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

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PETITIONERS' MEMORANDUM

STATEMENT OF THE CASE

This matter comes before the Board of Appeals for Baltimore County as an appeal of Baltimore County Administrative Law Judge Maureen E. Murphy's August 2, 2021 Opinion and Order denying all of the Petitions for relief. The Petition was filed by St. Rita's Roman Catholic Congregation, Inc. ("St. Rita's") as the owner, and by Family Crisis Center of Baltimore County Inc. ("FCC"), as the contract purchaser of the property at 2907 Dunleer Road in the Dundalk area of Baltimore County (the "Petitioners"). An appeal was noted timely from the Opinion and Order by John B. Gontrum, Esquire, on behalf of the Petitioners.

The Petitioners are seeking the following relief from the Baltimore County Zoning Regulations ("BCZR"):

Petition for Special Hearing pursuant to BCZR §500.7

(1) Residential Transition Area (RTA):

1(a) to confirm that the proposed building addition is outside the RTA and RTA regulations do not apply to the proposed addition, existing buildings or modified parking on site; or

1(b) in the alternative, to grant an exception to the proposed new uses and improvements pursuant to BCZR §1B01.1.B.1.g(9); and

1(c) to permit the existing rectory within the RTA buffer and setback as a non-conforming use.

(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 No. 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.

(5) Additional Relief: For such other and further relief as the nature of the development m ay require.

Petition for Special Exception

(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.

Petition for Variances

Lot No. 1: Church and Rectory

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

(2) From BCZR §1B01.2.C.1.a to permit a street corner side yard setback of 20 feet for the church in lieu of the required 35 feet;

(3) From BCZR §1B01.2.C.1.a to permit a front yard setback of 38 feet for the rectory in lieu of the required 40 feet;

(4) From BCZR §1B01.2.C.1.a to permit a street corner side yard setback of 27 feet for the rectory in lieu of the required 35 feet;

(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 feet from a right of way line in lieu of the required 10 feet; and

(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 feet in lieu of the required 40 feet;
(2) From BCZR §1B01.2.C.1.a to permit a street corner side yard setback of 19 feet in lieu of the required 35 feet;
(3) From BCZR §1B01.2.C.1.a to permit a rear yard setback from Dunleer Road of 28 feet in lieu of the required 30 feet;
(4) From BCZR §409.8.A.4 for a parking setback of 0 feet from the right of way line in lieu of the required 10 feet;
(5) From BCZR §1B01.1.B.1.C. to allow reconfigured parking within the RTA buffer and setback;
(6) From BCZR §1B01.1.B.1.c to allow repurposed hall and school buildings within the RTA, buffer and setback.

A hearing was held remotely using Webex for audio and video participation before the Board on November 18th and 23rd, 2021. John B. Gontrum, Esquire appeared on behalf of the Petitioners. James Shea, Esquire, appeared on behalf of Protestants Ann Sparks and Sharon Sparks. Protestants Ray Moon, Mary Dilegge, Tracey Mummert, Gregory Massoni, James Devlin, Joseph Guido, Carolyn Jones, Kerry Plancon, Gene Suliga, and Georgio Comninos appeared pro se and offered statements (singly and collectively "Protestants").

STATEMENT OF FACTS

The St. Rita's church complex is situated in the heart of Dundalk and consists of five (5) buildings on a lot of 84,000 square feet or 1.93 net acres zoned D.R. 5.5. The property is rectangular with sides of 420' by 200'. The gross area of the property as defined by the BCZR includes half of the adjoining right of ways up to thirty (30) feet. Because there are four (4) right of ways surrounding the site the gross area of the site includes an additional 31,000 square feet. The total area for zoning density purposes is, therefore, 115,000 square feet or 2.64 acres. The buildings include a church, a rectory, and three mostly vacant buildings: a building formerly used as a school, a former convent and a building named "Parish Hall", which is used for some

functions. The church seats 250 congregants. On the site there are thirty-two (32) parking spaces. The site is surrounded by streets. The church and rectory front on Dunmanway Road; the convent and school front on Dunleer Road, and the Parish Hall fronts on Mornington, but it appears that their primary means of entrance is off of Dunglow Road.

Mornington and Dunleer Roads are one-way roads. Dunmanway and Dunglow Roads are two-way roads built on eighty (80) foot wide rights of way with angled parking with their rights of way. There is angled parking on both sides of Dunglow Road, and on one side of Dunmanway. The travel ways on Dunmanway and Dunglow are twenty-four (24) feet wide, and on Mornington and Dunleer Roads are eighteen (18) feet wide on forty (40) foot wide rights of way.

Across Dunmanway from the subject property are commercial, office and institutional properties zoned BL-CCC. Across Dunglow Road from the site are apartments zoned D.R. 16. Across Mornington and Dunleer roads are individual, single family dwellings zoned D.R. 5.5. The properties across Dunmanway are in a National Historic District and a Commercial Revitalization District. The subject church complex and St. George's Episcopal Church across Dunleer Road from the St. Rita's site are the only properties south of Dunmanway in the Commercial Revitalization District (Petitioners' Exhibit 3A).

The St. Rita's complex appears eligible as a National Historic site based on correspondence from the Maryland Historical Trust (Petitioners' Exhibit 15). It recently has been assigned Maryland Historical Trust Inventory Number BA-3082-1.

Petitioners' first witness was Kevin Anderson, a registered civil engineer, accepted as an expert in civil engineering, zoning and land development. Mr. Anderson described the site and submitted the site plan consisting of five (5) pages (Petitioners' Exhibit 2A-2E). He had prepared and sealed the site plans and testified that they accurately represented the site and the proposal.

This case arose out of a desire by St. Rita's to subdivide its property into two (2) lots. Lot 1 would consist of the church and rectory building, and Lot 2 would consist of the former school building, the convent and Parish Center. Parking and access would be shared under a joint use agreement or easement. FCC has proposed converting the former school into living units for twelve (12) single parents and their children, victims of domestic violence. The convent is proposed to be razed and replaced with either open space or additional parking. The site plan shows the removal of the convent for open space and the addition of seven (7) parking spaces to bring the total on-site parking to thirty-nine (39) spaces.

Although some of the proposed parking spaces are within the ten (10) foot setback area for parking from Dunleer and Dunglow Roads, current parking spaces not only exist within the same setback areas but also encroach in the right of way of Mornington Road (Petitioners' Exhibit 2A).

If the convent is removed, and replaced with parking instead of totally being replaced with open area, there is a potential for an additional eight (8) or fourteen (14) spaces (Petitioners' Exhibits 6A and 6B). Mr. Anderson testified that the site is served by several bus lines, and that there is substantial off-site public parking, not only directly adjacent to the site on Dunglow Road but also at the Dundalk Center across Dunmanway.

Mr. Anderson testified that the only structural addition to the site will be a new entrance to the former school and Parish Hall buildings. The main entrance to the former school will be oriented from Dunleer Road to Dunglow Road. This entrance will consist of two (2) stories and 2,082 square feet and will include a ramp and an elevator. (Petitioners' Exhibits 2E, 5A, 5B). The addition will cover an existing paved area. The existing buildings are twenty (20) and twenty-five (25) feet from Dunglow Road's right of way, and the proposed addition would be two (2) feet from the right of way and seven (7) feet from the sidewalk (Petitioners' Exhibit 2E).

Mr. Anderson explained that the Parish Hall building and the former school were built on different levels, with stairs needed to access the first and second floors and basement areas of both buildings. Consequently, in order to meet accessibility requirements under the American Disabilities Act the addition was proposed. Mr. Anderson opined that the existing eighty (80) foot right of way on Dunglow Road, and the extensive setback of the apartment buildings from the right of way, along with the lack of opposition from those residents and owners suggests that the additional proximity to the right of way of Dunglow would have minimal impact on those apartments.[1]

Mr. Anderson testified that there were adequate public facilities covering the site with no traffic deficient intersections or water or sewer deficiencies. He reviewed the special exception criteria contained in BCZR §502.1, and testified that the proposed use as a Community Care Center in the existing buildings would not be injurious to the public health, safety or general welfare.

Mr. Anderson also offered that the use really did not meet all of the criteria of a boarding or rooming house. BCZR §408B requires that a rooming or boarding house be located in a single-family dwelling and that personal information of the residents must be disclosed to various county agencies. Neither of these requirements appear to be met by the proposed use.

Mr. Anderson also testified with respect to the Residential Transition Area ("RTA"). Not all of the property falls within the RTA. The church building, the parking closest to Dunglow and the area encompassed by the proposed new entrance are all outside of the RTA (Petitioners' Exhibit 2C). Neither the commercial zoning across Dunmanway nor the D.R. 16 zoning across Dunglow Road generates an RTA. Much of the existing Parish Hall, and all of the parking on the

[1] Using a thirty-foot (30') scale as indicated on Petitioners' Exhibit 1E, the proposed addition would be over one hundred twenty (120) feet from the closest apartment building and over thirty (30) feet from the roadway.

south and east sides of the property as well as a substantial portion of the former school and rectory fall within the RTA. Although the Parish Hall will continue to be used for church functions under an agreement with FCC, it will also be used by FCC as part of its Community Care Center and as a community building.

Mr. Anderson referred to several unique factors that created the need for zoning variances: the age of the buildings, the fact that they pre-existed the current regulations, the site being surrounded by roadways, and the wide right of way of Dunglow containing the twenty-four-foot travel way and angled public parking on the street. At the time of his testimony Mr. Anderson was not aware of the Maryland Historical Trust letter (Petitioners' Exhibit 15).

Ms. Amie Post, the Executive Director of the Family Crisis Center, testified on behalf of FCC. FCC is a private, charitable corporation. It works with state and county agencies in providing services to victims of domestic abuse, and is the permanent provider of emergency safe shelter and the designated provider of Baltimore County's domestic violence hotline. The Family Crisis Center has been located on Dunmanway within a block of the subject site for over forty (40) years.

The FCC operates under the auspices of the Governor's Office of Crime Control and Prevention, which certifies FCC and provides funding. The Governor's Office sets standards of care and admission policies and monitors FCC for compliance; it also supervises FCC programs. Baltimore County also provides funding and supervision of FCC programs. Ms. Post testified that state law requires local jurisdictions to provide victims of domestic violence and their children with a temporary home and counseling. Baltimore County cites FCC's programs as fulfilling its state obligations.

