



# HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Court House Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

Voice/Relay

Amy Gowan, Director

FAX 410-313-3467

August 26, 2021

## TECHNICAL STAFF REPORT

*Planning Board Meeting of September 9, 2021*

**Case No./Petitioner: ZRA-198 - Dunteachin Estates Homeowners Association, Inc.**

**Request:** To amend the Age-restricted Adult Housing (ARAH) conditional use requirements in Section 131.0.N.1.a of the Howard County Zoning Regulations as follows:

1. Reduce the maximum number of dwelling units allowed per net acre in R-ED and R-20 districts by 1.
2. Require that at least 25% of the dwelling units in an ARAH development be limited to a maximum 1,600 sq. ft. of above grade living space.
3. Increase the size of community buildings to 30 sq. ft. of net floor area per dwelling unit for the first 99 units.

### I. BACKGROUND AND HISTORY OF EXISTING ZONING REGULATIONS

In 1988, Zoning Board case ZB-849R added “Housing for elderly and/or handicapped persons” to the Zoning Regulations as a special exception in seven residential districts – R, R-ED, R-20, R-12, R-SC, R-SA-8 and R-A-15. This use was created to incentivize development of housing for the elderly and/or handicapped persons through an increase in density above the base zoning. The use allowed all dwelling unit types and was restricted to persons 60 years of age and older, or handicapped persons under the age of 60. The maximum allowed density was permitted to exceed the base zoning, as shown in the chart below, based on the assumption that this housing type would have less impact on public services such as schools and traffic due to the population’s age and smaller household size. The special exception allowed “housing for elderly and/or handicapped persons” to exceed the base zoning in R-ED and R-20 districts (2 dwelling units per acre) by 250% or 2.5 times (5 dwelling units per acre).

Zoning District	Maximum Dwelling Units Per Acre - Base Zoning District	Maximum Dwelling Units Per Acre – Special Exception
R	.33	2
R-ED	2	5
R-20	2	5
R-12	3	6
R-SC	4	8
R-SA-8	8	12
R-A-15	15	15

In 1993, the “Housing for elderly and/or handicapped persons” Special Exception was revised to require that “safe public road access” and “transportation to medical services, shopping areas, recreational and other community services” be available if not provided on-site. These requirements recognized the need for seniors to have access to goods and services via safe roads and through public transit service.

In 2001, Council Bill 11-2001 created and replaced the “Housing for elderly and/or handicapped persons” Special Exception category with the “Age-restricted Adult Housing (ARAH)” Conditional Use category. The definition of Age-restricted Adult Housing reduced the minimum age requirement to 55 and allowed persons less than 55 to live in the dwelling unit in certain situations.

In 2003, ZRA-42 amended Section 131.0.N.1 to change the minimum structure and use setbacks from the perimeter of the development as follows: (1) From the (then) current 30 feet to 40 feet for setbacks from an external right-of-way other than from an arterial or collector public street right-of-way and (2) From the (then) current 75 feet for apartments, and from the (then) current 50 feet for setbacks for other uses from RC, RR, R-ED, R-20 or R-SC Districts to 40 feet if adjoining a parcel developed with multi-family or non-residential uses.

In 2005, Council Bill 2-2005 (implemented a portion of the 2003 Comprehensive Rezoning Plan) clarified provisions for Community Center minimum sizes, permitted Multi-plex units in the RC and RR districts, and limited projects with less than 50 dwelling units in the R-ED, R-20 AND R-12 districts to detached, semi-detached, multi-plex and single family attached units only. Also, the allowed density was amended as shown below:

<b>[[Zoning District</b>	<b>Maximum Dwelling Units per Acre of Lot Area</b>
[[RC or RR	1 per net acre
R-20 or R-ED	5 per net acre
R-12	6 per net acre
R-SC	8 per net acre
R-SA-8	12 per net acre
R-A-15	25 per net acre]]

