

IN THE MATTER OF : BEFORE THE

THE VILLAS AT CATTAIL
CREEK, LLC : **HOWARD COUNTY**

Petitioner : **BOARD OF APPEALS**

: **BA Case No. 97-54E**

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DECISION AND ORDER

The Howard County Board of Appeals (the "Board") convened on the dates listed below over a period of four months to hear the petition of The Villas at Cattail Creek, LLC, Petitioner, for a special exception for housing for the elderly and/or handicapped persons in an RC-DEO (Rural Conservation - Density Exchange Option Overlay) Zoning District, located on the west side of MD 97, beginning approximately 1,100 feet north of Cattail Creek Drive, filed pursuant to Section 131.N.30 of the Howard County Zoning Regulations.

This case was heard by the Board over a period of four months. The case began on December 9, 1997, and concluded on April 14, 1998. During the four month period, the Board conducted twelve hearings. Listed below are the twelve hearing dates and the members of the Board who were present at those hearings:

<u>Date</u>	<u>Present</u>	<u>Absent</u>
12/9/97	Messenger Pfefferkorn Rushing Tanner	Layman
1/24/98	Layman Messenger Rushing Tanner	Pfefferkorn
1/29/98	Messenger Rushing Tanner	Layman Pfefferkorn



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Layman	Pfefferkorn	2/3/98	Layman	Sharps	2/3/98
Layman	Pfefferkorn	2/5/98	Layman	Sharps	2/5/98
Layman	Pfefferkorn	2/19/98	Messenger	Sharps	2/19/98
Layman	Pfefferkorn	3/3/98	Layman	Sharps	3/3/98
Layman	Pfefferkorn	3/5/98	Messenger	Sharps	3/5/98
Layman	Pfefferkorn	3/17/98	All	Sharps	3/17/98
Layman	Pfefferkorn	3/24/98	Messenger	Sharps	3/24/98
Layman	Pfefferkorn	3/26/98	Layman	Sharps	3/26/98
Layman	Pfefferkorn	4/9/98	All	Sharps	4/9/98

Chairman Jerry Rushing presided at all hearings. Lonnie R. Robbins, Senior Assistant County Solicitor, served as legal advisor to the Board.

¹ Effective February 2, 1998, Robert Sharps replaced Board member Evelyn Tanner because her term expired.

The Petitioner was represented by counsel, David A. Carney, Esquire. A number of

Protestants were present at the initial hearing and throughout the hearing process. In

accordance with Section 2.208(b) of the Board's Rules of Procedure, the Board requested the

Protestants to appoint a spokesperson. However, the Protestants did not elect to be represented

by a spokesperson and thus, acted on their own behalf.

This case was conducted in accordance with Section 2.209 of the Board's Rules of

Procedure. The Howard County Code, the Howard County Charter, the Howard County

Zoning Regulations, the various technical staff reports, the Department of Planning and Zoning

Technical Staff Report recommending approval dated November 26, 1997, the Planning Board

Recommendation of approval dated December 18, 1997, the General Plan for Howard County,

the General Plan of Highways, and the Petition and Plat submitted by the Petitioner were

incorporated into the record by reference.

The Petitioner provided certification that notice of the hearing was advertised and

certified that the property was posted as required by the Zoning Regulations. The Board

members present indicated that they had viewed the property as required by the Zoning

Regulations.

The following persons testified on behalf of the Petitioner: Joseph Blase Cooke,

President of Cattail Creek Country Club, Inc.; Donald R. Reuwer, Jr., one of the principals of

the Petitioner; Robert Sheesley, environmental consultant; Zach Fisch, project engineer; and

Randolph Marriner, an adjacent property owner.

The following persons testified on behalf of the Protestants: William Kennedy, David

Huber, Edwin Gramkow, Amy Lane, David Lane, David Noyes, Anne Brown, Joseph Carra,

and Susan Gray.

In rebuttal, Donald R. Reuwer testified on behalf of the Petitioner.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, the Board makes the following

Findings of Fact:

1. The subject property is a 58 acre site which is part of a larger 221 acre farm, known as the Haan property, which was owned by the Synadaccon Corporation. The Petitioner, a

contract purchaser, provided evidence to the Board at the initial hearing that the owner was in

agreement with the subject petition. Subsequently, the subject property was conveyed to the

Petitioner in February, 1998. The property is located in the 4th Election District, on the west

side of MD 97, beginning about 1100 feet north of Cattail Creek Drive, 3400 Roxbury Mills

Road, Glenwood, Maryland. The property is more particularly described as Tax Map 21,

Block 3, Parcel 3. The property is zoned RC-DEO (Rural Conservation - Density Exchange

Option Overlay).

The site has approximately 252 feet of frontage along MD 97. The site extends more

than 2,000 feet from MD 97 and is approximately 960 feet wide at its widest point. The site

consists of wooded areas and open fields with scattered trees. A farm tenant house and several

barn buildings will be removed. There is no direct access from MD 97 to the 58 acre site. The

topography on the property is rolling, with the highest point in the northeast corner near MD 97

and the lowest point near the northwest corner of the site.

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2. The subject property is surrounded by properties zoned RC-DEO. Vicinal properties

include:

A. Northern Properties:

The property to the northeast is the proposed 9.20 acre site for the existing

single-family dwelling. The site contains a two story stone dwelling in a

wooded area and has direct access to MD 97.

The property to the north and west consists of a 76.10 acre site that will be

acquired by the Cattail Country Club for possible golf course expansion.

To the north, beyond the 76.10 acre site is the 81.25 acre site for a proposed 37

single-family detached dwelling unit development. North of this proposed

development is the Wellington subdivision, with several lots (minimum lot size is

1.3 acres) and a 51.13 acre preservation parcel adjacent to the proposed 37

single-family development.

B. Southern Properties

To the South is the existing Cattail Creek Country Club's golf course. This

property contains a clubhouse, swimming pool, tennis courts, maintenance

complex and a parking area.

C. Eastern Properties

To the east, across MD 97, Parcels 29 and 30 of Sycamore Valley subdivision

each contain a two-story, single-family detached dwelling, located at a higher

elevation. These are flag lots with access from Sycamore Valley Run. Parcel 30

has an open lawn and Parcel 29 is wooded.

3. MD 97 is classified as a Minor Arterial on the Highways Map 2010 of the 1990

General Plan. MD 97 has a varying pavement width within an existing 60 foot wide right-of-

way. The proposed right-of-way width is 80 feet and the posted speed limit is 50 miles per

hour. According to data from the State Highway Administration, the traffic volume on MD 97

south of Burnt Woods was 8,833 ADT (average daily trips) as of April, 1993.

4. The Petitioner proposes to construct 116 dwelling units as housing for the elderly

and/or handicapped persons as defined by Section 103.A.67 of the Howard County Zoning

Regulations (the "Regulations")² on the subject site. In addition to the 58 acre portion of the

Haan property being developed for the 116 elderly/handicapped housing units, the remaining

property is proposed to be developed for one acre lots on the 81.25 acre parcel (the composite

plan shows 38 lots -- 37 residential and 1 open space), one single-family lot for the existing

stone house on the 9.20 acre parcel for a personal residence for Mr. Martiner, and a 76.10 acre

parcel for possible golf course expansion for Cattail Creek Country Club (Holes 1 and 9 of the

² Section 103.A.67 defines Housing for Elderly and/or Handicapped Persons as "A building or buildings containing dwelling units, a common dining area, and related facilities, such as recreational and educational services, therapy areas, health services, and business services. The occupancy of the dwelling units shall be restricted to elderly and/or handicapped persons. For the purpose of these regulations, elderly or handicapped persons are:

- a. Persons who are sixty years of age or over;
- b. Families where either the husband or wife is sixty years of age or older; or
- c. Handicapped persons under sixty if determined to have impairments which:

- (1) are expected to be of long and continued duration,
- (2) substantially impede their ability to live independently, and
- (3) are of such a nature that the ability to live independently could be improved by more suitable housing conditions.