The purpose of the facility proposed for the St. Rita's site is to provide transitional housing, counseling and training for up to twelve (12) individuals and their minor children. The individuals would be chosen based on certain criteria such as being employed, having child care and having certain basic social skills. Unlike residents in an apartment complex these individuals would be part of a program. Violation of the terms of the program could terminate the residents from the program and their living unit. Residents in the program could reside at the site for up to two (2) years. One of the principal purposes of the site is to provide stability not just to the adult residents but also to the children. Baltimore County's Department of Housing and Community Development issued comments in this case verifying the use of the twelve (12) living units and their importance to Baltimore County (Petitioner's Exhibit 14).

The location of the proposed site in close proximity to FCC's current facility allows the current staff to walk between the facilities. Although a few of FCC's staff will be present on the site during normal business hours, those staff members already have parking available off-site or use public transportation. FCC currently has a staff of twenty (20), but Ms. Post did not anticipate them parking at this location.

The living units will be secured. Security cameras on the St. Rita's site will be monitored throughout the day and night from their nearby facility. Entrances will have a passcode. In response to community comments, Ms. Post noted that in her years with FCC there had been only one (1) security incident at their current facility. Furthermore, individuals using this facility would already have gone through the initial programs at the existing FCC facility and would have been removed for a substantial period of time from the abusive situation. Consequently, based on her experience, the experience of similar programs, the admissions' criteria, and the security on site, it was highly unlikely that a security incident would occur.

The adult residents are expected to have employment during the day as part of the program criteria. Consequently, there should be little need for parking except during the nighttime hours and on weekends. In addition, in Ms. Post's extensive experience with abuse victims, private transportation is rare. In her estimation out of the twelve (12) adults in the program perhaps six (6) would have personal vehicles. With staff parking at their current off-site location, six (6) spaces for the use should be sufficient.

The specific criteria for admission to the program as well as the rules of occupancy have not been finalized. Consideration is being given to restricting guests, and there will be no live-in guests allowed. Ms. Post did not believe permission would be given for either pets or parties on-site.

The new, proposed entrance on Dunglow Road is necessary to bring the former school building and the Parish Hall into American Disabilities' Act compliance and to provide a link between the two buildings. It would serve as the entrance into the two buildings for all persons with the existing Parish Hall entrance on Mornington Road and school access off of Dunleer Road serving as emergency exits. The location and configuration of the buildings create a practical difficulty in reversing the entrance to face Dunleer Road.

Ms. Amy Menzer, the Executive Director of the Dundalk Renaissance Corporation ("DRC"), also testified in support of the zoning petitions. The DRC offices are in the commercial center across Dunmanway from the St. Rita's site. The DRC's mission is to promote the commercial community and stabilize the residential community of Dundalk. Ms. Menzer has been involved with the DRC for fifteen (15) years and lives in Dundalk.

She had been involved in the decision to extend the Commercial Revitalization District over the St. Rita's property because of the need for revitalization of the property and its importance

as a transition property between the commercial area across Dunmanway and the residential area around the property. She believed the proposed use would enhance the area and would not strain the community's resources. In addition, she found it compliant with the description for Commercial Revitalization Districts contained in Baltimore County's Comprehensive Plan. The purpose of such districts is to identify properties that have redevelopment opportunities and to promote a mix of uses including residential and institutional uses. Having twelve (12) additional families and refurbished community space in the school and Parish Hall buildings met the Comprehensive Plan's purposes.

Ms. Arkia Gowins, who has lived directly across Dunleer Road from the convent and Parish Center for nine (9) years, also testified that the site needs revitalization. Her family has owned properties in the immediate area of St. Rita's for decades. She noted the vandalism and deterioration of the site over time including vandalism and had to report the death of a person from an overdose on the convent steps. After review of the site proposal she believed that the proposed Community Care Center would benefit the site and would not be injurious to the health, safety or welfare of the community. Based on her knowledge of the site she did not foresee any parking issues arising from the proposed Community Care Center.

Mr. William Perry, a longtime parishioner of St. Rita's and a parish corporator, spoke on behalf of St. Rita's parish. He had attended the school when it was at its peak with two classes for every grade and 900 students. The school closed in 2006, and for the past fifteen (15) years the parish has been marketing the property and trying to find an alternative use for the building. He agreed that there had been vandalism and the buildings need repair. The parish does not have the funds, however, to undertake the substantial repairs necessary or to raze the buildings, and has no need for the buildings with the exception of the Parish Center. St. Rita's would continue to use

the Parish Hall building in conjunction with FCC and had been promised use of the kitchen for fundraisers.

Over the years the number of church services at St. Rita's has declined along with attendance at the remaining services. He did not believe parking would be an issue, and he noted that even when the site was operating at capacity there was not a parking issue.

Ann Sparks of 3002 Dunleer Road was Protestants' first witness. She has resided in the neighborhood for sixty (60) years. Her dwelling is in close proximity to the St. Rita's complex. Although across from St. Rita's on Dunleer there are only four (4) dwellings and St. George's parish church, in her block there are twenty-five (25) dwellings. The lots on Dunleer are also accessible by alley ways, and there are garages and parking pads on the lots. Because numerous dwelling occupants have more than one (1) vehicle, there is crowded parking on the street, and some residents use the St. Rita's parking area. In her view adding any new use to the St. Rita's site is detrimental to the parking in the area. Adding additional vehicles will be a burden to the area. On days of special events in the area, such as the Heritage Festival, parking becomes even more of an issue for her community.

She also opposes the expansion of FCC to the residential neighborhood from its current location across Dunmanway. This was not the purpose of locating the church institution in the residential community.

In addition to concerns over parking and her perception of the non-residential use, Ms. Sparks also was concerned about the safety of the area by adding the twelve (12) living units at St. Rita's. She stated that even more than the parking issue the safety issue was her top concern. She disagreed with subdividing off a piece of the church and did not believe that the community needed

more meeting room space. She did not believe the proposal fit within her community and feels it is unfair to the property owners. She submitted a petition in opposition to the proposal.

Under examination by the Board, Ms. Sparks testified that she would not be opposed to apartments on the site, for there were apartments in the neighborhood. She viewed FCC as a commercial use, and such use did not fit in the residential community. She would not object to a church-related use. She testified that the crux of all of her testimony was the intrusion of this use into the residential community. She believed the buildings could be torn down and townhouses or single-family dwellings could be put on the site instead. She had no problem with expanding the FCC as long as it was on the other side of Dunmanway.

Ray Moon of 3006 Dunmore Road testified that he agreed with Ms. Sparks' testimony and that the proposed use did not belong in the residential neighborhood. He believed that there were better uses for the St. Rita's property. If it cannot be used as a school, he believes either the buildings could be used as a museum or be torn down and used for four (4) single family dwellings. He believed that the FCC proposal would have a negative impact on the community because, in his opinion, such uses have a negative impact everywhere on residential areas.

Mary DiLegge of 3014 Dunglow Road testified as to numerous concerns with the proposal. Like Ms. Sparks and Mr. Moon, she believed the use did not belong in a neighborhood of single-family dwellings. In addition, the need for so many variances to accommodate the use indicates to her that the use does not fit. She especially did not like the variance for the proposed entrance on Dunglow Road, for it was located, in her opinion, much too close to the right of way and sidewalk areas. In addition, she thinks the entrance would take away from the historic appearance of the buildings.

Ms. DiLegge testified that the proposed use did not meet the criteria of a community care center, for it was not licensed by the Maryland Department of Health. Furthermore, the use was not small in size because it would allow twelve (12) to fifteen (15) dwelling units. She also did not believe it fit within the rooming/boarding house definition.

Ms. DiLegge believes that safety is also a concern because staff will not be on site all of the time. She believed that the abusers are criminals who have no concern for the community and may be coming to the site. Her husband had a bad experience being kidnapped and robbed from his own back yard. She agrees that the site looks bad, but believes that is the fault of the parish and that the proposed use would destroy the neighborhood.

Finally, she believed that the site would need more than six (6) spaces. She believed that a space should be allocated for each living unit.

Tracey Mummert of 3101 Dunglow testified that there was tremendous opposition to the proposal in the immediate neighborhood. She had helped organize both the on-line and in person petitions. She testified that the immediate neighborhood was bounded by Dunmanway, Dundalk Avenue, Dunhill Road to the south and Dunran Road to the east. She wants to live in the neighborhood unencumbered by county programs.

She has concerns over the number of adults that will be housed at the project as well as to the staff members parking on the lot. The neighborhood is changing with increased crime in the area. She perceives that the site will accommodate up to sixty (60) people plus friends and family and with those people will be more crime. The neighborhood uses have not basically changed in fifty (50) years, and the Community Care Center does not meet the intent of the neighborhood. The only people impacted by the proposal are the ones in the immediate neighborhood.

She also is concerned over the new entrance on Dunglow and does not understand how it will impact parking with a variance of that magnitude. She lives twelve (12) houses away and during any day traffic varies from light to heavy. She does have an alley with parking behind the house. Finally, she is concerned over the precedent that this might set with other such uses in her neighborhood.

Greg Massoni has lived at 3022 Dunglow Road for thirty-one (31) years. He had personally helped purchase and put up signs in opposition to the proposal throughout the neighborhood. He said the letter of community support from Dunlogan Community Association (Petitioners' Exhibit 8B) does not represent the neighborhood's thinking. He believes that the use will be a detriment to a neighborhood and community already negatively impacted by the uses in the Dundalk Center. Given the number of bedrooms within each living unit he believes that there will be a lot of people and activity at the site including vendors and delivery people. Most of the area would not be impacted by this, only the immediate neighborhood. In his opinion Dundalk is subjected to Section 8 housing, crime and untagged vehicles as well as by the uses in the commercial center. He chose to live in a neighborhood of single-family dwellings and does not believe that a social services program such as this belongs in his community. He believes it will destroy their way of life and community.

James Devlin of 3000 Dunleer Road has lived in the community since the 1980's, and his property is diagonally across from the St. Rita's site and adjacent to that of Ms. Sparks. He agreed with Mr. Massoni that the Dunlogan letter of support was not representative of community sentiment. He is concerned over whether the 100-year-old neighborhood and infrastructure will sustain the proposed use.

Mr. Devlin also testified that Dundalk has a very high density of population and that the crime rate in the local 21222 zip code represents 9.5% of all crime in Baltimore County. He believes that FCC is taking people from a hostile environment and putting them in another hostile environment. He did not believe that the FCC residents would have the resources to support the Dundalk shopping center. He also testified that parking is not generally a problem; it is the use to which he objects.

