IN THE MATTER OF	*	BEFORE THE
2907 DUNLEER ROAD	*	BOARD OF APPEALS OF
	*	BALTIMORE COUNTY
	*	Case No.: 21-105-SPHXA

* * * * * * * * * * * * *

CLOSING ARGUMENT MEMORANDUM

Ann and Sharon Sparks, two of the Protestants, by their undersigned counsel and pursuant to the instructions of the Board of Appeals for Baltimore County (the "Board") at the conclusion of the hearing(s) held in the above referenced matter on November 18 and 23, 2021, hereby submit the following Memorandum, in lieu of closing argument, for the Board's consideration.

Introduction/Summary of Argument

The Petitioner's original petition, presenting nearly all of the same evidence, was denied by ALJ Maureen Murphy ("ALJ Murphy") in a well-considered and well-articulated written opinion (all of which is incorporated herein by reference). That Opinion, and the arguments and evidence recited herein, succinctly set out the numerous reasons why the Board must deny all of the relief requested by the Petitioner.

In essence, the Petitioner is attempting to subdivide and intensify the use of non-conforming structures, with a completely new use that is not even permitted in the zone, and in so doing eviscerate every setback and buffer protection protecting the surrounding neighborhood. At the outset, it should be noted that this subdivision and intensification of non-conformance, for a wholly new use, is clearly disfavored/disallowed under Maryland law (which seeks to eliminate, not expand, non-conformance). Even leaving that overarching issue aside, however,

there are several reasons (as found by ALJ Murphy) that the Petition must be denied as a matter of law.

First, the Petitioner has failed to establish that it can meet the BCZR criteria for a "community care center." The special exception request must be denied as a matter of law for this reason alone. Even assuming, *arguendo*, that the proposed use did meet the definition, the BCZR § 502.1 and *Schultz* factors indicate that the request for this particular location must also be denied. Thirdly, the Petitioner's request for a waiver of the Residential Transition Area ("RTA") requirements must be denied as a matter of law because the Petitioner has failed to establish the evidence required to meet any of the stated exceptions to the RTA. Lastly, the variance relief must also be denied because the property cannot be deemed "unique" as a matter of law. All of these issues are addressed below.

Argument

The Board must deny the Petitioner's requests for the same reasons ALJ Murphy denied the requests.

I. The Petitioner's proposed use does not meet the criteria for any allowed use within this zoning.

The Petitioner argued to ALJ Murphy below that its proposed use fits the definition of various uses allowed by special exception in a D.R. zone (as a "boarding/rooming house", a "community building" or "community care center").[1] ALJ Murphy correctly found that the proposed use did not fit the criteria for *any* of these categories. In its closing argument memorandum to the Board, the Petitioner appears to have conceded that the majority of these proposed uses do not apply, and now relies solely on the argument that its proposed use qualifies

[1] The fact that so many alternatives were proposed is an indication that no one use/category clearly applies.

as a "community care center." The Board must reject that argument for the same reasons that ALJ Murphy did.

In order to qualify as a "Community Care Center," in a D.R. Zone, the Petitioner's proposed use must meet the definition set out in the Baltimore County Zoning Regulations (the "BCZR"). Those regulations define a community care center as:

> COMMUNITY CARE CENTER — A small-scale facility, sponsored or operated by a private charitable organization or by a public agency and licensed by the Maryland State Department of Health and Mental Hygiene or by the Maryland State Department of Social Services, for the housing, counseling, supervision or rehabilitation of alcoholics or drug abusers or of physically or mentally (including emotionally) handicapped or abused individuals who are not subject to incarceration or in need of hospitalization.

BCZR § 101.1.

