IN THE MATTER OF ST. RITA'S ROMAN CATHOLIC CONGREGATION INC. – LEGAL OWNER AND FAMILY CRISIS CENTER OF BALTIMORE COUNTY – CONTRACT PURCHASER PETITIONERS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE ON THE PROPERTY LOCATED AT 2907 DUNLEER ROAD	* * * * * * *	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY
12TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT	*	CASE NO.: 21-105-SPHXA

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OPINION

This matter comes to the Board of Appeals of Baltimore County ("Board" or "CBA") on appeal of the final decision of the Administrative Law Judge denying all relief requested by Petitioner for the property located at 2907 Dunleer Road in the Seventh Councilmanic District (the "Property").

Specifically, the Petitioner applied for:

Special Hearing pursuant to BCZR §500.7 as follows:

- Residential Transition Area (RTA):
  (1a) to confirm that the proposed building addition is outside the RTA and RTA regulations do notapply to the proposed addition, existing buildings or modified parking on site; or
  (1b) in the alternative, to grant an exception to the RTA to the proposed new uses and in1provements 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;

- 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.

- Parking Determination: (Lot No.1) - Request for a determination that the non-conforming joint use parking is adequate for the existing church and rectory.

- 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.

Special Exception relief as follows:

- 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,
- To approve a rooming and boarding house with a community building used for civic, social andeducational use pursuant to BCZR §1B01.1.C.4.

Variance relief as follows:

Lot No. 1: Church and Rectory-

- From BCZR §1B01.2.C.l.a to permit a front yard setback of 19 ft. for the Church in lieu of therequired 40 ft.;§
- From BCZR §1BO1.2.C.l.a to permit a street corner side yard setback of 20 ft. for the Church in lieu of the required 35 ft.;
- From BCZR §1B01.2.C.l.a to permit a front yard setback of 38 ft. for the Rectory in lieu of therequired 40 ft.;
- From BCZR §1BO1.2.C.1.a to permit a street corner side yard setback of 27 ft. in lieu of the required 35 ft.;
- From BCZR §409.6.A.4 to permit 39 joint use parking spaces for a 250 seat place of worship anda rectory in lieu of the required 63 spaces;
- From BCZR §409.6.A.4 for a parking setback of 0 ft. from the right-of-way line in lieu of therequired 10 ft.; and
- From BCZR §1BO1.1.B.l.c to allow reconfigured parking within the RTA buffer and setback.

Lot No. 2: Community Care Center-

- From BCZR §1B01.2.C.l.a to permit a front yard setback from Dunglow Road of 2 ft. in lieu ofthe required 40 ft.;
- From BCZR §1BO1.2.C.l.a to permit a street corner side yard setback of 19 ft. in lieu of the required 35 ft.;
- From BCZR §1BO1.2.C.l.a to permit a rear yard setback from Dunleer Road of 28 ft. in lieu of therequired 30 ft.;
- 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.;
- From BCZR §1B01.1.B.l.c to allow reconfigured parking within the RTA buffer and setback; and
- From BCZR §1BO1.1.B.l.c to allow repurposed hall and school buildings within the RTA, bufferand setback.

The Board held two days of virtual public hearings on November 18 and 23, 2021. St. Rita's Roman Catholic Congregation, Inc. and the Family Crisis Center of Baltimore County (collectively, "Petitioner") were represented by John B. Gontrum, Esquire. The Protestants, Ann and Sharon Sparks, were represented by James L. Shea, Esquire. Protestants Barbara Kenney, Mary DiLegge, Ellen Marsheck, James Cawthern, Joseph Guido and Tracey Mummert, Rachel Michael and William Perry, were *pro se.* A virtual Public Deliberation was held on February 23, 2022.

Factual Background

The Property consists of 1.93± acres occupying an entire block in Old Dundalk, all of which is zoned D.R. 5.5., and is bounded by Dunleer Road on the west, Mornington Road on the south, Dunglow Road on the east, and Dunmanway on the north.

To the north across Dunmanway is the commercial area of Dundalk Village Shopping Center in the BL-CCC zone and improved by commercial offices and uses. That area is in a National Historic District and Baltimore County Commercial Revitalization District. To the east across Dunglow Road are a series of garden apartment buildings zoned D.R. 16. To the south, across Mornington Road are single-family homes in the D.R. 5.5 zone. To the west, across Dunleer Road are four single family homes, and on the northwest corner of Dunleer Road is St. George's Episcopal Church, which, like St. Rita's Property, lies within the Commercial Revitalization District.

The Property is improved by five buildings, identified on Petitioner's Exhibits 2A-E as: St. Rita's Roman Catholic Church (#4); Rectory (#5); School Building (#1); Convent (#3); and, Community/Parish Hall (#2). The school was closed in 2006 and remains vacant, as is the convent.

The Petitioner seeks approval based on a proposed division of the Property into two lots: Lot 1 for the Church and Rectory; Lot 2 for the re-purposed school building and hall. The convent would be razed.

Petitioner, Family Crisis Center ("FCC" or the "Center"), is the contract purchaser of the proposed Lot 2. FCC is a non-profit organization that began operating in 1980. Amie Post, Executive Director, testified extensively as to the services FCC provides to victims of domestic violence and abuse, which include a 24/7 hotline, advocacy, intervention, and access to legal counseling among other services. FCC is a designated provider of Baltimore County's domestic violence hotline.

