IN RE: PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION & VARIANCE	*	BEFORE THE
(2907 Dunleer Road)	*	OFFICE OF
12th Election District	*	ADMINISTRATIVE HEARINGS
7th Council District		
St. Rita's Roman Catholic Congregation, Inc.	*	FOR BALTIMORE COUNTY
Legal Owner	*	**Case No: 2021-0105-SPHXA**
Family Crisis Center of Baltimore County *Contract Purchaser*	*	

Petitioners

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") for consideration of Petitions for Special Hearing, Special Exception and Variance filed on behalf of St. Rita's Roman Catholic Congregation, Inc., legal owner, and Family Crisis Center of Baltimore County ("FCC"), contract purchaser (collectively, the "Petitioners") for the property located at 2907 Dunleer Rd. (The "Property" or "Church Campus").

The Special Hearing was filed from the Baltimore County Zoning Regulations ("BCZR") § 500.7 as follows:

(1) Residential Transition Area (RTA):

> (1a) to confirm that the proposed building addition is outside the Residential Transition Area ("RTA") and RTA regulations do not apply to the proposed addition, existing buildings or modified parking on the site; or
>
> (1b) in the alternative, to grant an exception to the RTA to the proposed new uses and improvements pursuant to BCZR, §1B01.1.B.1.g(9); and
>
> (1c) to permit the existing rectory within the RTA buffer and setback as a non-conforming use;

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(2) Parking Determination: (Lot No. 2) - Request for a determination that the proposed joint use parking is sufficient for the proposed Community Care Center pursuant to BCZR § 409.6.A.

(3) Parking Determination (Lot 1) - Request for a determination that the non-conforming joint use parking is adequate for the existing church and rectory.

(4) Rooming or Boarding House - As an alternative to the special exception sought for a Community Care Center for a rooming and boarding house in an individual building for up to 15 units with kitchen facility pursuant to BCZR § 408B.1.A.

A Special Exception relief as follows:

(1) to allow the use of a Community Care Center in a D.R. 5.5 zone pursuant to BCZR §1B01.1.C.5; or alternatively,

(2) to approve a rooming and boarding house with a community building used for civic, social and educational use pursuant to BCZR, §1B01.1.C.4.

A Variance relief as follows:

Lot No 1: Church and Rectory –

(1) from BCZR § 1B01.2.C.1.a to permit a front yard setback of 19 ft. for the Church in lieu of the required 40 ft.;

(2) from BCZR, §1B01.2.C.1.a to permit a street corner side yard setback of 20 ft. for the Church in lieu of the required 35 ft.;

(3) from BCZR, §1B01.2.C.1.a to permit a front yard setback of 38 ft. for the Rectory in lieu of the required 40 ft.;

(4) from BCZR, §1B01.2.C.1.a to permit a street corner side yard setback of 27 ft. in lieu of the required 35 ft.;

(5) from BCZR, §409.6.A.4 to permit 39 joint use parking spaces for a 250 seat place of worship and a rectory in lieu of the required 63 spaces;

(6) from BCZR § 409.6.A.4 for a parking setback of 0 ft. from the right-of-way line in lieu of the required 10 ft.; and

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(7) from BCZR § 1B01.1.B.1.c to allow reconfigured parking within the RTA buffer and setback.

Lot No. 2: Community Care Center –

(1) from BCZR § 1B01.2.C.1.a to permit a front yard setback from Dunglow Road of 2 ft. in lieu of the required 40 ft.;

(2) from BCZR § 1B01.2.C.1.a to permit a street corner side yard setback of 19 ft. in lieu of the required 35 ft.;

(3) from BCZR § 1B01.2.C.1.a to permit a rear yard setback from Dunleer Road of 28 ft. in lieu of the required 30 ft.;

(4) from BCZR § 409.8.A.4 for a parking setback of 0 ft. from right-of-way line in lieu of the required 10 ft.;

(5) from BCZR § 1B01.1.B.1.c to allow reconfigured parking within the RTA buffer and setback; and

(6) from BCZR § 1B01.1.B.1.c to allow repurposed hall and school buildings within the RTA, buffer and setback.

