IN THE MATTER OF	*	IN THE OFFICE OF
2907 DUNLEER ROAD	*	ADMINSTRATIVE HEARINGS
	*	FOR BALTIMORE COUNTY
	*	Case No.: 2021-1015-SPHXA

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

CLOSING ARGUMENT MEMORANDUM

Ann and Sharon Sparks, two Interested Parties, by their undersigned counsel and pursuant to the instructions of the Court at the conclusion of the hearing held in the above referenced matter on June 10, 2021, hereby submit the following Memorandum, in lieu of closing argument, for the Court's consideration.

Introduction/Summary of Argument

Under alternate theories, the Petitioner is seeking approval of a proposed use that is only allowed in this zone by special exception. When a special exception use is sought, the Court must consider the facts of the particular neighborhood involved, and conduct an analysis using the factors set out in the zoning regulations and the test articulated in the *Schultz* case and its progeny. When all of the evidence, particularly the testimony of those most affected, is considered, it is clear that this use will have a particularly adverse impact on this neighborhood, one which would not be felt as severely if the proposed use were located in a more appropriate location. As such, under the applicable legal standards, each of the requested special exceptions must be denied.

The Petitioner has also sought multiple variances from several setback requirements, but has not put forth any evidence of an undue hardship created by a physically unique aspect of the property. The only argument that the Petitioner has put forth is that it wants to develop the existing buildings on the Property. Under the law, this is not sufficient to show that the physical

nature of the subject property is "unique." The setback requirements exist for a reason, and the Court should not allow an already injurious use to further creep into the surrounding neighborhood by doing away with these requirements. The Court must therefore deny the Petitioner's variance requests.

The Court must also deny the Petitioner's attempts to avoid the requirements of the Residential Transition Area (RTA) provided for in the zoning regulations. Allowing the Petitioner to avoid these requirements only further serves to unfairly impose this proposed use on the neighborhood without the required safeguards that would be required if this use were located anywhere else. The Court must require the Petitioner to adhere to the RTA.

Lastly, the Petitioner has requested approval of a limited parking lot for the joint use of the existing church as well as the new proposed use. The proposed number of spaces is clearly not sufficient under the zoning regulations, and will only exacerbate the congestion and parking issues to which the surrounding property owners testified. The Court must reject approval of the proposed joint use parking lot.

Argument

The Court must deny the Petitioner's requests in four general respects. First, the Court must find that the proposed use is not a justified special exception at this location, and deny the various special exception uses proposed. Second, the Court must deny the Petitioner's variance requests because the Petitioner has failed to meet its burden under the applicable standard for such variances. Third, the Court must deny the Petitioner's attempts to avoid the requirements of the RTA. Lastly, the Court must deny the Petitioner's request for approval of a joint use parking lot. Each area is addressed in turn below.

I. The Court must deny all three special exceptions proposed b/c of the adverse effects on the neighborhood.

Uses permitted by special exception stand in a "middle" ground, between permitted and prohibited uses. As the Court of Appeals has stated:

> The special exception adds flexibility to a comprehensive legislative zoning scheme by serving as a "middle ground" between permitted uses and prohibited uses in a particular zone. Permitted and prohibited uses serve as binary, polar opposites in a zoning scheme. A permitted use in a given zone is permitted as of right within the zone, without regard to any potential or actual adverse effect that the use will have on neighboring properties. A special exception, by contrast, is merely deemed *prima facie* compatible in a given zone. The special exception requires a case-by-case evaluation by an administrative zoning body or officer according to legislatively-defined standards. That case-by-case evaluation is what enables special exception uses to achieve some flexibility in an otherwise semi-rigid comprehensive legislative zoning scheme.

People's Counsel for Baltimore County v. Loyola Coll. in Maryland, 406 Md. 54, 71–72, 956 A.2d 166, 176 (2008).

The Petitioner's proposed use of the property, while laudable, must be denied because it is inconsistent with the present neighborhood, and would have a significant adverse impact that would not be as severe if the use was placed elsewhere. Special use exceptions are designed specifically so that the Court can undertake a case-by-case evaluation for the specific location and proposed use. When the applicable standards are reviewed, it is apparent that the Court must deny the proposed use because of its adverse impact on the neighborhood.

There are two overlapping standards the Court must employ in its evaluation: the factors set out in the Baltimore County Zoning Regulations, and the test articulated by the Court in *Schultz v. Pritts* and its progeny. The regulations provide that:

> § 502.1. - Conditions determining granting of special exception.
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> Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;
B. Tend to create congestion in roads, streets or alleys therein;
C. Create a potential hazard from fire, panic or other danger;
D. Tend to overcrowd land and cause undue concentration of population;
E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
F. Interfere with adequate light and air;
G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor
I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone, and for consideration of a solar facility use under Article 4F, the inclusion of the R.C. 3, R.C. 6, and R.C. 8 Zones.