According to Petitioner, FCC operates under the auspices of the Governor's Office of Crime Control and Prevention, which certifies and funds the program. Petitioner seeks Special Exception approval to change the use of the abandoned school building to a Community Care Center (as defined in BCZR §101) to provide transitional housing for up to twelve individuals and their minor children for periods of up to two years. The building would require minor exterior modifications, namely a new secure entryway on Dunglow Road to meet current ADA requirements and to link the school building to the Parish Hall. The addition necessitates variance relief.

The remaining variances relate to existing buildings. The Special Exception relates to the proposed change in use of the school to Community Care Center ("CCC"). The Special Hearing relief relates to those instances where existing buildings on both lots encroach into Residential Transition Area buffers and setbacks, the non-conforming status of the buildings, and a determination that the reconfigured joint use parking is sufficient to serve both lots.

The relief requested would bring the existing use and improvements, which long pre-date zoning in Baltimore County, into conformity with the current regulations.

For the reasons set forth below, this Board believes that Petitioner St. Rita's should have the right to validate all of its existing improvements and be able to subdivide its property in to two lots; however, despite a general belief that the location is appropriate for Community Care Center, this Board finds that the BCZR definition of a Community Care Center defies compliance and the Special Exception must be denied.

Decision

The hearing before the Board was *de novo*. Petitioner presented a number of witnesses in support of its case.

Kevin Anderson testified first. Mr. Anderson is vice-president of civil engineering and land surveying at KCW Engineering Technologies. He was accepted as an expert in civil engineering, surveying and zoning in Baltimore County. Using plans prepared by his firm (Petitioner's exhibits 2A-E) and aerial photographs (Petitioner's Exhibits 3A-B), he described the Property as it exists and as proposed.

The church building and other improvements were built between 1920 and 1946, prior to the adoption of zoning regulations in Baltimore County. The 250-seat church holds regular masses; the school is unoccupied; the parish hall is used for parish activities incident to the church use; the convent is vacant; and, the Rectory is used as the church office and for other uses accessory to the church. There are currently 32 on-site parking spaces with additional angled on-street parking abutting the site. There is also on-street parking in the commercial area and on nearby residential streets.

Mr. Anderson described the proposed division into two lots: Lot 1 being 37,400 sq. ft.(0.86 acres ±) on which sit the church, rectory and some reconfigured parking; Lot 2 being 46,600 sq. ft.

(1.07 acres±) containing the school, parish hall, convent (to be razed) and reconfigured parking. Parking would be shared by the two lots.

No changes are proposed to the church or rectory, either to their appearance or use. There would be no exterior changes to the school building or parish hall, but a 2,100 sq. ft. connector and new entrance would be built to link the school and parish hall and to satisfy ADA accessibility requirements. Other changes to Lot 2 would include the razing of the convent. The three-story school building would become twelve living units (two, three and four bedrooms) with the entrance on Dunglow Road instead of as it now exists on Dunleer Road. The Parish Hall would continue to be used by the church but would also be connected to and serve the CCC with a commercial kitchen, community space and offices.

Mr. Anderson stated that parking would be reconfigured to eliminate on-site angled parking and to add additional spaces, increasing the number of on-site spaces to 39. The convent would be razed and that area would be open space, though it too could support a few more parking spaces.

According to Mr. Anderson the proposed use is far less intense than that of a 900 pupil school and convent.

Mr. Anderson testified generally to the Special Exception criteria of BCZR §502.1 for the use as a Community Care Center. The proposal would result in less impervious area on the site, and not be detrimental to environmental and natural resources; because the school/apartments would contain sprinklers, there would be a reduced risk of fire. In addition, security at the controlled entrance would provide safety. He opined that by reconfiguring and adding parking, the impact would be no greater than the current or former use. Few residents would have personal vehicles, thus would not create congestion on roads; there would be fewer buildings on the site, reducing the possibility of overcrowding; the proposal is less intense than prior uses. Overall, the proposal would be consistent with the BCZR.

As to the RTA requirements, Mr. Anderson stated that all the buildings pre-date zoning and RTA regulations, and as such are non-conforming structures. He cited two possible exemptions to RTA for the new entrance applying 1B01.1g(9) or g(10). The Parish Hall functions as a community hall and the proposed addition is designed to meet RTA requirements to the extent possible.

Mr. Anderson also addressed Special Hearing Relief, noting that the BCZR do not list specific parking requirements to serve a CCC, so the petition asks the Board to make that determination. He stated that the convent area also could be used for parking. Public transportation serves the area, with stops on Dunmanway for various routes. There is additional parking available in the business area and on surrounding streets.

With respect to the variances, Mr. Anderson addressed each lot separately. He noted that the Property and buildings are unique: the buildings pre-existed zoning and are of a historic nature; the site is bound by four public roads, two with unusually wide rights-of-way widths. The site is further constrained by the location of the buildings. Elevations of the buildings on different parts of the Property limit access and linkages. Mr. Anderson noted that the Zoning Advisory Committee comments from the Department of Planning were supportive and that the Department of Public Works had no negative comments regarding parking and transportation.

Mr. Shea cross-examined Mr. Anderson about whether the general population or a limited group would benefit from the FCC services. Mr. Shea also questioned the uniqueness of the site, particularly regarding features of the land itself. As to the school building, Mr. Shea asked when it closed and its condition, and whether, in fact, any new use would engender more vehicles on the site, which Mr. Anderson conceded would do so. When asked if the Parish hall use would be exclusively for the FCC, Mr. Anderson responded that the hall would be available for both church and community use.