Due to the COVID-19 restrictions a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petitions were properly advertised and posted. John Gontrum, Esquire and Whiteford, Taylor and Preston represented the Petitioners. James Shea, Esquire and Royston, Mueller, Mclean & Reid, LLP represented Protestants, Ann Sparks and Sharon Sparks. In addition, there were many *pro se* Protestants in attendance as set forth herein.

Zoning Advisory Committee ("ZAC") comments were received from the Department of Environmental Protection and Sustainability ("DEPS") and the Department of Planning ("DOP") which agencies did not oppose the requested relief. However, the Department of Public Works, Transportation noted problems with the proposed shared parking arrangement and lack of parking calculations.

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EVIDENCE

Testifying for the Petitioners was Kevin Anderson, PE, Vice President of KCW Engineering, who was accepted as an expert in civil engineering, zoning and land development. (Pet. Ex. 1). Mr. Anderson prepared and sealed the 5-sheet site plan (the "Site Plan"). He explained that the proposal is to subdivide the Property into 2 lots: St. Rita's Church and Rectory Building will remain on Lot 1; and on Lot 2, the School Building will be converted into 4 bedroom and 3 bedroom apartments for abused women and their dependents, while the Parish Hall Building will have offices and meeting rooms for FCC staff. The existing Convent (11,500 sf.) will be razed and replaced with green space. FCC is the contract purchaser and would buy Lot 2 to convert it into the proposed use.

The Church Campus is 1.93 total acres and is zoned Density-Residential (DR 5.5). After subdivision into 2 lots, Lot 1 would be 0.86 acres and Lot 2 would be 1.07 acres. He stated that there would be no new construction on Lot 1 other than the newly configured parking. On Lot 2, the School Building would be connected to the Parish Hall Building by an addition which would have an elevator and handicap ramps. The addition, measuring 2,100 sf, would serve as the entrance to the FCC facility.

To the north of the Property the zoning is Business, Local-Commercial Community Core (BL-CCC) where local shops and businesses are located. To the east are apartments in a DR 16 zone. To the south and west are single family detached homes with neat yards and mature trees in a DR 5.5 zone. (Pet. Exs. 3A, 3B). The Dundalk Historic District and the Commercial Revitalization District of Dundalk is next to the Church Campus. As highlighted by the DOP, the Property and surrounding residential area are part of Old Dundalk Neighborhood and are within

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the boundaries of the Greater Dundalk-Edgemere Community Conservation Plan as adopted by Baltimore County in 2000.

There are five (5) existing buildings: (1) St. Rita's Church; (2) Rectory; (3) School Building; (4) Parish Hall Building; and (5) the Convent. The Property has angled parking spaces as shown on the Existing Conditions Plan. (Pet. Ex. 2A). Photographs of the buildings were provided. (Pet. Exs. 4A-4N). Mr. Anderson testified that there were 23 parking spaces which can be counted toward the Property. He stated that the angled parking spaces do not conform to BCC. Presently, there are 32 parking spaces on the Property for the Church and Rectory. The proposal is to have a shared parking agreement between Lot 1 and Lot 2. Mr. Anderson opined that the shared parking arrangement of 39 spaces was sufficient because St. Rita's Church would use the spaces on Sunday mornings and the FCC would use the spaces for its employees Mon-Fri during business hours.

As shown on the Architectural Floor Layouts, the School Building is 3 floors: a basement, first floor and second floor. (Pet. Exs. 5A-5C). It is proposed that the School Building have a total of 15 apartments, each with their own bedrooms, bathrooms and kitchens along with one (1) separate office/meeting room, fitness center, and storage room. The Parish Hall Building will be converted into sixteen (16) offices along with three (3) meeting rooms on both the basement and on one-half (1/2) of the first floor. The architectural plans do not provide information as to the renovations for the remaining one-half (1/2) of the first floor or the second floor of the Parish Hall Building.