Joseph Guido, who has lived at 3101 Dunglow Road for thirty-seven (37) years, believes his neighborhood can be characterized as "Leave it to Beaver Land" where the neighbors look after one another. He believes that the proposed use brings a tremendous opportunity for violence into the community and that the neighborhood should be protected from such violence; they have "earned their protection."

Carolyn Jones has lived at 2416 Dunmore Road also for thirty-seven (37) years. She agrees with Mr. Guido and others that the placement of this facility at the proposed location does not belong in a residential area. Police protection is not readily available, and she is concerned that the project could be expanded to a homeless shelter and subject people to violence. She has campaigned over the years against projects she believed were detrimental to the community such as a proposed prison and LNG plant, and she believes this is another bad project. She also believes that the use will negatively impact the local schools with transitory use.

Kerry Plancon of 3102 Dunglow Road has lived in the community for ten (10) years. She claimed to have served on various boards for transitional housing of different types and believes that the site needs on-site supervision. The residents in her experience were coming out of crises and had severe needs. She does not believe that the FCC residents would know how to behave in the community and needed supervision coming out of domestic violence situations. She also

testified that the apartments across Dunglow are very nice units. She is concerned about the parking and the number of variances. She believes the use will be a blight on the community and not a good fit.

Gene Suliga of 3108 has lived for seventy-five (75) years in Dundalk and thirty-four (34) years on Dunglow Road. Like other Protestants he believes that the use will be harmful and flies in the face of the residential community. The houses are architecturally unique, and a "crisis center" in the community does not belong here. He also believes that the thirty-nine (39) parking spaces at St. Rita's are short of what is needed. He believes that the county is improperly imposing this use on the community.

Georgio Comninos of 6809 Dunhill Road owns several properties in the area and twenty-five (25) to thirty (30) properties around the metropolitan area. He believes that a crisis center comes with safety risks for those fleeing domestic violence. He believes this is contrary to a community where the children walk to elementary schools and that it exposes the children to direct threats from the abusers of the victims. He works as a real estate professional, and he believes that no one wants to live near places like a homeless shelter or crisis center and that it will negatively impact values.

Parking is an issue in the area because of the people parked on the streets which creates a problem backing out of his parking pad on his lot. Cars are always parked on the St. Rita's lot, and the additional use will add to the demand for parking.

LEGAL STANDARDS

A. SPECIAL EXCEPTION

"The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The

special exception use is a valid zoning mechanism that delegates to an administrative Board limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption." *Schultz v. Pritts*, 291 Md. 1, 11, 432 A.2d 1319, 1325 (1981). *Schultz* went on to conclude:

> "We now hold 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." *Id.* at 22-23, 432 A. 2d. at 1331.

Section 502.1 of the BCZR lists eight (8) different factors to be considered in reviewing a special exception. As the Court in People's Counsel for *Baltimore County v. Loyola College in Maryland*, 406 Md. 54; 956 A.2d 166 (2008) stated, within each of the standards including the general standard of whether the use would be injurious to the health, safety or general welfare is the *Schultz v. Pritts* standard. Within each of the subsections of Section 502.1 is the *Schultz* issue of whether the use at the particular location has greater impacts than otherwise could be expected. In addition, a special exception must be shown that the use is "in conformance, is consistent, or is in harmony with a land planning document, such as a general plan, master plan, or functional master plan. *People's Counsel v. Loyola College* at 77, 956 A. 2d 180 n. 23.

In *Anderson v. Sawyer*, 23 Md. App. 612, 329 A. 2d 716 (1974) the Court examined the proposal for a funeral home in a residential neighborhood and made the following statement:

> "There can be no doubt that an undertaking business has an inherent depressing and disturbing psychological effect which may adversely affect persons residing in the immediate neighborhood in the enjoyment of their homes and which may lessen the values thereof. Indeed, it is precisely because of such inherent deleterious effects that the action of a local legislature in prohibiting such uses in a given zone or zones will be regarded as promoting the general welfare and as constitutionally sound.... But in the instant case the legislature of Baltimore County has determined that as part of its comprehensive plan

> funeral homes are to be allowed in residential zones notwithstanding their inherent deleterious effects. By defining a funeral home as an appropriate use by way of special exception, the legislature of Baltimore County has, in essence, declared that such uses, if they satisfy the other specific requirements of the ordinance, do promote the health, safety and general welfare of the community. As part of the comprehensive zoning plan this legislative declaration shares in a presumption of validity and correctness which the courts will honor....
>
> The presumption that the general welfare is promoted by allowing funeral homes in a residential use district, notwithstanding their inherent depressing effects, cannot be overcome unless there are strong and substantial existing facts or circumstances showing that the particularized proposed use has detrimental effects above and beyond the inherent ones ordinarily associated with such uses. Consequently, the bald allegation that a funeral home use is inherently psychologically depressing and adversely influences adjoining property values, as well as other evidence which confirms that generally accepted conclusion, is insufficient to overcome the presumption that such a use promotes the general welfare of a local community. Because there were neither facts nor valid reasons to support the conclusion that the grant of the requested special exception would adversely affect adjoining and surrounding properties in any way other than would result from the location of any funeral home in any residential zone, the evidence presented by the protestants was, in effect, no evidence at all." [citations omitted] *Id.* at 624-625, 329 A. 2d at 724.

Schultz also rejected the test of *Gowl v. Atlantic Richfield Co.*, 27 Md. App. 410, 417, 341 A. 2d 832, 836 (1975), where the impact of a special exception was measured against that of a permissible use. The test is not whether FCC would create less parking problems than a school at the location but whether the parking for FCC would tend to create congestion in the roads or streets on its own.

B. VARIANCE

Application was made in this case for zoning variances pursuant to Section 307 of the B.C.Z.R. Section 307.1 states:

> **"§ 307.1. - Authority to grant variances; procedures and restrictions.**
>
> 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. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification."

The section articulates two standards by which area or bulk variances may be granted: practical difficulty and unreasonable hardship. When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive ("or"), Maryland courts generally have applied the more restrictive hardship standard to use variances, while applying the less restrictive practical difficulties standard to area variances because use variances are viewed as more drastic departures from zoning requirements. *Belvoir Farms Homeowners Ass'n, Inc. v. North*, 355 Md. 259, 276 n. 10, 734 A.2d 227 (1999).

Cromwell v. Ward, 102 Md. App. 691, 651 A.2d 424 (1995), is the leading case in Maryland discussing variances and practical difficulty. Before the issue of whether a practical difficulty arises, there must be a finding that "special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request." *Cromwell* referred to *North v. St. Mary's County*, 99 Md. App. 502, 638 A.2d 175 (1994), and the ordinance that was at issue as follows:

> "In *North v. St. Mary's County*, 99 Md. App. At 512, we held that the ordinance there required a fining that "special conditions or circumstances exist that are peculiar to the land…" We there stated that, in the zoning context, the term "unique has a customized meaning.

> 'In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, *i.e.*, its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.' " *Cromwell* at 710, 651 A.2d at 433-434.

There are two (2) points that should be noted with respect to *North* and *Cromwell.* First, the ordinance at issue in *North,* and quoted in *Cromwell,* differs from BCZR § 307 in that it only pertains to the unique characteristics of the land. Section 307 of the BCZR also refers to special conditions of the structure at issue. Also, in *Cromwell*, the case was framed around the concept of self-inflicted hardship where the building was constructed not in compliance with the zoning height requirements and then sought to be permitted.

The second factor in determining whether a variance is warranted from bulk or area requirements is to determine whether a practical difficulty with the restrictions is present. In *McLean v. Soley*, 270 Md. 208, 310 A. 2d 783 (1973), the Court quoted 2 Rathkopf, *The Law of Zoning and Planning*, (3d ed. 1972) 45-28, 29, as follows:

> "In determining whether practical difficulties exist, the zoning board must consider three factors:
>
> 1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
>
> 2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
>
> 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured." *Id. at* 214-15, 310 A.2d at 787 (1973).

C. RESIDENTIAL TRANSITION AREA

Residential Transition Areas ("RTA") were first adopted in Baltimore County in Bill No. 100-70. The regulations have been amended over the years, but the purpose stated in the BCZR of the regulations is stated in BCZR §1B01.1.B.1.a.(2) is to assure that either similar housing types are built adjacent to one another or that adequate buffers and screening are provided between dissimilar housing types. Despite the reference in the purpose of the section applying to houses, Section 1B01.1.B.1.d applies the RTA to any use allowed as of right or by special exception in the D.R. zone or any parking. It clearly applies to new development and construction.

There are several ways in which restrictions within an RTA may be modified: by variance pursuant to Section 1B01.1.B.1.(c)(1) or by modification by Section 1B01.1.B.1.(c)(2), or by exception by Section 1B01.1.B.1.(g). Section 1B01.1.B.1.(g)(10), for example, grants an exception for a new community building if during the special exception process it is determined that compliance to the extent possible with the use requirements will be met and that the special exception can otherwise be expected to be compatible with the character and general welfare of the surrounding residential uses. It is also clear that variances under Section 1B01.1.B.(c)(2) may be granted regardless of the standards of BCZR §307 provided the tract is more than two (2) acres and with the recommendation of a County department.

D. SPECIAL HEARING

Special hearings may be requested to determine the non-conforming status of a use or structure pursuant to BCZR §500.7. In addition, exceptions to the RTA pursuant to BCZR §1B01.1.B.1.g may be granted by special hearing. The parking regulations also allow for a special

hearing. If a particular use does not have parking spaces assigned to it, Section 409.6.A allows for the number of spaces to be provided by a use to be determined. Usually, this is done in the hearing process, if, as here, a hearing is required. There are no parking spaces allocated in the zoning regulations for a Community Care Center. There also are no spaces allocated to a community center. These are uses where the need for parking may vary widely based on the special exception sought.

DISCUSSION

A. INTRODUCTION

This case hinges on the issue of whether the proposed use is appropriate for the St. Rita's site. If the Board finds that the use is an appropriate use, then the other issues would be capable of resolution. If the Board agrees with the Protestants that the use is not appropriate, the only remaining considerations are whether to bring the existing structures and parking into compliance by granting the variances and special hearing requests.

In order for the subdivision of the St. Rita's site to occur, the site has to be brought up to current zoning standards either through the granting of variances or through special hearing relief to grant non-conforming uses. Virtually any use of St. Rita's site including the school, convent and Parish Hall buildings requires zoning setback and parking relief. The buildings are all non-conforming with regard to setbacks, and to the extent that uses are allowed in the former school, Parish Hall and former convent buildings they would all need relief under the RTA, for the convent and school uses have been abandoned through disuse over the years.