Mr. Shea also presented questions posed by Appellant James Devlin regarding whether FCC would charge rent or allow sublets; who would pay utilities; whether residents would have restraining orders against their abusers. Such questions were deferred to the spokesperson for FCC.

Amie Post testified next. Ms. Post is the Executive and Clinical Director of Petitioner Family Crisis Center, whose offices are located at 10 Dunmanway in a county-owned building. Ms. Post oversees the totality of the Center's operations. The Center provides comprehensive services for victims of domestic violence, including a 24-hour hot line, counseling, training, partnering with police, accepting referrals from the Baltimore County Department of Social Services, and maintaining a Liability Assessment Protocol for use by first responders when called.

The FCC is a 501(c)(3) organization whose services are confidential and intended to provide crisis response and emergency safe shelter. The Center has twenty full time staff members. Its grant partners are Baltimore County through the Departments of Social Services and Planning and the Office of Maryland Crime Prevention. The Center is funded in part by the Department of Housing and Community Development. Other funding comes from the State Office of Crime Control and Prevention, which is the vehicle for distributing Federal funding. According to Ms. Post, Baltimore County is required to provide services for victims of domestic violence under Federal law. The County satisfies its obligation by contracting with private agencies, FCC being one agency serving the eastern part of Baltimore County, and TurnAround being another agency serving the central area. Ms. Post stated that these programs are certified by the State of Maryland and subject to grant reviews and on-site inspections.

Upon inquiry, Ms. Post testified that if the Petitions are approved, FCC would maintain all its ongoing crisis operations as they are at its current location. However, some victims of domestic violence benefit from longer term services as part of their ongoing stabilization. The proposed use at St. Rita's would do so by providing bridge housing. Currently, FCC can provide a maximum stay of only 90 days, and has only two rooms available. The St. Rita's facility would provide additional capacity to those participants who qualify.

Family Crisis Center would use a coordinated entry system to screen and allow a client to enter the program. The first ninety days would be spent at the existing FCC with staff support and counseling. Entrants for transitional housing would be required to demonstrate having a job, established safety toward stability, availability of transportation and childcare. All entrants would be part of an ongoing program where each agrees to standards of personal behavior and regular staff contact. If participants do not maintain their agreements and program goals, they would have to leave the facility.

Ms. Post stressed that the FCC does not discriminate based on sexual identity, race, national origin or other bases.

Though not tenants, the participants would be charged rent. Each unit would be occupied by one adult and that person's dependent children. Rent would increase as the entrant achieves programmatic goals of financial empowerment.

Ms. Post cited the proximity of FCC's office and personnel as making this location better than other locations for the proposed housing.

Ms. Post also testified that FCC would be fully responsible for the maintenance and grounds on proposed Lot 2. She explained that there would be at least weekly visits to the center by FCC staff, but no such person would be on-site 24/7. Security for the building would include

camera surveillance and a double-keyed building entrance, plus individual unit keys. The main entrance would be that proposed on Dunglow Road.

Ms. Post explained that the Parish hall would be a shared use. FCC would occupy office space in that building for four staff members to provide non-crisis services.

As to parking, Ms. Post explained that it was unlikely that the residents would own their own vehicles and that the building is proximate to public transportation, such that 12 parking spaces would provide adequate parking. No additional parking is proposed for FCC staff, who would continue to park at FCC's main facility across Dunmanway. She felt the shared parking with the church is adequate to serve all the uses.

Ms. Post also testified to the Special Exception criteria, and why, in her opinion, the St. Rita's site was a good location for the proposed bridge housing and consistent with the neighborhood and existing uses.

In addition, Ms. Post explained FCC's long relationship and outreach with the immediate community and the support for this proposal from the Dunlogan Community Association and The Dundalk Renaissance Corp. She introduced letters in support from other service providers and from community associations.

Mr. Gontrum asked why Ms. Post felt this location is appropriate for the bridge housing, and she responded that the greatest percentage of calls for service arose from this zip code and the two adjoining zip codes, indicating a high level of need in the immediate area. While she feels the community is mostly supportive, Ms. Post acknowledged opposition from the Dunglow area.

Mr. Shea cross-examined Ms. Post, asking her about opposition from residents of Mornington and Dunleer Roads, which she acknowledged exists. Mr. Shea asked about "branding" the project proposed for the school building as "the Nest". Ms. Post said the proposal

was for people who have well established safety, rather than being in crisis. No guests would be allowed in the building. Ms. Post stressed that FCC cannot disclose identities or other personal information.

In response to Mr. Shea's questions, Ms. Post said the FCC is not licensed by the State Department of Health and Mental Hygiene ("DHMH") or the Maryland Department of Social Services ("DSS"), a stated requirement of the BCZR definition. When asked about traffic, Ms. Post said that there would be some traffic generated by deliveries and contractors serving the building and site.

Petitioner's next witness was Amy Menzer, the Executive Director of the Dundalk Renaissance Corporation, a 501(c)(3) community development organization involved in revitalizing Dundalk. The organization provides support for home development, renovations and repairs for seniors through loan and grants programs, public space improvements and promotes community stability. Offices of the corporation are located two blocks from St. Rita's property.