Mr. Anderson testified that the proposed use met the Special Exception factors in BCZR, §502.1. He testified that the proposed use was less intense than a school use as it would generate less people and less traffic. Mr. Anderson found the proposed use would not be detrimental to the

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health, safety or general welfare of the locality because the existing FCC facility is on another street in the area. The shared parking arrangement, he stated, would work because St. Rita's Church would need parking on Saturdays and Sundays when the FCC was not active, and the FCC would need parking when St. Rita's Church is not in service. He added that most of the 15 tenants would not have their own car and he therefore allotted 8 spaces for them. He estimated that only 12 spaces were needed for FCC staff. Mr. Anderson found that there would be less overcrowding of the land given that the former Convent would be razed. He confirmed that the Property was not in a deficient area for water or sewer. He also stressed that the area where the Convent is located will remain a fenced-in, landscaped area for the tenants to use.

Mr. Anderson testified that the Residential Transition Area ("RTA") was generated here as a result of the existing Rectory Building on Lot 1 being located across from single family homes. Mr. Anderson noted that in the Petition, Exception g(9) was requested. However, he admitted that setback variances are still needed, and therefore it was not met. He offered instead that Exception g(10) for a 'new community building devoted to civic, social and educational activity' was applicable here. Specifically, Mr. Anderson felt that repurposing an existing School Building and Parish Hall Building to provide housing for families met the g(10) Exception.

In regard to the requested Variance relief, Mr. Anderson opined that the Property was unique due to the existing buildings which predate the BCZR and the fact that it is surrounded by 4 streets. He then offered that the Petitioners would suffer a practical difficulty if they had to meet the setbacks because they would be forced to demolish the buildings.

The second witness to testify for the Petitioner was Amie Post, Executive Director of FCC. Ms. Post described her duties as overseeing the day to day operations, complying with legal restrictions and handling funding requirements. The FCC began operating in 1980 at its current

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location (120 Trading Place/10 Dunmanway, Dundalk). She testified that the FCC provides shelter to victims of domestic violence and their dependents. She stated that children of abused females are 85% likely to be victims of abuse. Funding is provided to FCC at the State level though federal funds.

Ms. Post described that FCC operates a 24/7 hot line, advocates for victims, intervenes in abuse situations and provides access to legal counsel. Victims of domestic violence are protected by HIPAA regulations and COMAR prevents the disclosure of information on victims. Ms. Post reiterated that FCC does not disclose information to Baltimore County agencies or to the police.

Ms. Post testified that the purpose of the proposed use is to provide safe and affordable housing to victims of domestic violence who have already been in FCC program for 90 days. The tenants are not chronic homeless women. There is a screening process where they are evaluated for safety and risk. FCC recognized that women of domestic violence can be charged four (4) times the amount of rent due to their situation. The rent for these tenants at this facility would come from government grants (i.e. 'Rapid Rehousing Grants').

There are 15 proposed apartments. Dependents of the abused women up to 18 years of age, and if disabled, over the age of 18, would also be permitted to live in the apartments. The maximum length of stay is 2 years. Ms. Post stressed the lack of adequate resources in Baltimore County for housing for these women and their dependents. The proposed use will be in addition to, and not replace, the existing FCC facility at 10 Dunmanway.

Ms. Post indicated that the Parish Hall Building will provide 16 offices for 20 workers who will all park on the Property. The hours of operation for employees is Mon-Friday, 9:00 – 5:00. The employees will monitor the apartments and provide counseling to the tenants. Ms. Post stated that security cameras and security lighting will be added to protect the tenants. The new addition

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which will connect the School Building with the Parish Hall Building, will also serve as the central entrance point to screen people coming and going from the buildings. The new elevator will serve both buildings. The Proposed green area will replace the former Convent and will have a walking path for tenants to use.

Protestants.