Parking also is an issue under the zoning regulations for any continued use of the site other than a church use. Under the zoning regulations the church use requires sixty-three (63) spaces, and there are only thirty-two (32) approved zoning spaces on the site with the current buildings. In order for the church alone to meet the current parking requirements other buildings would have to be removed. No additional use of any sort would be permitted without a parking variance. The proposed Community Care Center is among the least parking intense uses available for the site.

Although the requested special exception is dependent on the granting of variance or special hearing relief, so too is virtually any other use of the St. Rita's site unless the buildings are removed, and the site redeveloped. Consequently, the various types of relief will be discussed separately.

B. SPECIAL EXCEPTION

There is significant and passionate opposition to the proposed use of the St. Rita's site for a Community Care Center. In viewing the criteria under Section 502.1 of the BCZR, Protestants made allegations that the use would tend to create congestion in the roads and streets, tend to overcrowd the land and would impact their safety. The actual facts, however, do not support these allegations and concerns no matter how fervently and sincerely they may be held. Even the protestants seemed to disagree over issues such as the parking impact. The only issue on which there seemed united agreement was that this was a social services program that did not belong in their community. There is a presumption, however, that this use fits within the legislative scheme for residential uses absent a showing that there is some specific condition of the site which exacerbates the impact of such use to the detriment of the public, health safety and welfare.

1. DEFINITION OF A COMMUNITY CARE CENTER

Section 101 of the BCZR defines a Community Care Center as follows:

> "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."

The proposed use is a small-scale facility. Twelve (12) living units are proposed along with counseling services supplementing the counseling and administrative services already in place at the current site on Dunmanway. The D.R. zones are not the only zones where Community Care Centers are allowed in the BCZR. In the R.C. zone, Section 1A01.2.C.6 allows a special exception for a Community Care Center as follows:

> "6. Community care centers provided that no residential community care center, i.e., a center which serves as the residence of the persons for whom care is provided, shall provide care for more than 15 persons per site, and no day community care center shall provide care for more than 15 persons per acre nor more than 75 persons per site; however, if the site is in excess of two net acres and is located outside the urban rural demarcation line, the hearing authority shall determine the maximum number of persons permitted in a day community care center based on the total acreage of the site and the testimony and evidence presented."

The same language is contained in the R.C. 5 zone in Section 1A04.2.B.5. If 75 persons per site are allowed in the two (2) R.C. zones with private well and septic as a Community Care Center, then the twelve (12) adults with minor children proposed for the former school building must be deemed a small-scale facility.

The number of units to be provided at St. Rita's site was derived by FCC based on the size of the school building to adequately accommodate living units for families. Two (2) units are proposed on the basement level and five (5) each on the first and second floors. Each unit will have its own kitchen and bathroom facilities. There will be multiple bedrooms for each unit. One

reason for the number of bedrooms is that such units are not often found in the residential market. Victims of abuse often include multiple children, and housing for more than one or two children and adults is difficult to find. These units are to support a need as indicated in the letter from the Department of Housing and Community Development (Pet. Ex. 14). Initially, fifteen (15) units were proposed including one (1) and two (2) bedroom units, but these would diminish the number of units available for families where the need for supportive housing was deemed greater.

The proposed density is also commensurate with the history of the site and the adjoining D.R. 16 zoning. D.R. 16 zoning would attribute 1.5 density units to each of the living units proposed based on the number of bedrooms. This would mean that eighteen (18) density units would be using Lot 2 of the St. Rita's site. Lot 2 contains 1.45 acres of gross area, which would permit twenty-three (23) density units.

The FCC is an I.R.S. §501(c)(3) charitable corporation, and this fact was not in dispute. The fact, however, that it is not licensed by either the State Department of Health and Mental Hygiene or by the State Department of Social Services raised an issue as to its qualifications as a Community Care Center. That issue can be addressed both through the purpose of the zoning definition and by the legislative history of state regulation of victims of abuse.

The first version of a definition of a Community Care Center was adopted by the County Council in Bill 91-1974 (See Attachment A). In that legislation there was no reference to victims of abuse or to the Maryland State Department of Social Services. Both references were added in Council Bill No. 142-1979 (See Attachment B). At the time of the enactment of County Council Bill 142-1979, however, the State Department of Social Services no longer existed. Its programs for abuse victims had been transferred to Social Services Administration of the Department of Human Resources.

The Maryland State Department of Social Services actually terminated when the Department of Human Resources was formed in 1975. Social Services became a part of the Department of Human Resources. Chapter 500, Acts of 1979 specifically established domestic abuse programs within the Social Services Administration of the Department of Human Resources. It stated the following in pertinent part:

> "The Secretary of Human Resources shall establish and maintain a model shelter home located in a major population center of the State. The model shelter shall be located so as to facilitate the use of the shelter by battered spouses and their children living in the region surrounding the shelter. The purpose of the model shelter shall be to house, care for, and rehabilitate battered spouses and their children. The shelter home shall be designed and staffed as follows:
>
> (a) The shelter shall provide battered spouses and their children with a temporary residence and necessary counselling.
>
> (b) The Social Services Administration shall supervise, direct, control and manage the shelter home."

This enactment was repealed and replaced in Chapter 296, Acts of 1984. It was codified in Courts and Judicial Proceedings §4-514 et seq. It expanded the program so that there would be at least one (1) shelter in a major population area. The Social Services Administration was to supervise and set standards of care and admission and monitor the shelters and provide technical assistance to a local organization or agency that is able to run a private shelter for battered spouses and their children. The Maryland Code was again amended by the Domestic Violence Act in 1994 (Chapter 728, Acts of 1994), and the provisions for treatment and assistance for battered spouses and children were transferred to the Family Law Article.

The Department of Human Resources, up until 2011, was responsible for the establishment and operation of the domestic violence program.[2] See Annotated Code of Maryland, Family Law, §4-516. By Chapter 356, Acts of 2011 the program was transferred to the Governor's Office of

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[2] In July, 2017, the Department of Human Resources was renamed the Department of Human Services (Chapter 205, Acts of 2017).

Crime Control and Prevention. (See Attachment C) It is under the auspices of this program and the supervision of the Governor's Office of Crime Prevention that victims of domestic abuse and their children are served. See Annotated Code of Maryland, Family Law, §4-515 (a). Section 4-515(b) of the Family Law Article mandates that as part of the program at least one (1) program must serve each population center. For Baltimore County the FCC fulfills that mandate. Interestingly, the annotations to Section 4-515 contain a reference to 85 Op. Att'y Gen. 114 (April 27, 2000) exempting the House of Ruth from zoning requirements in Baltimore City because it serves a public purpose on property leased from the State. FCC serves the same purpose as the House of Ruth in Baltimore County. It is not, of course, leasing property from the State and is a private entity.

Because the intent of the adoption of the definition in the County Zoning Regulations was to provide centers to house and counsel victims of abuse under government auspices, those functions could only be served by programs functioning under the Department of Human Resources, now transferred to the Governor's Office of Crime Prevention; otherwise, the use of serving victims of abuse would not exist within the zoning regulations and consequently, would not be permitted in Baltimore County, contrary to the State Code mandate.

In *Phillips v. State*, 226 Md. App. 1, 126A.3d 739 (2015), the Court reviewed what appeared to be an obsolete statute with respect to the procedures for DNA evidence admissibility. Although the case is not close on the facts to the present matter, its discussion of obsolete statutes is pertinent. The Court recognized that statutes may become legally obsolete by a superseding legislative enactment or by being declared unconstitutional. Statutes may also become factually obsolete where times change and the premises for the statute change. The Court analyzed the different treatment of factually obsolete laws. It concluded:

> "Cognizant of the challenges presented by obsolete statutes ... it is our view that the best way to proceed with an obsolete statute is...to rely on the traditional tools of statutory interpretation to effectuate the legislature's intent, as we have previously done when dealing with outdated statutes. See, e.g., *Sieglein v. Schmidt*, 224 Md. App. 222, 242, 120 A.3d 790 (2015) (interpreting "artificial insemination" in parentage statute to encompass in vitro fertilization – a newer reproductive technology that didn't exist at the time of the statute's enactment-because the legislature intended to "acknowledge the role of medically assisted, non-traditional conception of a child in establishing a parent's rights and obligations") .... Our principal aim in this undertaking is to determine if and how the legislature would have intended for us to enforce this now-obsolete statute.... Thus, we hold that the proper way to deal with a statute that is obsolete on its face is to look to the legislature's intent and work to effectuate that intent in the present legal and factual landscape." *Id.* at 12, 126 A.3d at 745.

Clearly, in adopting a definition for a Community Care Center the County Council intended for there to be a mechanism to allow for the shelter and assistance of victims of abuse as well as for the other categories in the definition. It may not be coincidental that the state legislature at about the same time was attempting to do the same or that the FCC was established at its current location at the same time. It also is clear that the definition was intended to provide for victims of abuse, not criminals and not those in need of hospitalization. In all of these respects the FCC proposal meets this definition and intent. Although members of the community in opposition to the FCC proposal questioned whether the proposed use met the strict definition of a Community Care Center, none seemed to question the nexus between the program proposal and government involvement.

The importance of the FCC in serving its mission is emphasized in the County Department comments. This is an important service provided to County residents and is supported by the Departments which work closely with the FCC.

It should be recognized, moreover, that the special exception for a Community Care Center is among the most closely regulated of all special exception uses. BCZR §502.5 puts unique limitations on Community Care Centers. The special exception only lasts five (5) years and then

must be renewed. The site must be inspected by the Department of Permits, Approvals and Inspections and the use can only be extended after notice and publication. The renewal of the special exception may be the subject of another hearing. Consequently, unique protections are afforded the neighborhood under this special exception to make sure that the private entity is operating in a manner consistent with its mission and county regulations.

2. COMMUNITY CARE CENTERS AND FAIR HOUSING ACT.

The Fair Housing Act (the "Act") prohibits discrimination in the sale, rental or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status, or national origin. 42 U.S. C. §§3601-19. Victims of domestic violence are not specifically protected against discrimination based on their status as victims. Because the vast majority of domestic violence victims are women, the impact of the act on domestic violence comes from the prevention of discrimination due to their gender. Consequently, there are provisions protecting women from discrimination in housing and eviction due to domestic violence.

The Act does not appear to pertain to this request for housing for victims of domestic violence. The legislation providing for a special exception for a Community Care Center as well as the definition is gender neutral.