The Board should find, as ALJ Murphy did, that the proposed facility will not be "small in scale," and thus outside of the definition provided by the BCZR. ALJ Murphy looked to the proposed use of the Property and found that the Petitioner's proposed development would involve creation of fifteen (15) separate living facilities for families with their own amenities, and a separate office space to be used by the FCC's employees. *See* ALJ Opinion, p. 12-13. In it's presentation to the board, Amie Post of the Family Crisis Center (the "FCC") stated that the FCC had revised it plans to now only provide for twelve living spaces with amenities, but that does not change the fact that this will not be a small scale living facility. Each of the units will have its own amenities and will provide for families to live in the units, not single individuals. In fact, Ms. Post stated that the switch to twelve units would allow for larger family units, and, as such, the reduction will not lead to a decrease in the total population living at this facility. Amie Post also admitted that the residents would certainly be free to have guests, further contributing to the total number of people on site. As such, the Board should find the living space is, in and

of itself, not "small in scale." The proposed development does not only include the living space however, but also the FCC's new office location on the site. Amie Post testified that she intended this new space to be main administrative location, even moving her own office as CEO to the new location. She testified that FCC staff will use and occupy the office space. While Ms. Post attempted to minimize the number of office staff that could be there at any one time, it is clear that the use of this space will be typical office/business use by the FCC and its staff. On cross-examination, Ms. Post admitted that, like any office, there would be delivering, servicing, and other third-parties coming and going from the office location on any typical day. In essence, the new central FCC office location will operate as any typical office location would, including all of the ancillary business activity. Taken together, these two facilities (the multiple family living area and the FCC's office space) are not a "small scale" operation, as ALJ Murphy so found. Based on the evidence presented to the Board, it should make the same finding.

The Board should also find, as ALJ Murphy did, that the proposed facility will not be "licensed by the Maryland State Department of Health and Mental Hygiene or by the Maryland State Department of Social Services." The Petitioner admits it is not licensed by either of these two entities, and this factual finding cannot be in dispute. Because it is not licensed by one of these entities, the proposed use cannot qualify as a "community care center" as defined by the BCZR. As set out above, the BCZR definition provides that licensure from one of these two entities is a prerequisite for meeting the definition of a community care center under the code. The Board must therefore find, as AJL Murphy did, that the Petitioner's proposed use cannot meet the strictly defined terms provided for in the BCZR for a "community care center."

The Board cannot allow a special exception use that is not provided for by the BCZR, and the Petitioner's argument that it is, essentially, "close enough" to qualify as a "community

care center" is legally insufficient. Maryland law provides that zoning ordinances must be strictly construed. *See*, *e.g.*, *County Council of Prince George's County v. E. L. Gardner, Inc.*, 293 Md. 259 (1982)(and cases cited therein); *see also Purich v. Draper Properties, Inc.*, 395 Md. 694, 712, 912 A.2d 598, 609 (2006) and case cited therein); *Heath v. Mayor & City Council of Baltimore*, 190 Md. 478, 481, 58 A.2d 896 (1948). In light of this principal, the Board does not have discretion to disregard the definitional requirements of the BCZR, or fashion new or additional uses not provided for in the ordinance. Here, the zoning regulation contains a clear and mandatory requirement (licensure by one of two state agencies), and that requirement in unambiguous. Under the cannons of statutory construction, the Board must give effect to clear and unambiguous language of the ordinance and is not permitted to consider patrol evidence to vary that construction.

Even if that were not the case, the Board should reject the notion that this regulation is "obsolete" based on the very legislative history cited by the Petitioner in its closing memorandum. The triggering event that rendered the ordinance obsolete, according to the Petitioner, occurred in 1975 when state agencies changed names. The actual amendment to the Baltimore County zoning (that required the state license as a condition) was not added until 1979. Presumably, Baltimore County was aware of the change when it enacted the requirements in 1979, and certainly could have included the new entities as permitted licensors if it desired. Moreover, in over 40 years since then, Baltimore County has not altered this requirement, a clear indication that the ordinance is written as intended. As such, even were the Board permitted to consider parol evidence (which it is not), it should still find that the ordinance is not "obsolete," and is thus not capable of being rewritten by the Board.

The argument that the Board can permit a community care center, despite the lack of licensure from the required state entity, has also already been rejected by this Board in a similar case, and, as such, this argument should be rejected here under the principal of *res judicata*. In the case of *In Re: associated Catholic Charities, Inc.*, Case No. 13-103-SPHXA (the "St. Luke's case"), a petitioner argued that he should be considered a community care center, despite not having the required state license, because the petitioner essentially served the same role. This is exactly the same argument presented by the Petitioner here. In the St. Luke's case, the Board strictly construed the requirements of this exact zoning regulation and found the requirement for state licensure *mandatory*. Under the rationale of that holding, the Board must also reject the Petitioner's argument that it is close enough to the requirements to qualify. ALJ Murphy found, under that holding, that the state licensure requirement was mandatory, and the Board must do the same under the holding in the St. Luke's case, as *res judicata*.