The common dining area shall not be required for a development with 25 or fewer dwelling units."

cluster buildings containing four units each. Units will be one story, 30 or 31 feet in width, handicapped as contained in Section 103.A.67 of the Zoning Regulations. The units will be in parcel. All owners will be individuals who satisfy the criteria for housing for the elderly and/or proposes to construct 16 dwelling units for the elderly and/or handicapped on the 58 acre

6. Mr. Donald Reuwer, a principal of the Petitioner, testified that the Petitioner

the subject petition complies in all material respects with that criteria. for special exceptions generally and specifically for the housing for the elderly, and he believes would have a positive impact on the Club. He stated that he had read and reviewed the criteria development would enhance the quality of life for the area adjacent to the Club and that it

Mr. Cooke also testified that the perception of the Club's Board was that the proposed 16 unit requirements for the elderly in serving them meals, as well as being fully handicap accessible. Mr. Cooke stated that the facilities at the Club are adequate to meet all of the

the Club's property.

envisioned to provide access from the dwelling units to the common dining facilities located on facilities for the elderly/handicapped units at the Club's existing restaurant. A cart path is access from the proposed 58 acre site to the Club property, and to provide common dining the Club has authorized the purchase of the open space portions of the Haan property, to grant

5. Mr. Cooke, President of Cattail Creek Country Club, Inc., (the "Club") testified that

totals 224.55 acres, as evidenced by Petitioner's Exhibit 1. not considered under this petition). We also note that the total acreage of the composite plan proposed golf course expansion are shown on the 58 acre parcel, however, Holes 1 and 9 are

have sizes of between approximately 1800 and 2000 square feet, with one car garage, and a shared 20 foot wide driveway used for parking. Visitor parking will be located in six locations along the private road as identified on the Special Exception Plan.

Mr. Reuwer indicated that the units will be on an 18-foot wide private road that will connect to a new public road from MD 97. All driveways and roads within the project will be privately owned and maintained. Access to Md 97 will be through the adjacent single-family development to the north. The proposed access point will be opposite Countryside Drive on the east side of MD 97. The Petitioner states that the project will be a gated community.

Under an arrangement with the Club, all of the residents of the project would become social members of the Club and utilize the existing clubhouse dining facilities as part of the common dining area requirement of the Zoning Regulations. Mr. Reuwer stated that the existing dining facilities at the Club are sufficient to meet the needs of the proposed residents in view of the fact that the existing facilities are under utilized. The proposed units will be equipped with full kitchens. The units are for individuals who are ambulatory and are not for individuals that need assisted housing, but rather for those considering independent living. The units will be occupied by one or two people with occasional visitors. The recreational services for the residents will be furnished through the existing facilities at the Club (swimming pool, tennis courts and golf course). The project will provide additional recreational amenities such as a croquet court and putting green. Because of the nature of the project there are no loading requirements. All trash storage will be individually maintained within the garage of each unit and any outside trash receptacles will be adequately screened within a brick enclosure. The

Petitioner stated that any lighting would involve the area within the private driveways and parking areas and would be deflected so not to shine into any residential use.

With respect to parking, Mr. Reuwer stated that 232 parking spaces are provided for

the residents plus 82 visitor spaces for a total of 314 parking spaces. He further stated that 47

spaces are required by the Zoning Regulations, however, because this is a project for the active

elderly, the Petitioner is anticipating more reliance on the automobile than for an assisted living

project. Golf carts are envisioned as part of the internal transportation for residents to travel

between their units and the Club's facilities on an internal cart path. Residents may have their

own cart or use community carts stationed throughout the project.

Mr. Reuwer stated that the Petitioner has contacted and received a response from

Eyre's Bus service, Inc., regarding transportation services required to take residents to medical

services, shopping areas, and community services not on site (Petitioner's Exhibit 3). He

further stated that once the exact needs of the residents are identified, the Petitioner will

provide the appropriate transportation services for its residents, and that it was premature to

specify a schedule at this time. Mr. Reuwer also testified that the proposed units do not

adversely effect adjacent neighboring properties and the project has adequate buffering. In

addition to the extensive landscaping that will be required by the Howard County Landscape

Manual, he stated that to the south, proposed Holes 1 and 9 will provide buffers for the Club

property; to the north, proposed Hole 2 will serve as a buffer; to the west, there are several

thousand feet of buffer toward Mrs. Riggs property; and to the east, there is an adequate

existing forest buffer for the Mariner property and MD 97. Mr. Reuwer stated that the subject

property has historically been planted in corn which tends to have the highest runoff and damaging effect on streams. He also opined that the proposed use would have a less damaging effect with respect to runoff than agricultural uses because of the County's storm water management and water quality requirements.

Mr. Reuver stated that because of the proximity to the Club, buffering and landscaping proposed by the Petitioner, the elderly housing units will not have an adverse effect on vicinal properties, nor will the project hinder or discourage the development or use of adjacent land or structures. He stated that, due to its proximity to Leisure World and the senior center in Glenwood, the soils being well suited for the proposed use, and opportunity for adequate buffering, the site is superior to any other RC or RR zoned property in the area.

7. Mr. Mickey Cornelius, a traffic engineer, gave his opinion that the proposed use will not cause a traffic safety problem on MD 97 and that ingress and egress to the site will be safe. He also opined that the access drive through the elderly housing will provide safe travel for both vehicular and golf cart traffic. He stated that the location for the proposed access point was selected after consultation with the State Highway Administration (SHA). Mr. Cornelius stated that Petitioner's Exhibit 6 indicates the roadway improvements and enhancements consisting of acceleration and deceleration lanes along with a new center lane would further improve conditions at this intersection. A dedicated center turn lane is not located on MD 97 between Roxbury Mill Road and Carr's Mill Road and thus, this intersection would have more lanes than any other intersection in the corridor (an exclusive left turn lane, thru lane, and a lane for right turning vehicles). In addition, there is also a divided entrance at the access point.

Mr. Cornelius performed a traffic study which looked at the intersections of MD 97 and Burntwoods Road, MD 97 and Countryside Drive, and MD 97 and Cattail Creek/Sycamore Valley Drive. The study indicated that the three intersections were operating at a level of service C or better. The study encompassed performing actual traffic counts, which confirmed the accuracy of SHA's daily traffic volume of 8,833 ADT (average daily trips) for the proposed area. Mr. Cornelius testified that based on SHA accident criteria and the accident history of this area of MD 97, it is not considered a high accident area.

Mr. Cornelius stated that housing for the elderly is a relatively low traffic volume generator, especially during peak hours. The 16 elderly housing units are projected to generate 21 morning peak trips and 26 evening peak hour trips. The 38 single-family dwelling units are projected to generate 44 morning peak hour trips and 57 evening peak hour trips.

Thus, the combined total proposed uses for the new access road would total 65 and 83 morning and evening peak hour trips, respectively. In contrast, Mr. Cornelius stated that if the Haan property was developed for single-family detached residences consistent with the zoning permitted under the RC zone, the development would generate 113 and 152 morning and evening peak hour trips, respectively at the proposed access road intersection. He also stated that based on insurance data, the elderly have less accidents than other classes of drivers.

With respect to sight distances, Mr. Cornelius testified that from the new proposed public road there is ample sight distance for safe ingress and egress in each direction at the proposed access road opposite Countryside Drive with approximately 750 feet to the north and south. Based on a 50 mph travel speed, the SHA desired or required sight distance is 510 feet.

Even assuming a vehicle traveling 60 mph at this location, the desired sight distance would be

620 feet.

8. Mr. Robert W. Sheesley, an environmental consultant, testified concerning the

proposed septic system, the availability of potable water on the site, and the effects of the

proposed use on the groundwater in the area. Mr. Sheesley testified that 9 test wells were set

up at different locations throughout the site to determine the water table levels, monitor the

water table, and to identify the soil profile 75 feet below the surface. He stated that the

proposed shared septic system would be similar to systems used by public schools constructed

in western Howard County that are not served by public water and sewer. The shared septic

system would have 4 separate septic fields with areas for renovation. He further stated that

the proposed 7,900 linear feet of trenches would provide ample design capacity for 20 years

for the original trenches and renovation for reuse of other areas within the septic areas.

A unique characteristic of the property is that the top of the ground water table is

between 28-32 feet below the surface of the ground. One test area identified the water table

level at 22 feet. Mr. Sheesley stated that in the Piedmont Plateau areas of the State

(Baltimore, Howard, Frederick and a portion of Montgomery Counties), ground water levels

are usually found closer to the surface and are normally in the range of 12-15 feet from the

surface. The trenches for the proposed septic system would be 3-7 feet below the surface

based on the soil profile. According to State and County requirements, a protective zone of at

least 4 feet must be between the base of the system and any ground water and rock. Mr.

Sheesley explained that a "mounding analysis" (the hydraulic loading of sewage into the soil)

was performed to insure that the four foot protective area would be maintained over the life of

the system. He also explained in great detail the pre-treatment and special filtration process

of the proposed shared septic system to provide clean water effluent and the neutralization of

nitrate levels in the soil profile. He stated that the system is a sophisticated septic system that

processes the solids more effectively and performs an initial filtering of the liquids. The pre-

treatment equipment is designed to be odorless and Mr. Sheesley indicated that there was no

history of failure. In addition, the system is required to be bonded by the State and

maintained and inspected by State certified operators. On cross examination, Mr. Sheesley

stated that the design specifications for the pre-treatment facility envisions a tank which is able

to handle 34,000 gallons a day, approximately 20 feet in diameter with a height of 8 feet

which will be located under ground.

