Brantley Development Group, Petitioner ZRA 108	*	**PLANNING BOARD OF HOWARD COUNTY, MARYLAND**

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MOTION: To recommend denial of the proposal to amend Section 103.A. (Definitions) to permit older adults without children under eighteen (18) years of age to occupy a certain percentage of the dwelling units within an age-restricted adult housing development.

ACTION: ***Recommended denial of Petition; Vote 5 to 0.***

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RECOMMENDATION

On October 23, and November 13, 2008, the Planning Board of Howard County, Maryland, considered the petition of the Brantley Development Group to amend Section 103.A.5. of the Zoning Regulations to remove the restriction that all households within an age-restricted adult housing (ARAH) development be occupied by at least one member who is 55 years of age or older and would add a provision to permit up to 20 percent of the units within an age-restricted adult housing development to be occupied by individuals less than 55 years of age. This petition would affect existing, under construction projects and projects in the approval pipeline.

The petition, the Department of Planning and Zoning Technical Staff Report and Recommendation were presented to the Board for its consideration. The Department of Planning and Zoning recommended that the Petitioner's request be **DENIED.**

At the October 23 meeting, the Petitioner was represented by Sang Oh, Esq. Several citizens testified in opposition to the petition.

Mr. Oh asserted the current regulation does not comply with the Federal Fair Housing Act and the Housing for Older Persons Act (HOPA) which prohibits housing discrimination based on several factors, including familial status. He noted that although the federal law exempts housing for persons 55 or older, he argued that the zoning regulation 103.A.5 is too strict by requiring 100% occupancy. Mr. Oh indicated it was not the petitioner's intent to frustrate the senior housing policy but to provide more flexibility consistent with the federal law to outweigh the risk of exclusion of citizens based on their age or familial status. Specifically, he argued that the County's current regulation is bad policy and changing it to conform to federal law, despite the senior housing exemption, is based on a policy of inclusion. He argued that more flexibility in the regulation would allow a younger family member to care for their parent or relative or provide

additional housing options for handicapped persons or disable veterans. Mr. Oh pointed out that if the amendment was approved, individual existing ARAH communities would have to amend their covenants to approve the changes so that compliance and implementation would not be mandatory. Mr. Oh explained that the proposed amendment would also offer owners more flexibility in resale of their property to buyers below the minimum age. He argued the General Plan did not anticipate the saturation of the senior housing which has resulted in a glut of unsold and vacant properties.

The Board questioned Mr. Oh to evaluate whether the petition was a result of age discrimination or of poor market conditions. Mr. Oh replied that federal law exempts disabled people under the age of 18 from living in the ARAH communities and perhaps the Board would find that a minimum age limit should be set. The Board recognized that many residents of these communities choose to purchase a home for the specific reasons that the communities are age restricted. The Board sought input on an alternative solution by developing a new housing classification that would yield a product that permits a blending of ages with a possible distribution of 80-20 without allowing children. Mr. Oh replied that houses in newly constructed age restricted communities are sitting vacant and he could not see any reason that it should not be filled by disabled people or adults without children.

Several citizens testified in opposition to the petition.

Grace Kubofcik, representing the League of Women Voters of Howard County stated the petition represents a policy decision that should be considered in the next General Plan and not as a Zoning Regulation Amendment. She aid the zoning regulations should not be retrofitted to accommodate a fluctuation in the housing market. She indicated that despite the poor market conditions, Howard County's senior (over 55) population is projected to increase from 19% to 31% over the next 25 year.

Joan Lancos, representing the Hickory Ridge Village Association, stated it is not surprising that age-restricted units are not selling in the current economy. She said these units were fairly easy to get approved because there was no need to pass the APFO test for schools thereby leading to an oversupply. However, she said the Village Board does not support changing the definition of ARAH and believes the proposed amendment will be a "foot in the door" to other zoning changes that would defeat the purpose of this type of housing.

Bridget Mugane, President of Howard County Citizens Association testified that her organization agrees with DPZ and opposes the proposed amendment on several grounds,

including its inconsistency with the General Plan and the Senior Housing Master Plan. Specifically, she noted the Senior Housing Master Plan anticipates an increase in the senior population in the County over the next 25 years and stated that despite the poor market conditions senior housing is still being built.