For all these reasons, the Board must find that the Petitioner's proposed use does not qualify as a community care center, and is thus not permitted by special exception (independent of any adverse impact issue). The Board must therefore deny the Petitioner's request for a special exception for this reason alone.

II. Even if the proposed use qualified as a "Community Care Center," the special exception factors under *Schultz* and BCZR § 502.1 warrant rejection of the petition.

Even if the Board were to find that the proposed use qualified as a "community care center" under the BCC, it still must analyze whether this proposed use satisfies the factors set forth in the *Schultz* case, as well as the factors under BCZR § 502.1. Analysis under both of these tests indicates that the proposed use would cause an impermissible level of harm in this particular location, even if it did fit the zoning definition of a community care center.

A. The BCZR § 502.1 factors indicate that the petition must be rejected.

In order to grant a special exception use within a zone, the Board must make certain finding under the BCZR related to adverse impacts created by the use at this particular location. The Baltimore County Zoning Regulations provide that:

> § 502.1. - Conditions determining granting of special exception.
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> Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:
>
> A. Be detrimental to the health, safety or general welfare of the locality involved;
> B. Tend to create congestion in roads, streets or alleys therein;
> C. Create a potential hazard from fire, panic or other danger;
> D. Tend to overcrowd land and cause undue concentration of population;
> E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
> F. Interfere with adequate light and air;
> G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
> H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor
> I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone, and for consideration of a solar facility use under Article 4F, the inclusion of the R.C. 3, R.C. 6, and R.C. 8 Zones.

BCZR § 502.1.

The Board heard evidence indicating adverse impact under the several of these criteria. First and foremost, the Board heard evidence under Factor G, that the proposed use is inconsistent with overall character of the existing neighborhood, a central issue in this case. The Board also heard evidence, however, under factors A (health, safety, and general welfare), B (congestion in roads), and D (overcrowding and undue concentration), all of which also indicate the Board should deny the petition.

1. The proposed use is inconsistent with the spirit and intent of this neighborhood.

Every neighboring homeowner who testified in opposition to the Petitioner's proposed development was consistent that this proposed use was, in essence, a business use that was being improperly placed in the midst of a single-family-home neighborhood. The Board heard considerable testimony from the neighbors and received multiple photos demonstrating the character of the neighborhood. Particularly to the west and south of the property, the neighborhood consists of single family, detached homes with yards. The Sparks and other neighbors testified that was a close-knit community of homeowners, who have been fighting to preserve the character of their community over many years, and have been fighting to stem the continuing encroachment of business uses and other social services into their residential area. The special character of the neighborhood has even been afforded special recognition/protection by Baltimore County, as the Board heard evidence that the neighborhood is part of the Old Dundalk Neighborhood and is within the boundaries of the Greater Dundalk-Edgemere Community Conservation Plan adopted by Baltimore County in 2000.

The Board must find, as ALJ Murphy did, that the proposed use would be inconsistent with the character of this neighborhood. As recounted above (and as found by the ALJ), the proposed use will be a business use with associated apartments. *See* ALJ Opinion, p. 14. The entire Parrish Hall will be renovated into offices and meeting rooms for use by the FCC. Amie Post confirmed that the FCC will be the owners and operators of the entire site, including the Parrish Hall. The facilities will not be open to the public, but will instead only serve the FCC's staff and their residents (i.e., in other words it will operate as a private business). With limited parking on the site (intended to serve not only FCC's business use, but also the existing Church population), will inevitably cause an overflow of this business use into the residential

neighborhood, which already has very limited street parking (as many neighbors testified to, and as the ALJ found below, *see* ALJ Memorandum, p. 14-15). Residents will be able to bring and park their vehicles on site, as will any children or guest of the residents who wish to park there. As ALJ Murphy found (and the Board received testimony), that the FCC office space will receive the same third-party visitors/service people that any office location would (i.e., vendors, counselors, inspectors, etc.), which will only further exacerbate the business "spill" into the neighborhood.