With respect to water usage, Mr. Sheesley testified that the peak demand for water

is 24 gallons per minute for the 116 units and the average daily demand for water supplies is

approximately 17 gallons per minute. He explained that the 4 wells located on the property

will produce over 120 gallons per minute. He also explained in detail that the required 72

hour pump test and the results indicated there was no negative impact to surrounding water

supplies. The water tests for contaminants, i.e., pesticides, herbicides, bacteria, radon, etc.,

yielded favorable results.

Regarding grading for the proposed use, Mr. Sheesley testified that with

appropriate sediment control measures there would be no impact on the nearby streams that

either feed to the Little Cattail Creek or the Little Cattail Creek as it passes through the Haan

Property. He further explained that sediment controls would be established at the perimeter

of the construction or limited disturbance area, and there is considerable distance from the last point of the limited disturbance to the first evidence of the stream system, which is over 400

feet away. In addition, the vegetation that exists between the area of limited disturbance and

the stream system will remain intact and serve as a natural water quality measure.

Mr. Sheesley stated that the site is unique geologically with respect to water

resources, forest reserves, and soils profile. Specifically, the site has an extremely deep water

table; while there are no trees to be cut down, the site will be reforested; the closest stream to

the proposed development is 400 feet and 800 feet from the sewage disposal system; and soils

which percolate at a rate between 5-7 minutes. In conclusion, Mr. Sheesley stated that the

shared septic facilities, wells, and water quality measures of the proposed use would have no

environmental or adverse effect on vicinal properties.

9. During the cross examination of Mr. Sheesley by Ms. Amy Lane, it was

discovered that two of the wells for potable water were not on the 58 acre parcel as depicted

by the Special Exception Plan. On or about February 5, 1998, the Petitioner amended its

Special Exception Plan and submitted a revised plan dated February 7, 1998 as Petitioner's

Exhibit 9. The Petitioner proffered that while the amended plan reconfigured the boundary

line in the southwest corner of the property to include the two wells located there, the plan

remains consistent with the original Petition in that it is still a 58 acre parcel on which is

proposed 16 cluster units in buildings containing four units, served by a private road that

will connect to the proposed public road for access to MD 97 as previously indicated.

The Petitioner stated that other modifications were made as a result of the relocation of the septic areas approved by the Department of Environmental Health in late January, 1998. (Petitioner's Exhibit 8). The amended plan shifted the location of a portion of the primary private roadway so as to accommodate the revised septic areas, re-sited some of the buildings as a result of those changes, added a 2,500 square foot community building which would be a common dining area, and sited prospective locations of enclosed dumpster areas, if needed. The plan also identified possible locations for storm water management facilities. We note that the revised plan indicates a total of 297 parking spaces (232 unit spaces and 65 visitor spaces). Thus, the Petitioner has reduced the visitor parking by 17 spaces from the original proposal.

The Board, after reviewing the proposed changes, determined that the changes were not substantive in the context of the subject Petition because the acreage remains the same, the proposed use has not changed, the property has maintained the same general configuration, and the adjoining properties are the same under the amended plan.

10. Mr. Zach Fisch, a professional engineer, testified concerning his analysis of the site with respect to the above mentioned modifications and landscaping measures proposed by the Petitioner. He stated that the amended plan was substantially similar to the original plan and the impervious surfaces associated with the project remained unchanged. He testified that the landscaping proposed is in accordance with the requirements of the Howard County Landscaping Manual. The plan indicates that perimeter deciduous trees and non-deciduous trees are a part of the landscaping plan. All dumpsters would be screened and their

architectural design would match that of the development. Although storm water management facilities are not required to be identified as a part of this process, the areas were shown by the Petitioner to demonstrate proposed locations in relationship to the proposed units.

Mr. Fisch testified that the proposed clubhouse would not have any significant

impact on the environment, storm water management or septic/water facilities proposed for the site. He stated that when the clubhouse was in use, the units' facilities would not be in use and therefore, the project's total septic/water use would not be adversely affected.

However, the Board questioned whether the proposed clubhouse would encourage activities and attract additional guests and relatives, and thereby have more of an impact on the overall septic/water system.

Mr. Fisch testified that the plan as it has been revised complies with both the

zoning and subdivision regulations. On cross examination, Mr. Fisch stated that runoff from farmland in row crops would have a greater impact on vicinal properties than the potential runoff from the proposed use as it is envisioned to be developed.

11. Mr. Randolph Marriner, the owner of the adjacent 9.20 acre site that contains a

residential dwelling, testified he was familiar with the specific plans of the proposed use and that he supports the petition of the adjacent property owner. He further stated that he did not believe the proposed use would have an adverse effect on the use of his property, but rather thought it would have a beneficial effect. When questioned about the beneficial effects of the project on cross examination, Mr. Marriner stated that the pre-treatment of sewage before it returns to the soil is better in this project than it would be for a development of single-family

homes near his property not using a pre-treatment process.

12. Mr. William Kennedy, Environmental Affairs Manager with the Washington

Suburban Sanitary Commission ("WSSC") and a resident of Ten Oaks Road, appeared to

testify about concerns regarding the proposed use and the possible impacts it may have on

waste water, sediment control and storm water management with respect to its close proximity

to the Triadelphia Reservoir. Thus, Mr. Kennedy's primary concerns involved the project's

potential effect to the drinking water supply if the project's septic system, sediment controls,

or storm water management controls failed. He stated that streams on the site flow into the

Little Cattail Creek which flows to the Triadelphia Reservoir. The reservoir is approximately

three river miles down stream from the site. The velocity in the Little Cattail Creek is about

one foot per second, which means that any pollutants in the Little Cattail Creek would reach

the reservoir in about 4.5 hours. He felt that if the project was not in the watershed, then its

effects would be less of a problem.

Specifically, Mr. Kennedy testified that: (1) the water quality of Little Cattail

Creek and eventually the reservoir could be impacted by the increased number of septic

discharges and additional impervious surfaces (roadways, parking areas, roofs, etc.) unless

the on site waste water treatment system significantly reduced nitrogen or phosphorus; (2)

unless special storm water management measures are implemented to keep post-construction

runoff to pre-construction levels, the result would be sediment deposition in the reservoir as

well as non-point source pollutants associated with human activities; and (3) the construction

and land disturbance associated with the additional dwellings units over the base RC density

of one dwelling unit per 4.25 acres could result in an increased impact on adjacent properties.

On cross examination, Mr. Kennedy conceded that he has never reviewed the

records of the County's Environmental Health agency and testified on behalf of WSSC in

Howard County concerning an application prior to this project. He also stated that Mr.

Sheesley's testimony was consistent with the records he reviewed. He further stated that he

did only a cursory investigation of the Health Department's files and he did not review any

other reports filed with other agencies, such as the Maryland Department of the Environment

(MDE). Upon questioning by the Board, Mr. Kennedy conceded that he did not have any

supportable evidence that the petition, at it was described through testimony, would have an

adverse impact greater at its proposed location than any other location in the zone. He also

stated that Howard County has the proper guidelines in place to mitigate or handle the

concerns or conditions he has raised, and if the guidelines are properly enforced, his concerns

could be satisfied or ameliorated.

13. Ms. Amy Lane, who resides on Countryside Drive, testified with the aid of a 30

minute video tape of traffic in the area of the proposed use on MD 97. She stated that she is

concerned about the traffic hazard posed by the elderly having to pull out into the heavy

traffic of MD 97 at the proposed location of the new public road. Ms. Lane stated that she

counted as many as 204 cars (both directions) in a 10 minute period at the Countryside Drive

location, which she believes averaged 1,224 cars an hour. She also stated that the school bus

route on MD 97 was changed to eliminate left turns into Countryside Drive because of safety

concerns. Ms. Lane testified that she was aware of one fatal accident near Countryside/MD

97, which occurred between 2:00 am and 2:30 am. She was unable to provide any specific details regarding the accident. In addition, she believed that the Petitioner did not provide any evidence of providing public transportation for the elderly to shopping, medical appointments, etc., as required by the regulations.