The following Protestants testified and asked questions of the Petitioners' witnesses: (1) Anthony Kopecni, 3026 Dunleer Rd.; (2) Gregory Massoni, 3022 Dunglow Rd.; (3) Karen Arnetta, 3011 Dunran Rd.; (4) Mary Dilegge, 3014 Dunglow Rd.; (5) Rachel Michael, 3006 Dunleer Rd.; (6) Tracy Mummert, 3101 Dunglow Rd.; (7) Joe Guido, 3101 Dunglow Rd.; (8) Jim Devlin, 3000 Dunleer Rd.; (9) Karen Arnetta, 3011 Dunran Rd.; (10) Barrie Drum, 3028 Dunleer Rd.; (11) Ellen Marshek, 3000 Dunglow Rd.; (12) James Cawthern, 3002 Dunglow Rd.; (13) Michael Gray, 3110 Dunglow Rd.; (14) Tracy Gray, 3110 Dunglow Rd.

James Shea, Esquire represented Ann Sparks and Sharon Sparks, 3002 Dunleer Rd. (the "Sparks"). The Sparks testified that they have own their home for 60 years. Their home is located 100 ft. from the corner of St. Rita's Church. The Sparks are opposed to the requested relief because they feel it will be a negative impact on the community and the surrounding streets. The Sparks find the proposed use by FCC to be inconsistent with the single family homes which surround the Property. In their view, the more appropriate zoning for this use is commercial such as the YMCA where FCC currently operates or at the Northpoint Government Building on Wise Ave. The Sparks testified that the shared parking arrangement between St. Rita's Church and the FCC will overflow into neighboring streets. Dunleer and Mornington Streets are both one-way. In addition to Church on Sundays, St, Rita's has church services for funerals and weddings. For a typical church service on Sunday, there are 50-75 cars.

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SPECIAL EXCEPTION

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. *Schultz v. Pritts*, 291 Md. 1, 11 (1981). The *Schultz* standard was revisited in *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use.

1. Boarding/Rooming House. To qualify as a Boarding or Rooming House under BCZR, 101.1, the following must be met:

> BOARDING- OR ROOMING HOUSE
>
> A. A building:
>
> * * * *
>
> 2. Which is not the owner's domicile and which is occupied in its entirety, for compensation, by three or more individuals ***who are 18 years old or older and not related to each other by blood, marriage or adoption.***
>
> B. The term does not include a hotel, motel, apartment building or a facility for foster care (as defined in the Family Law Article, Section 5-501(g) of the Annotated Code of Maryland and COMAR 07.06.16). The term does include a care home (as defined in the Health General Article, Section 19-307(b) of the Annotated Code of Maryland.)

(Emphasis Added). In addition, Boarding and Rooming Houses located in DR zones are further regulated under BCZR, §408B.1:

> **§ 408B.1. - Permit procedure; regulations.**
>
> Notwithstanding any provision in these regulations to the contrary, boarding- or rooming houses are permitted in D.R. Zones, subject to the provisions of this section.

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> B. Boarding or rooming houses are permitted only in single-family detached dwellings.
>
> C. The applicant shall be required to keep and preserve accurate occupancy records, including the name, social security number and dates of occupancy of each tenant and shall make such records available to the Fire Department, Police Department, Department of Permits, Approvals and Inspections and other appropriate governmental agencies.
>
> D. Off-street parking spaces shall be located in the side or rear only, unless otherwise approved by the Zoning Commissioner, and shall be landscaped in accordance with the Class A requirements of the Landscape Manual.

First, applying BCZR, §101.1.A.2 to the evidence here, the proposed use does not meet the definition of Boarding/Rooming House because the FCC intends to also house minor children of the abused females. A second issue is that under BCZR, §408B.1.B, Boarding/Rooming Houses are only permitted in single-family detached dwellings, not in a converted school building. The third problem is that the Petitioners will not be able to meet the disclosure requirements for the residents of a Boarding/Rooming House (battered/abused women). Specifically, the Petitioners are not permitted to disclose to Fire Department, Police Department, Department of Permits, Approvals and Inspections ("PAI") or other appropriate governmental agencies the names, social security numbers or dates of occupancy of each tenant. Accordingly, the proposed use cannot be a Boarding/Rooming House.