ZONING DISTRICT	NUMBER OF DWELLING UNITS IN DEVELOPMENT	MAXIMUM UNITS PER NET ACRE
RC AND RR	20 OR MORE	1
R-ED AND R-20	20-49	4
	50 OR MORE	5
R-12	20-49	5
	50 OR MORE	6
R-SC	20-49	7
	50 OR MORE	8
R-SA-8	20 OR MORE	12
R-A-15	20 OR MORE	25

In 2019, ZRA-187 amended Section 131.0.N.1 to require Age-restricted Adult Housing Conditional Uses with densities that exceed the base zoning district to have frontage on and direct access to a collector or arterial road.

## II. DESCRIPTION OF PROPOSAL

### Sec. 131.0.N.1.a.(4)

This section establishes the maximum density allowed, according to zoning district, for ARAH developments approved through the Conditional Use process, as shown below:

Zoning District	Number of Dwelling Units in Development	Maximum Units Per Net Acre
RC and RR	20 or more	1
R-ED and R-20	20-49	4
	50 or more	5
R-12	20-49	5
	50 or more	6
R-SC	20-49	7
	50 or more	8
R-SA-8	20 or more	12
R-H-ED	20 or more	10
R-A-15	20 or more	25
R-APT	20 or more	35

The Petitioner contends that the maximum number of dwelling units currently allowed in the R-ED and R-20 districts was based on data from the 1980's that is no longer valid and that the number should be based on current data. The amendment proposes to reduce the maximum density allowed

in these districts by 1. For developments with 20 to 49 units the density would decrease from 4 dwelling units per net acre to 3 and for projects with 50 or more units from 5 to 4.

**Sec. 131.0.N.1.a.(5)**

The Petitioner asserts that in recent ARAH developments, the trend is to build larger dwelling units with more than 2,200 sq. ft. of living space above ground, which does not accommodate empty nesters who want to downsize from large homes to smaller, more affordable homes. The Petition states that there are designs with less than 1,600 sq. ft. of living space above grade that would meet the needs of this population. Therefore, this amendment proposes a new section that requires at least 25% of dwelling units in an ARAH development be limited to 1,600 sq. ft. of above grade living space.

**Sec. 131.0.N.1.a.(10)**

This section requires that at least one on-site community building or interior community space shall be provided that contains a minimum of:

- (a) 20 square feet of floor area per dwelling unit, for the first 99 units with a minimum area of 500 square feet, and
- (b) 10 square feet of floor area per dwelling unit for each additional unit above 99

The Petitioner contends that the size of the community building should be based on the occupancy load factors in the Howard County Fire Code (2019) that are used to determine the maximum capacity of buildings. To accomplish this, the Petitioner proposes to increase the size of community building to 30 sq. ft. of net floor area per dwelling unit for the first 99 units. The minimum number of units in an ARAH development is 20, which results in a 600 square foot building; therefore, the Petitioner proposes to remove the 500 square foot minimum size requirement. The amendment also exempts non-assembly space within the community building, such as hallways, bathrooms, and kitchens, from counting toward the square footage.

### **III. EVALUATION OF PROPOSAL**

This section contains the Department of Planning and Zoning (DPZ) technical evaluation of ZRA-198 in accordance with Section 16.208.(d) of the Howard County Code. The Petitioner's proposed amendment text is attached as Exhibit A.

- 1. The compatibility, including potential adverse impacts and consequences, of the proposed Zoning Regulation Amendment with the existing and potential uses of the surrounding areas and within the same zoning district.**

**Sec. 131.0.N.1.a.(4)**

The R-ED and R-20 districts allow a maximum density of 2 dwelling units per acre and contain a significant portion of the remaining developable land in the County. Reducing the allowed

density of ARAH developments in these zoning districts may result in more compatible infill projects, since the density will be closer to what is permitted by right.