Ms. Menzer is familiar with the commercial revitalization district imposed on parts of Dundalk by Baltimore County, and is also familiar with the related Master Plan 2020 goals that identify the area as a gateway to the community. Ms. Menzer noted that the St. Rita's site is in the Commercial Revitalization District as is another nearby church because of the potential vulnerability of these properties and the opportunity they provide to the community to have leverage over design.

Ms. Menzer testified that there are numerous reasons to support the proposal: two of the buildings are vacant and pose a threat; vacant buildings create uncertainty and undercut property values; over the fifteen years the school has been closed, there have been many failed proposals for its use, including a drug treatment facility and more apartments; FCC is a trusted

neighborhood and non-profit partner for forty plus years; and, FCC's mission and services help maintain family stability.

Ms. Menzer stated that the Master Plan addresses policies for commercial revitalization areas. She sees the subject site as part of a "frayed edge" of the neighborhood and main street development. The site and its improvements are unique for their historic nature and charm, pre-dating all zoning. She testified that if granted, the use would not be injurious to the community but would contribute to a stronger neighborhood, district and families and would not pose a threat to homeownership.

Petitioner's next witness was Ms. Arkia Gowins, a resident on Dunleer Road opposite the abandoned convent. Ms. Gowins and her family have lived in the area for 50 years, though she has lived at 2910 Dunleer Road for only 10 years. As such, she is familiar with the neighborhood and the site. She has observed the unused buildings at St. Rita's deteriorate, become eyesores and victims of vandalism. She has had occasion to contact law enforcement to the buildings, including when a corpse was found outside the convent.

As a person involved in the community, Ms. Gowins supports approval of the petitions and the proposed change in use. She does not foresee parking problems unless there is a large funeral or wedding at one of the two churches.

Petitioner then called William Perry, a resident of the area for 73 years, who is familiar with St. Rita's as a member, former student, Eucharist minister and member of the Parish Corporation. He provided a history of the church, first established in 1920 in a frame building, later demolished and rebuilt; the school and convent dated from the late 1920's. Church services are held at 9 and 11 o'clock on Sunday mornings, with a combined attendance of about 190. Mr. Perry recalled that in the years between 1950 and 1980 there were as many as six masses held to

accommodate the attendance. He noted the school closed in 2006, and the last nuns left the convent two years ago. At one time the school had 900 students.

Mr. Perry testified that the site (Lot 2) has been for sale since 2006. Reasons for the current sale are to provide the means to make needed repairs, provide greenspace, permit use of the Parish Hall as a multi-use community center, and fulfill the mission of the religious order to love and care for one's neighbors.

Mr. Perry did not think the CCC would conflict with church uses or impact parking. Church attendance is walkable, thereby reducing the need for automobile travel.

He further stated that the Parish could not afford to raze the vacant buildings because of a large debt owed to the archdiocese.

On cross-examination by Mr. Shea, Mr. Perry stated that FCC has no formal affiliation with the parish.

Mr. Gontrum then recalled Ms. Post who testified that the site is eligible for designation on the Maryland Inventory of Historic Properties and for listing on the National Register of Historic Places.

Following the close of Petitioner's case, Mr. Shea called on Protestant Ann Sparks to testify. Ms. Sparks has resided at 3002 Dunleer Road for sixty years, in a block of twenty-five single-family homes. She noted that there are apartments opposite St. Rita's on Dunglow Road and that the church property divides the residential area to the south from the commercial uses north across Dunmanway where the shopping center, FCC offices and the YMCA are located. She noted her street provides parking on only one side, and there is a scarcity of parking. She introduced a number of photographs illustrative of the limited parking.

She further testified that St. Rita's actively operates as a church with regular Sunday and holy day services, choir practice and weekend weddings. Ms. Sparks indicated that there is nothing unique to the topography or shape of the property.

Ms. Sparks, while not opposed to FCC, is opposed to the subject proposal because it expands a business use into the residential neighborhood. She feels it would bring traffic into the area where parking is already an issue. She herself parks on Mornington Road rather than at her house. She feels that most homes have multiple vehicles and parking has gotten progressively worse. She noted that when there are nearby events, such as the Heritage Fair, parking spills onto the residential streets. Ms. Sparks also has concerns about safety arising from the threat from perpetrators of domestic violence. She is also concerned that the use is not affiliated with the church. She feels the use would be less detrimental at a different location.

On cross-examination, Ms. Sparks admitted that there are alleys behind the homes on Dunleer Road that provide access for parking in the rear of lots or in garages. Though she is not advocating for the buildings to remain vacant, she recognizes that any use will add to traffic congestion and parking needs. To her knowledge, the church parking is not fully utilized on Sundays.

Ray Moon, of 3006 Dunmore Road then testified. He agrees with Ms. Sparks that there should be a clear line of division between the commercial and residential areas. He would prefer a different use here and feels this type of housing would have a negative impact.

Also testifying in opposition was Mary DiLegge of 3014 Dunglow Road. She believes the neighborhood should be strictly residential and that St. Rita's site and the proposed use require a lot of variances and are not suitable for the intended use. She feels the proposed units do not meet the definition of CCC in that it is neither small in scale nor would it be licensed by DHMH or DSS. She feels that the fact that the FCC staff would not be on premises 24/7 raises

a safety concern and that the parking is inadequate. Miss DiLegge faults the church and the archdiocese for the condition of the property.

