IN THE MATTER OF ST. RITA'S ROMAN CATHOLIC CONGREGATION, INC., LEGAL OWNER FAMILY CRISIS CENTER OF BALTIMORE COUNTY, CONTRACT PURCHASER PETITIONERS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCES ON THE PROPERTY LOCATED AT 2907 DUNLEER ROAD	* * * * * * *	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 21-105-SPHXA

12TH ELECTION DISTRICT
7TH COUNCIL DISTRICT

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PETITIONERS' REBUTTAL MEMORANDUM

I. A COMMUNITY CARE CENTER CARING FOR VICTIMS OF DOMESTIC ABUSE IS PERMITTED IN BALTIMORE COUNTY.

Protestants are incorrect in stating that the proposed Community Care Center for victims of domestic abuse should not be permitted because it does not have Maryland State Department of Health or State Department of Social Services certification. Following Protestants argument, no Community Care Center for domestic abuse would be permitted in Baltimore County.

Community Care Centers are permitted by special exception in the D.R. zones. That means that the Baltimore County Council has determined that a Community Care Center should be permitted in a residential zone and is compatible with D.R. uses, including residences, absent a finding that there are unique conditions peculiar to the land which would make the use injurious to the health, safety or general welfare of the neighborhood. See *Schultz v. Pritts,* 291 Md. 1, 432 A.2d 1319 (1981).

In County Council Bill No. 142-79, the definition of Community Care Center was specifically amended to provide facilities for "abused individuals". This class of people was not included in the original definition. There would have been no point in adding in the language if the "housing, counseling, supervision or rehabilitation" of such persons had to be limited to organizations licensed by the Maryland Department of Health and Mental Hygiene or the Maryland State Department of Social Services because such facilities were supervised by another agency. The intent of the legislation should be furthered over the obsolete reference to a now non-existent State Department. The point of the legislation is that the private entity should be subject to the supervision of a State agency, which is the function of the Governor's Office of Crime Control and Prevention. The court decisions cited in Petitioners' Memorandum are clear that attention must be paid to the intent of the legislation, especially after the passage of over four (4) decades and the succession of various State departments and agencies.

Protestants argue that the zoning ordinances should be strictly construed, but the cases it cites for that proposition are not relevant. Both *Purich v. Draper Properties*, 395 Md. 694, 912 A. 2d 598 (2006) and *County Council of Prince George's County v. E. L. Gardner, Inc.*, 293 Md. 259, 443 A.2d 114 (1982) were construing the provisions with respect to non-conforming uses which had to be strictly construed in order to effectuate the purpose of eliminating non-conforming uses. In *Heath v. Mayor and City Council of Baltimore,* 190 Md. 478 at 484, 58 A.2d 896 (1948) the Court stated: "… a provision of the ordinance for an exception to the general rule should be strictly construed." Neither the issue involved in that case nor the reference to strict construction is apt in this matter.

Of more relevance to this matter is the opposite argument that zoning ordinances "should be liberally construed to accomplish their plain purpose and intent". *Stansbury v. Jones,* 372 Md.

172 at 187, 812 A.2d 312 (2002). Judge Cathell for the Court quoted from *Landay v. Board of Zoning Appeals*, 173 Md. 460, 466, 196 A. 293 (1938) saying "in a constitutional sense, the only justification for the restrictions… on the use of private property is the protection of the public health, safety or morals." Perhaps of even more relevance is B.C.Z.R. §601.1:

> "If any section, paragraph, subdivision, clause or provision of these regulations shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provisions so adjudged, and the remainder of the regulations shall be deemed valid and effective.
>
> The Board of County Commissioners of Baltimore County hereby declares that it would have adopted these regulations and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid."

The mention of the obsolete "Board of County Commissioners" and the failure to change the wording after 65 years does not render this regulation void. Rather, as with the definition of Community Care Center the intent of this section is to make sure that the primary intent of the definition of a Community Care Center is kept intact.

According to Protestants' argument, housing of victims of domestic abuse cannot be covered by the definition of a Community Care Center, and because the housing of such victims cannot meet the requirements of a boarding house due to privacy requirements, such "housing, counseling, supervision or rehabilitation" afforded to others covered by the definition are to be denied victims of domestic abuse in Baltimore County. C.f. *Kowalski v. Lamar*, 25 Md. App. 493, 334 A.2d536 (1974) (uses not listed in the zoning classifications are not permitted in the zone). This interpretation not only conflicts with the intent of the County Council but also with requirements of State law on Baltimore County to provide such facilities. It is shocking to conclude that these victims are not to be provided housing and counseling in Baltimore County because of an obsolete reference in a 1979 ordinance.