See BCZR § 502.1. In addition, the case of *Schultz v. Pritts* and its progeny impose a concurrent requirement. In that case, the Court held (in often quoted language) that:

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

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

Based on the testimony presented in opposition to the Petitioner's requests, two things are clear. One, the proposed use will have a detrimental impact in several of the categories enumerated in the zoning regulations, and two, that negative impact would be less severe if the proposed use was placed in a more appropriate part of the surrounding area.

The Court heard testimony from the surrounding property owners concerning the detrimental impact to "the health, safety or general welfare of the locality involved." Many of the surrounding property owners, including Ann Sparks, testified about the health and safety concerns associated with the proposed use in the heart of their residential space. Specifically, many of the owners testified about the safety concerns associated, not necessary with the boarders themselves, but more so with other individuals involved with them, particularly the "battering" spouse/significant other. These property owners have first hand experience with these issues, due to the fact this same organization has run a similar location nearby, with many of the same issues. Many residents throughout the hearing expressed concern over the safety issues when "social services" and similar uses are placed within the local residential neighborhood. Many of the local residents quite passionately expressed the sentiment that their neighborhood has historically born a much great brunt of these safety issues, while other, more affluent neighbors are free of these safety hazards. All of this testimony, particularly from the most nearby neighbors, indicates that placing the proposed boarding house in this residential neighborhood will have a severe negative impact on the health and safety of the neighborhood, a burden that could much more easily be absorbed/addressed if this use were place in a more appropriate location. Under the applicable law, this is a ground to reject the proposed special exception use, and the Sparks request that the Court deny the request on this basis.

The Court heard testimony from the surrounding property owners that the proposed use would "overcrowd land and cause undue concentration of population." It should already be readily apparent that, given the sheer number of setback variance requests sought, the Petitioner is trying to fit a use into a space that really is too small to accommodate it. Indeed, the Petitioner is attempting to side-step many of the safeguards in place to prevent overcrowding in

resident areas, including the RTA as well as the setback requirements. On top of that, the Court heard testimony, from Ms. Sparks and others, about the already crowded and congested nature of this area. As many residents recounted, adding another intensive use to this property will only serve to worsen this problem. Given this adverse effect on the neighborhood, the Court should deny all of the proposed special exception uses.

The Court heard testimony from the surrounding property owners that the proposed use would "Tend to create congestion in roads, streets, or alleys therein." Like the congestion issue, many nearby residents, including Ms. Sparks, testified to the parking issues on and surrounding the subject property as it is now. Many residents testified about their concerns that the new use, which hurts, rather than helps, parking, will only worsen this problem. Given that this area is already "completely saturated," allowing the proposed use by special exception will have a significant and unique adverse effect on the neighborhood. The Court can and should deny the request for a special exception on this ground as well.

The Court heard testimony from the surrounding property owners that the proposed use would be inconsistent with "the spirit and intent" of the zoning regulations. The nearby residents who testified, in particular Ms. Sparks, provided powerful testimony that the proposed boarding home for abused individuals was inconsistent with the character of their neighborhood. Ms. Sparks, in particular, is a longtime resident of this neighborhood (having lived in her home for over 60 years) and her testimony on her long-time community should carry great weight. All of the residents who testified were consistent: placing this boarding home squarely in the middle of the existing residences will fundamentally harm and/or change the nature of their neighborhood. That is the very essence of the spirit and intent of the zoning regulations: that similar uses should be grouped together. The individuals who own homes and live in this community should have a

say in how their neighborhood is managed. The hearing made clear that the people who actually live near this property have spoken, and they do not want this boarding home located at St. Rita's church. Those wishes should take precedent over the wishes of developers and other forces outside of the local community, which, while all well intentioned, will not bear the brunt of the burden of supporting this type of use. Given the fact that the proposed use is so inconsistent with the current neighborhood, the Court can and should deny the special exception request.

The Court also heard testimony from some of the surrounding property owners about other locations in the nearby area, where the proposed use would have a less adverse impact. In particular, several residents testified about use at a location like the existing YMCA location. Ms. Ann Sparks also provided testimony about the North Point Government Center located at 7701 Wise Avenue, Dundalk, MD 21222, which would also be a more suitable location. All of this evidence indicates that there are other locations in the nearby area, where this proposed special exception would have a less severe negative impact, and be more consistent with the surrounding area. This is exactly the standard laid out by the Court in *Schultz* and the subsequent cases interpreting it. If the proposed use was placed at any of these locations, the safety and other adverse effects recounted above would be much less severe. As a result, the Court must deny all of the proposed special exception uses for the subject property under the standard articulated by the Court in *Schultz* and the subsequent cases interpreting it, as well as the factor in the Baltimore County zoning regulations.