Petitioners rely on *In Re: Associated Catholic Charities, Inc.*, Case No.: 13-103-SPHXA ("St. Luke's Church case"). However, I find that case is distinguishable on its facts. In the St. Luke's Church case, Associated Catholic Charities requested relief to operate 'Hosanna House', which was housing for 14-16 women who were over age of 50 years, were certified as homeless and disabled, and who did not have minor dependents living with them. The facts there were

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that only 1 or 2 of the disabled residents would have a car. The existing St. Luke's Apartments (a 125 Unit complex for low income seniors) shared a parking lot with Hosanna House and agreed to share 33 of its unused parking spaces. The Board found that St. Luke's property was an "institutional campus and the facilities [were] inter-related with a connection to charitable programs of the Church." The Board also found that the former convent which housed nuns was "a single family dwelling that functioned as a boarding house, where communal kitchen and bathroom facilities are provided for the residents, each of whom would reside in separate bedrooms." Prior to the proposed Hosanna House, the facts were that the former convent has been occupied as an assisted living facility using the same layout.

However, in this case, the facilities are not inter-related and do not have a connection to programs of St. Rita's Church. In the St. Luke's Church case, because of the inter-connection of programs, it was confirmed that there was ample parking for both St. Luke's Apartments and Hosanna House. In this case, there are not even enough parking spaces for St. Rita's Church and Rectory. On this point, while the Greater Dundalk-Edgemere Community Conservation Plan encourages area churches to assist the underprivileged and provide solutions for social problems, this proposed use is not affiliated with, part of, or operated by St. Rita's Church, or the Archdiocese. The subdivision of this Property and sale of Lot 2 is a business transaction. Once subdivided and sold, Lot 2 will be owned and operated by FCC and the FCC's successors and assigns.

In the event that an appellate court would find that the proposed use *does* meet the definition and the use permit regulations for a Boarding/Rooming House as above, Petitioners here are seeking Special Exception relief to approve a Boarding or Rooming House with a 'community building' under BCZR, §1B01.1.C.4 which reads as follows:

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> 4. Community buildings, swimming pools, commercial beaches, golf courses, country clubs or other similar civic, social, recreational or educational uses, including tennis facilities, provided that no tennis facility in a D.R.I or D.R.2 Zone shall comprise more than four courts and no tennis facility in a D.R.3.5, D.R.5.5, D.R.16 Zone shall comprise more than six courts (Section 406A).

While there is no definition of 'community building' in the BCZR, its meaning can be derived from the other similar uses listed BCZR, §1B01.1.C.4 above. All of these uses are recreational and/or social in nature. As a result, I find that the proposed use is not a 'community building' in the ordinary, common sense meaning of the phrase where people in the surrounding and/or nearby neighborhoods may use it for civic, athletic or social purposes. By way of example, the YMCA located at 125 Shipping Place/10 Dunmanway, Dundalk where, the FCC currently operates, is a place for community members to come and use. In this case, the School Building and Parish Hall Building would not be opened for use by the community but only by the FCC employees and the tenants.

2. Community Care Center. In the alternative, Petitioners seek Special Exception relief to qualify the proposed use as a Community Care Center. To do so, the proposed use must meet the following definition:

> 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.

As applied here, I find that the proposed facility is not 'small in scale' as it will become an apartment building with 15 independent living apartments along with amenities, and a separate office building where 20 people will work. While the FCC is a charitable organization which

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will operate the facility, neither the Maryland State Department of Health and Mental Hygiene nor the Maryland State Department of Social Services are the agencies which license the facility. As admitted by the Petitioners, neither of those State agencies are in charge of abused persons. The Board of Appeals applied the same reasoning in the St. Luke's case wherein the requested relief to approve Hosanna House as a Community Care Center was denied because it was not licensed by the State of Maryland. Accordingly, for these reasons, the proposed use does not meet the definition of Community Care Center.