Also speaking in opposition was Tracey Mummert of 3101 Dunglow Road. Ms Mummert owns her home with her husband and has lived there for eighteen years. She spoke of the internet and paper petitions from neighbors opposing the petitions. Ms. Mummert would like to see the lowest density use for the site, noting that a small three-block area of single-family homes is surrounded by apartments, some subsidized, and that there has been an increase in crime.

Gregory Massoni also opposed the proposal. Mr. Massoni resides at 3022 Dunglow Road and has owned the property for thirty-one years. He described the neighborhood as made up of beautiful, well-maintained single-family homes.

Jim Devlin has owned and resided at 3000 Dunleer Road since the early 1980's. His house sits kitty-corner to the church property, specifically from the convent. He opposes the proposal raising infrastructure concerns, citing a recent water main break. Though not bothered by parking, he feels St. Rita's has not maintained its property.

Joseph Guido has lived at 3001 Dunglow Road for thirty-seven years. He shares Ms. Mummert's concerns, particularly the opportunity for violence and the frequent turnover of residents that would occur.

Carolyn Jones has resided at 3016 Dunmore Road for thirty-seven years. She feels that FCC provides essential services but these should not be located to impact homes. Rather, she feels the use should be placed near police, counselling and job training. She fears that the use of a CCC, if approved, would expose the community to perpetrators of violence.

Kerry Plancon and her husband own and have resided at 3102 Dunglow Road for ten years. She is opposed to the petitions because she believes on-site supervision is needed 24/7. She fears that the perpetrators of domestic violence focus on control and will pose a safety threat.

George Comninos resides at 6809 Dunhill Road and owns it and several other homes in the area. He has a real estate property management company that handles twenty to twenty-five properties. It is his view that people in crisis present safety risks and that, as a real estate professional, he feels the use would be detrimental to business and property values. Though he has a driveway to his house, parking in it is difficult with an average size car because of all the on-street parking.

Ms. Post was then recalled as a rebuttal witness who addressed the concerns raised regarding safety. Ms. Post explained that the proposed housing is not designed for individuals in crisis, but for those who have established safety. Such housing promotes stability. FCC uses established tools to test and screen potential residents and considers factors such as established resiliency along with the previously mentioned program requirements: employment, childcare, transportations, etc. The FCC has rarely experienced abusive partners coming to its premises, and not all since 2015. Ms. Post added that there will be multiple levels of on-site security and robust safety planning.

APPLICABLE LAW

SPECIAL HEARING

A non-conforming use is one that predates the zoning imposed on a property. It is defined in BCZR §101 as a legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. Under BCZR 104.3, no non-conforming building or structure may be extended more than 25 percent of the ground floor area of the building so used.

A Special Hearing Petition is effectively a request for declaratory judgment. BCZR § 500.7, *Antwerpen v. Baltimore County*, 163 Md. App. 194, 209 (2005).

Here we are presented with two questions, the first regarding non-conforming use, the second regarding the Residential Transition Area ("RTA"). The first question is to determine if the existing buildings are permitted as non-conforming per BCZR § 104.1.

The second question, regarding the RTA, is multi-part: whether to permit the Rectory within the RTA buffer and setbacks as a non-conforming use; to determine whether the proposed building addition is outside the RTA and that the RTA regulations do not apply to the proposed addition; or in the alternative whether the proposed new use and improvements are an exception to the RTA.

Residential transition area is defined as a one hundred foot area including any public road or right-of way, extending from a D.R. zoned tract boundary into the site to be developed. The purpose of an RTA is to assure that similar housing types are built adjacent to one another or that adequate buffers and screening are provided between dissimilar housing types.

The BCZR also provide for variance of the RTA upon a determination of compatibility and that a reduction in the RTA will not adversely impact the adjacent residential community or development.

Uses permitted in the RTA include those permitted as of right in the D.R. zones pursuant to BCZR §1B01.1.A. These expressly permit churches and uses accessory thereto.

Petitioner bears the burden of presenting evidence (customarily through experts) on which the Board can assess whether a zoning request pursuant to the BCZR may be approved. While the BCZR provides no specific criteria for the granting of a Request for Special Hearing, "the administrative practice in Baltimore County has been to determine whether the proposed Special Hearing would be compatible with the community and generally consistent with the spirit

and intent of the regulations." *Kiesling v. Long*, Unreported Opinion, No. 1485, Md. Ct. Spec. App. (Sept. Term 2016).

COMMUNITY CARE CENTER

BCZR § 101 defines Community Care Center as 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 ("DHMH") or by the Maryland State Department of Social Services ("DSS"), 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. Section 1B01.1.C.5 permits such uses in the DR zones by special exception.

SPECIAL EXCEPTION

In order to grant a request for a Special Exception under BCZR, §502.1, 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.

In *Schultz v. Pritts*, 291 Md. 1, 22-23, 432 A.2d at 1331 (1981), the Court of Appeals held that "the appropriate standard to be used in determining whether a requested special exception use

would have an adverse effect and therefore should be denied, is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone."

The Court of Appeals in *People's Counsel for Baltimore County v. Loyola College in Md.* 406 Md. 54, 106, 956 A.2d 166 (2008) upheld that longstanding *Shultz* analysis, explaining that a Special Exception use has "certain [inherent] adverse effects....[which] are likely to occur". In its analysis, the *Loyola* Court observed that "[t]he special exception adds flexibility to a comprehensive legislative zoning scheme by serving as a 'middle ground' between permitted use and prohibited uses in a particular zone." *Id.*, 406 Md. at 71, 956 A.2d at 176 (2008).