On cross examination, Ms. Lane conceded that she had not reviewed the traffic

study submitted into evidence by the Petitioner or any other studies dealing with the impact of traffic in the County. When questioned about other accidents on MD 97 near the proposed new road, Ms. Lane was unable to identify any significant statistics, but commented that she hears sirens several times a week. Upon questioning by the Board regarding her traffic counts and methodology, it was discovered that her counts were more in line with the Petitioner's

traffic study than she realized. In the traffic industry, a peak hour is defined as the heaviest counts for 4 consecutive 15 minute periods within a 2 hour period. The traffic study counted 910 cars southbound and 249 cars northbound (peak hour) for a total of 1,159 cars, at the same location as Ms. Lane's traffic count.

14. Mr. David Lane, who resides on Countryside Drive, testified that he believes the project is greater in density than the surrounding neighborhood and that there is not adequate buffering near the periphery of the site either with open space areas or landscaping. On cross examination, Mr. Lane conceded that there is nothing unique or different about his RC

neighborhood than other RC zoned land in the County. Most RC and RR land consists of single-family dwellings, woods, pastures, one acre lots, three acre lots and farms. He also stated that the proposed project should not be allowed in the RC zone anywhere because such

development is taking away areas where his family can ride horses and bikes.

15. Mr. Chuck Noyes, a resident of Burntwoods Road, testified that he is opposed to

the project because the elderly have special medical needs which will place a strain on the fire and rescue services in the western part of the County. He also stated that if the elderly units

were placed in the Lisbon area near the Lisbon Fire Station, which is in the RC district, the

use would have less of an adverse impact than at its proposed location. On cross examination,

Mr. Noyes was unable to produce any statistics on deaths in the area because individuals did

not receive timely medical care. He did state that provided the proposed Glenwood Fire

Station is built in 2001, his concerns would diminish.

16. Mr. David Huber, a resident of Sycamore Valley Run, testified in opposition and

stated that the petition should be denied because there are no medical facilities close to the site and there are many other sites in the county with appropriate density, hospitals, and other

facilities to help people with medical problems and provide a quick response to medical

emergencies. He stated also that the project should be rejected because it does not have a

common dining facility and because it has no buffer zone to the north. Mr. Huber believes

that the proposed septic system will have an odor which he bases on personal experience and

knowledge. Mr. Huber stated that he has never been near a sewage plant that did not emanate

odors.

With respect to traffic safety and access, he believes the site is extremely

dangerous because it is on MD 97 which is the second busiest road in western Howard

County. In addition, he states that because elderly people deteriorate with age, their reflexes

slow and this would present a safety issue in the community given the unsafe traffic conditions on MD 97. Regarding adequacy of water, he states that the wells producing approximately 120 gallons per minute equates to one gallon per minute for each resident which will be inadequate at peak usage. He also testified that the proposed high density development will produce adverse impervious surface runoff into the watershed. In addition, he believed the ground water measurement analysis performed by the Petitioner's expert was flawed because the tests were conducted during last year's drought period.

Mr. Huber stated that from personal knowledge and observations, he has seen porous rock on his property and surrounding properties. Thus, he believes that the subject site has porous rock which would affect the effective operation of its septic system. Mr. Huber stated that several homes, as well as his own, in the immediate area have nitrate treatment systems because of existing high levels of nitrates in the soil. He states that this is characteristic of land that has been under intense agricultural use for a long time. He further concludes that even with a septic system that removes nitrates from raw sewage before the effluent is introduced into the soil, there would be some level of nitrates introduced into the soil which could have the potential to accumulate over time and be introduced into the Little Cattail Creek which flows to the Triadelphia Reservoir.

17. Ms. Susan Gray, a resident of Highland, Maryland, testified that the impact of this project is more adverse at the proposed location because of its potential impact on the Triadelphia Reservoir. Because the Little Cattail Creek is approximately 400 feet from the project and given the proposed shared septic system, she contended that circumstances are

created which could result in effluent escaping and leeching into the streams that flow into the reservoir, which is located 3 river miles away. She testified that Cattail Creek has a high sediment, nitrogen and phosphorus load, and that its flow is less than some other streams in the area. She stated that impervious surfaces create runoff and increased impervious surface areas produce greater contamination of the streams.

Ms. Gray voiced concern that no matter how well sediment control devices and storm water management facilities are designed, they will not completely protect or control runoff quality and quantity such that there is no difference between pre-development and post-development runoff. In addition, she opined that should the septic system fail, the existing forestation and natural environment conditions would not provide sufficient filtration or ecological processing before the pollutants entered the streams and eventually the reservoir.

She testified that the area of the proposed project is environmentally unique and that is why an environmental easement was placed on an adjacent property known as the "Riggs Property". She stated that she found a document in the Health Department file which described the site as having extremely high levels of porous rock; however, the document was not produced or introduced into evidence. Ms. Gray also contends that the ground water and water testing was not under wet weather conditions.

Ms. Gray stated that a shared septic system in an area known as Fulton Station failed, and that when it failed, the County had to connect the property to public sewer. She contends that should this site fail, there is no public sewer near the property, as was the case in the Fulton area, and thus, it would cost an enormous amount of money to connect this site

to public sewer. She also stated that the traffic conditions near the site present traffic safety issues. She testified that elderly drivers are more likely to have accidents when they are entering and exiting traffic and making left and right turns.

Ms. Gray also produced a letter that Mr. Sheesley wrote concerning the analysis of a single-family development known as "Big Branch Overlook" (Opposition Exhibit 30). It appears this property is a few miles from the proposed site and that Mr. Sheesley noted some concerns with the project. Ms. Gray contends that the Big Branch Overlook project and the subject project are very similar. Except for the fact that both projects are located near streams which flow into the Triadelphia Reservoir, we find conditions on the properties to be different. For example, the Big Branch project will utilize individual septic systems while the subject project will use a pre-treatment process with its septic system. The Big Branch project has inferior soil conditions with rock fragments on steep slopes and a water table of 9-12 feet. In contrast, the subject property as testified to by Mr. Sheesley, has good soil conditions, no steep slopes and a water table of 28-30 feet.

On cross examination, Ms. Gray was asked to identify portions of the site that had steep slopes. Upon further questioning, it was clear that Ms. Gray used a definition for steep slopes that was not consistent with the Zoning Regulations. With respect to her testimony concerning matters dealing with grading and impervious surfaces, sediment runoff and siltation, stabilization of disturbed areas, septic pretreatment procedures, and general construction, she conceded that she did not have technical expertise in these areas. It appears Ms. Gray did review certain EPA technical documents from the past 10 years related to these

aspects to formulate her opinions on these matters. Ms. Gray also conceded that while MDE has jurisdiction over shared septic systems, she did not conduct any independent investigation to locate specific studies and criteria MDE may employ in reviewing the subject project.

When cross examined on whether she knew that there were conditions of bedrock at the site that would impact the ground water table and the septic areas as proposed, Ms. Gray

conceded that she did not know if such conditions existed.

On cross examination, Ms. Gray testified that the proposed project is incompatible with the neighborhood because its density changes the character of the community.

According to Ms. Gray, the community now consists of agricultural easements, farms, single-family homes on a minimum of one acre lots, and that condominiums are totally different than single-family homes. She believes this project would be more compatible in an RC District

that is surrounded by similar density or development, such as the Smith property on MD 175 in Columbia. Upon further cross examination, Ms. Gray conceded that other than traffic

concerns, she could not state affirmatively that the proposed project would prevent or hinder the development of adjacent and vicinal properties. Ms. Gray also conceded that the density allowed for the proposed project is consistent with the General Plan; however, the particular property must be reviewed in determining whether its proposed use is in character with the existing neighborhood.

18. Mr. Gramkow testified that he lives in the Cattail Creek neighborhood. He

stated that he is concerned about the traffic hazard posed by the proposed development and the access to MD 97. He stated that he lives on top of a hill overlooking the entire project and

neighborhood would be decreased by the proposed use. On cross examination, she stated that

20. Ms. Amy Lane testified that she was concerned that property values in her

to which she testified.

conceded that she did not have any supportable evidence to substantiate the fears or concerns

porous rock and fractures that are located under the soil. On cross examination, Ms. Brown

medical emergencies in the area. She also testified that the site presents a danger because of

"dead zone" by the Lisbon Fire Department because of a lack of adequate response time to

medical needs than the general public and that the area of the proposed site has been coined a

at peak times. Ms. Brown also stated that the elderly generally require additional emergency

failure, and potential traffic hazards created by placing elderly persons on a dangerous road

about the possible failure of the proposed septic and water system and odors associated with a

19. Ms. Anne Brown, a resident of Countryside Drive, testified regarding her fears

blocked by a group of tall trees and a wooded area.