The Violence Against Women Act ("VAWA") was initially adopted in 1987 but has been reauthorized several times. It also protects male victims of domestic abuse. See HUD Programs: Violence Against Women Act Conforming Amendments; Final Rule, 75 Fe. Reg. 66246, 66251. The purpose of VAWA was to protect some domestic violence victims from eviction, denial of housing, or termination of assistance on the basis of domestic violence. It also provides grant

programs for programs such as those provided by FCC. It does not, however, contain provisions such as the Religious Land Use and Institutionalized Persons Act (RLUIPA) which prevents discrimination against private religious institutions through legislation or the application of legislation on specific matters.

3. BCZR SECTION 502.1 CRITERIA

The Planning Department Comment (Pet. Ex. 13) found that the proposed use complied with the Master Plan proposed uses for the area. In this respect it appeared to agree with the testimony of Ms. Menzer, who also testified that the proposal complied with adopted plans for the area. The application of the Commercial Revitalization District to the site by the County emphasized the need for revitalization of what had been an institutional use. The proposed use of the site meets both the general purposes of the residential zone and the specific language contained in Master Plan 2020 at pages 137-140 (Attachment D).

Although the opponents to the proposal were adamant that this was a commercial use not suited for their neighborhood, individuals also focused their concerns on Sections 502.1. B, C, D and G. Section 502.1.B states that prior to granting a special exception it must appear that the proposed use will not "tend to create congestion in the roads, streets or alleys therein." The concerns of the nearby residents were not directed at additional traffic on the roads or streets generated by the proposed use but at the additional parking generated by the use.

The Administrative Law Judge made a critical factual error in finding that twenty (20) employees of the FCC would be utilizing the site and parking on it. Testimony before the Board, which was not contested, is that FCC has twenty (20) employees total, and none of them has a need for parking at St. Rita's. Of course, from time to time a couple of them may park at the site,

but that assumes that there is parking available, and if there is parking available, it is not creating congestion elsewhere. With parking available across the street, the parking for FCC staff is closer to the site than it is for County employees in Towson. Consequently, the only parking needed on the site is by the individual residents. The Administrative Law Judge made a second factual error in stating the Department of Public Works and Transportation in its comments opposed the parking. It did not, and there are no such comments filed with the Administrative Law Judge or the Board.

It is unquestioned that <u>any</u> additional use of the St. Rita's site to that of the existing church will generate additional parking. The site has been unused for a number of years but for the church and some ancillary activities at the rectory. Consequently, whether the former school and parish hall are used for a Community Care Center or for a school or for some other use, there will be a need for additional parking. It also appears that parking is an issue for some of the residents in the surrounding neighborhood. There was even testimony that some of the residents use the St. Rita's site for their own parking.

Interestingly, in describing the burdens on the neighborhood from special events like the Heritage Festival, none of the Protestants mentioned crowding from church services either on the weekends or during the week. For generations, the congregants of St. Rita's have either walked to services, parked on the lot or have learned to park at the commercial center which would be expected to be mostly vacant on Sundays and in the evening.

Uses permitted by right, such as schools, may create congestion in the roads or streets, and absent the need for zoning variances, it would make no difference what impact they may have on parking or traffic in the area, for the County has determined such uses are permitted. Special

exception uses, however, do have to meet the burden and *Schultz v. Pritts* made clear that comparing the impact of such uses to the impact of by right permitted uses is not appropriate.

In this case, however, the proposed use does meet the Section 502.1.B criterion. The proposed use is not creating any congestion. To the extent that parking is "congestion" the issue is whether the use is exacerbating that congestion. Currently, there are thirty-two (32) spaces for parking on the St. Rita's site. The proposal at a minimum adds seven (7) additional spaces to the current number. The use as proposed should only generate the need for six (6) spaces. The Board can and may condition its approval on even adding additional parking as suggested in Petitioners' Exhibits 6A and 6B. Consequently, because the use is adding additional spaces, it is not creating any additional need that it is not meeting. It cannot then be said to be "creating" congestion. Interestingly, some of the Protestants were not hesitant in suggesting uses such as schools or apartments which indeed would add significantly more parking usage, so it is appropriate to query how important the parking generated by FCC really is. There are no other uses which would generate less parking.

Uncontested testimony was presented that the adults in the program would number no more than twelve (12) and must have employment. Public transportation is readily available to the site. Most of the residents would have day jobs and would be absent from the site. At night, when the residents would be expected to return to the site, there is no lack of parking available on site. Again, this would not create congestion in the neighboring streets. During the day, the photos introduced by both Petitioners and opposition showed much available parking in the public spaces on the surrounding streets as well as on-site (Petitioners' Exhibit 4).

The addition of seven (7) parking spaces meeting zoning criteria should in any event improve the existing conditions. If half of the adult residents use public transportation, and the

employees walk to work at the adjoining commercial center or carpool, as Ms. Post in her testimony described as her experience, then the additional vehicles would be covered by the additional parking.

Section 502.1.C. states that a special exception use at a particular location must not create a safety issue for the community. Several community members mentioned their fear for their safety if the use is permitted. Given the changing demographics of the community and the high local crime rate cited by Mr. Devlin, and the undisputed drug abuse, vagrancy, and vandalism at the site, it is completely understandable that change in the use would create concerns. The use, however, would not create a safety hazard. Indeed, occupancy of the buildings with the attendant security should improve the existing condition.

Ms. Post testified that participants in the program would already have gone through a lengthy separation from the conditions of abuse. The residents are victims, not criminals, and well-removed from former abusers. This residency program is a subsequent phase to addressing the immediate unsafe condition. Surveillance cameras, secured entrances and security lighting are all intended to protect the site. The residents will have been screened and approved in a process far more rigorous than that of a typical rental situation. The current FCC facility has not had security issues over the past forty (40) years of its operation, and there is nothing about either the proposed use or its specific location that would be expected to generate a safety issue. The use of a Community Care Center has been legislatively determined as appropriate for residential neighborhoods, and no unique condition of the site was presented which would present a safety concern.

Section 502.1.D prohibits the overcrowding of the land and the causing of undue concentration of population. No independent County reviewer has stated that this use at this

location would overcrowd the land. No new building is being proposed. The property is adjacent to both commercial and D.R. 16 zones. It is the very definition of a transitional property into the single-family residential community. In this context the twelve (12) adults and their children living in a three-story school building that contained up to 900 children and teachers is not overcrowding the land or causing an undue concentration of population. The former school contains 23,439 square feet for an average of almost 2,000 square feet per unit, which is far more than the average apartment now being constructed.

The convent contains over 11,000 square feet and is proposed to be razed. In its place will either be open space or a combination of open space and parking as determined by the Board. Consequently, even with the addition of the entrance to the former school building and Parish Hall, there will be less building area on the site than now exists so that the property will be less crowded than it now is. The new use will not cause any undue concentration of population.

Section 502.1.G states that the proposed use must be consistent with the property's zoning classification and consistent with the spirit and intent of the zoning classification. The opposition to the proposal believes that the use neither is consistent with the zoning nor consistent with the spirit of the zoning classification. Clearly, the County reviewers, the Dundalk Renaissance Corporation and local residential associations disagree with these beliefs (Petitioners' Exhibits 8, 13, 14). The use of the property will be residential. Contrary to the belief of some of the opposition, the housing of these women and their children is not a commercial use. The counseling and interaction of these residents and the FCC staff also is not a commercial use, but is certainly in line with the mission of the parish and the historic use of the site.

The zoning regulations contemplate allowing group houses and multi-family dwellings in a D.R. 5.5 zone (BCZR §1B01.1.A.1.c). As the site is adjacent to two (2) streets with eighty (80)

foot rights of way and commercial and D.R. 16 zoning, the proposed use of the former school building is certainly compatible with the neighborhood, and as Ms. Menzer described, the imposition of the Commercial Revitalization District came about because the site transitions into the residential community. Given the District that covers the property, and its location to other more intense zones, it is clear that this use at this location is consistent with the spirit and intent of the regulations and of the zone. It also should be noted that Community Care Centers are acceptable even in rural zones such as R.C. 2 by special exception, where arguably a density of fifteen (15) apartments on two (2) acres or an adult day center of seventy-five (75) is far denser in comparison to adjoining properties than the subject site.

In summary, the proposed use meets the definition of a Community Care Center as intended by the County Council and meets the criteria of Section 502.1. The County Council has determined that such uses are permissible in residential areas and neighborhoods by permitting the use by special exception. There is no evidence in the record that this use as proposed at this location will have any more of a negative impact on the surrounding neighborhood than at similarly zoned locations.

C. SPECIAL HEARING RELIEF

This site highlights the problems with bringing a property developed almost a century ago into conformance with today's zoning regulations. The situation of five (5) older buildings and parking along with a proposed subdivision and special exception use creates a plethora of zoning issues. Consequently, special hearing relief was sought for the Residential Transition Area ("RTA"), for a parking determination pursuant to BCZR §409.6.A, and for such other relief as may be appropriate including non-conforming status. The buildings are non-conforming as well

as the parking in the current configuration. The change in use, however, of some of the buildings, and the reconfiguration of the parking areas, require addressing the number of parking spaces, building setbacks and the RTA.

1. RESIDENTIAL TRANSITION AREA

No one raised an objection to the RTA issues. No one suggested that the buildings all come down because of non-compliance with the RTA or that the existing parking be eliminated. Not one person objected to the reconfigured parking on site. No one said that the buildings and parking were incompatible with the neighborhood. Indeed, this appears to be a case where if the proposed use of the site is acceptable to the Board, the RTA changes would be approved. If the use is not acceptable to the Board, the only issue is whether to recognize either the non-conforming status of the existing buildings or to grant an RTA exception.

No new buildings or additions to buildings are proposed in the RTA. The change in use of Lot 2, however, triggers the RTA for the existing buildings.

On Lot 1, occupied by the church and rectory, the church is outside the RTA, but the rectory is inside the RTA. Its purpose is not changing from an accessory use to the church, and it would typically be grandfathered as being in existence prior to the adoption of the RTA in Bill 100-1970. The only real RTA issue on Lot 1 is the reconfigured parking.

Parking currently is directly adjacent to Dunglow Road right of way on both Lots 1 and 2, and parking is directly adjacent to Dunleer Road on Lot 2 (Pet. Ex. 2A). The proposed parking on Lot 1 would add spaces in back of the rectory and bring parking up to the right of way of Dunleer Road (Pet. Ex. 2B). Exceptions provided for additions to existing structures contained in BCZR §§1B01.1.B.1.g (4) and (9) would not apply because setback variances are also needed for the

parking. Because it is new parking associated with a religious institution and a building devoted to civic and educational activity (the Community Care Center), it would appear that the parking would be covered under exception g (10). Subsection g (10) recognizes that for buildings such as the Community Care Center, special exceptions are necessary, and the section implies that if the use meets the criteria for a special exception, it would qualify for the RTA exception.

