

Office of the County Auditor
Auditor's Analysis

Council Bill No. 87-2021 (ZRA 198)

Introduced: November 1, 2021

Auditor: Michael A. Martin

Fiscal Impact:

Our Office cannot determine the fiscal impact of this legislation because we cannot determine the volume and size of future Age-Restricted Adult Housing (ARAH) residential developments in the County.

However, the passage of this legislation would limit the number and potentially the size of future ARAH residential developments in the County and, therefore, may reduce the revenues and expenditures associated with that type of development.

Notable changes with a fiscal impact based on our review of Zoning Regulation Amendment 198 and its associated technical staff report (TSR) prepared by the Department of Planning and Zoning (DPZ) include:

- A decrease of 51 out of 133 eligible ARAH development sites in the Residential: Environmental Development (R-ED) and Residential: Single (R-20) zoning districts due to the proposed unit density reduction. This decrease represents potential ARAH developments that are between 5 and 6.67 acres which would no longer be eligible for development if this legislation passes.
- A reduction in potential residential development revenues and expenditures arising from the cap of 1,600 square feet on at least 25 percent of the units of an ARAH development.
- Decreased unit density in the 82 potential ARAH development sites in the R-ED and R-20 districts which would still be eligible if this legislation were to pass, potentially reducing the revenues and expenditures from the resulting development.

Purpose:

The purpose of this zoning amendment is to revise certain zoning regulations associated with ARAH conditional uses as follows:

- Reduce the maximum number of dwelling units allowed per acre in R-ED and R-20 zoning districts by 1 unit per acre.
- Require 25 percent or more of dwelling units in ARAH developments be capped at 1,600 square feet above grade living space in all zoning districts.

- Increase community building size from 20 to 30 square feet of net floor area per dwelling unit for the first 99 units and remove the 500 square feet minimum area requirement in all zoning districts.

Other Comments:

A proposed development of interest to the petitioner is located at 5263 Kerger Road in Ellicott City. The development would result in an 8.35 acre, 30-unit single-family detached ARAH development, which would need to reduce its planned unit density to below 3 units per acre if this legislation passes. Our Office has been advised that a conditional use petition has been submitted for this development; however, we cannot provide an accurate fiscal impact until the development's plans are approved.

Per the TSR, there has never been an approved ARAH development in a R-ED district. The TSR also details the 5 ARAH developments that have been approved in R-20 districts, which amount to 365 dwelling units in total.

The DPZ confirmed this zoning amendment will apply to all ARAH Conditional Use petitions without a signed Decision & Order from the Board of Appeals or the Hearing Authority prior to the effective date of the legislation.

Since at least 15 percent of the ARAH dwelling units in the R-ED and R-20 districts must be classified as Moderate-Income Housing Units (MIHUs), DPZ indicated this legislation may create the unintended consequence of creating MIHUs that are visibly distinct from the rest of the development if the mandated smaller units are used to satisfy the MIHU commitment.

The Petitioner, Dunteachin Estates Homeowners Association, Inc., submitted a request to address some of the terminology issues identified in DPZ's TSR that could make implementation of this legislation challenging (see **Attachment A**). These include the terms "net floor area," "living space," and "above grade." The DPZ indicated they would look to the Council to resolve any conflicting or subjective language.

**Friendly Amendments
Offered by
Dunteachin Estates Homeowners Association, Inc.
In Response to
DPZ Technical Staff Report on ZRA 198**

Attachment A – CB87-2021

Friendly Amendment #1

DPZ Report

“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 the proposed structure. This might include or exclude hallways, utility closets, garages, basements, lofts, attics, and other spaces, to the extent that they are finished. These are details typically provided with construction plans at the building permit stage and typically reviewed by the 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.

Response

“Living space above grade” is a real estate industry term. Home sale listings provide the square feet of living space above grade. Property tax assessments are based on the square feet of living space above grade. The Maryland State Department of Assessments and Taxation defines “living space above grade” to mean the finished area that is above ground level and excludes attics, basements and garages. A basement where one or more sides is partially below ground level is not considered above grade even if one or more of the walls are 100% above the ground.

Proposed Amendment to Section 103.0: - Definitions

LIVING SPACE ABOVE GRADE : THE FINISHED AREA OF A DWELLING UNIT THAT IS ABOVE GROUND LEVEL. THE TERM DOES NOT INCLUDE ATTICS, BASMEMTS AND GARAGES. A BASEMENT WHERE ONE OR MORE SIDES IS BELOW GROUND LEVEL IS NOT CONSIDERED ABOVE GRADE EVEN IF ON OR MORE OF THE WALLS ARE 100% ABOVE GRADE.