In contrast, the Petitioner indicated that Mr. Gramkow's line of sight would be partially

property, Mr. Gramkow reiterated that he would be able to see most of the proposed project.

questioning concerning how much of the proposed development he could see from his

dining facilities are good common dining facilities with excellent food. Upon further

Cattail Creek Country Club and that he uses the dining facilities. He further stated that the

on a private system. On cross examination, Mr. Gramkow stated that he is a member of the

project. Mr. Gramkow opined that this project should be on public water and sewer and not

that he will be able to see every house, road, and everything that will be associated with the

she did not have any evidence to demonstrate that the proposed use would cause property

devaluations in the area.

21. Mr. Joe Carta presented testimony that his property is immediately contiguous to

the Haan property on the same side of MD 97. Mr. Carta stated that he is opposed to the

proposed use because its density is not consistent with the low density of the area, he fears

that the proposed septic system will contaminate the water supply, the number of accidents in

front of his home makes the proposed location unsafe, he believes lights from the use will be

obtrusive, and fears that the proposed condominiums will use a lot of water and cause other

wells in the area to go dry based on his experience of his well going dry several years ago.

On cross examination, Mr. Carta stated that his house is approximately 50 feet from

MD 97 and his barn is approximately 25 feet from the roadway. With respect to visibility,

Mr. Carta conceded that his property is down hill from the proposed use and that there are

trees which obstruct his view of the subject area. Regarding the age of Mr. Carta's well that

went dry, Mr. Carta stated that it is possible that the well could be 100 years old given the

fact his barn was built in 1876 and house is probably older than the barn. Upon further

questioning, Mr. Carta stated that while he did install some septic tanks as a partner in an

earth moving company in 1967, he had no formal training or certification in the design of

septic systems or wells.

22. Mr. Donald Reuwer testified on rebuttal to address assertions by the Protestants

that the subject petition was deficient in certain respects to requirements of the special

exception criteria. Specifically, he stated that the petition satisfies the transportation

proposed new common dining area increases water and sewer capacity, then there will be less

He indicated that the system will be in compliance with MDE requirements and if the that will emit from the site because it is a passive system which will be located underground.

He further stated that the shared septic system and its components will have no odors

property within 24 months of the first unit being occupied.

for all of the Villas' residents. Proposed croquet courts will be constructed on the Villas' card rooms, four tennis courts, and swimming pool with social membership status reserved stated that the Club has an existing 18 hole golf course, a clubhouse with dining, meeting and With respect to recreational facilities associated with the proposed use, Mr. Reuwer

delivery service to the Villas on a regular basis.

also indicated that the Club is fully ADA compliant and the Club has agreed to provide a food driver will be provided to transport owners between the hours of 6:00 p.m. and 8:30 p.m. He addition to community golf carts which will be heated and enclosed, a Suburban vehicle and a respect to transporting owners between the Villas and the Clubhouse, he indicated that in

event the Board determined an on site facility was required by the Zoning Regulations. With 2,500 square foot community building which could be used as a common dining area in the

lack of an on site dining facility, Mr. Reuwer stated that the petition was amended to include a third day to the River Hill Village Center and offices in the area on Saturdays. Regarding the Columbia Mall and River Hill Village Center and medical offices in the Columbia area; and a transportation services- one day to White Flint area and medical offices; another day to the

requirement because as a minimum, Eyre Bus Service will provide three days a week of

property is located as "Rural Conservation," which encompasses areas where densities of new development will be at one unit per five acres net, where housing will be required to cluster and where extensive open space will be preserved in perpetuity. The property is currently zoned RC, which is established to preserve natural features and the rural landscape, while allowing low density, clustered residential development. The property also has a DEO designation, which allows residential density in the RC and RR Districts to be exchanged between parcels. While the preferred land use in the RC District is agriculture, residential

1. General Plan: The Howard County General Plan designates the area in which the

A. General Criteria for Special Exceptions (Section 131.B).

Based upon the foregoing Findings of Fact, the Board concludes as follows:

CONCLUSIONS OF LAW

units built based on that increased use.

On cross examination by Mr. Carta, Mr. Reuwer was asked whether the treatment process would put chlorine in the water. Mr. Reuwer responded that chlorine is not a part of the process and that the system operates more like a sand filtering system. In response to questions by Ms. Brown concerning septic system failures, Mr. Reuwer stated that the system is designed with two repair areas, each with a 20 year life cycle. Upon questioning by the Board, Mr. Reuwer stated that while he is aware of elderly housing developments which may require individuals to drive to a dining area via an internal road, he is not aware of any projects where the individuals have to go onto a public road to drive to the dining area.

development is permitted when it is located and designed to minimize its impact on agricultural land, farming operations, and sensitive environmental features, and it creates an attractive rural development which respects existing features of the rural landscape. (Section 104 of the Zoning Regulations).

The Petition proposes 116 dwelling units on 58 acres for elderly and/or handicapped housing. The density of this development is consistent with the special exception criteria which allows a maximum of two dwelling units per acre in the RC District. The General Plan recognizes the importance of housing for the elderly, disabled, and special populations throughout the county in accomplishing balanced growth. Specifically, providing an adequate housing supply for the elderly is an identified goal and policy of the General Plan. (1990

General Plan, Chapter 5, p. 112). The Howard County Zoning Board, presumably in response to this charge, in its 1993 Comprehensive Rezoning chose to continue to permit elderly housing as an appropriate land use in the RC district, subject to special exception approval. A review of the testimony and exhibits submitted indicate that a significant amount of residential subdivision has occurred throughout the rural zoning districts in a compatible nature with agricultural uses. However, Protestants believe the proposed use is not in harmony with the General Plan because the use does not involve farming or single-family detached dwelling units on 3 acre or larger lots. In other words, the Protestants believe the use is a high density use and should not be approved by the Board. The term high density for areas within the rural west, however, is not defined. In addition, the Protestants believe the Petition will not be in harmony with the General Plan because of its use of community wells and a shared

septic system.

Access will be from MD 97 via a new public roadway. While MD 97 is traveled

heavily in a southbound direction in the morning peak hours and similarly in a northbound direction in the evening peak hours, it functions well from a traffic standpoint. The

intersections in the area are operating at a level of service C or better. The Petitioner will

provide road improvements and enhancements consisting of acceleration, deceleration, and

center turn lanes at the proposed public road intersection which will improve conditions in

this area of MD 97. The elderly housing units are projected to generate approximately 21

morning peak hour trips and 26 evening peak hour trips, an amount of traffic less than if a

single-family subdivision was developed on the site.

The General Plan addresses County ownership of shared septic systems where

individual lot owners are involved, and it states that such ownership would ensure regular

maintenance and monitoring in order to protect the environment. This General Plan provision

recognizes the advantage of having one entity being responsible for maintenance/monitoring

rather than a number of individual lot owners. The subject Petition satisfies this policy

objective through its condominium-type ownership. The condominium association will own

and operate the shared septic system through a State regulated and certified operator. In

addition, the General Plan at page 50 states that the "flexibility in site design which shared

septic systems affords further enhances the goals of clustering to preserve agricultural land

and minimize the impact of development on the groundwater resources of the county." While

the General Plan states that community wells are not considered viable because of regulatory

complexity, expense, and liability, we disagree with the Protestants that such wells are not allowed by the General Plan.

Although the proposed elderly housing development is more dense than surrounding properties, it meets the maximum permitted density specified in the special exception criteria and is within the intent of the General Plan. While the Protestants believe that the proposed elderly housing and/or handicapped housing units are perhaps more intense than the General Plan contemplated for the RC District, the Board finds it particularly significant that the use will have minimal impacts on traffic and the rural character of the district. In addition, the units are not offensive or unattractive. The units will be tastefully designed brick veneer, one-story patio homes. Accordingly, the location and size of the use, the nature and intensity of the operation, 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 use will be in harmony with the land uses and policies indicated in the General Plan for the district in which it is located, as required by Section 131.B.1 of the Zoning Regulations.

