

IN THE MATTER OF  
THE VILLAS AT CATTAIL  
CREEK, LLC

: BEFORE THE  
:  
: HOWARD COUNTY  
:  
: BOARD OF APPEALS  
:  
: BA Case No. 00-10E

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**DECISION AND ORDER**

The Howard County Board of Appeals (the "Board") convened on the dates listed below 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 1,000 feet north of Cattail Creek Drive, filed pursuant to Section 131.N.30 of the Howard County Zoning Regulations.

This case was originally heard by the Board on July 25, 2000. On September 18, 2000, the Petitioner substantively amended its Petition, and pursuant to its Rules of Procedure, Section 2.202(c), the Board remanded the matter to the Department of Planning and Zoning ("DPZ") and the Planning Board for further recommendations. Additional hearings on the amended Petition were held on December 14, 2000, and February 8, 2001. Listed below are the three hearing dates and the members of the Board who were present at those hearings:

<u>Date</u>	<u>Present</u>	<u>Absent</u>
7/25/00	Sharps Pfefferkorn Scott Waff	Vacancy
12/14/00	Sharps Patterson <sup>1</sup> Pfefferkorn Scott	Waff

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<sup>1</sup>Effective July 27, 2000, Mr. Patterson joined the Board.



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President of Cattail Creek Country Club, Inc.; Christopher Healy, a neighbor in the Cattail Ridge subdivision; and Randolph Marriner, the owner of the residence known as "Hickory Hill."

The following persons testified on behalf of the Protestants: Youn Miles, William Brown, Linda Black, Joe Carta, and Nedenia J. Tucker.

**FINDINGS OF FACT**

Based upon the evidence presented at the hearing, the Board makes the following Findings of Fact:

1. The Petitioner originally proposed to construct 116 units for the elderly on a 58 acre parcel. On September 18, 2000, the Petitioner amended its Petition as follows: (1) the special exception area was reduced from 58 acres to 19.5 acres; (2) the dwelling unit configuration was modified from attached to detached units; (3) the number of units was reduced from 116 to 25 units; and (4) the common dining facility was deleted because the number of units proposed did not exceed 25 units. The Board, at its work session on September 19, 2000, determined the modifications were substantive and pursuant to Section 2.202(c) of its Rules of Procedure, postponed the scheduled hearing of September 21, 2000, and remanded the amended Petition to DPZ and the Planning Board for further recommendations.

The 19.5 acre special exception site is part of the larger 58.0 acre parcel. The Petitioner is the owner of the subject property. The property is located in the 4th Election District, on the west side of MD 97, beginning about 1000 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 229. The property is zoned RC-DEO (Rural Conservation - Density Exchange Option Overlay).



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3. MD 97 is classified as a Minor Arterial on the Highways Map 2010 of the 1990 General Plan.<sup>2</sup> 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. Mr. Donald R. Reuwer, Jr., a principal of the Petitioner, testified that the Petitioner proposes to construct 25 single-family detached one-story dwelling units within a condominium regime as housing for the elderly and/or handicapped persons as defined by Section 103.A.67 of the Howard County Zoning Regulations (the "Regulations") on the subject site. Individual lots are not being created with this proposed development. All units will be located on a private road that varies from 18 to 22 feet in width and will connect to MD 97 via the roads of the adjacent Cattail Ridge subdivision to the north. The proposed access point on the west side of MD 97 (Rolling Hills Drive) is opposite Countryside Drive. The individual units will contain full service kitchens with master bedrooms on the first floor and include two-car garages. No common dining facility is proposed, nor is one required for developments of 25 units or less. The residents will be entitled, as part of their condominium fee, social membership in the adjacent country club, with access to the pool, dining room and other recreational amenities. The loop at the end of the private drive that fronts on many of the proposed units, will be laid out in grass as a putting green for the residents' recreational use. Residency and occupancy will be limited to individuals and/or couples with one spouse who must be 60 years of age or older or handicapped. Therefore, all

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In November, 2000, the Howard County Council adopted Howard County's 2000 General Plan. The classification for MD 97 remained unchanged in the 2000 General Plan. Thus, MD 97 is classified as a Minor Arterial on Transportation Map 2000 - 2020 of the 2000 General Plan.



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testified that the proposed units do not adversely effect adjacent neighboring properties and the project has adequate buffering. With respect to buffering, he stated that given the distances from adjacent uses and the combination of existing woods along with the extensive landscaping that will be required by the Howard County Landscape Manual, the proposed use will be adequately screened and buffered from adjacent land to the south, north, and west.

With respect to parking, Mr. Reuwer stated that there is no off-street parking with each unit having a two-car garage and a parking pad that would accommodate most visitation. Mr. Reuwer also stated that because of the site's proximity to the country 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. Mr. Reuwer stated that housing for the elderly is a relatively low traffic volume generator, especially during peak hours.

5. Mr. John Stamerro, President of Cattail Creek Country Club, Inc., (the Club") testified in support of the proposed use and generally stated the Club believes the proposed 25 unit development will have a positive impact on the Club. He stated that he believes the subject petition complies with all of the material elements with respect to both the general and specific criteria for the proposed use.

6. Mr. Christopher Healy, a home owner in the Cattail Ridge subdivision, testified in support of the subject petition. He stated that the proposed use would not have a negative impact on his property.