As such, the Board must find that: a) the existing neighborhood is primarily residential in nature (consisting of single family, detached homes), and b) placing this business use with associated apartments in this area would be inconsistent with the existing character of the neighborhood, and thus in violation of factor G of BCZR § 502.1.

2. <u>The proposed use would cause other cause other adverse impacts to this neighborhood</u>.

Other factors under BCZR § 502.1 have been implicated by the testimony heard by the Board and indicate that the proposed use is not appropriate in this location as a special exception.

First and foremost, the proposed parking is woefully inadequate for this site. As ALJ Murphy correctly noted, the BCZR requires 1 parking space for every 4 seats located in a church (or 63 spaces for a 250-seat church, as here). The Petitioner's plan calls for a *total* of 39 spaces to be jointly used by the church and the new FCC business use with associated apartments. This is a drastic departure from what the regulations require, and a clear indication that there will necessarily be spillover congestion in the surrounding streets and alleys, which is a factor this Board must consider. The required number of parking spaces is based on experience and expectation formed by the County, and the Board should not allow the Petitioner to side-step this important issue, particularly given all the other issues presented (and exceptions requested) by

the proposed development. The Board has heard from multiple residents concerning the ongoing parking and congestion issues. The lack of adequate parking under the code for this development, coupled with the addition of a business/office with related apartments (and all the related activity that entails), makes it clear that the proposed development, in this particular location, will create "congestion in roads, streets or alleys" under factor B of BCZR § 502.1.[2]

It is also clear from the testimony and evidence presented that this development will serve to overcrowd an already overcrowded piece of property. Many, if not most, of the existing structures on the property are "non-conforming," in that they were built before certain zoning enactments, and sit too close to various setback and buffer lines. While the law allows such non-conformance to remain as is, continued non-conformance is disfavored, and the law expects/hopes to eliminate such non-conformance over time. For this reason, the law strongly prohibits a property owner from attempted to expand/change/intensify an already non-conforming use. Subdivision of the property, and associated development into a new use, as the Petitioner is attempting here, is certainly an intensification of the use of the Property. If an owner attempted to construct the existing structures today, as is, they would not be permitted to, because the structures simply would not fit into this property under the current zoning. The Petitioner here, however, seeks not only subdivide and intensify the use of the property, but even to build an addition that *further* encroaches into the setback areas. The sheer number of variances (and the waivers of the RTA requested, discussed below) indicate that this will be an

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[2] The Petitioner's contention that the congestion caused by its proposed use would be less than caused by the school when it ceased operation more than 15 years ago is legally irrelevant. First, the applicable timeframe is an increase over the present situation, not some situation which may or may not have existed well in the past. Second, as ALJ Murphy pointed out in her Opinion, school use is of right, and hence the traffic generated by it is expected and allowed. As a proposed special exception, the Petitioner's use enjoys a less-favored position, and must establish that the traffic/parking it generates will not have a negative impact on the current situation, which is already poor.

overcrowded development for this site. The Board can and should reject the special exception on this basis (factor D) as well.

Lastly, many of the neighboring homeowners testified about the potential safety concerns that will be created by placing the FCC office and the associated apartments in this neighborhood. The FCC will use this space to house individuals who are fleeing domestic violence. Many of the residents, rightfully so, fear that the domestic violence (i.e., the abuser) will follow the victim to their new location, creating a safety risk for the neighborhood (as well as, obviously, the victim). While the FCC has argued that it has taken steps to minimize this risk, it cannot be eliminated, as it is inherent in housing victims of domestic violence. The Board can and should consider the safety hazard to a residential neighborhood if this type of business operation is placed in its midst, as a factor (factor A) weighing against granting a special exception.

B. The *Schultz* factors indicate that the petition must be rejected.

In the *Schultz* case (and its progeny), the Court of Appeals recognized that, to a certain extent, all special exception uses have some negative impact on the surrounding area. In some places, however, this negative impact is felt to a greater extent that it would be if the use was located in another area. In such a situation, a finder of fact is permitted to reject the proposed use at that particular location. In often quoted language, the Court held that:

> These cases establish that a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone.

Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981); *see also People's Counsel for Baltimore County v. Loyola Coll. in Maryland*, 406 Md. 54, 89, 956 A.2d 166, 187 (2008).

In the present circumstances, the proposed use placed at this location will have an adverse impact that is greater than if the proposed use were placed in another location. Similar to the argument recounted above, the proposed use will be a business use with related apartments. Placing this type of operation in the midst of a single-family neighborhood will have a negative impact that is much greater than if it were place in a more "commercial friendly" areas, even some close by. For example, many of the resident testified about other areas of Dundalk that are not so residential in nature (such as, for example, the area surrounding where the FCC is currently located) as potential locations for this operation. The holding in the *Schultz* case indicates that, because placement of the FCC office in this neighborhood would have a negative impact not felt in those other areas, the Board should deny the special exception request.

For all these reasons, even assuming *arguendo*, that the Board determines the Petitioner's proposed use meets the code definition of a "community care center," it must still deny placement of that business in this neighborhood, under either the BCZR § 502.1 factors, or the test articulated in *Schultz*.

III. <u>The Petitioner has not met its burden to show adequate legal justification for any exception to the RTA requirements, and the Board must thus deny these special hearing requests</u>.

The Property is subject to the Residential Transition Area (RTA) contained in the Baltimore County Code. The requirement exists to protect/screen residential areas from other uses (such as proposed here), by requiring a "buffer" area between the uses. In addition to requesting that the Board allow an improper special use, it also seeks to totally eviscerate this protective requirement, to the detriment of the surrounding neighborhood. As ALJ Murphy correctly found, however, the Petitioner has failed to meet its burden of producing evidence that

would justify an exception to the RTA requirement. The Petitioner's arguments and evidence before the Board suffer from the same legal deficiencies and must therefore likewise be rejected.

There is no dispute that the RTA applies to this Property. The zoning regulations provide for a RTA if the property to be developed is zoned D.R. and is adjacent to a DR1, 2, 23.5, 5.5, or RC zoned property which contains a single family detached, semi-detached, or duplex within 150 feet of the property line. *See* BCZR 1B01.1.B.1.b. Several surrounding properties meet this requirement, as such, and proposed development of the Property must provide for the RTA, unless an exception applies.

None of the exceptions offered by the Petitioner apply, as correctly found by ALJ Murphy. The Petitioner has argued that it should be allowed to waive the RTA requirements under either BCZR 1B01.1.B.1.b.(g)(9)(referred to herein as "Exception (g)(9)"), or 1B01.1.B.1.b.(g)(10)(referred to herein as "Exception (g)(10)").

Exception (g)(9) provides an exception for:

> (g)(9) An addition to an existing community building, or other structure devoted to civic, social, recreational, fraternal or educational activity, including parking areas and driveways, provided all other applicable zoning regulations, including setback, parking, and screening requirements, are maintained.

As the ALJ found, Exception (g)(9) clear does not apply here for two reasons. First, this is no "existing" community building, and, even if there were, setback and other requirement will *not* be maintained. Because the proposed use is outside of the statutorily defined exception, the Board does not have legal authority to grant an exception to the RTA on this basis of Exception (g)(9).

Exception (g)(10) provides an exception for:

(g)(10)A new community building, or other structures devoted to civic, social, recreational, fraternal or educational activity, if the Zoning Commissioner determines during the

special exception process that the proposed improvements are planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and that the special exception can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises.

As the ALJ found, Exception (g)(10) does not apply because the proposed use will not "be compatible with the character and general welfare of the surrounding residential premises," for all of the reasons articulated above, which are incorporated herein. Secondly, the building will not be a "community" building (such as the nearby YMCA) because it does not serve the community as such, but only serves the clients of the FCC, and is not open to the public. For both of these reasons, the Board does not have legal authority to grant an exception to the RTA on the basis of Exception (g)(10).

Because the Petitioner has failed to meet its burden in establishing the applicability of an exception to the RTA, the Board must reject the Petitioner's request to waive the RTA and require it to be honored in any proposed redevelopment of the Property, or any change in the use of the use of the Property (whether that be proposed changes in parking, or associated with alterations to use/structures on the Property). Because the exceptions do not apply as a matter of law (as ALJ Murphy found), the Board must reject the request to waive the requirements of the RTA.