Attachment A – CB87-2021

Friendly Amendment #2

DPZ Report

Age-restricted housing (ARAH) has requirement for Moderate Income Housing Units (MIHU’S). Currently, “At least 10% of the dwelling units in RC, RR, R-ED, R-20, R-12, and R-SC Districts, and at least 15% in R-SA-8, R-H-ED, R-A-15 and R-APT Districts shall be Moderate Income Housing Units.” Typically, MIHU’s are designed to blend in with 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.

Response

The smaller units should be disbursed among MIHU and non-MIHU units. Not more than that 10% of the smaller units should be used to satisfy the MIHU requirement.

Proposed Amendments to Section 131.0: - Conditional Uses

N. Conditional Uses and Permissible Zoning Districts

1. Age-restricted Adult Housing

a. Age-Restricted Adult Housing, General

- (5) AT LEAST 25% OF THE DWELLING UNITS SHALL HAVE 1,600 SQUARE FEET MAXIMUM OF LIVING SPACE ABOVE GRADE. NOT MORE THAN 10% OF THE UNITS MEETING THIS REQUIREMENT SHALL BE MODERATE INCOME HOUSING UNITS.

Attachment A – CB87-2021

Friendly Amendment #3

DPZ Report

The amendment [to Section 131.0.1.a (10)] conflicts with the POR, CCT, TNC, R-SL, 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 units.

Response

The zoning regulation sections pertaining to the R-SI, POR, CCT and PSC districts should be amended to conform to the community building size requirements proposed in Section 131.0.N.1.a (10). The zoning regulations for the TNC district reference the age-restricted housing requirements in the POR district. The MXD district does not contain any requirements for age-restricted housing. Two options are offered below for amending the sections.

Option A – Cross reference proposed amendment to Section 131.0.N.1.a (10)

Proposed Amendment to Section 113.2: - R-SI (Residential: Senior—Institutional) District

E. Additional Requirements for Age-Restricted Adult Housing

4. Community Center

At least one on-site community building or indoor community space within a principal structure COMPLYING WITH THE REQUIRMENTS IN SECTION 131.0.N.1.a (10) shall be provided [[that contains a minimum of:

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

Proposed Amendment to Section 115.0: - POR (Planned Office Research) District

E. Additional Requirements for Age-Restricted Adult Housing

4. Community Center

At least one on-site community building or indoor community space within a principal structure COMPLYING WITH THE REQUIRMENTS IN SECTION 131.0.N.1.a (10) shall be provided [[that contains a minimum of:

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

Proposed Amendment to Section 117.4: - CCT (Community Center Transition) District

E. Additional Requirements for Age-Restricted Adult Housing

Attachment A – CB87-2021

4. Community Center

At least one on-site community building or indoor community space within a principal structure COMPLYING WITH THE REQUIRMENTS IN SECTION 131.0.N.1.a (10) shall be provided [[that contains a minimum of:

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

Proposed Amendment to Section 127.1: - PSC (Planned Senior Community) District

B. Requirements for Planned Senior Community

8. Community Center

At least one on-site community building or indoor community space within a principal structure COMPLYING WITH THE REQUIRMENTS IN SECTION 131.0.N.1.a (10) shall be provided [[that contains a minimum of:

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

Option B –Repeat language in proposed amendment to Section 131.0.N.1.a (10)

Proposed Amendment to Section 113.2: - R-SI (Residential: Senior—Institutional) District

E. Additional Requirements for Age-Restricted Adult Housing

4. Community Center

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 FORTHICKNESS OF INTERIOR WALLS, COLUMNS, HALLWAYS, STAIRS, RESTROOMS, CLOSETS, UTILITY ROOMS, PANTRIES, KITCHENS OR KITCHENEETES, 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.

Proposed Amendment to Section 115.0: - POR (Planned Office Research) District

E. Additional Requirements for Age-Restricted Adult Housing

4. Community Center

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

Attachment A – CB87-2021

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- (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.

Proposed Amendment to Section 117.4: - CCT (Community Center Transition) District

E. Additional Requirements for Age-Restricted Adult Housing

4. Community Center

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 FORTHICKNESS OF INTERIOR WALLS, COLUMNS, HALLWAYS, STAIRS, RESTROOMS, CLOSETS, UTILITY ROOMS, PANTRIES, KITCHENS OR KITCHENEETES, 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.

Proposed Amendment to Section 127.1: - PSC (Planned Senior Community) District

B. Requirements for Planned Senior Community

8. Community Center

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 FORTHICKNESS OF INTERIOR WALLS, COLUMNS, HALLWAYS, STAIRS, RESTROOMS, CLOSETS, UTILITY ROOMS, PANTRIES, KITCHENS OR KITCHENEETES, 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.