It is also shocking to conclude that the housing of victims of any sort of crime or violence is a "commercial" use not fit for a residential community. These victims are our residents. By law, they must reside in Baltimore County. By providing housing, counseling and assistance for these victims, government is providing only the most basic of services to its residents. Thankfully, the County Government recognized this need over forty (40) years ago and provided a solution stating that Community Care Centers were appropriate in residential settings.

Protestants' argument that the decision of *In Re: Associated Catholic Charities, Inc.*, Case No. 13-103-SPHXA ("St. Luke's") is *res judicata* ignores the most basic elements of *res judicata*. In *Seminary Galleria, LLC v. Dulaney Valley Improvement Association*, 192 Md. App. 719, 995 A.2d 1068 (2010) the Court described at length the characteristics of *res judicata*. *Res judicata* is a legal determination that the cause of action or claim brought in a prior case by the same parties bars a subsequent claim that was decided or could have been raised and decided in the previous case. None of the characteristics that would lead to a finding of *res judicata* are present before the Board. There is no common identity of parties and certainly not the same issue presented. The St. Luke's case pertained to housing elderly women, who may otherwise be homeless. The Board found that it was a boarding house. There was no State oversight and no County oversight of the facility. There were no requirements of confidentiality which apply to abuse victims.

II. THE PROPOSED USE IS SMALL IN SCALE.

The Petitioners are seeking to allow twelve (12) living units in a large, three story former school. They are also seeking meeting rooms in what is now essentially a community center facility. The Zoning Regulations permit dozens of adults in Community Care Centers in the R.C. zones. See B.C.Z.R. §1A01.2.C.6. These facilities in the R.C. zones are still considered small in scale. If Protestants are concerned over the number of children which might occupy the units,

such concern certainly was not evidenced in Protestants' testimony of the "good old days" when a school for over 900 children existed on the premises. The twelve (12) adults living in the units are entitled, as are all adults, to have children, and Baltimore County has never put in a regulation limiting the number of children in a family. Victims of abuse should not have to undergo a litmus test for assistance based on the number of children in the household. Petitioners have already reduced the number of living units by twenty percent (20%) to be more in keeping with the existing building and to improve the living conditions for the proposed residents.

The testimony before the Board was clear that the Family Crisis Center will be maintaining its main office in its current location. Unlike the conclusion reached by the Administrative Law Judge, twenty (20) employees will not be working out of this location. Ms. Post may have an office in this location, and there will be rooms for counseling in the Parish Hall, but that is not the same as the operations at the current Family Crisis Center Facility. The living quarters will be the principal use by the Family Crisis Center at this subject property, and these are certainly small in scale compared to other numbers used with respect to Community Care Centers.

The Parish Hall will still be used by the Parish as well as by the Family Crisis Center. It is available for community meetings, and presentations on this proposal were given there. Because of the subdivision there has to be a joint agreement with the Parish on access, parking, utilities as well as use of the Parish Center. This joint use has already been contemplated and discussed.

III. THE COMMUNITY CARE CENTER IS CONSISTENT WITH THE NEIGHBORHOOD.

Protestants argue that the use is inconsistent with their neighborhood even though a Community Care Center is permitted in residential zones. The County Council has made a finding that absent unique circumstances a facility 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" is appropriate in a residential community. B.C.Z.R. §101, Community Care Center.

The use has also been deemed to be compliant with the County Master Plan and community plans, and there was testimony from the Executive Director of the Dundalk Renaissance Corporation that a dispassionate review of the proposal is in keeping with the area and the property's designation as a revitalization area. Of all of the uses within the definition of "Community Care Center" the proposed use contains perhaps the least impact on a residential community. These are victims, not abusers, and the housing is for families, just like those in the adjacent apartments or dwellings with one major exception. These families will have been thoroughly vetted and counseled and supervised to an extent that simply does not occur in any rental situation or in single family dwellings.