2. Particular Adverse Effect: Section 131.B.2 of the Zoning Regulations requires the Board to find that the proposed use will not "adversely affect vicinal properties." Virtually every human activity, however, has the potential for adverse impact. Zoning recognizes this fact and, when concerned with special exceptions, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. The modern seminal case on special exceptions, Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981), establishes the standard for resolving special exception issues of adverse impact.

presented by the Protestants on these issues, however, amounted only to unsupported opinions

proposed septic system disturbing their neighborhoods, and screening. The testimony

of accidents on MD 97 at the site's proposed access location, offensive odors from the

the potential for increased traffic from the site and accidents due to the existing high number

believed the project would benefit his property. Other Protestants expressed concerns about

in the area. In contrast, Mr. Marriner, who lives the closest to the project testified that he

that no appraisals were done to determine if location near the project affected property values

produced no evidence, however, that such a result will occur. In fact, Ms. Lane conceded

elderly housing project near their homes would decrease their property values. They

Some Protestants expressed fears that the presence of a condominium type, one-story

different than those ordinarily associated with the proposed use in the RC District.

evidence was placed before the Board sufficiently demonstrating any adverse effects unique or

property values, density, traffic, odors, and environmental protection are understandable, no

within other RC districts of the County. While the Protestants' concerns about decreased

those adverse effects are greater at the proposed site than they would generally be elsewhere

elderly/handicapped has adverse effects in an RC District. The proper question is whether

Thus, the question in the matter before the Board is not whether housing for the

within the zone. Id. at 22-23, 432 A.2d 1319 (emphasis added).

inherently associated with such a special exception use irrespective of its location

particular location proposed would have any adverse effects above and beyond those

there are facts and circumstances that show that the particular use proposed at the

exception use would have an adverse effect and, therefore, should be denied is whether

[T]he appropriate standard to be used in determining whether a requested special

Schultz states that:

and conclusions. Unsupported conclusions or fears of witnesses to the effect that a proposed use of property will or will not result in harm amount to nothing more than vague and general expressions of opinion which are lacking in probative value. *Anderson v. Sawyer*, 23

Md.App. 612, 329 A.2d 716 (1974). Even if accepted as fact, however, the Protestants'

testimony would only tend to show the adverse effects that are inherent in a special exception use for elderly housing; no testimony was presented to show that such adverse effects would be unique or different than those ordinarily associated with the use in the RC District.

With respect to odors, the Protestants testified that waste water treatment systems

normally generate odors which adversely affect vicinal properties. However, no evidence or

testimony was presented by the Protestants to demonstrate that the proposed under ground

passive system proposed by the Petitioner would generate odors above and beyond those

ordinarily associated with the use. More important, Mr. Sheesley testified that the system

would not generate odors.

With regard to the environmental impact of the proposed use on vicinal properties,

Mr. Robert Sheesley demonstrated that appropriate sediment control measures would be

implemented to protect the Little Cattail Creek and that there is considerable distance from the

last point of limited disturbance to the first evidence of the stream system, which is over 400

feet away. Ms. Gray testified that no matter how well sediment controls are designed, they

will not completely control runoff quality or quantity. She and other Protestants voiced fears

about possible septic failures that would leech into the Little Cattail Creek which flows into

the Triadelphia Reservoir. The Triadelphia Reservoir is located 3 river miles away from the

Little Cattail Creek. Much of the Protestants' testimony on this issue was contradicted by Mr. Sheesley, who showed that the site was unique geologically with respect to water resources, forest reserves, and soils profile. More importantly, Mr. Kennedy who testified for the Protestants regarding the project's potential impact on the Triadelphia Reservoir, stated that if all safety measures were satisfied by the Petitioner, he would have no concerns with the project as it is proposed. In considering the relative weight of the testimony, the Board finds that any vicinal environmental impact of the project is likely to be insignificant. The Protestants attempt to meet the Schultz standard and distinguish the subject site by asserting that the proposed use would have less impact at other RC zoned properties in the county. The weight of the evidence, however, is contrary to this assertion. Ms. Lane testified concerning alternate sites at Routes 144/ 94 in Lisbon and near the Mt. View Middle School on Route 99. Ms. Gray testified concerning other potential sites as well. The Protestants argue that the alternate sites are outside of the Patuxent Reservoir Watershed, on less congested roads, and within the planned service area for water and sewer. Notwithstanding these arguments, we note that all of the alternate sites will flow into a watershed somewhere. Additionally, being located in the planned service area does not guarantee that the proposed use will have less adverse environmental impacts than if it is located in the no planned service area. With respect to traffic safety and congestion, the use generates low traffic volumes and with the road improvements proposed, the site will achieve safe access. More important, the Protestants have not shown by substantial evidence that the proposed use will have any adverse impacts above and beyond those inherently associated

with such use in the RC District.

The Petitioner, on the other hand, has met its burden by presenting sufficient evidence

establishing that this proposed use will not adversely affect vicinal properties to an extent

greater than elsewhere in the RC District. The proposed housing and parking meets the

required setbacks for structures and uses for the RC District. The project will be set back a

significant distance from vicinal residential properties, with buffering through the use of

existing woods and landscaping, thereby attenuating the effects of any noise or visual impact.

The nearest residence is approximately 1,000 feet from the proposed housing for the elderly.

The adjacent property to the south is a golf course, while the use to the north and west are

proposed additional golf course holes. Mr. Fisch testified that the landscaping around the

perimeter of the site adjacent to the existing and proposed golf course will be equivalent to

Type A landscaping, and landscaping at the perimeter adjacent to the existing dwelling will be

equivalent to a Type C landscape edge in accordance with the Howard County Landscape

Manual. All outdoor lighting is proposed to be directed away from residential uses. Trash

will be stored in each unit's garage.

Mr. Cornelius testified that the housing for the elderly will generate low amounts of

traffic. With respect to traffic accidents on MD 97 at the proposed location, Mr. Cornelius

stated that SHA traffic and accident data did not identify this area as a high accident area.

This information contradicts the Protestants' argument that the subject portion of MD 97 is an

unsafe and high accident area.

The proposed housing for the elderly does not produce noise or other detrimental

Mr. Carta's residence is located on the lower side of a hill beyond what is proposed as the Cattail Ridge subdivision. Mr. Gramkow's residence is located across MD 97 and permits a partial diagonal view of a portion of the site with the remainder being buffered by existing wooded area. The Gramkow residence is approximately 1,500 feet from the closest point on which a proposed residential building is to be located. The Cattail Ridge development would

separated by distance from the properties across MD 97.

landscaping on the site and the distances from adjacent uses will screen and buffer the use from the adjacent land to the south, north, and west (the existing golf course and potential expansion holes) and from the adjacent dwelling to the northeast. The use is sufficiently through the project engineer, Mr. Fisch, a combination of the existing woods and the required

the units. As to the landscaping, which was shown on the Landscaping Plan submitted except around dumpsters, provided they are utilized for trash storage instead of the garages of conform with all required structure and use setbacks. No walls and fences are proposed,

development. The proposed one-story brick veneer housing structures for the elderly will than the planned Cattail Ridge subdivision, there are no other adjacent properties available for development of the single-family detached subdivision to be known as Cattail Ridge. Other planned in concert with the existing uses and amenities of the Club, and the prospective

3. Structures and Landscaping: The proposed elderly housing development has been

adversely affect vicinal properties, in accordance with Section 131.B.2 of the Regulations. and complies with the conditions enumerated herein by the Board, the proposed use will not activity. Provided that the Petitioner installs the necessary landscaping, road improvements

be located approximately 600 feet from the closest proposed elderly housing unit. No other residence is closer than 1,000 feet to the proposed project. Thus, the location, nature and height of the proposed structures and fences, and the nature and extent of the landscaping will therefore be such that the use will not hinder or discourage the use or development of the adjacent land and structures, in compliance with Section 131.B.3 of the Regulations.

4. Parking and Drives: Section 133.D.2.b of the Zoning Regulations requires two

parking spaces per five dwelling units for housing for the elderly. Thus, 116 units will require 47 parking spaces. The special exception plan, as amended, indicates that two parking spaces will be provided for each unit plus an additional 65 visitor spaces for a total of 297 parking spaces. Because no services are provided on site and because the target population is the active elderly, the Petitioner is anticipating more reliance on the automobile. Therefore, the 250 excess parking spaces are appropriate for the proposed development. The six visitor parking areas are located throughout the site to serve each cluster of structures. Each unit will have a garage and a parking pad which are of adequate size for the intended use. While there are no adjoining residential uses that require screening other than as shown on the Landscape Plan, provided the Petitioner implements its

Landscape Plan consistent with the Landscape Manual, the parking areas will be properly located and screened from adjoining residential uses in accordance with Section 131.B.4.