However, reducing the density from 4 to 3 for projects with 49 or fewer dwelling units would exclude properties between 5 acres and 6.67 acres, which removes 49 of the 136 remaining R-20 and R-ED eligible properties from possible ARAH development. This is due to the requirement that ARAH developments contain a minimum of 20 dwelling units; therefore, a 5-acre property is required at a density of 4 dwelling units per acre and a 6.67-acre property is required for a density of 3 dwelling units per acre.

Additionally, the density of 3 of the 5 ARAH developments approved in R-20 after the ARAH land use was created in 2002 will not comply with the density proposed by this amendment. DPZ records indicate that no ARAH developments have been approved in R-ED. The following table shows the approved ARAH developments in R-20 and their densities.

File #	File Name	Zoning	Dwellings	Acres	Density	Current	Proposed
BA-01-047C	The Courtyards of Ellicott Mills, LLC	R-20	35	7.0	5*	4	3
BA-09-008C	Hebron Manor I, LLC	R-20	68	15.5	4.4	5	4
BA-14-014C	Rock Burn, LLC	R-20	45	11.3	4	4	3
BA-17-018C	Bethany Glen	R-20	154	68.5	2.2	5	4
BA-18-025C	Williamsburg Group, L.L.C	R-20	63	15.7	4	5	4

\*Allowed density was 5 dwelling units per acre

#### **Sec. 131.0.N.1.a.(5)**

The requirement for dwelling units to be less than 1,600 square feet does not appear to be based on any standard or documented demand. In response to this Petition, DPZ contacted the Department of Housing and Community Development and the Office on Aging to request information related to desired unit size for senior housing. DPZ also reviewed several current reports and studies including; the RCLCO [Market Research and Demand Forecast](#) (Oct 1, 2020), the [Housing Opportunities Master Plan](#) (May 2021), Office on Ageing [Age Friendly Survey](#) and the State DHCD [Maryland Housing Needs Assessment 2020](#). These plans and studies found strong support for senior/retirement housing, including age restricted and those specifically designed to meet the needs of seniors. While affordability is frequently cited as a concern, there was no specific data regarding desired unit size.

Further, DPZ analyzed the dwelling unit size of the approved ARAH developments and none of single-family developments contain dwelling units that are less than 1,600 square feet; therefore, these developments will not comply with this amendment.

**Sec. 131.0.N.1.a.(10)**

The petitioner proposes using the Howard County Fire code and an average unit occupancy of 2 persons per dwelling unit. This occupancy estimate is based on a reasonable standard and would result in larger community buildings within ARAH developments that could serve the diverse recreational needs of seniors in these developments. A larger community building is also unlikely to have any adverse impacts on surrounding areas.

2. **The properties to which the Zoning Regulation Amendment could apply and, if feasible, a map of the impacted properties.**

**Sec. 131.0.N.1.a.(4)**

The density reduction impacts R-20 and R-ED zoned properties 5 acres and larger. Attachment A is a map depicting these zoning districts and potentially impacted properties. As seen in this map there are estimated to be 64 R-20 and 69 R-ED properties that are five acres or more and thus meet the minimum size necessary for ARAH projects.

**Sec. 131.0.N.1.a.(5) & (10)**

The provisions regarding unit size and community buildings would apply to all Conditional Use ARAHs and therefore impact RC, RR, R-ED, R-20, R-12, R-SC, R-SA-8, R-H-ED, R-A-15, and R-APT zoned properties, excluding properties subject to preservation easement and properties less than 5 acres as previously discussed.

Attachment B shows these zoning districts and potentially impacted properties.

3. **Conflicts in the Howard County Zoning Regulations as a result of the Zoning Regulation Amendment.**

**Sec. 131.0.N.1.a.(4)**

The basis for this amendment is that the increased density for ARAH developments was based on data from the 1980's that is not applicable today. This issue would apply universally to ARAH developments in all zoning districts. However, the proposed amendment only reduces the density in the R-ED and R-20 districts and not the other zoning districts that allow ARAH developments as a conditional use: RC, RR, R-12, R-SC, R-SA-8, R-H-ED, R-A-15, and R-APT Districts.