II. <u>Variances from the setback requirements are not appropriate because the property is not unique</u>.

Maryland Courts have stated that the general rule is that the authority to grant a variance should be exercised sparingly, and only under exceptional circumstances. *Cromwell v. Ward*, 102 Md. App. 691 (1995). When analyzing a variance request, the Court must engage in a two

step analysis. The case of *Cromwell v. Ward* sets out this test, and also highlights the particular flaw the Petitioner's requests have: the lack of "uniqueness" of the Property.

In *Cromwell v. Ward*, a variance had been granted because of the condition of the structures on the property. On appeal, the Court of Special Appeals reversed, because it held that that the petitioner had failed to show that *the property itself* was different from the surrounding properties in any way, and hence not "unique" as that term is used in the zoning law.

The Court held in *Cromwell* that the two step analysis must be done in a particular order. The Court stated:

> The Baltimore County ordinance requires "conditions ... peculiar to the land ... and ... practical difficulty...." Both must exist. But the terms "practical difficulty" and "unreasonable hardship" are stated in the ordinance disjunctively. Thus, at least as to variances other than use variances, if the property is found to be unique, the practical difficulty standard would then apply. We address practical difficulty at some length hereafter. However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when that uniqueness is first established that we then concern ourselves with the practical difficulties (or unnecessary hardships in use variance cases).

Cromwell v. Ward, 102 Md. App. 691, 699, 651 A.2d 424, 427-428 (1995). It is clear from this decision that there must be something unique about the property itself (i.e. topography, etc…) before a variance can be granted. Not only is it clearly stated in the above quotation, but the *Cromwell* Court went on to highlight cases where this exact point was made. For example, the Court quoted the case of *AD + Soil, Inc. v. County Comm'rs*, 307 Md. 307, 513 A.2d 893 (1986), which stated, "The board declined to grant the variances, concluding that Ad + Soil's 'hardship' was self-inflicted, and, in any event, that it was not the result of exceptional or extraordinary characteristics of the land itself and therefore not the kind of hardship cognizable

under the Zoning Ordinance...." *See Cromwell*, 102 Md. App at 709. The Court also discussed the case of *In Red Roof Inns, Inc. v. People's Counsel*, 96 Md. App. 219, 224, 624 A.2d 1281 (1993). Discussing that holding, it stated, "We then discussed the legal standards to utilize in respect to variances construing the same statute that applies in the case at bar, saying that variances may be granted 'where special circumstances or conditions exist that are peculiar to the land ... and where strict compliance ... would result in practical difficulty....' *Id.* (emphasis added)." *Cromwell*, 102 Md. App at 709 (Emphasis highlighted by the *Cromwell* Court). Lastly, the Court quoted *North v. St. Mary's County*, 99 Md. App. at 512, 638 A.2d 1175, and stated:

> In *North v. St. Mary's County*, 99 Md. App. at 512, 638 A.2d 1175, we held that the ordinance there required a finding that "special conditions or circumstances exist that are peculiar to the land...." We there stated that, in the zoning context, the term "unique" has a customized meaning:
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> > In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.

It is clear from all of this caselaw that, in order to satisfy the first step in the variance analysis, a petitioner must present evidence that the property itself is physically unique and distinct from the surrounding properties. In the present context, the Petitioner has presented no evidence of this kind whatsoever. The only evidence presented by the Petitioner was that the existing buildings would make development difficult if the setback requirements are observed. While this may, in fact, be a practical difficulty or undue hardship for the developer, it does not establish that the land itself is unique in any way. There was absolutely no evidence of any relevant condition such as shape, topography, subsurface condition, or environmental factors.

As the Court of Special Appeals held in *Cromwell*, where no such evidence is presented, it is arbitrary and illegal to grant a variance from the setback requirements (in that case, height restrictions). *See Cromwell*, 102 Md. App at 726. Because the Petition has failed to present any evidence that would make this property unique, the Court is required to deny all of the variance requests, pursuant to the holding in *Cromwell*.

III. <u>The Court must deny the Petitioner's requests with respect to the RTA.</u>

The Petitioner has made several requests with respect to the RTA requirements for the Property. For the reasons below, these requests must be denied.