This Dundalk neighborhood happily is not much different from dozens of similar neighborhoods throughout the county where the residents care for one another and keep in touch with one another. It is an urbanized neighborhood built almost 100 years ago where many residents walk to shop or obtain services. The streets surrounding the subject site are inordinately wide, and there is significant on-street parking immediate to the site. Many people apparently walk to the church services, and there is ample public transportation. It is the ideal setting to locate this facility where the residents are getting a fresh start with new employment and stable schooling for the children. Like senior housing, these facilities probably do not belong in areas where there is little walkability or no nearby commercial facilities. In fact, the relationship of this

use to this area is quite the opposite of that argued by the Protestants; it is exactly where such facilities should be located.

IV. THE USE HAS PARKING TO MEET ITS STAFFING NEEDS AND IS PROPOSING ADDITIONAL ON-SITE PARKING TO THE EXISTING PARKING.

The Protestants argue that the use will congest the roads. It is difficult to believe that the six (6) additional vehicles projected for the site will create congestion in the roads or streets, particularly when the use is located directly adjacent to the town center of Dundalk. It has been argued that there will be more than six (6) vehicles and that there will be delivery vehicles. Delivery vehicles will be coming and going from Dunmanway, which is essentially a commercial roadway and will not be impinging on the residential community at all unless there are also deliveries to other residences in the neighborhood. Even if there are double the number of anticipated vehicles, it is difficult to imagine that twelve (12) vehicles will overcrowd the streets given the additional parking spaces proposed.

There are two features of this use at this location which diminish the traffic flow. One is that the main office of the Family Crisis Center is across Dunmanway from the site about a block distant. There is parking for the employees at that location. There is no reason for them to park on the site. Petitioners are willing to accept a condition that employees of the Family Crisis Center will be directed to park at their existing location. The other feature is that the site is located next to a bus stop serving several bus routes. As Ms. Post testified, the adult residents generally can not afford independent transportation, and bus service is important. The fact that a bus stop serving three (3) routes is so convenient indicates either that other residents in the immediate area also use public transportation or that there are meaningful destinations in close proximity for people using

the bus service. In either case, some, if not most, of the twelve (12) adult residents will be using public transportation.

It also is important to realize that the wording in Section 502.1 B asks whether the use "will tend to create congestion…". The proposal calls for the addition of seven (7) more parking spaces than currently exists. The proposal basically is taking care of any parking the use creates. Even if there are eight (8) or ten (10) vehicles created by the use, does the addition of one (1) or three (3) vehicles create congestion in the roads, streets or alleys? Residents from the community testified that the church parking lot now is occupied by residents using it for themselves. The record is clear that there is more parking on the church lot now than is needed for the church purposes and combined with the addition of seven (7) spaces there will be ample parking for this use. There are few, if any, other special exception or by right uses that create the need for so few spaces, and no other use will enjoy the ability to already have parking for staff in such close proximity.

V. THE PROPOSAL IS NOT CAUSING AN UNDUE CONCENTRATION OF POPULATION OR OVERCROWDING THE LAND.

The proposed use does not overcrowd the land. No new buildings are being proposed. Indeed, the proposal calls only for a small addition for accessibility. There is no additional "crowding" of the land proposed. If by "crowding" Protestants mean there will be more people than currently exist, then virtually any use will cause there to be more people now than currently exist. This use is perhaps the least intense special exception which could be placed on the property. Staffers walking from the Family Crisis Center headquarters across Dunmanway to the St. Rita's site will not create congestion or cause an undue concentration of population. Protestants'

argument would lead to the conclusion that no special exception would be permitted on the property, for what use would not add people to the buildings?

Petitioners are not contending that this use should be permitted because it has less impact than some of the "by right" uses allowed in the residential zone. That argument was overturned in the *Schultz* case. What is important to recognize, however, is that the Protestants do not perceive the use of a school handling hundreds of children as overcrowding the land. They do not see the parking of school staff cars on the site as creating congestion or burdening the streets in the community. The perception of some of the neighbors is that such a use would be welcome. Some others would welcome townhouses or apartments, which would have an impact on these issues as well. If a school use would be welcomed and not create these issues, then clearly the proposed use will not in reality create the issues about which they claim to be so concerned.