7. Mr. E. Randolph Marriner, the owner of Hickory Hill, testified he was familiar with the specific plans of the proposed use and that he supports the petition of the adjacent property owner.





11. Mr. Joe Carta presented testimony that his property is in close proximity to the subject site on the same side of MD 97. In general, Mr. Carta believes that the proposed use and its density is not consistent with the low density of the area. He also fears that the proposed septic system will contaminate the water supply and generally cause contamination in the area. In sum, Mr. Carta believes land should be left in its natural state because, any moving of earth or excavation causes contamination.

12. Ms. Nedenia J. Tucker testified about her concerns of septic failures. In addition, she voiced concern about what happens if the elderly die or if they are unable to live in their homes - will the homes go to younger relatives? Ms. Tucker presented no factual information on which to base her concerns and fears.

#### CONCLUSIONS OF LAW

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

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

1. General Plan: The Howard County General Plan designates the area in which the property is located as "Rural Conservation". 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 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).



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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. Schultz states that:

[T]he appropriate standard to be used in determining whether a requested special exception 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 at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. Id. at 22-23, 432 A.2d 1319 (emphasis added).

Thus, the question in the matter before the Board is not whether housing for the elderly/handicapped has adverse effects in an RC District. The proper question is whether those adverse effects are greater at the proposed site than they would generally be elsewhere within other RC districts of the County. While the Protestants' concerns about, density, odors, and environmental protection are understandable, no evidence was placed before the Board sufficiently demonstrating any adverse effects unique or different than those ordinarily associated with the proposed use in the RC District.

Housing for the elderly is a residential use that does not produce inordinate noise or intensity of use that is out of character in a residential setting. The site is bordered in most



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 proposed housing for the elderly does not produce noise or other detrimental activity. Provided that the Petitioner installs the necessary landscaping, and complies with the conditions enumerated herein by the Board, the proposed use will not adversely affect vicinal properties, in accordance with Section 131.B.2 of the Regulations.

3. Structures and Landscaping: The proposed elderly housing development has been planned in concert with the existing uses and amenities of the Club, and the prospective development of the single-family detached subdivision known as Cattail Ridge. Other than the planned Cattail Ridge subdivision, there are no other adjacent properties available for development. The proposed one-story brick veneer housing structures for the elderly will conform with all required structure and use setbacks. No walls and fences are proposed. As to the landscaping, a combination of the existing woods and the required 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. Mr. Carta's residence is located on the lower side of a hill beyond what is the Cattail Ridge subdivision. The use is sufficiently separated by distance from the properties across MD 97. 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. Each unit will contain a two-car



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provide transportation to medical services, shopping areas, recreational and other community services for its residents. Mr. Reuwer testified that the condominium association will have the use of a van to provide transportation, as requested, to medical, shopping, and other community services. Because the facility is geared toward healthy, ambulatory seniors with their own cars, it is anticipated that the use of this service would be limited, and would be best determined by the requirements of the residents' needs. These provisions for transportation services are in compliance with Section 131.N.30.d.

5. As stated in Paragraph A.4 above, 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, 19.5 acres of a 58 acre parcel, 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 25 units is less than the permitted 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 putting green proposed for the residents, septic reserve 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).





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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 single-family detached homes with related facilities. The Petitioner has also shown that occupancy will be restricted to elderly and/or handicapped persons who satisfy the applicable requirements of the definition. As stated earlier, because the proposed use does not exceed 25 units, a common dining facility is not required.

Based on the above, we conclude that the proposed use satisfies the requirements of Section 103.A.67.



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ATTEST:

HOWARD COUNTY BOARD OF  
APPEALS



Ann Nicholson  
Secretary

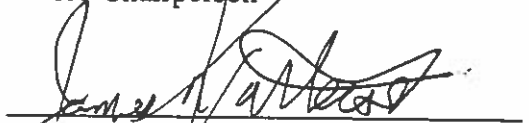


Robert Sharps, Chairperson

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



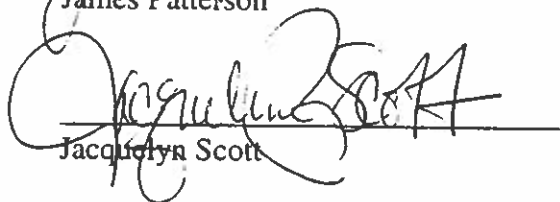
James W. Pfeffer  
Vice Chairperson



James Patterson



Lonnie R. Robbins  
Senior Assistant County Solicitor

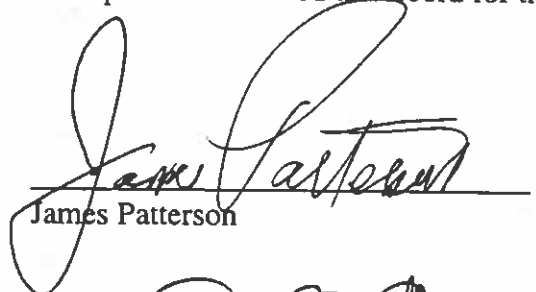


Jacquelyn Scott

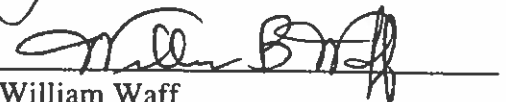


William Waff

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



James Patterson



William Waff