IV. <u>The Board must deny the variances requested because the Petitioner has not shown the Property is "unique" as that term is used under variance law</u>.

As the Board correctly noted, whenever a property owner seeks approval of a subdivision of his or her property, the owner must bring the property into compliance with the existing setback and area requirements. This is true even if the existing structures pre-dated the setback and area requirements, because, while the law will allow a non-conforming use to remain in place, it will not allow that non-conformance to be intensified or continued under a new

development. In order to allow the development of this non-conforming property to proceed, the Petitioner has asked the Board to completely gut the setback requirements for this property—in 19 separate areas—for its proposed development and additions to the property.

The *only* basis for the requested variances is the nature of the structures on the property, and the development of the surrounding property. Under clear and unequivocal Maryland law, this type of situation **cannot**, as a matter of law, render the property "unique," which is an absolute requirement before variance relief can be granted.

The applicable law in this area is well stated in *Cromwell v. Ward*, 102 Md. App. 691 (1995), and the cases cited therein, particularly the case of *North v. St. Mary's County*, 99 Md. App. 502, 638 A.2d 1175 (1994). In *Cromwell*, the Court set out the general two-step test that must be employed before variance relief can be granted. As the Court stated, before a finder of fact can consider the second step (whether there is "practical hardship"), they must first find that the property at issue is "unique" as that term is defined in this context.

In discussing what does and does not qualify a property as unique, the Court quoted the decision in *North v. St. Mary's County*, in order to determine that uniqueness cannot, as a matter of law, stem from either: 1) the extent of improvements upon the property, or 2) the extent of improvements on the surrounding property. Instead, the uniqueness must relate to some inherent physical condition of the property. The Court in Cromwell quoted this portion of *North v. St. Mary's County* to elucidate the point:

> In *North v. St. Mary's County*, 99 Md. App. at 512, 638 A.2d 1175, we held that the ordinance there required a finding that "special conditions or circumstances exist that are peculiar to the land...." We there stated that, in the zoning context, the term "unique" has a customized meaning:
>
>> In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes

> requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.

Cromwell, 102 Md. App at 709; *see also AD + Soil, Inc. v. County Comm'rs*, 307 Md. 307, 513 A.2d 893 (1986); *In Red Roof Inns, Inc. v. People's Counsel*, 96 Md. App. 219, 224, 624 A.2d 1281 (1993).

As the Court clearly held, uniqueness cannot be based on "the extent of improvements upon the property, or upon neighboring property." If a property owner seeks variance relief solely on this basis, it cannot be granted as a matter of law. *See id.*

That is exactly the situation now confronted by the Board. The petitioner seeks 19 forms of variance relief, but bases those requests solely on the existing (and proposed) development on the Property, as well as its proximity to development on the surrounding property. The petitioner's own witness, Kevin Anderson, confirmed there was nothing physically unique about this property, such a topography, rivers, etc. The Petitioner's closing argument memorandum admits this dispositive fact as well. It is clear that the relief is solely based on the configuration of the existing development on the property, the location of the proposed additions, and the proximity to development on surrounding properties. Again, all of these claims of uniqueness relate to development on the property or development of the surrounding property. Even the Petitioner's assertion that the Property *may* be eligible for historic designation relates to the existing development on the Property.[3] Even were the Board to base its decision on what may or may not occur in the future (which is not permissible in and of itself), it would not change the

[3] The Petitioner's Memorandum admits any potential designation does not currently prohibit the existing non-conforming structures from being demolished and/or rebuilt/reconfigured in conformity with the setback and area requirements.

law: that the existing development on a piece of property cannot render that property unique for variance purposes.[4] Because of this principal, the Board must find that the Property is not unique, and therefor must decline the variance relief requests, as a matter of law.

Conclusion

For all of the above referenced reasons, The Board must deny all relief requested by the Petitioner.

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[4] Instead, this is what the law refers to as a "self-made hardship." The FCC contracted to purchase property with non-conforming structures on it, and now finds itself unable to comply with the zoning in its proposed subdivision/redevelopment plan. Nothing about this situation renders the property "unique" under the law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of January, 2022, a copy of the foregoing Closing Argument Memorandum was served via email and regular mail on:

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