Patrick Crow testified that a great push was made for this housing product years ago and it was met by developers. He said an incentive to build this product was granted to developers in the form of increased density and the elimination of the need to pass the schools' test. He said that senior housing projects are still being built, and there is no need for the amendment. He said the County expended great thought and energy backing this type of housing product and a need for such a change would have risen long before now if the demographic mix was truly warranted.

The Planning Board questioned whether the current senior housing regulation requiring 100% age-restricted occupancy violated the federal law. Paul Johnson, Howard County Counsel to Planning Board advised the Board that the existing language of the senior housing regulation passed the legal sufficiency test prior to enactment and was determined to be in compliance with the federal law. Specifically, he explained that local jurisdictions are given the discretion to impose greater restrictions than provided for in the federal law. He noted that the 80% requirement in the federal law is a minimum occupancy requirement for housing for older persons 55 and older and not a cap or a required 80/20 split. Mr. Johnson also informed the Board that the amendment's current proposed language may cause some issues. For example, as written the language could imply that 20 percent would be reserved for residents less than 55 as a set aside.

Discussion

At its November 13, 2008 worksession, the Board discussed and thoroughly reviewed the petitioner's rationale for the amendment change, citizen testimony and the Department of Planning and Zoning's technical staff report. The Board concludes the following:

- **Amendment conflicts with the Howard County General Plan and the Howard County Senior Master Plan**

The General Plan, even as a guide, strongly supports a commitment to aging in place in a variety of housing options such as age-restrict retirement communities. In fact, Policy 4.3 clearly states the goal of the county is to "[e]nsure an adequate housing supply for the elderly and disabled and special populations."(General Plan, page 84) In addition, the ongoing need for senior housing is also identified in the Senior Master Plan with data projecting a steady increase in the senior housing population over a 20 year period to support the current and future senior

housing supply. The General Plan, when written, pointed to the tripling of the senior population by 2020 and the growing scarcity of residential land leading to difficulty in providing new senior housing thereby permitting its construction in valuable employment land. This policy direction is implemented by the zoning regulations that permit various incentives to encourage construction of ARAH to meet the senior housing needs of the County.

In no subsequent monitoring updates, such as the General Plan Monitoring report, has staff identified a reduction in demand to levels so low that a substantial change in policy is needed in order to sell ARAH units. Nor has there been any testimony by a grassroots movement of citizens or developers to initiate this change because of difficulties with the policy. Further, the Office of Aging, an advocate for citizens older than 55, has not forecasted drastic declines in market demand over the long term. The Board was not persuaded that the current market conditions are in part due to a lack of foresight or planning in the General Plan that would necessitate a reduction in the age-restricted housing stock in order to correct a perceived oversupply of senior housing.

While the petitioner suggested that the units could be used for returning disabled veterans, nothing was presented as to how many disabled veterans were interested and in need, how many were being denied, or how many were not finding their needs met in the general housing market. The fact that a disabled veteran or younger family member does not qualify to live in an age-restricted community does not justify changing the nature of the age-restricted communities. If this need exists, then another housing category or option should be considered.

- **<u>Existing Age Restricted Zoning Regulations are in compliance with Federal Law</u>**

The Board agrees that the 80% occupancy requirement represents a minimum threshold and not an independent requirement or cap. Federal regulations do not prohibit 100% unit occupancy by persons over 55 years of age. Board members questioned DPZ staff as to requirements in surrounding jurisdictions. DPZ stated that numerous jurisdictions such as Montgomery County have similar 100% restrictions for many years. Planning Board agrees that local jurisdictions have been given the authority and discretion to determine what percentage level is best for implementing their over 55 housing goals. Therefore, the Planning Board was not persuaded by Petitioner's assertion that the County's ARAH regulations were discriminatory and in violation of federal law.

- **Economic Market Forces are the impetus for this amendment**

Originally presented as a discrimination issue, Planning Board concludes, after petitioner's own testimony, that the amendment is more about being able to sell vacant units. According to the Senior Master Plan, ample potential demand is forecasted for the foreseeable future. With hundreds of age restricted units, primarily in the upper end of the price range, having been built to date, market strength is evident. Repeatedly, Planning Board has heard the need for senior housing, affordable senior housing and rental senior housing from the community and developers. The need is demonstrated by the continued application for senior communities and a proposed zoning regulation amendment (ZRA 111) seeking increased density for ARAH.

