the character of the surrounding neighborhoods. All landscape requirements will be reviewed and evaluated at the Site Development Plan (SDP) stage of the development process.

- (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 proposed units will be one and two-story single-family detached dwellings similar to the adjoining residential uses.

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

berms, or increased setbacks.

The development proposes to retain existing landscaping as well as install new landscaping to buffer adjoining residential uses.

- 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 RR zoning district requires a 75-foot principal structure setback from a collector public street right-of-way. The Plan delineates the proposed units more than 100 feet which is a similar distance as the neighboring properties from Triadelphia Road.

(7) Bulk Requirements**(a) Maximum Height:**

- i. Apartments40 feet**
Except in R-SA-8, R-A-15 and R-APT55 feet
- ii. Other principal structures 34 feet**
- iii. Accessory structures15 feet**

The detailed height elevations of the proposed buildings 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:**
 - Single-family detached, semi-detached, and multi-plex40 feet**
 - Apartments100 feet**
 - Single-family attached75 feet**

Single-family detached, semi-detached, and multi-plex40 feet

iii. From open space, multi-family or non-residential uses in RC, RR, R-ED, R-20, R-12 or R-SC30 feet

iv. From zoning districts other than RC, RR, R-ED, R-20, R-12 or R-SC20 feet

Because the development is less than 50 units the setback from Triadelphia Road shall be the same as the setback required for residential uses on adjacent properties - see criterion Section 131.0.N.1.a(6)(c). All buildings comply with the required 75-foot setback from an external public street right-of-way and 40-foot setback from lots in the RR 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
A minimum of 10 feet must be provided between structures

(ii) Rear 20 feet

No fee-simple lots are proposed; 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***

The proposed single-family detached units meet the required face-to-face, rear-to-rear, and side-to-side setbacks.

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

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

Apartment buildings 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.

Apartment buildings and single-family attached buildings are not 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 RR and 72.5% of the site or 19.37 acres of open space is proposed. The open space or open area is proposed to provide amenities, including a community center, pathways, and recreational uses for the residents.

- (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.**

The proposed development would provide outdoor recreational areas, a pavilion, a community garden, a bocce court, pathways, natural surface walking trails, and a community building.

(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 520 square feet of floor area for on-site community buildings or interior community space. The Petitioner satisfies this requirement by providing a 550-square foot community building.

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

This proposed development consists of 26 units; this criteria does not apply.

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

Trash pickup within the development will be curb-side pickup and no central trash storage area is proposed in connection with the dwelling units or the community building under this Petition. The proposed ARAH units will utilize standard household trash containers.

(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.**

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

- (15) The development shall incorporate universal design features from the Department of Planning and Zoning guidelines that identify required, recommended, and optional features. The petition shall include descriptions of the design features of proposed dwellings to demonstrate their appropriateness for the age-restricted population. The material submitted shall indicate how universal design features will be used to make individual dwellings adaptable to persons with mobility or functional limitations and how the design will provide accessible routes between parking areas, sidewalks, dwelling units, and common areas.**

The proposed development will incorporate all of the required Universal Design Guideline features.

- (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 Petitioner is proposing that 10% of the proposed housing units be Moderate Income Housing Units (3 units). Specifics of the MIHU's will be addressed at the site development plan stage, as the Petitioner may elect to pursue the payment of a fee-in-lieu.

- (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 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 architectural designs on October 8, 2025, and December 17, 2025. At the December meeting, DAP made motions

regarding connecting the three parks and garden spaces to expand useability and increasing landscaping between rear areas of the proposed units on the private drives to provide a larger buffer. The motions, applicant responses to the motions, and DAP's endorsement are in the record.

ORDER

Based upon the foregoing, it is this 21st day of July, 2026, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of ESC Triadelphia, LLC. for Age-Restricted Adult Housing, General, Conditional Use, in a RR (Rural Residential) DEO (Density Exchange Option) Zoning District, 26.72 gross acres of land (26.52 net acres), Council District 5, Tax Map 22, Grid 5, Parcel 109, Lot 2, identified as 12668 Triadelphia Road, Ellicott City, Maryland, be and is hereby **GRANTED, subject to the following CONDITIONS:**

- (1) The Conditional Use shall be conducted in substantial compliance with the Conditional Use Plan except as may be modified by these Conditions.
- (2) The Conditional Use shall be limited to an Age-Restricted Adult Housing community consisting of no more than twenty-six (26) single-family detached dwelling units, together with the community building, open space, internal access, trails, landscaping, resident amenities, and related improvements shown on the Conditional Use Plan.
- (3) The Petitioner shall comply with all applicable requirements of Howard County Zoning Regulations Section 131.0.N.1, including all applicable age-restriction, open-space, resident-amenity, common-ownership, maintenance, universal-design, and Moderate Income Housing Unit requirements.
- (4) The Petitioner shall submit and obtain approval of all required subdivision, Site Development Plan, Environmental Concept Plan, Forest Conservation,

grading, stormwater management, road, access, sight-distance, APFO, utility, Health Department, Maryland Department of the Environment, and all other required County or State approvals before commencing development or use as required by applicable law. No grading or site disturbance shall occur until all of these approvals are obtained.

- (5) The final design of the shared water system and multi-use sewerage system shall be subject to review and approval by the Howard County Health Department, the Maryland Department of the Environment, and any other Agency having jurisdiction. Nothing in this Decision and Order shall be construed as final approval of well locations, well yields, groundwater appropriation, potable-water suitability, wastewater treatment, groundwater discharge, or related technical design requirements.
- (6) If subsequent technical review requires modifications to well locations, utility design, road layout, stormwater management, forest conservation, environmental protection measures, or other site improvements, the Petitioner may make such modifications through the applicable County and State review processes, provided that any material change (not considered a minor modification by DPZ) requiring amendment of the Conditional Use approval shall be submitted for approval in accordance with applicable law.
- (7) A condominium association, or other legally responsible common-ownership entity shall be established as required to own, manage, and maintain the private road, common areas, open space, landscaping, resident amenities, stormwater management facilities, shared water system, multi-use sewerage system, and other common use improvements.
- (8) This Conditional Use approval shall not authorize the issuance of building permits, commencement of construction, or occupancy until the Petitioner

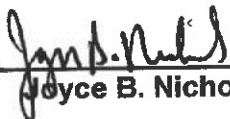
has obtained all later-stage approvals, permits, licenses, and authorizations required by applicable County, State, and federal law.

- (9) No grading permit shall be issued prior to approval by the Maryland Department of the Environment of any required groundwater appropriation permit and groundwater discharge permit.
- (10) Any conflict between these conditions and applicable County or State requirements shall be resolved in favor of the more restrictive or controlling legal requirement,

And it is further **ORDERED, that the Motion to Deny be and hereby is 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.