**Sec. 131.0.N.1.a.(5)**

Limiting the size of a dwelling unit is inconsistent with how principal dwellings are regulated, as there are no other square foot maximum size restrictions for principal dwelling units in the Howard County Zoning Regulations. Additionally, ARAH developments are permitted in the

POR, CCT, TNC, R-SI, MXD, and PSC zoning district, but the amendment does not require that 25% of the ARAH dwelling units in these zoning districts be 1,600 square feet or less.

Age-restricted adult housing (ARAH) has a requirement for Moderate Income Housing Units (MIHUs). Currently, "At least 10% of the dwelling units in the RC, RR, R-ED, R-20, R-12 and R-SC Districts, and at least 15% in the R-SA-8, R-H-ED, R-A-15 and R-APT Districts, shall be Moderate Income Housing Units." Typically, MIHUs are designed to blend in with the non-MIHU units in a development. To the extent that smaller units are used to satisfy the MIHU requirement, it could create an unintended outcome of MIHU units being visibly distinct from the rest of the development.

**Sec. 131.0.N.1.a.(10)**

The amendment conflicts with the POR, CCT, TNC, R-SI, MXD, and PSC districts' ARAH community building size requirement, since it does not amend these zoning districts to provide a larger community building for developments with less than 99 dwelling units.

Additionally, while not necessarily conflicts, the amendment to this section, as proposed, contain terminology that needs clarification for proper implementation.

- 1) Section 131.0.N.1.a.5 – "Living space above grade" is not defined in the Zoning Regulations.

These terms would need to be defined for the Department to accurately and effectively calculate the square footages and review proposed plans. Specifically, this definition should articulate what is and what is not considered "living space" included within a proposed structure. This might include or exclude hallways, utility closets, garages, basements, lofts, attics or other spaces, to the extent they are finished. These are details typically provided with the construction plans at building permit stage and typically reviewed by Department of Licenses and Permits.

The regulations should further explain what constitutes "above grade." Such an explanation should account for a variety of topographic site conditions, where a measurement is taken, describe the applicability of elevation, and whether it is intended to include walk-out basements.

- 2) Section 131.0.N.1.a.10 – "Net Floor Area" is defined in the Zoning Regulations as "The sum of the areas of the areas of the several floors of the structure(s) as measured by the exterior faces of the walls, less any area within the structure(s) devoted to parking, vehicular driveways, atria, office building storage areas, or enclosed malls and similar areas." The petition provides a description that is different than the existing definition and should be clarified if the intent is for the general definition to apply more narrowly.

Additionally, Conditional Use Plans typically don't show the details listed in the Net Floor Area description described in the petition. These are details typically provided with the construction plans at building permit stage. Community buildings would need to be fully designed, with all the identified features listed in this section, at the initial stage of zoning approval in order to confirm that the proposed community building on the plan satisfied this requirement and the exterior boundary of the building is shown properly

4. **The compatibility of the proposed Zoning Regulation Amendment with the Policies and objectives, specifically including the environmental policies and objectives, of the Howard County General Plan.**

DPZ finds that the proposed ZRA 198 is not in conflict with the environmental policies and objectives in Plan Howard 2030, the County's general plan. The proposed ZRA 198 does not change the ARAH open space requirement, which is intended to be protective of natural features and accommodate stormwater management.

The R-20 and R-ED zoning districts are located within PlanHoward 2030's Established Communities and Targeted Growth and Revitalization Place Types. These place types are in the eastern half of the county and are inside the planned service area or PSA boundary (see Map 6-2 on page 69).