3. Special Exceptions Factors. In the event that an appellate court should find that the proposed use meets the definition and/or regulations for a 'Boarding/Rooming House,' or the definition of 'Community Care Center', I find that the proposed use does not meet the Special Exception factors. Specifically, I find that the proposed use will create congestion in surrounding roads and streets through traffic and parking, will overcrowd the land and cause and undue concentration of population, and will have an adverse impact on the locality involved.

While I understand the argument that St. Rita's School was a use which generated people and traffic, a school use is permitted by right in the DR zone. By designating a school as a permitted use, the County Council contemplated that traffic and parking are inherent effects of a school but decided that the general welfare is promoted when schools are located in the same zone where people live. Conversely, the proposed use here need not be located in a residential zone. In fact, the FCC operates like a business; many offices and meeting rooms are proposed for both the basement level and 1st Floor. Indeed, the existing FCC business at 120 Trading Place/10 Dunmanway is located in a Business, Local – Commercial Community Core zone. Based on the evidence presented, I find that adverse impacts of the proposed use in the former St. Rita's School and Parish Hall buildings, would be above and beyond those inherently associated with this use.

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In accordance with the holding in *Shultz v. Pritts*, I find, based on the testimony of the property owners and residents in the surrounding community that this use, at this location, because of the lack of parking on-site and proposed shared parking plan with St. Rita's Church, will adversely impact parking in the side streets, which is already in short demand.

In *Anderson v. Sawyer*, 23 Md. App. 612, 329 A.2d 716 (1974) where a funeral establishment was specifically listed as a special exception use, the Court held that the Baltimore County Council was aware of certain "inherently deleterious effects" of that use when it decided to permit funeral homes in residential zones. In this case, the proposed apartments for abused women and their children is not an enumerated special exception use and does not meet the definitions of Boarding/Rooming House or Community Care Center. In other words, the Baltimore County Council has not yet legislated that buildings with apartments, offices and meeting rooms for abused women and their families should be permitted uses only in residential zones. In fact, the County Council may decide that, as some Protestants here have argued, that this type of facility should be in an apartment zone or a business zone.

Based on the evidence presented, I find that the proposed use functions as a business use with associated apartments. The testimony of Amie Post, the Executive Director of FCC was, and the Site Plan confirms, that the entire Parish Hall will be renovated into offices and meeting rooms for the FCC staff of 20 people who will parking on-site. There is additional office space/meeting room in the School Building as well as a large storage room. Yet, the Property is part of a residential neighborhood of single family, detached homes. I find that the proposed use will generate additional traffic and parking problems on a Property which only has a total of 32 parking spaces and the parking will overflow into an area that already has limited on street parking. Not only will there be a staff of 20 people parking on the Property but the 15 residents living there can

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bring their own vehicles and park on the lot. In addition, the FCC will have vendors and providers who will need to regularly park on the Property for the services. Admittedly, there will also be counselors meeting with residents and government agencies inspecting the property will also use the on-site parking. The required parking spaces for a 250-seat Church and Rectory under BCZR is 1 space per every 4 seats or 63 spaces. (Pet. Ex. 2B). I find the proposed parking plan for a total of 39 spaces to be shared between the FCC and the Church, is not adequate to meet the needs of both these uses. I am convinced that the parking needs for Lot 1 and 2 will exist simultaneously causing the constant spill-over into the surrounding streets.

I also agree with the ZAC Comment by DPW, Transportation Division, which highlighted that the Petition failed to calculate the required parking for a Community Care Center. In my view, this emphasizes that parking will be exacerbated by the influx of people to the Property for the proposed use. I find that the parking calculations were speculative and vague at best. For these reasons, the Special Exception factors have not been met.