The *Schultz* and *Loyola* Courts, and more recently in *Attar v. DMS Tollgate, LLC*, 451 Md. 272, 285 (2017) have expressly recognized that "[a] special exception is presumed to be in the interest of the general welfare, and therefore a special exception enjoys a presumption of validity." (See also *Loyola*, 406 Md. at 84, 88; 105 *Schultz*, 291 Md. at 11). Based on this standard, once an applicant puts on its *prima facie* evidence in support of a special exception, the opponents must then "set forth sufficient evidence to indicate that the proposed [use] would have any adverse effects above and beyond those inherently associated with such use under the *Schultz* standard." *Attar*, 451 Md. at 287. (*See Montgomery County v. Butler*, 417 Md.271, 276-77 (2010) (opponent must show "non-inherent adverse effects" to "undercut the presumption of compatibility enjoyed by a proposed Special Exception use"). (*See also*, *Clarksville Residents Against Mortuary Defense Fund, Inc. v. Donaldson Properties*, 453 Md. 516, 543 (2017) ("there is a presumption that the [Special Exception] use is in the interest of the general welfare, a presumption that may only be overcome by probative evidence of unique adverse effects").

VARIANCES

The decision of whether to grant a variance is a two-step process. "The first requires a determination of whether the property, in and of itself, is "unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provisions to impact disproportionately upon that property." *Cromwell v. Ward*, supra, at 694 (1995). If that "uniqueness" does not exist, no variance may be granted. If it does, then the second hurdle is to determine whether practical difficulty and/or unreasonable hardship result from the disproportionate impact of the zoning ordinance caused by the property's unique quality. *Cromwell*, supra at 694-695.

Baltimore County Zoning Regulations § 307.1 provides:

> "The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where Special circumstances or conditions exist that are peculiar to the land or ***structure*** which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship." (emphasis added)

In requiring a pre-requisite finding of "uniqueness," the Court defined the term and stated:

> "...Uniqueness" of a property for zoning purposes requires that the subject property has 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..."

Id. at 710.

DISCUSSION

In its deliberation, this Board considered this case first by relief requested for the entire Property and arising from existing buildings and conditions. These relate to Special Hearing requests for RTA relief and/or a determination of non-conformity.

All the buildings on the site predate the adoption of the Baltimore County Zoning Regulations. The church and the accessory rectory and church hall (like the school and convent when functioning) are uses permitted in the D.R. zone. What is non-conforming are the building structures. While the Board finds that these are also valid non-conforming buildings, granting variances will bring these into conformity with today's regulations and is preferable to perpetuating their non-conforming status, which would allow an expansion of those uses.

The grant of variance relief for the structures also extends to relief from the RTA requirements. To the extent the Rectory is in the RTA setback and buffer, the Board will grant variance relief. The church lies entirely outside the RTA.

Similarly, to the extent the school building and parish hall lie within the RTA setback and buffer, the Board will grant the requested variance relief. The relief will facilitate the church's ability to subdivide and repurpose the surplus buildings and land, and is consistent with public policy supporting private property rights.

The Board also considered the variance relief request on Proposed Lot 1, all of which relates to existing buildings and parking on the site. Granting these variances will bring the church and rectory and accessory parking into conformity with the BCZR. We find that the existing structures are unique as contemplated by BCZR §307, such that the zoning regulations impact this property differently than other properties in the zone. To otherwise bring the church and rectory into conformity would require demolishing all or part of these historic structures. To do so would impose a practical difficulty on Petitioner. Our statute clearly provides that uniqueness is not limited to the physical characteristics of the land but includes the disjunctive "or" to include "structures". We choose to give meaning to the plain language of the statute, consistent with settled rules of statutory construction.

We note that under *Cromwell* "uniqueness" of a property for zoning purposes requires that the subject property has 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. While we recognize the shape and topography are quite regular here, the historical significance of the buildings and restrictions imposed by abutting properties – unusually wide street rights of way – should not be disregarded as having no impact.

The on-site parking, whether as existing, or increased as proposed, has served the church uses and complies to the extent possible with applicable regulations. These variances are necessitated by the unique physical configuration of the existing buildings. The Board will also grant the variances for parking, which if reconfigured would be sufficient for joint use by Lots 1 and 2. The proposed parking would increase the number of spaces, and thereby improve the existing conditions.

As to the proposed Lot 2 zoning variance requests, to the extent these relate to the Parish Hall, the Board will grant the relief on the same basis as discussed above.

The most challenging issue before the Board involves the requested Special Exception relief for a proposed Community Care Center on Lot 2 in the D.R. 5.5 zone.

The Board discussed at length the concerns raised by the community regarding the use as twelve living units for victims of domestic violence and their minor children. Those concerns include a fear of increased crime, commercial activity on the site and a worsening of an existing shortage of parking on neighborhood streets. Many of these concerns arise from existing conditions or occurrences unrelated to the proposal at St. Rita's.