Because there was no objection to the parking configuration by the residents or in the County comments, the proposed parking configuration may be presumed compatible. The area on Lot 1 proposed for parking is now used as a driveway and is now available for parking due to the reconfiguration of the parking on Lot 2.

With regard to Lot 2 the RTA would apply to the new parking configuration and to the former school building and Parish Hall. The Parish Hall is still going to be used by the church, and there is going to be less activity around the entrance on Mornington Road with the new entrance being off of Dunglow. This will have only a favorable impact on the dwellings on Mornington which generate the RTA for the Hall. In addition, the parking off of Mornington will be removed from the right of way and will set back the required distance from the right of way of both Mornington and Dunleer. The new parking configuration will actually be much improved over the existing parking situation which is totally non-compliant with the zoning regulations. None of the neighbors had any concern over the location of the existing or proposed parking.

The new entrance for the Parish Hall and living units on Dunglow is outside of the RTA. It is the repurposing of those portions of the buildings within the RTA which creates the existing need for relief. Because there is no new construction within the RTA, it cannot be said that there is an addition to the buildings. If the buildings are treated as a new community building, we believe that the Subsection g.(10) exception would apply, unless the Board chooses to recognize

that the buildings are non-conforming with respect to the RTA and that the change of use of the buildings with no new construction makes the RTA inapplicable.

2. Parking

There are no parking requirements set forth in the zoning regulations for a Community Care Center or for a community building. Consequently, the Board may determine what is appropriate (BCZR §409.6.A). Obviously, neither the Department of Planning nor the Department of Housing and Community Development disagreed with the parking proposed by the Petitioners or with the shared parking arrangement.

Currently, at St. Rita's even with church services, there is ample parking. Mr. Perry's testimony was not contradicted about the situation of parking on the St. Rita's lot, and he is certainly familiar from his years of association with the parish with the current parking as well as the neighborhood parking. From the parish perspective, if the proposed use were generating a parking issue, the parish would be impacted before anyone else when congregants cannot find parking.

We also know that in Ms. Post's experience with these abuse victims that most are dependent on public transportation. In *In Re: Associated Catholic Charities, Inc.*, Case No. 13-1-3-SPHXA, the County Board of Appeals approved a rooming and boarding house for sixteen (16) adult homeless or disabled women over the age of fifty (50) in a former convent. It also approved a variance of six (6) parking spaces in lieu of the sixteen (16) required including staff based on the testimony of the population that would be housed and the application procedure. The families proposed to be living at this location are also effectively homeless and are trying to be reestablished. Owning private vehicles is a luxury, which if they could afford it, would probably

mean that they do not need the assistance of FCC in providing this kind of housing. Adding an additional seven (7) spaces to provide for this use is appropriate and certainly is not a finding injurious to the public health, safety or general welfare.

D. VARIANCES AND IMPACT OF MARYLAND HISTORICAL TRUST FINDINGS

The Board has raised the issue of whether the property is unique in such ways as to create a practical difficulty with compliance with the strict application of the Baltimore County Zoning Regulations. Obviously, there is nothing unique about its shape, topography or soil conditions. The buildings on the site are clearly non-conforming, for they existed prior to the enactment of zoning regulations in Baltimore County pertaining to setbacks or parking. Those regulations did not come into effect with zoning in 1945 but only subsequently in the adoption of the 1955 regulations. By that time the existing buildings were all in place. However, the property does have some unique features. It comprises a complete block in size and is the only single property that is totally surrounded by public rights of way. It is not contiguous to any private property. In addition, two of the public rights of way are eighty (80) feet in width with angled parking. Typical road construction required by the County is a thirty (30) foot travel-way on a fifty (50) foot right of way. Here the travel ways are uniformly twenty-four (24) feet wide on eighty (80) feet right of ways. Nowhere else in this area does this situation exist.

Another unique aspect of the site is the historic nature of the buildings and their locations on the site. Petitioners' Exhibit 15 states that in the opinion of the Maryland Historical Trust the complex qualifies for registry on the National Register of Historic Places. Because the buildings are placed where they are, the parking to support the buildings has to be located in its present and

proposed locations. Many of the variances are for setbacks for the existing buildings and for the parking. In no case is parking being located closer to the right of ways than the current parking.

The Board raised an issue on whether Petitioners' Exhibit 15 meant that the zoning hearing was advisory. The letter came about as the result of a bond issue for project funding, and indicates that there needs to be further discussion before the bond proceeds can be released. The fact that the Historical Trust has concerns over the entrance and over the razing of the convent simply means that these concerns have to be addressed in order to obtain State funding. We respectfully submit that the actual physical condition of the convent and the need for ADA compliance are justification for the changes. It may mean that architecturally there may have to be changes or even that the façade of the convent has to be someway incorporated into the site design as has been done elsewhere, but if there are changes to the proposed site plan these would have to be addressed in subsequent proceedings which may involve additional hearings. Zoning requests are by their nature issues that arise at the beginning of a project, and frequently there are changes as the project evolves. This does not make the zoning opinion "advisory". In fact, zoning is necessary to obtain subdivision approval.

As far as Baltimore County is concerned, inclusion on the National Register is not dispositive of whether the buildings must remain. Baltimore County Code, Section 32-7-301 et seq contains the provisions relating to historical preservation. Placement on the National Register or on the Maryland State Inventory of Historic properties does not suffice for this property to even be placed on the County preliminary landmarks list. Baltimore County Code §32-7-301(a). Consequently, there is no known present prohibition to removal of the convent building or to the placement of a new entrance on the site. Indeed, not one of the residents who testified against the

proposed Community Care Center, nor the Department of Planning, which oversees the County Landmarks program, have any objection to razing the convent building.

The practical difficulty resulting from the presence and location of the buildings and parking is that if the zoning regulations are strictly applied either the buildings must be determined to have non-conforming status or be torn down. Furthermore, if the parking setbacks are rigorously applied proposed spaces will have to be removed even though there was absolutely no opposition to the proposed parking.

The parking variance relating to the number of spaces was sought primarily for the church. At no time since the inception of the church does it appear that more parking has been present on the site than there is today. As testimony indicated, many of the parishioners walk to services. Others park across Dunmanway in the commercial center, which has public parking. The many decades use of the site even when the school and convent were in operation indicate that the lack of parking for the church has not been an issue in the community. Again, to provide the sixty-three (63) spaces needed for the church to comply with the zoning regulations, additional buildings would have to be razed, which is a practical difficulty. Furthermore, additional RTA relief would be needed in any event for the additional parking spaces.

Variance relief pursuant to BCZR §1B01.1.B.1.c has been sought from the RTA setback for the existing structures and parking based on the facts presented by both the Departments of Planning and Housing and Community Development. Neither Department wishes to see the structures razed or the parking removed. If the Board determines that an exception to the RTA does not apply, the Petitioners believe that a variance is warranted.

The addition for the new entrance does require a setback variance. Based on the location of the buildings to which the entrance is connected and their setbacks from the Dunglow Road

right of way, the new entrance had to be situated in close proximity to the right of way in order to provide the necessary ramps for ADA compliance. The new addition may only be a few feet from the right of way on Dunglow Road, but will be seven (7) feet from the sidewalk, over thirty (30) feet from the actual roadway, and over one hundred (100) feet from the nearest apartment.

The location of the entrance is important to comply with the American Disabilities Act ("ADA"). The National Parks Service has even published guidelines on ADA accessibility for historic buildings. See Jester and Parks, *Making Historic Properties Accessible, Preservation Brief No. 32.* (Attachment E). Placing the entrance in any other location puts it within the RTA or effectively puts it on the rear of the property facing Dunleer Road. This could be done, but having one entrance to each of the buildings for users who are not disabled and another entrance to the rear for people who are disabled flies in the face of the whole purpose of the ADA as well as being wholly inconsistent with the mission of both the parish and FCC. More importantly, the new entrance will be located in proximity to the handicapped parking spaces on Dunglow. No other entrance would provide the accessibility to parking. Not one of the apartment owners or residents testified against the project, nor does it appear that any of them opposed the project based on the petitions submitted by the opposition. The location of the entrance will not negatively impact the health, safety or welfare of any the single-family dwelling residents.

E. CONDITIONS

The Board has the explicit authority pursuant to BCZR §502.2 to impose such conditions as it sees fit if it believes it appropriate to grant the special exception relief for a Community Care Center. These conditions are in addition to the conditions and five (5) year renewal requirement of Section 502.5. The Petitioners have offered that the area now occupied by the convent should

become open space. The Petitioners believe that parking is sufficient as proposed. The convent area, however, may yield either eight (8) or fourteen (14) additional spaces, and the Petitioners have no issue with complying with that condition should it be imposed.

If the Board determines to deny the variance for the new entrance, the Petitioners would request the Board to indicate where the new entrance should be, for any of the existing entrances to the buildings would require an additional variance. The school and Parish Hall are twenty-five (25) and twenty (20) feet, respectively, from the Dunglow Road right of way instead of the required forty (40) feet.

The Petitioners also do not object to a limitation on staff parking on the site, particularly during day time hours. If there are evening meetings with residents or community meetings, these would occur presumably after nearby residents are home and their vehicles parked so using the site at those hours in the evening should not adversely impact the community.

The Petitioners have agreed to sign a joint parking and access agreement, which would be recorded among the land records of Baltimore County. The Petitioners also are willing to sign an agreement calling for continued parish use of the Parish Hall for events and after service receptions.

CONCLUSION

A Community Care Center special exception allows the Petitioner's requested use in the D.R. zone. It is a unique use with special protections in order to make sure the use adheres to its intended purpose with protections to the neighborhood. Despite the opposition of some of the neighbors, it has legislatively been deemed appropriate for residential neighborhoods unless there is some peculiar characteristic of the site that creates a unique adverse impact. In this case the use

is proposed for existing buildings on a transitional, institutional site consistent with the County's Master Plan. The parking it requires is minimal, and additional parking is being added to the site to address the proposal's parking needs. It is not creating any adverse condition. Any use of the site involving the existing buildings and parking area will require almost all of the proposed variances. The new entrance is also a requirement of federal law and has been placed to be the most accessible to the parking areas. The special exception, special hearing and zoning relief sought are appropriate and should be granted.