SPECIAL HEARING

A hearing to request special zoning relief is proper under BCZR, §500.7 as follows:

> The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

"A request for special hearing is, in legal effect, a request for a declaratory judgment." *Antwerpen v. Baltimore County*, 163 Md. App. 194, 877 A.2d 1166, 1175 (2005). Petitioners seek Special

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Hearing relief in regard to the Residential Transition Area under BCZR, §1B01.1.B *et seq.,* that the proposed joint use parking arrangement is sufficient for Lots 1 and 2, and for a Community Care Center for a rooming and boarding house in an individual building for up to 15 units with a kitchen facility under BCZR, §408B.1A. In regard to the proposed joint parking arrangement for Lots 1 and 2, and the request to approve a Community Care Center for a rooming and boarding house, those requests are denied for the same reasons already set forth above.

In regard to the Residential Transition Area, the exception sought here under BCZR, §1B01.1.B.1.g(9) ("Exception g(9)") reads as follows:

> (g) Exceptions to residential transition. The restrictions contained in Paragraphs a through e above, of this Subsection B.1, do not apply to:
>
> * * * *
>
> (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.

I find that Exception g(9) does not apply here because there is no *existing* community building (the approval for the community building is sought as Special Exception relief); the facts do not support an approval of a community building as set forth above; and variance relief is still needed for setbacks and parking. During the hearing, Petitioner argued that BCZR, §1B01.1.B.1.g(10) would apply for a 'new community building' approved through the Special Exception process. While this exception was not specifically sought in the Petition, the Petitioner did seek "such other and further relief as the nature of the development may require." This all-inclusive request for relief would include Exception g(10). However, for the same reasons that the 'community building' was denied under the Special Exception relief, the same reasoning applies to Exception g(10).

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Because neither Exception to the RTA applies here, the Property is subject to the 100 ft RTA area which extends from the adjacent single family homes into the Property and includes the 75 ft setback and 50 ft landscaped vegetative buffer. Specifically, the RTA prohibits the Rectory, School Building, Parish Hall Building and the proposed parking spaces from being located in the 75 ft setback and 50 ft buffer. I do not agree with the Petitioners' position that the mandatory RTA provisions may be avoided or ignored simply by declaring that the existing buildings are non-conforming uses or reconfiguring the limited number of parking spaces in order to satisfy the Petitioners' desire to develop a Property which is not suitable for its intended use. To do otherwise, would eviscerate the RTA provisions and the need for single family homes to be protected with the setback and buffer.

Accordingly, based on the evidence, I find that the Special Hearing relief will be denied.

VARIANCES

A variance request involves a two-step process, summarized as follows:

(1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and

(2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

Petitioner seeks seven (7) variances for Lot 1 and six (6) variances for Lot 2 in order to make this proposed use fit on this Property. I do not agree that the Property is unique simply because the buildings pre-dated the BCZR. Even if the Property was found to be unique, I find the hardships alleged are self-imposed due to the Petitioners' desire to develop it which can only be accomplished by seeking extensive zoning relief.

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THEREFORE, IT IS ORDERED this **2nd** day of **August, 2021**, by this Administrative Law Judge that the Petition for Special Hearing pursuant to the Baltimore County Zoning Regulations ("BCZR"), §500.7 in regard to:

(1) Residential Transition Area (RTA):

(1a) confirming that the proposed building addition is outside the Residential Transition Area ("RTA") and RTA regulations do not apply to the proposed addition, existing buildings or modified parking on the site be, and it is hereby **DENIED**; or

(1b) in the alternative, to grant an exception to the RTA to the proposed new uses and improvements pursuant to BCZR, §1B01.1.B.1.g(9) and g(10) be, and they are hereby **DENIED**; and

(1c) permitting the existing rectory within the RTA buffer and setback as a non-conforming use be, and it is hereby **DENIED**;

(2) Parking Determination: (Lot No. 2) - Requesting a determination that the proposed joint use parking is sufficient for the proposed Community Care Center pursuant to BCZR § 409.6.A be, and it is hereby **DENIED**.