The General Plan recognizes that the County needs to identify ways to preserve the existing character of established neighborhoods while accommodating some continuing growth and creating opportunities for limited, compatible, infill development such as senior housing for residents wishing to downsize but stay in their communities. (p. 138)

Policy 10.1 of the general plan supports the concept of protecting and enhancing "*established communities through compatible infill, sustainability improvements, and strategic public infrastructure investments*" with the following implementing action "*Flexible Infill: Consider zoning modifications that would provide more flexibility in order to allow limited, compatible infill that enhances an existing community*" (p. 138).

While PlanHoward2030 supports zoning changes in Established Communities that create opportunities for senior housing and allow limited infill that is compatible with the character of a neighborhood, it does not specifically speak to density limitations.

Targeted Growth and Revitalization designated place types represent places in the county where the future County growth should be located. While no precise location is proposed for this amendment and it only pertains to conditional use criteria for age restricted adult housing, the ZRA could limit densities in place types targeted for growth.



### **Housing Policies**

Howard County's location and quality of life has created high housing demand and prices. While Howard County has innovative affordable housing programs that provide options for some households, the overall supply of affordable housing remains limited. Therefore, PlanHoward 2030 has a focus on encouraging diverse and affordable housing options -- especially given the needs of the growing senior population and residents living with disabilities -- and acknowledges that a housing mix of townhomes and apartments typically offer more affordable housing products.

On page 129 of PlanHoward 2030, Policy 9.2 states: "*expand full spectrum housing for residents at diverse income levels and life stages, and for individuals with disabilities, by encouraging high quality, mixed income, multigenerational, well designed, and sustainable communities.*" Implementing action a. of Policy 9.2 encourages a "*Range of Affordable Options by continuing to expand current options for full spectrum, affordable housing through affordable housing requirements in additional zoning districts; increased regulatory flexibility to provide low and middle alternatives to moderate income housing; institution of density or other incentives; use of fee-in-lieu option; accessory apartments; establishment of public, private, and nonprofit partnerships; and promotion of business community support for workforce housing.*"

As outlined above, this general plan policy calls for regulatory flexibility to increase density in exchange for more affordable units, which is not supported by the first element of this ZRA. However, the second element of this ZRA, which establishes a 1,600 sq. ft. limit on one quarter of units, is supported by the policy and implementing action outlined above, to the extent that a smaller unit size achieves a more affordable price point for purchasers. The general plan does not provide specific guidance as to the appropriate size of a senior housing unit or community buildings (as addressed in element three of the ZRA).

*PlanHoward 2030*, Policy 9.4 calls for expanded housing options "*to accommodate the County's senior populations who prefer to age in place.*" The second element of this amendment calls for a variety of ARAH unit sizes, including 25% at a maximum size of 1,600 sq. ft. Therefore, the proposed ZRA is consistent with this policy.

### **Current County Initiatives Relevant to ZRA-198**


Since the adoption of PlanHoward 2030, the County has led initiatives, such as the Housing Opportunities Master Plan Task Force and the Age Friendly Initiative, that have continued discussions related to the need for housing that is affordable to a greater diversity of incomes, especially for the County's senior population. Specifically, the Howard County Housing Opportunities Master Plan (HOMP) recommends that the County consider making land use, planning and zoning changes to facilitate the development of lower-cost and diverse housing typologies, such as, duplexes, triplexes, quadplexes, courtyard apartments, cottage courtyards, live-work units and accessory dwelling units (ADU), throughout the County to address the

shortage of housing units for its low and moderate income workforce and growing senior population. These housing types are also known as “missing middle” housing.

As a part of the County’s General Plan Update, HoCo By Design, a Strategic Advisory Group (SAG) focused on housing was formed. To complement the HOMP recommendations, the group discussed the concept of missing middle housing, which it defined as *“a range of small-to medium-size home choices that seek to offer different price points for residents living in Howard County. Homes are compatible in scale and character with surrounding neighborhoods or integrated into new or existing activity centers throughout the County as a transition between different land uses or building types. Missing middle homes may be represented by a single, multi-unit building on a single lot, or a cluster of homes oriented around a common green space.”* The group discussed the need for this housing type to be “attainable,” meaning that the County should have an adequate supply of housing units that are available and affordable to households of all abilities at various income levels.