What has concerned Planning Board for years is the absence of sufficient numbers of units in the middle to low price ranges and in the rental market. Planning Board has repeatedly voiced its concern that a glut of product at that the high end would cause units to sit. DPZ staff agreed that the glut combined with market conditions have left newly built units vacant. The Planning Board does not consider it the County's responsibility to ensure the sale or resale of housing types that the government approves. This zoning amendment is based on a need to minimize financial exposure. If enacted, additional housing types under development will seek similar relief. The Planning Board does not support allowing short term market fluctuations to dictate major alterations to county policy and zoning regulations.

- **Incentives and Density Bonuses already received by Developers can not be refunded**

Applications for Age Restricted Adult Housing receives benefits that other residential communities do not because of the government's policy to actively encourage these developments. Developers are able to bypass the Adequate Public Facilities Ordinance for schools because with only residents over 55, there will be no impact on the Howard County Public School System. These developments also have access to separate allocations which permit them to leapfrog ahead of traditional residential projects in any region with restricted or capped allocations. With the proposed amendment applying to existing communities as well as new, no process exists which would enable the County to recover the density, allocations and the expedited construction given to an ARAH project before it was built.

- **Altering Age Restricted Adult Housing Makeup for Existing Communities Impacts Traffic, Owners, and Homeowners Associations**

The Board is aware that in general traditional residential projects with residents under the age of 55 will generate more average daily trips than an ARAH community. When an existing ARAH project passed its Adequate Public Facilities test, it was done using lower trip generation numbers. As a result, any mitigation designed and built was based on the impact of lower trip generation numbers. The proposed amendment is silent on how the increase in traffic caused by altering an existing community's demographic would be mitigated and who would bear the burden of the mitigation.

Owners who purchased an age restricted home did so because they chose to live with others who were older than 55. Because these communities were implementing a governmental policy, these residents never expected or were informed that it was possible that their community's age composition could be altered. In fact, the few residents Planning Board heard from definitively opposed the proposed amendment because it would eliminate the type of "community" they bought into. Many stated they chose to live in a 100% age-restricted community. If altered they would leave, but they doubted their ability to sell their home because other seniors would not want to buy into a hybrid community. The Planning Board believes that applying this amendment to any existing communities would vastly undermine the certainty and predictability of the process. Certainly more feedback should be obtained from existing ARAH communities to confirm this sentiment.

Furthermore, with the amendment applicable to existing communities, there is no process by which the County government could monitor and enforce an 80/20 composition. Extensive burdens would also be placed on homeowners associations for the same functions. It is unclear whether either would be able to enforce the 80/20 distribution. Who, for example, would have the authority to deny an age restricted owner's sale to an under 55 buyer if the 80/20 composition is already achieved? It is unclear how they would be even be notified of the pending sale to an under 55 buyer. In addition, the Board questioned who would decide which contracts to accept if a situation arose when multiple units receive offers from under 55 buyers but the community's composition would only permit a portion of those under 55 buyer contracts to be accepted. Also unaddressed is the process and recourse a homeowners association would have available to it if children joined an under 55 household. By altering the age composition, the likelihood that this scenario would occur increases.

The Planning Board considers the uncertainties pertaining to implementing and managing the amendment with respect to existing age restricted adult communities are too great to warrant approval of the amendment retroactively.

Motion:

Ms. CitaraManis made a motion to accept the recommendation of denial of the DPZ Technical Staff Report. Gary Rosenbaum seconded the motion.

Vote:

The motion for denial of the petition in accordance with the recommendation of the DPZ Technical Staff Report passed by a vote of 5 to 0.

For the foregoing reasons, the Planning Board of Howard County, Maryland, on this 26th day of January 26, 2009, recommends that the Petitioner's request to amend section 103.A.5. of the Zoning Regulations to permit older adults without children under eighteen (18) years of age to occupy a certain percentage of the dwelling units within an age-restricted adult housing development, be **DENIED** in accordance with the recommendation of the Technical Staff Report.

HOWARD COUNTY PLANNING BOARD

David Grabowski, Chairperson

Gary Rosenbaum, Vice Chairperson

Linda A. Dombrowski

Tammy J. CitaraManis

Paul Yelder

ATTEST:

Marsha S. McLaughlin
Executive Secretary