The parking concern seems to arise because of the proliferation of multiple vehicles for individual households in the nearby single-family homes, and that those households do not have or choose not to use on-site parking for their personal vehicles where on-street parking is limited. We do not believe the proposed zoning relief would exacerbate this situation, but that the proposed shared parking is adequate. This is a condition normally associated with the use, and is a use that is less automobile intense than other permitted uses. Similarly, the Board felt the use would not create congestion or traffic concerns beyond those normally associated with such housing.

The Board also considered the compatibility of the use with the nearby neighborhood, noting that there are commercial zoning and uses across Dunmanway and apartment zoning across Dunglow Road at a higher density than the proposed use would yield. The Board noted that testimony from Amie Post indicated a high incidence of calls for FCC services from the immediate area, thus supporting the location as serving this community. The concerns about crime and parking both reflect community concerns and existing problems, but there was no testimony demonstrating that this type of facility causes higher rates of crime. The Board while sympathetic to the fears of the community that the proposed use would be detrimental, expressed its sense that the use would be appropriate at this location and that the services are both needed and beneficial notwithstanding community concerns. There was no one whose testimony was in any way critical of the Family Crisis Center or the value of the services it now provides or proposes to provide.

As the Court of Appeals has stated, a Special Exception use has inherent adverse effects, but enjoys a presumption of validity. This applicant has put on a prima facie case in support of the Special Exception that the Protestants have not overcome.

Nevertheless, the Board will deny the Special Exception for a Community Care Center based on the statute as it exists, flawed as it is. The Board can only rule based on the law as it exists; it is up to the County Council to change.

The use Community Care Center is defined 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. (emphasis added)

The use is not now, nor has it ever been, susceptible of satisfying the definition. Upon investigation of cases before the Board and the ALJ, we could discover only one instance where the use has been granted, and in that case, there was evidence and a finding that the proposed facility – a men's shelter- was exempt from licensing requirements as stated. (Case No. 2020-0005-X) Based on the November 16, 2021 letter from Terry F. Hickey to this Board, the proposed facility would be the only one of its kind in Baltimore County.

Protestants argue that the use fails on its face based on the definition. Petitioner argues that statute is obsolete and the intent of the law should be given effect, citing *Phillips v. State*, 226 Md. App 1 (2015).

The original county legislation, Bill 91-74, provided for facilities for intermediate care for certain individuals, and did not include victims of abuse. That law did require providers be licensed and approved by the Maryland State Department of Health and Mental Hygiene. Bill 142-69 repealed the prior definition and adopted a new one, which includes "abused "individuals".

As cited in Petitioner's memo, the State Domestic Abuse Program was established by 1979 legislation under the Social Services Administration of the Department of Human Resources. The 1979 law provided the Secretary of Human Resources "establish and maintain" a home for battered spouses and their children "in a major population center". No license was issued for such a home, but the law provided that the Social Services Administration, an agency of the Department of Human Resources, supervise, direct, control and manage the home.

The state law was again repealed and replaced and recodified in 1984 as Courts and Judicial Proceedings §4-514, expanding the program so there would be at least one shelter in a major population area, remaining under the supervision of the Social Services Administration.

Ten years later the state law was amended by the Domestic Violence Act and recodified in the Family Law Article §4-516. In 2011, supervision of the program was transferred to the Governor's Office of Crime Control and Prevention. As of today, under the State law, at least one program must serve each population center. The term "population center" is undefined.

Amie Post testified that Baltimore County contracts with Family Crisis Center to provide these services. Ms. Post also testified that similar services are provided by TurnAround and the Center for Hope.

Family Law Article §4-515 establishes the Domestic Violence Program to provide "in each region of the state" services for victims of domestic violence and their children temporary shelter, counseling and other services and that there be at least one authorized shelter in a major population center serving the area. Under the Family Law article, the Governor's office of Crime Prevention, Youth and Victim Services supervises the program. No license is required.

Reading the preamble to County Council bills 91-74 and 142-69, there is no reference that the definition of Community Care Center is intended to fulfill the state programs or a successor program or procedure, adopted later by the state. The license requirement is

definitional and limiting. An examination of the State's law does not dictate compliance by each of the political subdivisions in the state, such that Baltimore County is subject to a mandate. In fact, the state law refers to "each region" of the state (Family Law §4-515(a)(2) or "major population center" (Family Law §4-515(b)).

The Board also considered the issue of certification versus licensing. The certification presented by Petitioner is issued by the State for access to confidential records. Licensing, on the other hand, suggests a regulatory mechanism requiring a more comprehensive review, such as professional education, training and accreditation, specific service categories and the use of registered trained professionals, staff ratios, record keeping, periodic inspections and renewals, examination and evaluation of the facility, an enforcement procedure and a measurable standard for compliance and delivery of services. Based on Ms. Post's testimony, to the extent these oversight activities occur, they are incident to the grant programs that fund the FCC. The Board was unable to equate these and the certification offered with normally understood licensing requirements.

Despite an earnest desire to build a bridge between the Baltimore County Zoning Regulations and the Annotated Code, there is scarce language on which we may do so. There is no suggestion in the Baltimore County Code that licensing could be supplanted by "certification" or deference to a successor state agency.

The Board of Appeals has not found a legal roadmap that would permit a Community Care Center under the current definition in the Baltimore County Zoning Regulations, nor a mandate for Baltimore County to do so or pre-emptive language in state law. Even if we were to find that the Baltimore County is a "population center" required to provide such services under state Domestic Violence Program, there was testimony and evidence as to the existence of more than one such existing program in the County.