As proposed, access into the site will be gained from a single point on MD 97 across from Countryside Drive. The Petitioner proposes road improvements and enhancements consisting of acceleration and deceleration lanes and a dedicated center turn lane at the new

The Board's site visit and observations of traffic in the vicinity of the site gives them some concern for traffic safety issues related to the elderly having to leave the Villas property to use the Club's common dining facility. The proposed public road access with its improvements, and the introduction of the low amounts of traffic produced by the proposed project use will not create a traffic hazard that is above and beyond that ordinarily associated

exit the site and accelerate from southbound MD 97 to enter the Club's property. turn left onto MD 97 and then turn left again into the site from northbound MD 97; and to difficult and unsafe for the elderly using the Club's facilities to exit the Club's property and it a very dangerous road to access. The Protestants believe these conditions will make it volumes in conjunction with the high rate of speed vehicles travel MD 97 at rush hour make the north and similar sight distance to the south. The Protestants argue that the heavy traffic the site distances from the proposed access are adequate in both directions with 750 feet to vicinity of the site are operating at a level of C or better. Mr. Cornelius also indicated that Even with the heavy volumes of traffic, Mr. Cornelius noted that the intersections in the southbound direction in the morning peak hours and northbound in the evening peak hours. The testimony before the Board established that MD 97 is heavily traveled both in a

and egress to the public roads in accordance with this criteria. Countryside Drive, and where it connects to the site's property, would furnish safe ingress investigative data, he concluded that the proposed public access at MD 97 opposite public road at MD 97 would have a median strip. He further stated that based on his public road access point. Mr. Cornelius testified that the design of the entrance to the new

with a housing for the elderly use in an RC zone.³ While it makes good development sense

to eliminate duplication of services by using an existing nearby dining facility, the Board,

however, believes that for safety reasons, an internal vehicular road should be provided to

access the Club's facilities and alleviate the need to travel onto MD 97. Therefore, while the

Board finds that the ingress and egress drives, as proposed by the Petitioner, will be laid out

so as to achieve maximum safety, we further believe that any impact to traffic on MD 97 can

be mitigated by the Petitioner providing an internal vehicular road to connect the Villas to the

Club's common dining facility.

5. Other Uses on Site: The special exception use will not be combined with any

other special exception uses or permitted uses. Thus, this criteria is not applicable.

B. Specific Criteria for Elderly/Handicapped Housing (Section 131.N.30).

1. The project consists of 29 condominium structures that contain four dwelling

units each for a total of 116 units on a 58 acre site. The proposed single-family detached

dwelling units are among the types of dwellings permitted by Section 131.N.30.a. of the

Zoning Regulations.

2. The only outside recreational facility proposed are croquet courts. Other on site

accessory uses include a security entrance and community building which the Petitioner states

would serve as a meeting and common dining area. However, the Board did not approve the

³ The Petitioner argues that the proposed use will not have an adverse impact because it will generate less traffic than would be generated if the site were developed as single family detached residences as permitted under the RC designation. According to Schultz, however, the Board may not consider the adverse effects produced by permitted uses; rather, the Board must compare the adverse impact created by this use at this particular site to that which is "inherent" or ordinarily associated with a housing for the elderly use in an RC zone. Schultz, at pp. 1330-1331.

proposed community /clubhouse building. (See the discussion of this in paragraph C below.)
The use of these facilities will be limited to on-site residents and their guests, as provided in
Section 131.N.30.b.

3. As stated in Paragraph A.2 above, the uses will not produce unique adverse

effects on the use or development of the surrounding area due to noise, odor, lights, or any

other reason, in compliance with Section 131.N.30.c.

4. The development is not located near public transportation, thus the Petitioner must

provide transportation to medical services, shopping areas, recreational and other community

services for its residents. The Petitioner has documented its commitment to provide van or

bus service for medical, shopping, and other community services. Additionally, for the

recreational and dining facilities located on the Club's property, community owned golf

carts and a transportation vehicle suitably conditioned for inclement weather and adverse

weather conditions will be provided by the Petitioner for shuttling residents between the

Villas and the Club. These provisions for transportation services are in compliance with

Section 131.N.30.d.

5. Provided the road improvements as proposed by the Petitioner and discussed in

Paragraph A.4 above are installed, the site will have safe public road access, in compliance

with Section 131.N.30.e.

6. The proposed development meets the following development standards enumerated

in Section 131.N.30.f.:

(1) The site size, 58 acres, satisfies the minimum lot size requirement for

elderly housing use in the RC District, which is three acres, pursuant to Section

131.N.30.F.(1).

(2) The maximum density for the elderly housing use in an RC District is two

units per acre. The proposed development of 16 units equals the maximum density allowed

under Section 131.N.30.F.(2).

(3) The special exception plan shows the open space or open areas of the

property is in excess of the minimum of 50% required by Section 131.N.30.F.(3). This

space will include the croquet courts proposed for the residents, septic field drain areas, and

other open areas that will maintain much of the existing vegetation and wetlands, thus

protecting natural features, in compliance with Section 131.N.30.F.(3).

(4) No business uses are proposed for the site; therefore, Section

131.N.30.F.(4) is inapplicable.

(5) No loading areas are proposed. Trash collection areas are proposed to be

located in each unit's garage and therefore will be adequately screened. If the Petitioner

decides to use dumpsters, such dumpsters will be enclosed within brick veneer enclosures as

depicted by photographs submitted into evidence. Thus, Section 131.N.30.F.(5) is satisfied.

(6) The housing units are designed and arranged to minimize the impact on

adjoining properties. The closest residences are approximately 1,000 feet from any proposed

dwelling unit. Existing mature woods and vegetation exist on the property. The project has

transitional open space around all sides at its periphery and the Petitioner proposes to install

landscaping in accordance with the Landscape Manual that is shown on the Landscape Plan.



The proposed landscaping is harmonious in density and type with the surrounding areas, and is designed to provide adequate transition or buffering near the periphery of the site, as required by Section 131.N.30.F.(6).

(7) Mr. Donald R. Reuwer, Jr., on behalf of the Petitioner, testified that the open space areas, recreational facilities and other facilities will be installed during the initial phase of the housing development. Certain recreational and dining facilities already exist on the Club's property and the Villa residents will be allowed to use them because of their social membership. Therefore, Section 131.N.30.F.(7) is satisfied.

C. Definition of Housing for the Elderly and/or Handicapped (Section 103.A.67).

To be considered for a special exception for the housing for the elderly and/or handicapped, a proposed use must meet the definition for such housing as set out in Section 103.A.67 of the Definitions portion of the Zoning Regulations. Section 103.A.67 defines Housing for Elderly and/or Handicapped Persons as:

"A building or buildings containing dwelling units, a common dining area, and related facilities, such as recreational and educational services, therapy areas, health services, and business services. The occupancy of the dwelling units shall be restricted to elderly and/or handicapped persons. For the purpose of these regulations, elderly or handicapped persons are:

- a. Persons who are sixty years of age or over;
- b. Families where either the husband or wife is sixty years of age or older; or
- c. Handicapped persons under sixty if determined to have impairments which:

(1) are expected to be of long and continued duration,
(2) substantially impede their ability to live independently, and
(3) are of such a nature that the ability to live independently could be improved by more suitable housing conditions.
The common dining area shall not be required for a development with 25 or fewer dwelling units."

The Petitioner has presented substantial testimony to demonstrate that the dwelling

units will be located in a series of buildings, with a common dining area and related

recreational facilities to be located in an existing facility on adjacent property. The Petitioner has also shown that occupancy will be restricted to elderly and/or handicapped persons who

satisfy the applicable requirements of the definition.

The Protestants, however, argue that the off site dining arrangement does not satisfy

the requirement of a common dining area. In mid-February of 1998, the Petitioner made

some changes to its Special Exception Plan based on its completion of its septic and well

testing and siting of related facilities. The amended plan also included a proposed

community/clubhouse to be located on site, which would include a "common dining area".

The Petitioner did not present sufficient evidence regarding the use of this community

building or its potential impact on traffic or on the planned water and septic systems. Thus,

the Board has declined to approve the proposed community/clubhouse as part of the amended

special exception plan.

With respect to Petitioner's use of the Club's dining facility as its common dining

area, we find that the use will be consistent with the Section 103.A.67. We interpret

the "common dining area" language of Section 103.A.67 to mean that there must be space

within a building to which the residents of the housing for the elderly facility would have

access and in which common dining could occur, if they so choose. We are not convinced

that the common dining area must be located on the elderly housing site, provided

transportation is available to the facility and internal vehicular road access is available to the

facility from the dwelling units. We reach this interpretation after comparing the language of Section 103.A.67 which also has provisions for recreational, educational, therapy, health and business services, and the special exception language of Section 131.N.30 which makes these services or uses permissive as to being on site, and if not provided on site, then transportation must be provided for such services.