The Housing SAG concluded that tools and incentives to allow a broader range of missing middle housing should be created through updating zoning regulations and suggested that the housing units be small to medium size in scale; however, there wasn’t any specific mention of the ideal square footage. To the extent that a smaller sized ARAH unit encourages greater affordability and small-to medium-size home choices for the County’s senior population, the ZRA’s proposed smaller unit size would be supported by the recent studies and engagement outlined in this section.

Approved by:

 8-24-21  
Amy Gowah, Director Date

**Exhibit A**

**Petitioner’s Proposed Text**

(CAPITALS indicate text to be added; text in [[brackets]] indicates text to be deleted.)

Section 131.0.N.1.a

a. Age-Restricted Adult Housing, General

(4) The maximum density shall be as follows:

Zoning District	Number of Dwelling Units in Development	Maximum Units Per Net Acre
RC and RR	20 or more	1
R-ED and R-20	20—49 50 or more	[[4]] <b>3</b> [[5]] <b>4</b>
R-12	20—49 50 or more	5 6
R-SC	20—49 50 or more	7 8
R-SA-8	20 or more	12
R-H-ED	20 or more	10
R-A-15	20 or more	25
R-APT	20 or more	35

CLOSE

**(5) AT LEAST 25% OF THE DWELLING UNITS SHALL HAVE 1,600 SQUARE FEET MAXIMUM OF LIVING SPACE ABOVE GRADE.**

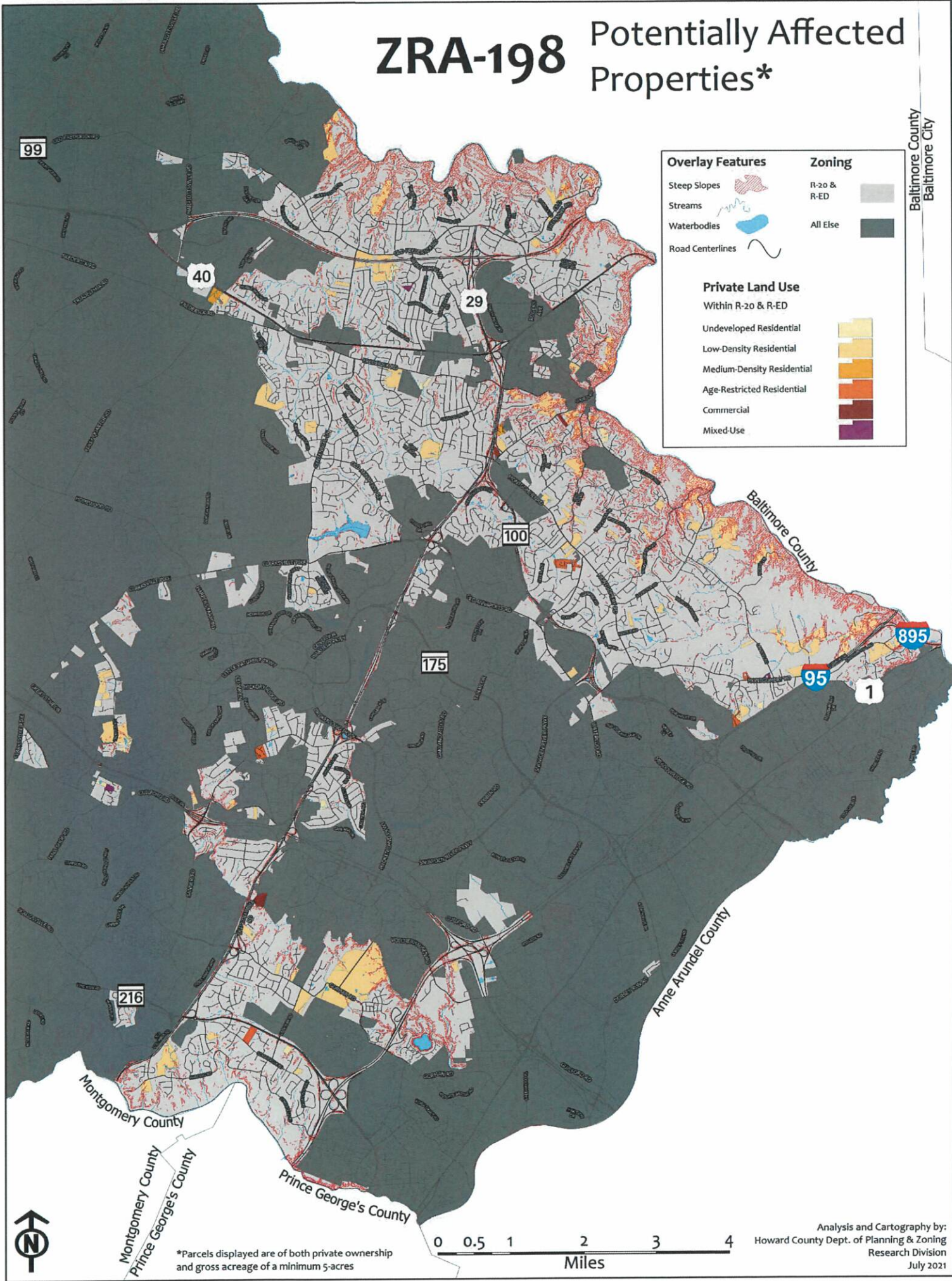
**Renumber subsections (5) through (18) as (6) through (19)**