Respectfully submitted,

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Towson, Maryland 21204
410-832-2055
jgontrum@wtplaw.com

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of December, 2021, a copy of the foregoing Petitioners' Memorandum was electronically mailed and/or sent to the following individuals by first class mail, postage prepaid:

James L. Shea, Jr., Esquire
Royston, Mueller, McLean & Reid LLP
102 W. Pennsylvania Avenue, Suite 600
Towson, Maryland 21204 - 4575

John B. Gontrum

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

Legislative Session 1974, Legislative Day No. __

BILL NO. 91-74

Mr. Wallace A. Williams, Councilman

By the County Council, September 3, 1974

A BILL
ENTITLED

AN ACT to amend the Baltimore County Zoning Regulations to add the definition of "community care center" to said regulations and to provide for the uses to be permitted thereof, by adding the definition of "community care center" to Section 101 of said regulations, by amending the list in paragraph 1B01.1.C under Article IB of said regulations, by amending subsection 230.13 of said regulations, and by amending subsection 1B02.1 of said regulations.

SECTION 1. Be it enacted by the County Council of Baltimore County, Maryland, that the definition of "community care center" be and it is hereby added to Section 101 of said regulations to follow immediately after the definition of "community", and to read as follows:

Community care center: A small-scale use devoted to the housing, counseling, supervision and/or rehabilitation of ~~reformed~~ alcoholics, or individuals who are physically or mentally handicapped, but not subject to incarceration, and who need no full hospital treatment but do need an intermediate degree of protective care or support before returning to fully independent community living. These facilities are sponsored and operated by private charitable organizations or public agencies as licensed and approved by the Maryland State Department of Health and Mental Hygiene.

SECTION 2. And be it further enacted, that the following item be and it is hereby added to the list in paragraph 1B01.1.C under Article IB, between Items 6 and 7:

6A) Community care center

A

SECTION 3. And be it further enacted, that the following item be and it is hereby added to the list in Section 230.13 of said regulations:

Community care center

SECTION 4. And be it further enacted, that subsection 1B02.1 of said regulations be and it is hereby repealed and re-enacted with amendments to read as follows:

1B02.1-Uses Permitted As of Right or by Special Exception According to Zoning Classification. The following uses are permitted in D.R. zones either as of right or by special exception, in accordance with the schedule below, wherein the abbreviations and symbols shall be interpreted as follows:

S.E.: Use permitted by special exception only;

+ : Use permitted as of right;

(X) : (Use prohibited)

	D.R.1	D.R.2	D.R.3.5	D.R.5.5	D.R.10.5	D.R.16
Airports	S.E	(X)	(X)	(X)	(X)	(X)
Animal boarding places, class A (see Section 421)	+	S.E.	S.E.	S.E.	(X)	(X)
Animal boarding places, Class B (see Section 421)	S.E.	S.E.	S.E.	(X)	(X)	(X)
Antique shops (see Section 402B)	S.E.	S.E.	(X)	(X)	(X)	(X)
Cemeteries	S.E.	S.E.	S.E.	S.E.	(X)	(X)
Community Care Center	S.E.	S.E.	S.E.	(X)	(X)	(X)
Conversion of dwellings to tea rooms or restaurants (see Section 402)	S.E.	S.E.	(X)	(X)	(X)	(X)
Golf driving ranges, miniature-golf courses, or baseball-batting ranges	S.E.	S.E.	(X)	(X)	(X)	(X)
Kennels	+	S.E.	S.E.	S.E.	(X)	(X)
Laboratories (see Section 418)	S.E.	S.E.	S.E.	(X)	(X)	(X)

1.	D. R. 1	D. R. 2	D. R. 3.5	D. R. 5.5	D. R. 10.5	D. R. 16
2. Offices or 3. office buildings	(X)	(X)	(X)	(X)	(X)	S. E.
4. Race tracks, 5. commercial	S. E.	S. E.	(X)	(X)	(X)	(X)
6. Research institutes 7. on sites individually 8. 15 acres or less in area 9. (see Section 418)	S. E.	S. E.	S. E.	(X)	(X)	(X)
10. Residential art salons 11. (See Section 402C)	S. E.	S. E.	(X)	(X)	(X)	(X)
12. Riding stables, 13. commercial	S. E.	S. E.	(X)	(X)	(X)	(X)
14. Sanitary landfills	S. E.	S. E.	(X)	(X)	(X)	(X)
15. Shooting ranges	S. E.	S. E.	(X)	(X)	(X)	(X)
16. Trailers & trailer 17. parks	See Subsection 415.6					

18. SECTION 2. <u>And be it further enacted</u>, that this Act shall take effect

19. forty-five days after its enactment.

READ AND PASSED this 7th day of October 1974

By Order

Herbert E. Hohenberger, Secretary

PRESENTED to the County Executive, for his approval this 7th day of October 1974

Herbert E Hohenberger, Secretary

APPROVED AND ENACTED:

Oct. 10, 1974
Date

Frederick C. Dewberry
County Executive

I HEREBY CERTIFY THAT BILL NO. 91 IS TRUE AND CORRECT AND WILL TAKE EFFECT ON Nov. 22 1974.

Henry C. Cantwell
Chairman, County Council

County Council of Baltimore County Maryland

Legislative Session 1979, Legislative Day No. 16

BILL NO. 142-79

Mr. Eugene W. Gallagher, Councilman

By the County Council, August 6, 1979

A BILL

ENTITLED

AN ACT to provide for community care centers in DR AND resource conservation zones, AND TO IMPOSE SPECIAL REQUIREMENTS WITH REGARD TO SUCH CENTERS, by repealing definition "Community care center" in Section 101-Definitions, of the Baltimore County Zoning Regulations and enacting a new definition "Community care center" in lieu thereof under said section and regulations; by adding new paragraph 7A. to subsection 1A01.2.C, by adding new paragraph 7A to subsection 1A02.2.B, by adding new paragraph 5A to subsection 1A04.2.B of said regulations, BY ADDING NEW SECTION 502.5 TO SAID REGULATIONS: by repealing and re-enacting with amendments paragraph 6A of subsection 1B01.1.C of said regulations and by repealing the line "Community Care Center" in the table in subsection 1B02.1 of said regulations.

WHEREAS, the County Council has received a final report from the Baltimore County Planning Board, and has held a public hearing thereon, recommending the adoption of legislation to provide for community care centers in resource conservation zones and to clarify existing regulations providing for such centers in other residential zones; now, therefore

SECTION 1. *Be it enacted by the County Council of Baltimore County, Maryland,* that the definition "Community care center" in Section 101-Definitions, of the Baltimore County

B

Zoning Regulations, be and it is hereby repealed and a new definition "Community Care Center" under said section and regulations, is hereby enacted in lieu thereof, said new definition to read as follows:

Section 101 — Definitions

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.

SECTION 2. *Be it further enacted,* that new paragraph 7A to subsection 1A01.2.C; new paragraph 7A to subsection 1A02.2.B; ~~and~~ new paragraph 5A to subsection 1A04.2.B; AND NEW SECTION 502.5; all of the Baltimore County Zoning Regulations, be and they are hereby added to said regulations, said new paragraphs AND SECTION to read as follows:

1A01.2 — Use regulations

C. Uses permitted by special exception. The following uses, only, are permitted by special exception in R.C. 2 zones.

7A. Community care centers providing care for not more than 15 persons per ~~acre~~ SITE.

1A02.2 — Use regulations

B. Uses permitted by special exception. The following uses, only, are permitted by special exception in R.C. 3 zones.

7A. Community care centers providing care for not more than 15 persons per ~~acre~~ SITE.

1A04.2 — Use regulations

B. Uses permitted by special exception. The following uses, only, are permitted by special exception in R.C. 5 zones.

5A. Community care centers providing care for not more than 15 persons per ~~acre~~ SITE.

SECTION 502.5 — IN ADDITION TO CONSIDERATION OF THE REQUIREMENTS IMPOSED GENERALLY ON THE ISSUANCE OF SPECIAL EXCEPTIONS BY SECTION 502.1 OF THESE REGULATIONS, THE FOLLOWING SPECIAL REQUIREMENTS, REGULATIONS AND LIMITA-

TIONS SHALL APPLY TO AND BE EFFECTIVE WITH REGARD TO SPECIAL EXCEPTIONS WHICH MAY BE ISSUED UNDER THESE REGULATIONS, VIZ:

1. ANY SPECIAL EXCEPTION OR RENEWAL THEREOF GRANTED FOR A COMMUNITY CARE CENTER UNDER THE AUTHORITY OF THESE REGULATIONS SHALL BE FOR THE LIMITED DURATION OF FIVE YEARS AND SHALL THEREAFTER BE OF NO FURTHER FORCE AND EFFECT, UNLESS, NO LATER THAN THREE MONTHS PRIOR TO THE EXPIRATION OF SUCH SPECIAL EXCEPTION, APPLICATION IS FILED FOR RENEWAL.

2. APPLICATIONS FOR RENEWAL SHALL BE HEARD BY THE ZONING COMMISSIONER AS IN THE CASE OF AN ORIGINAL PETITION EXCEPT THAT ADDITIONAL TESTIMONY AND COMPETENT EVIDENCE SHALL BE PRESENTED PERTAINING TO APPLICANT'S STANDARD OF PERFORMANCE OF THE REQUIREMENTS IMPOSED IN THE ORIGINAL ORDER OR ANY RENEWAL ORDER. SUCH RENEWAL ORDER, IF GRANTED, MAY IMPOSE NEW OR AMENDED CONDITIONS AS MAY BE APPROPRIATE.

SECTION 3. *Be it further enacted,* that paragraph 6A of subsection 1B01.1.C of the Baltimore County Zoning Regulations, be and it is hereby repealed and re-enacted, with amendments, to read as follows:

1B01.1 — General use regulations in D.R. Zones.

C. Uses Permitted by Special Exception. The following uses, only, are permitted by special exception in all D.R. Zones:

6A. Community care centers

SECTION 4. *Be it further enacted,* that the line "Community Care Center" in the table in subsection 1B02.1 of the Baltimore County Zoning Regulations, be and it is hereby repealed.

SECTION 5. *And be it further enacted,* that this Act shall take effect forty-five days after its enactment.

READ AND PASSED this 4th day of September, 1979.

By Order

Thomas Toporovich, Secretary

PRESENTED to the County Executive, for his approval this 5th day of September, 1979.

Thomas Toporovich, Secretary

APPROVED AND ENACTED: 9/7/79

Donald P. Hutchinson,
County Executive

I HEREBY CERTIFY THAT BILL NO. 142-79 IS TRUE AND CORRECT AND TOOK EFFECT ON OCTOBER 22, 1979.