(3) Parking Determination (Lot No. 1) - Requesting a determination that the non-conforming joint use parking is adequate for the existing church and rectory be, and it is hereby **DENIED**.

(4) Rooming or Boarding House - As an alternative to the special exception sought for a Community Care Center for a rooming and boarding house in an individual building for up to 15 units with kitchen facility pursuant to BCZR § 408B.1.A be, and it is hereby **DENIED**.

A Special Exception relief as follows:

(1) allowing the use of a Community Care Center in a D.R. 5.5 zone pursuant to BCZR §1B01.1.C.5 be, and it is hereby **DENIED**; or alternatively,

(2) approving a rooming and boarding house with a community building used for civic, social and educational use pursuant to BCZR, §1B01.1.C.4 be, and it is hereby **DENIED**.

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By DMugnon

A Variance relief as follows:

Lot No 1: Church and Rectory –

(1) from BCZR § 1B01.2.C.1.a permitting a front yard setback of 19 ft. for the Church in lieu of the required 40 ft. be, and it is hereby **DENIED**;

(2) from BCZR, §1B01.2.C.1.a permitting a street corner side yard setback of 20 ft. for the Church in lieu of the required 35 ft. be, and it is hereby **DENIED**;

(3) from BCZR, §1B01.2.C.1.a permitting a front yard setback of 38 ft. for the Rectory in lieu of the required 40 ft. be, and it is hereby **DENIED**;

(4) from BCZR, §1B01.2.C.1.a permitting a street corner side yard setback of 27 ft. in lieu of the required 35 ft. be, and it is hereby **DENIED**;

(5) from BCZR, §409.6.A.4 permitting 39 joint use parking spaces for a 250 seat place of worship and a rectory in lieu of the required 63 spaces be, and it is hereby **DENIED**;

(6) from BCZR § 409.6.A.4 for a parking setback of 0 ft. from the right-of-way line in lieu of the required 10 ft. be, and it is hereby **DENIED**; and

(7) from BCZR § 1B01.1.B.1.c allowing reconfigured parking within the RTA buffer and setback be, and it is hereby **DENIED**.

Lot No. 2: Community Care Center –

(1) from BCZR, §1B01.2.C.1.a to permit a front yard setback from Dunglow Road of 2 ft. in lieu of the required 40 ft. be, and it is hereby **DENIED**;

(2) from BCZR, §1B01.2.C.1.a to permit a street corner side yard setback of 19 ft. in lieu of the required 35 ft. be, and it is hereby **DENIED**;

(3) from BCZR, §1B01.2.C.1.a to permit a rear yard setback from Dunleer Road of 28 ft. in lieu of the required 30 ft. be, and it is hereby **DENIED**;

(4) from BCZR, §409.8.A.4 for a parking setback of 0 ft. from right-of-way line in lieu of the required 10 ft. be, and it is hereby **DENIED**;

(5) from BCZR § 1B01.1.B.1.c to allow reconfigured parking within the RTA buffer and setback be, and it is hereby **DENIED**; and

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(6) from BCZR § 1B01.1.B.1.c to allow repurposed hall and school buildings within the RTA, buffer and setback be, and it is hereby **DENIED**.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlm

ORDER RECEIVED FOR FILING
Date 8/2/21
By DMignon

JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
MAUREEN E. MURPHY
Administrative Law

August 2, 2021

John Gontrum, Esquire – jgontrum@wtplaw.com

RE: Petitions for Special Hearing. Special Exception and Variance
Case No. 2021-0105-SPHXA
Property: 2907 Dunleer Road

Dear Mr. Gontrum:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

Pursuant to Baltimore County Code § 32-3-401(a), "a person aggrieved or feeling aggrieved" by this Decision and Order may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlm
Enclosure

c: St. Rita's Roman Catholic Congressional, Inc. – john.macsherry@archbalt.org
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