In addition to the units having fully equipped kitchens and the Club providing a food delivery service, the Petitioner has committed to providing an internal transportation system of community golf carts and a suitable vehicle to shuttle residents to the Club's facility via an internal cart path/road. Residents will also be allowed to use personal golf carts, if they so choose. The Board heard ample testimony regarding the prospective elderly residents' independence, mobility, driving habits, and their active life styles. Residents that choose not to use the shuttle service or golf carts would probably drive to the Club's common dining facility. Thus, to mitigate the need for the residents to travel onto MD 97 for common dining purposes, we find that the Petitioner shall provide an internal private road connection between the Club's property and the elderly housing units. Based on the above, we conclude that the proposed common dining area arrangement satisfies the requirements of Section

103.A.67.

ORDER

Based upon the foregoing, it is this 10th day of September, 1998, by the

Howard County Board of Appeals, **ORDERED:**

That the Petition of The Villas at Cattail Creek, LLC, Petitioner, for a special

exception for housing for the elderly and/or handicapped in an RC-DEO (Rural Conserva-

tion - Density Exchange Option Overlay) Zoning District, filed pursuant to Section 131.N.30

of the Howard County Zoning Regulations be, and the same hereby is, GRANTED, subject

to the following conditions:

1. The special exception shall apply only to the proposed housing for the elderly and/or handicapped and associated parking and other site improvements, as described in the petition and as depicted on the special exception plan for The Villas at Cattal Creek as revised, dated February 7, 1998, and as amended by this Decision and Order, and not to any other activities, uses or structures on the subject property.

2. The special exception use shall be buffered with the required type of landscape edge or approved equivalent as required by the Landscape Manual.

3. Development of the special exception use shall not commence until subdivision of the entire property, including the provision of the public road from MD 97 to the site, has been completed. The Petitioner shall install all necessary traffic/road improvements and enhancements (acceleration, deceleration, and center turn lanes) to provide safe road access to MD 97.

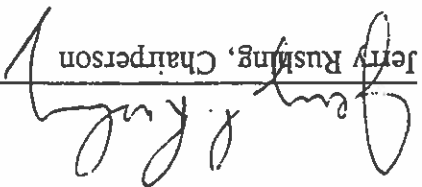
4. The Petitioner shall provide internal vehicular road access between the Villas' property and the Club's common dining facility for use by the residents.

5. All residents shall meet the definition of the elderly and/or handicapped as specified in Section 103.A.67 of the Zoning Regulations.

6. The number of dwelling units on the 58 acre site shall not exceed 116.

7. The Petitioner shall comply with all applicable federal, State, and County laws and regulations.

HOWARD COUNTY BOARD OF
APPEALS

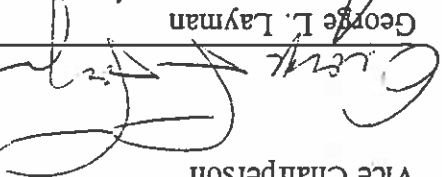


Jerry Rusling, Chairperson

DISSENT - see attached

Donald B. W. Messenger

Vice Chairperson

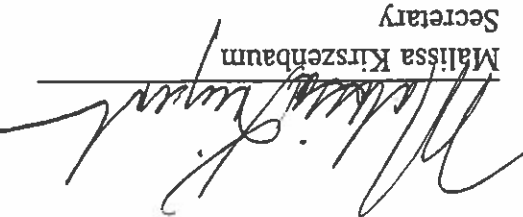


George L. Layman

Robert Sharps

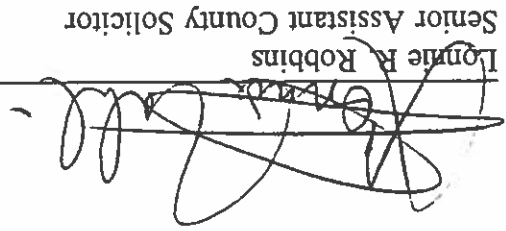
DID NOT PARTICIPATE

James W. Pfefferkorn



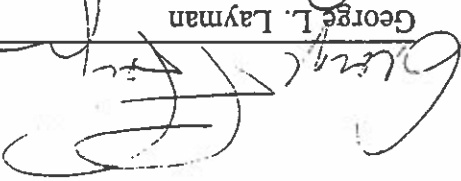
Malissa Kirszenbaum
Secretary

PREPARED BY:
HOWARD COUNTY OFFICE OF LAW
BARBARA M. COOK
COUNTY SOLICITOR



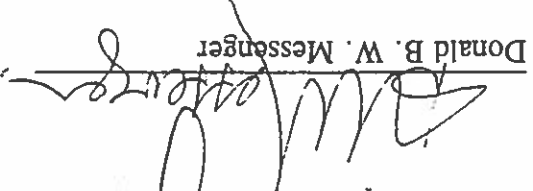
Lonnie R. Robbins
Senior Assistant County Solicitor

I HEREBY CERTIFY that I have listened to the tapes and reviewed the record for those meetings for which I was absent.



George L. Layman

Robert Sharps



Donald B. W. Messenger

ATTEST:

irrespective of its location within the zone.

and beyond those inherently associated with such a special exception use

proposed at the particular location proposed would have any adverse effects above

whether there are facts and circumstances that show that the particular use

exception use would have an adverse effect and, therefore, should be denied is

(T)he Appropriate standard to be used in determining whether a requested special

1319, as follows:

the Maryland Court of Appeals to mean in the leading case Shultz v. Pritz, 291 Md. 1, 432 A.2d

"The use will not adversely affect vincinal properties". This requirement has been interpreted by

Regulations, Section 131, Special Exceptions, B General Standards Required for Approval 2.

installation of a private sewage disposal system for this project. Howard County Zoning

and proponents, in my opinion, that there would be an adverse affect to adjoining property by the

It was established at the hearings in this case by the evidence presented by the opponents

that the request meets all the prescribed standards and requirements."

competent material, and substantial evidence, that he or she is entitled to the relief requested and

"The burden of proof is one of preponderance of the evidence, and is on the Petitioner to show by

Under the rules of procedure of the Howard County Board of Appeals, Section 2.209 (c),

I must dissent from the opinion of the majority of the Board of Appeals in this case.

DISSENTING OPINION

• BA #97-54E

* BOARD OF APPEALS

* HOWARD COUNTY

* BEFORE THE

CREEK, L.T.C.

THE VILLAS AT CATTAIL

IN RE:

I also disagree with the majority in that I believe it is required by the criteria for housing project and I agree.

areas in the RC zone were proposed by the opponents as a more suitable site for this type of zone not in the Patuxent watershed or in the RC zone where public sewer was available. Other would be more adverse than the impact and effect of this system if it were in an area in the RC is obvious that the adverse effect of this sewer system in the RC zone in a Patuxent watershed necessary to have a private sewer waste treatment system as has been proposed by this project. It

This area of the County is not sewered by public sewer and therefore it would be western portion of the County.

General Plan proposes preservation of the agricultural and rural character of the the Planned Water & Sewer Service Area as the County's main growth area. The housing. The 1990 General Plan established the eastern part of the County within rural land uses-agriculture and low density residential single family detached Howard County's drainage to the Patuxent reservoirs also consists primarily of

Interim Report of the Patuxent Reservoir Group, March 1995, Page 4, as follows:

rural character protected. See Article Developing a Patuxent Reservoir Protection Strategy.

The 1990 general plan calls for this part of Howard County to have its agricultural and surrounding property.

locations within the RC-DEO zone, which is the zoning of the subject property and the preponderance of the evidence that the effect at this location would not be greater than at other

that is to be installed will not adversely affect this location and has not shown by a evidence in accordance with the Shultz v. Pritz standard that the private sewage disposal system

In herein case, the Petitioner has not met the burden of proof by preponderance of the

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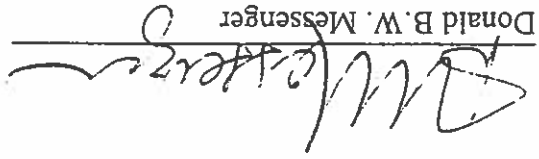
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for the elderly and/or handicapped that there be an on sight dining area. See Howard County Zoning Regulations, Section 103, Definitions 67. I further disagree with the majority that this case should have been remanded to the Planning Board for further consideration when the plan was amended during the proceedings to show a community building which it was proposed would be an on sight dining facility and a redrawing of the boundary lines of the property for which the special exception was sought. I believe these changes were substantial changes, that the Planning Board should have had an opportunity to reconsider this matter, and the case should have been remanded to them and it was error not to do so.


Donald B. W. Messenger
Vice Chairman
Howard County Board of Zoning Appeals