VI. THE VARIANCES OR EXCEPTION FROM THE RESIDENTIAL TRANSITION AREA ARE FOR THE EXISTING STRUCTURES.

Portions of the existing buildings at St. Rita's (but for the church itself) lie within the Residential Transition Area (RTA). The RTA was statutorily created to address new buildings. The existing buildings are non-conforming. The use inside the buildings does not impact the relationship of the buildings to the surrounding community. The Board may approve the proposal either via a grant of an exception as an existing building that is devoted to a civic purpose or by means of a variance based on the comments filed by the Department of Planning. These buildings have to have some use or be razed. Any use of the buildings needs an exception to the RTA, a variance, or to be declared non-conforming. The entrance addition is not in the RTA, and does

not need an RTA exception. Its size is certainly a very small percentage of the overall size of the existing non-conforming buildings.

VII. IMPACT OF COMMERCIAL REVITALIZATION DISTRICT ON PARKING

In addition to the exception available to the use of a Community Care Center as a civic use, the parking has its own exception available to it. The Special Hearing request asked for such other relief as the use may be entitled, and B.C.Z.R. §1B01.1.B.1.g (17) creates an exception for parking in a Commercial Revitalization District. The proposed parking would be permitted under Section 409.8.B.

No neighbor complained, however, of the parking arrangement or of the addition of spaces. The proposed parking does not further intrude into the setbacks, and indeed, increases the setbacks from the existing parking in several areas.

VIII. SETBACK VARIANCES

As with any area variance, the site must show some unique condition in order to qualify for setback variances. The unique condition must create the need for the variances requested. In this case the existing buildings have historical attributes, which is explicitly stated as a unique condition in *Cromwell v. Ward*, 102 Md. App. 691 at 710; 651 A.2d 424 (1995). Tearing down the buildings would make no sense, for some have been in place for over ninety (90) years. Similarly, the parking has to be arranged around the buildings. There is a clear desire on the part of all parties to maximize the parking, and to do that requires variances due to the location of the buildings.

Apart from variances, however, another way of looking at the buildings is that they are simply non-conforming. No one contested that the buildings and parking lot in its current condition are non-conforming. No one contested that they did not predate the existing regulations. The buildings and parking could be found to be non-conforming. A non-conforming building is treated under the same Section 103 of the B.C.Z.R. as a non-conforming use. A use may be abandoned, but the building may continue to be non-conforming.

Typically, the County prefers variances to be granted rather than non-conforming status when the issue is an existing building. The reason is that non-conforming buildings can be expanded by up to twenty-five percent (25%). B.C.Z.R. §104.3. Under a variance the property is locked into a site plan, and changes require either special hearings or additional variances. The County arguably has more control over a site under a variance approval than under a non-conforming status approval.

The only new structure on the site requiring a variance is the entrance on Dunglow Road across from the apartments. Not one resident or owner of the apartments testified in opposition to the proposal. The County did not offer a comment adverse to this accommodation. In this situation there is a unique condition given the width of the right of way encompassing not only the travel way of Dunglow but also the angled parking and sidewalk. The new entrance will not encroach on the sidewalk area to any greater extent than any of the buildings directly across Dunmanway encroach, and in fact will be set back further. The testimony was that this entrance is necessary for American Disabilities Act compliance. The entrance location is not just the most "desirable" location but the location that best meets the needs for parking proximity and access of the people it is intended to serve. Unfortunately, the existing buildings do not lend themselves to

accessibility, and even though they have historical attributes, the buildings are required to be accessible and, moreover, should be accessible to the extent possible.

CONCLUSION

The Protestants principal argument is that this use will ruin their community. The County has determined, however, that this use in a residential community is absolutely appropriate. The site has received a special designation as a Commercial Revitalization District to allow for expanded uses and exceptions to allow for redevelopment. Perhaps, the dispute the Protestants have is with the County which declared that a Community Care Center is appropriate in the residential zones.

This use will have the least impact on the site of virtually any permitted use or special exception use. The principal use is housing, and unlike virtually any other kind of housing, it will be monitored for compliance with a specific program with specific objectives. It is specially controlled under the Zoning Regulations so that it will be monitored for compliance and has to reapply. All of these safeguards are put in place for the use on a site that is in desperate need for reuse. Petitioner respectfully submits that the use and relief sought should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of January, 2022, a copy of the foregoing Petitioners' Memorandum was electronically mailed and/or sent to the following individuals by first class mail, postage prepaid:

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