The first request is that the Court declare that the RTA does not apply to the Property at all. This is clearly not the case. The zoning regulations provide for a RTA if the property to be developed is zoned D.R. and is adjacent to a DR1, 2, 23.5, 5.5, or RC zoned property which contains a single family detached, semi-detached, or duplex within 150 feet of the property line. *See* BCZR 1B01.1.B.1.b. Several of the surrounding homes meet these requirements, and the subject property is itself zoned D.R. As such, the subject property is clearly subject to the RTA requirements under the zoning regulations.

The "buffer" created by the regulations, if the property is subject to the RTA requirements, is defined by the Code as follows: "The residential transition area (RTA) is a 100-foot area, including any public road or public right-of-way extending from a D.R. zoned tract boundary into the site to be developed." In other words, the buffer runs from the Church's entire property line, 100 feet inwards, throughout the property. The code does *not* provide, as the Petitioner has argued, that the 100 foot buffer runs from any particular adjacent property zoned DR1, 2, 23.5, 5.5, or RC. Instead, the code states the buffer runs from the "D.R. zoned tract boundary." In other words, the entire perimeter of a property subject to the RTA must include a

100 foot buffer. The Petitioner cannot pick and choose which portions of the property it wishes to be subject to the buffer. Instead, the regulation states that, if the property is subject to the RTA, the buffer runs from its property line 100 feet inward, period. The Court must therefore find that the buffer applies throughout the property, and reject the proposed RTA lines presented in the Petitioner's exhibits.

The Petitioner's second request is that the Court find that an exception to the RTA applies. The Court must reject that argument. The exception in question, located at BCZR 1B01.1.B.g.(9), provides that "an exception exists for an addition to an existing community building (or other structure….) *provided all other applicable zoning regulations, including setback, parking, and other area requirements, are maintained*." *Id.* (Emphasis added). That exception clearly does not apply here, as the Petitioner has sought a host of variances from the setback requirements. By the explicit terms of the regulations, this exception does not apply to the current situation, and the Court should so hold.[1]

The Petitioner's final request is that the Court find that the proposed reconfigured parking lot is not subject to the RTA. Given that the Petitioner has miscalculated the extent of the RTA (as described above), this assertion is not accurate. As such, the Court must find that the reconfigured parking lot (or at least some portions thereof) is subject to the RTA.

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[1] During testimony, one of the Petitioner's witnesses asserted that the exception under subsection (10) applies. To undersigned counsel's knowledge, that ground was not included as part of the Petitioner's written petition, and thus should not be considered. Even if the Court were to consider this exception, it would still require a finding that "proposed improvements are planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and that the special exception can otherwise be expected to be compatible with the character and general welfare of the surrounding residential properties." Here, the flaw in the request is twofold: 1) there is little, if any, attempt to comply with the RTA at all, and, 2) the proposed use is inconsistent wit with the neighborhood, as discussed in relation to the special exception requests.

IV. The Court must find that the proposed joint parking is not sufficient for use by both the old and new uses.

The Petitioner's final request is that the Court find that the proposed joint parking lot is sufficient under the code for both the existing use of the subject property (i.e., the Church), as well as the proposed new use. The Court must reject that argument, because it is based on nothing but unsupported conjecture, in an effort to avoid the clear requirements of the zoning regulations. Instead, the Court must accept the testimony of the nearby residents, who have experienced the existing and already problematic parking situation in the area. The proposed new, more intensive use, without any additional parking, will only exacerbate the situation.

For churches, the zoning regulations require one parking space for every four seats in the principal place of worship. BCZR § 409.6(a)(4). For boarding houses, one parking space for every tenant bed is required. BCZR § 409.6(a)(1). At the hearing, the Petitioner presented evidence that the boarding house could sleep 15 to 18 individuals. As such, this use would require 15 to 18 parking places. The petition filed in this matter asserted that the existing church seats approximately 250 people, which would require 62 spaces. As such, under the regulations, approximately 77 to 80 spaces would be required for a combined use parking lot. The Petitioner's proposal only calls for 39 spaces for the combined use. This is woefully inadequate under the regulations. The Petitioner has not offered any justifiable reason for this departure from the requirements. The only testimony offered was the unsubstantiated opinions, of outsiders who are unassociated with the Church, that parishioners will only use the parking lot on Sunday (and that presumably boarding house residents will never need to park on Sunday). The unsubstantiated opinions stand in stark contrast to the testimony of the neighbors who have lived nearby, and who testified about the already difficult parking situation. Allowing the Petitioner to avoid the parking requirements of the regulations, given this lack of justification and already

tenuous situation, is completely unwarranted, and the Court must reject the Petitioner's request to approve this joint use parking lot.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of June, 2021, a copy of the foregoing Closing Argument Memorandum was served via email and regular mail on:

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