(10) At least one on-site community building or interior community space shall be provided

that contains a minimum **NET FLOOR AREA AS MEASURED WITHIN THE INSIDE WALLS OF THE BUILDING OR SPACE WITH DEDUCTIONS FOR THICKNESS OF INTERIOR WALLS, COLUMNS, HALLWAYS, STAIRS, RESTROOMS, CLOSETS. UTILITY ROOMS. PANTRIES. KITCHENS OR KITCHENETTES, AND OFFICE ROOMS** of:

- a) ~~[[20]]~~ **30** square feet of **NET** floor area per dwelling unit, for the first 99 units ~~[[with a minimum area of 500 square feet]]~~, and
- (b) 10 square feet of **NET** floor area per dwelling unit for each additional unit above 99.

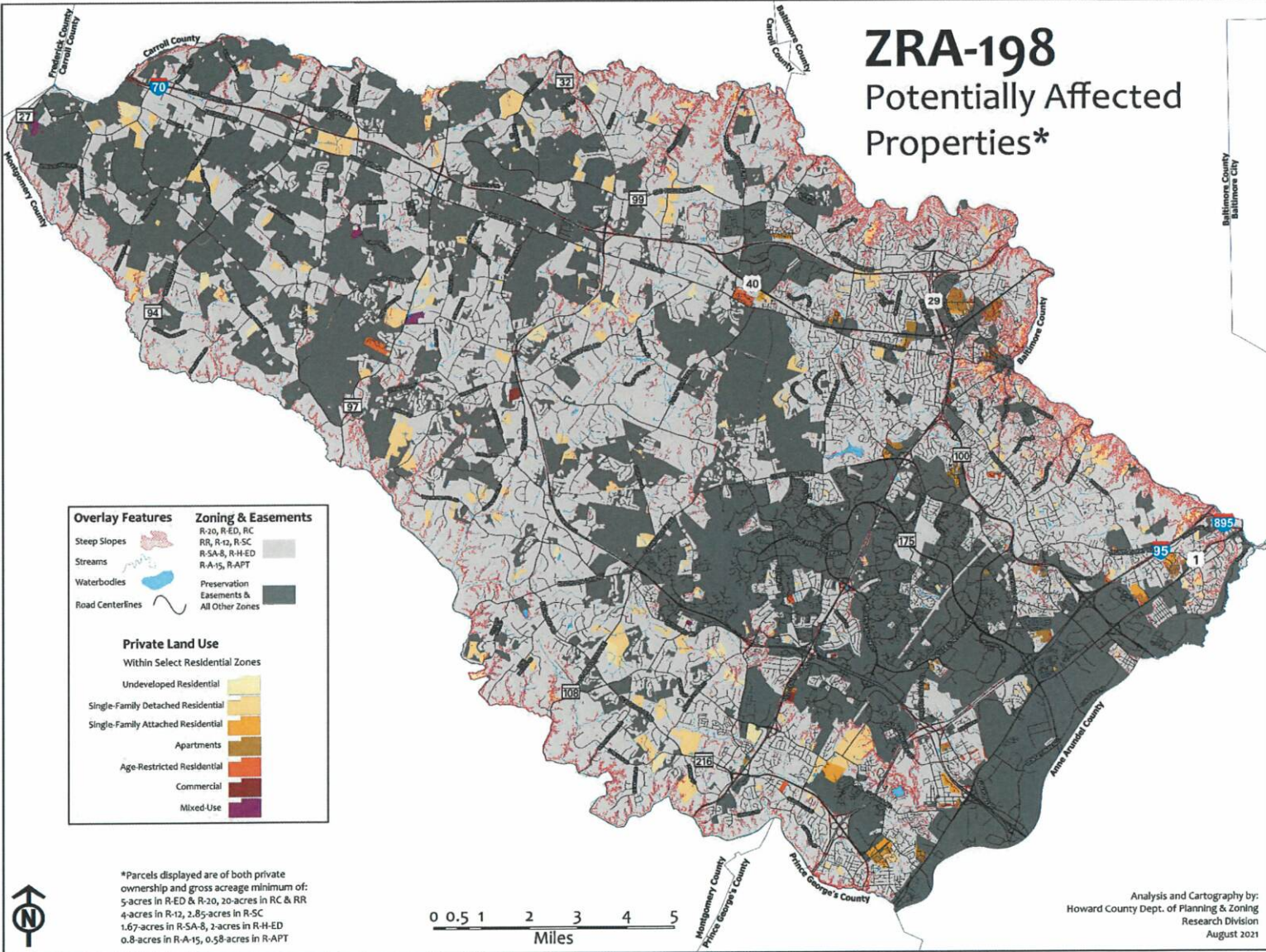
# ZRA-198 Potentially Affected Properties\*



\*Parcels displayed are of both private ownership and gross acreage of a minimum 5-acres

# ZRA-198

## Potentially Affected Properties\*

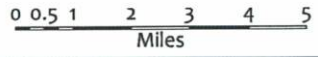


Overlay Features	Zoning & Easements
Steep Slopes	R-20, R-ED, RC
Streams	RR, R-12, R-SC
Waterbodies	R-SA-8, R-H-ED
Road Centerlines	R-A-15, R-APT
	Preservation Easements & All Other Zones

Private Land Use	
Within Select Residential Zones	
Undeveloped Residential	[Light Yellow]
Single-Family Detached Residential	[Yellow]
Single-Family Attached Residential	[Orange]
Apartments	[Dark Orange]
Age-Restricted Residential	[Red-Orange]
Commercial	[Red]
Mixed-Use	[Purple]

\*Parcels displayed are of both private ownership and gross acreage minimum of:  
 5-acres in R-ED & R-20, 20-acres in RC & RR  
 4-acres in R-12, 2.85-acres in R-SC  
 1.67-acres in R-SA-8, 2-acres in R-H-ED  
 0.8-acres in R-A-15, 0.58-acres in R-APT



Analysis and Cartography by:  
 Howard County Dept. of Planning & Zoning  
 Research Division  
 August 2021