Despite requesting alternative relief as a boarding house, Petitioner offered no evidence that the proposal satisfied the BCZR definition of Boarding or Rooming House. That relief will be denied.

Protestants also asserted that the Board must deny the petitions under principles of *res Judicata*, citing our prior decision in Case No. 13-103 SPHXA, the St. Luke's case. This board is not bound by its prior decisions. We find that *res judicata* does not apply. Here there are different parties, different issues, different relief requested, different premises and distinguishable facts. The facility in the prior case involved a shelter for homeless women certified homeless and as having disabilities, over a particular age; no children would be permitted.

In summary, there was agreement that despite the neighborhood concerns, the proposed use at the St. Rita's abandoned school building and Parish Hall meets the standard for a Special Exception and that the effects of the use at this location are no more detrimental than those normally associated with the use elsewhere in the zone, and the proposed site is a better location according to much of the testimony. Nevertheless, the definition in the zoning regulation defies satisfaction and to be functional must be legislatively amended or given effect by an authority higher than this Board. Other relief dependent on the grant of the Special Exception for a Community Care Center will be dismissed as moot, since without the approval of the Community Care Center, these become unnecessary.

The Board unanimously agreed that all the existing buildings and the existing parking should be brought into compliance by the grant of the variance relief, and that the proposed parking is adequate to serve both Lot 1 and Lot 2.

ORDER

THEREFORE, IT IS THIS 30th day of June, 2022, by the County Board of Appeals of Baltimore County

ORDERED that

Special Hearing relief

- Residential Transition Area (RTA):

  (1a) to confirm that the proposed building addition is outside the RTA and RTA regulations do notapply to the proposed addition is **DISMISSED AS MOOT**;
  (1a) to confirm that the proposed building addition is outside the RTA and RTA regulations do not apply to the existing buildings or modified parking on site is **GRANTED**;
  (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)is **DENIED**; and
  (1c) to permit the existing rectory within the RTA buffer and setback as a non-conforming use is **DISMISSED AS MOOT**;

- Parking Determination: (Lot No. 2) - Request for a determination that the proposed joint use parking is sufficient is **GRANTED;**

- Parking Determination: (Lot No.1) - Request for a determination that the non-conforming joint use parking is adequate for the existing church and rectory is **GRANTED**.

- 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. is **DENIED.**

Special Exception relief as follows:

- To allow the use of a Community Care Center in a D.R. 5.5 zone pursuant to BCZR §IB01.1.C.5 is **DENIED**; or alternatively,
- To approve a rooming and boarding house with a community building used for civic, social andeducational use pursuant to BCZR §1B01.1.C.4. is **DENIED.**

Variance relief as follows:

Lot No. 1: Church and Rectory-

- From BCZR §1B01.2.C.l.a to permit a front yard setback of 19 ft. for the Church in lieu of therequired 40 ft. is **GRANTED;**

- From BCZR §1BO1.2.C.l.a to permit a street corner side yard setback of 20 ft. for the Church in lieu of the required 35 ft. is **GRANTED;**
- From BCZR §1B01.2.C.l.a to permit a front yard setback of 38 ft. for the Rectory in lieu of therequired 40 ft.is **GRANTED;**
- From BCZR §1BO1.2.C.1.a to permit a street corner side yard setback of 27 ft. in lieu of the required 35 ft. is **GRANTED;**
- From BCZR §409.6.A.4 to permit 39 joint use parking spaces for a 250 seat place of worship anda rectory in lieu of the required 63 spaces is **GRANTED**;
- From BCZR §409.6.A.4 for a parking setback of 0 ft. from the right-of-way line in lieu of therequired 10 ft. is **GRANTED**; and
- From BCZR §1BO1.1.B.l.c to allow reconfigured parking within the RTA buffer and setback is **GRANTED.**

Lot No. 2: Community Care Center-

- From BCZR §1B01.2.C.l.a to permit a front yard setback from Dunglow Road of 2 ft. in lieu ofthe required 40 ft. is **DISMISSED AS MOOT**;
- From BCZR §1BO1.2.C.l.a to permit a street corner side yard setback of 19 ft. in lieu of the required 35 ft. is **GRANTED**;
- From BCZR §1BO1.2.C.l.a to permit a rear yard setback from Dunleer Road of 28 ft. in lieu of therequired 30 ft. is **GRANTED**;
- 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.is **GRANTED**;
- From BCZR §1B01.1.B.l.c to allow reconfigured parking within the RTA buffer and setback is **GRANTED**; and
- From BCZR §1BO1.1.B.l.c to allow repurposed hall and school buildings within the RTA, bufferand setback is **GRANTED.**

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

BOARD OF APPEALS
OF BALTIMORE COUNTY

Deborah C. Dopkin

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Board of Appeals of Baltimore County

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June 30, 2022

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RE: In the Matter of: *St. Rita's Roman Catholic Congregation, Inc. – Legal Owner*
Family Crisis Center of Baltimore County – Contract Purchaser
Case No.: 21-105-SPHXA

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Sunny Cannington Hay

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Duplicate Original Cover Letter
Enclosure

c: St. Rita's Roman Catholic Congregation, Inc.
Family Crisis Center of Baltimore County
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law
Ann and Sharon Sparks
Barbara Kenney
Mary DiLegge
Ellen Marsheck
James Cawthern
Joseph Guido and Tracey Mummert
Rachel Michael
William Perry