



ANNE ARUNDEL COUNTY OFFICE OF LAW

Legislative Summary

To: Members, Anne Arundel County Council

From: Kelly Phillips Kenney, Supervising County Attorney /s/

Via: Gregory J. Swain, County Attorney /s/

Date: March 20, 2023

Subject: Bill No. 21-23 – Zoning – Requirements for Conditional Uses – Housing for the Elderly of Moderate Means

This summary was prepared by the Anne Arundel County Office of Law for use by members of the Anne Arundel County Council during consideration of Bill No. 21-23.

Background

“Housing for the elderly of moderate means” is a conditional use, with the conditions set forth in § 18-10-137.¹ In addition to requiring that the occupants meet certain low and moderate income restrictions, the County Code requires that the property be encumbered by a deed restriction that requires that the rental units be occupied by individuals who are 62 years of age or older. § 18-10-137(1)(i). This provision on its face requires that *all* residents be 62 years of age or older.

It has recently been brought to the County’s attention that many of these projects receive federal or State funding that requires only *one* resident be 62 years of age or older. Some of these funding provisions refer to 24 C.F.R. 5.403, under which the Housing and Urban Development (“HUD”) defines “elderly family” as “a family whose head (including co-head), spouse, or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more live-in aides.”

¹ Housing for elderly of moderate means is allowed as a conditional use in the R2, R5, R10, R15, and R22 Zones. See § 18-4-106.

Note: This Legislative Summary provides a synopsis of the bill as introduced. It does not address subsequent amendments to the bill.

Purpose

The purpose of Bill No. 21-23 is to revise the conditions of § 18-10-137 to allow projects that receive government funding to restrict the age of the residents in line with the criteria in federal law discussed above.²

Bill No. 21-23

SECTION 1.

This section repeals § 18-10-137(9), which currently provides, “The deed restrictions contained in this section shall be enforceable by the County or its designee.” This enforcement language is moved into paragraph (1).

SECTION 2.

Subsection 18-10-137(1) is revised to change the requirement for a “deed restriction” to a “covenant”. The language from existing paragraph (9) that provides for the enforcement by the County or its designee is moved into paragraph (1) for clarity.

Subparagraph (1)(i)1. is existing language broke out into a separate item number that requires all individuals to be 62 years of age or older Subparagraph 2. is new and provides that, for a development funded in whole or in part with government funds contingent on adherence to the definition of “elderly family” in 24 C.F.R. 5.403 (as set forth above), the units may be occupied by a family whose head (including co-head), spouse, or sole member is a person who is at least 62 years of age or older.

² In Bill No. 97-19, the conditions in § 18-10-137 were changed from requiring one resident to be 62 years of age or older to requiring all residents meet the age restriction. The language was modified to conform to the Fair Housing Act (“FHA”). The FHA prohibits discrimination against families with minor children, but it creates a “safe harbor” provision for housing that qualifies as “housing for older persons”. In other words, the owner of a property that meets the definition of “housing for older persons” is generally not subject to a discrimination claim under the FHA if families are not allowed.

“Housing for older persons” means housing--

- (A) provided under any State or Federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or
- (B) intended for, and solely occupied by, persons 62 years of age or older; or
- (C) intended and operated for occupancy by persons 55 years of age or older, and--
 - (i) at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older;...

42 U.S.C.A. § 3607.

The current condition in § 18-10-137 comports with paragraph (B). The C.F.R. provision that is the basis of the change in the current Bill is a funding-eligibly requirement, not a FHA requirement. It is our understanding that when an elderly family is not eligible to live in a community that falls under the new category in this Bill, it would be due to failure to meet the funding criteria and not a basis for familial status discrimination under the FHA.

SECTION 3.

This section provides that the Ordinance shall take effect 45 days from the date it becomes law.

The Office of Law is available to answer any additional questions regarding this Bill. Thank you.

cc: Honorable Steuart Pittman, County Executive
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