Norman W. Lauenstein,

Chairman, County Council

EXPLANATION: *Italics indicate new matter added to existing law.*
[Brackets] indicate matter stricken from existing law.
CAPITALS indicate amendments to bill.
~~Strike-out~~ indicates matter stricken out of bill.

Chapter 356

(House Bill 739)

AN ACT concerning

Sexual Assault Crisis Programs and Domestic Violence Programs – Transfer to the Governor's Office of Crime Control and Prevention

FOR the purpose of transferring certain responsibilities for certain sexual assault crisis programs and domestic violence programs from the Department of Human Resources to the Governor's Office of Crime Control and Prevention; transferring certain appropriations held by the Department of Human Resources to the Governor's Office of Crime Control and Prevention; establishing that this Act may not affect certain memberships or terms of office; providing for the validity of certain transactions; authorizing the publishers of the Annotated Code to take certain actions; providing for the continued effectiveness of certain directives, duties, and responsibilities relating to the functions of a sexual assault crisis program and domestic violence program; transferring all functions, powers, duties, equipment, assets, and liabilities of certain sexual assault crisis programs and domestic violence programs from the Department of Human Resources to the Governor's Office of Crime Control and Prevention; clarifying language; defining a certain term; and generally relating to sexual assault crisis programs and domestic violence programs.

BY repealing and reenacting, with amendments,
Article – Criminal Procedure
Section 11–923
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
Article – Family Law
Section 4–501, 4–503, 4–515, and 4–516
Annotated Code of Maryland
(2006 Replacement Volume and 2010 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Criminal Procedure

11–923.

(a) The General Assembly finds that an increasing number of sexual assault offense victims in the State:

(1) lack necessary counseling and follow–up services; and

(2) in some parts of the State, have only the help of extremely limited support services.

(b) The purpose of this section is to provide for sexual assault crisis programs that address the special needs of sexual assault victims.

(c) (1) The [Department of Human Resources] **GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION** shall help establish sexual assault crisis programs in the State.

(2) The programs shall be developed and located to facilitate their use by alleged victims residing in surrounding areas.

(3) The programs shall:

(i) provide specialized support services to adult and minor alleged victims of sexual assault crimes; and

(ii) include a hotline and counseling service.

(d) The [Department of Human Resources] **GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION** may [contract with] **AWARD GRANTS TO** public or private nonprofit organizations to operate the sexual assault crisis programs.

(E) THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION SHALL REGULARLY CONSULT, COLLABORATE WITH, AND CONSIDER THE RECOMMENDATIONS OF THE FEDERALLY RECOGNIZED STATE SEXUAL ASSAULT COALITION REGARDING SEXUAL ASSAULT CRISIS PROGRAMS AND POLICIES, PRACTICES, AND PROCEDURES THAT IMPACT VICTIMS OF SEXUAL ASSAULT.

[(e)] **(F)** Money for the sexual assault crisis programs shall be as provided in the annual State budget and shall be used to supplement, but not supplant, money that the programs receive from other sources.

[(f)] **(G)** The [Secretary of Human Resources] **EXECUTIVE DIRECTOR OF THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION** shall include a report on the sexual assault crisis programs in the [Department of Human Resources] **ANNUAL REPORT SUBMITTED BY THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION** ~~annual report~~ to the General Assembly**, IN ACCORDANCE WITH § 2–1246 OF THE STATE GOVERNMENT ARTICLE**.

[(g)] (H) (1) The Governor's Office of Crime Control and Prevention shall establish and sustain child advocacy centers in the State.

(2) The child advocacy centers:

(i) may be based in private nonprofit organizations, local departments of social services, local law enforcement agencies, or a partnership among any of these entities;

(ii) shall be developed and located to facilitate their use by alleged victims residing in the surrounding areas;

(iii) shall investigate allegations of sexual crimes against children and sexual abuse of minors;

(iv) shall provide or facilitate referrals to appropriate counseling, legal, medical, and advocacy services for victims; and

(v) shall be included in all joint investigation procedures developed in accordance with § 5–706 of the Family Law Article.

(3) The Governor's Office of Crime Control and Prevention may contract with public or private nonprofit organizations to operate child advocacy centers.

(4) Money for child advocacy centers shall be as provided in the annual State budget and shall be used to supplement, but not supplant, money that the programs receive from other sources.

(5) On or before January 1 each year, the Governor's Office of Crime Control and Prevention shall submit an annual report, in accordance with § 2–1246 of the State Government Article, on child advocacy centers to the General Assembly.

Article – Family Law

4–501.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) "Abuse" means any of the following acts:

(i) an act that causes serious bodily harm;

(ii) an act that places a person eligible for relief in fear of imminent serious bodily harm;

(iii) assault in any degree;

(iv) rape or sexual offense under §§ 3–303 through 3–308 of the Criminal Law Article or attempted rape or sexual offense in any degree;

(v) false imprisonment; or

(vi) stalking under § 3–802 of the Criminal Law Article.

(2) If the person for whom relief is sought is a child, "abuse" may also include abuse of a child, as defined in Title 5, Subtitle 7 of this article. Nothing in this subtitle shall be construed to prohibit reasonable punishment, including reasonable corporal punishment, in light of the age and condition of the child, from being performed by a parent or stepparent of the child.

(3) If the person for whom relief is sought is a vulnerable adult, "abuse" may also include abuse of a vulnerable adult, as defined in Title 14, Subtitle 1 of this article.

(c) "Child care provider" means a person that provides supervision and care for a minor child.

(d) "Cohabitant" means a person who has had a sexual relationship with the respondent and resided with the respondent in the home for a period of at least 90 days within 1 year before the filing of the petition.

(e) "Commissioner" means a District Court Commissioner appointed in accordance with Article IV, § 41G of the Maryland Constitution.

(f) "Court" means the District Court or a circuit court in this State.

(g) "Emergency family maintenance" means a monetary award given to or for a person eligible for relief to whom the respondent has a duty of support under this article based on:

(1) the financial needs of the person eligible for relief; and

(2) the resources available to the person eligible for relief and the respondent.

(H) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION.

[(h)] (I) "Final protective order" means a protective order issued under § 4–506 of this subtitle.

[(i)] (J) "Home" means the property in this State that:

(1) is the principal residence of a person eligible for relief; and

(2) is owned, rented, or leased by the person eligible for relief or respondent or, in a petition alleging child abuse or abuse of a vulnerable adult, an adult living in the home at the time of a proceeding under this subtitle.

[(j)] (K) "Interim protective order" means an order that a Commissioner issues under this subtitle pending a hearing by a judge on a petition.

[(k)] (L) "Local department" means the local department that has jurisdiction in the county:

(1) where the home is located; or

(2) if different, where the abuse is alleged to have taken place.

[(l)] (M) "Person eligible for relief" includes:

(1) the current or former spouse of the respondent;

(2) a cohabitant of the respondent;

(3) a person related to the respondent by blood, marriage, or adoption;

(4) a parent, stepparent, child, or stepchild of the respondent or the person eligible for relief who resides or resided with the respondent or person eligible for relief for at least 90 days within 1 year before the filing of the petition;

(5) a vulnerable adult; or

(6) an individual who has a child in common with the respondent.

[(m)] (N) (1) "Petitioner" means an individual who files a petition.

(2) "Petitioner" includes:

(i) a person eligible for relief; or

(ii) the following persons who may seek relief from abuse on behalf of a minor or vulnerable adult:

1. the State's Attorney for the county where the child or vulnerable adult lives, or, if different, where the abuse is alleged to have taken place;

2. the department of social services that has jurisdiction in the county where the child or vulnerable adult lives, or, if different, where the abuse is alleged to have taken place;

3. a person related to the child or vulnerable adult by blood, marriage, or adoption; or

4. an adult who resides in the home.

[(n)] **(O)** "Residence" includes the yard, grounds, outbuildings, and common areas surrounding the residence.

[(o)] **(P)** "Respondent" means the person alleged in the petition to have committed the abuse.

[(p)] **(Q)** "Temporary protective order" means a protective order issued under § 4–505 of this subtitle.

[(q)] **(R)** "Victim" includes a person eligible for relief.

[(r)] **(S)** "Vulnerable adult" has the meaning provided in § 14–101(q) of this article.

4–503.

(a) A law enforcement officer who responds to a request for help under § 4–502 of this Part I of this subtitle shall give the victim a written notice that:

(1) includes the telephone number of a local domestic violence program that receives funding from the [Department of Human Resources] **GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION**; and

(2) states that:

(i) the victim may request that a District Court commissioner file a criminal charging document against the alleged abuser;

(ii) if the commissioner declines to charge the alleged abuser, the victim may request that the State's Attorney file a criminal charging document against the alleged abuser;

(iii) the victim may file in the District Court or a circuit court or, when neither the office of the clerk of the circuit court nor the Office of the District Court Clerk is open, with a commissioner, a petition under this subtitle; and

(iv) the victim may obtain a copy of the incident report, as provided under § 4–503.1 of this Part I of this subtitle.

(b) A law enforcement officer may not be held liable in a civil action that arises from the officer's failure to provide the notice required under subsection (a) of this section.

4–515.

(a) (1) The [Secretary] **EXECUTIVE DIRECTOR** shall establish a program in the [Department of Human Resources] **GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION** to help victims of domestic violence and their children.

(2) The purpose of the program is to provide for victims of domestic violence and their children, in each region of this State:

(i) temporary shelter or help in obtaining shelter;

(ii) counseling;

(iii) information;

(iv) referral; and

(v) rehabilitation.

(b) As a part of the domestic violence program, there shall be, in a major population center of this State, at least 1 program serving the area.

(c) Any program established under this section shall be subject to the following conditions:

(1) the program shall provide victims of domestic violence and their children with a temporary home and necessary counseling;

(2) the [Department of Human Resources] **GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION** shall:

(i) supervise the program;

(ii) set standards of care and admission policies;

(iii) monitor the operation of the program and annually evaluate the effectiveness of the program; [and]

(iv) adopt rules and regulations that set fees for services at and govern the operation of each program; AND

(V) REGULARLY CONSULT, COLLABORATE WITH, AND CONSIDER THE RECOMMENDATIONS OF THE FEDERALLY RECOGNIZED STATE DOMESTIC VIOLENCE COALITION REGARDING DOMESTIC VIOLENCE PROGRAMS AND POLICIES, PRACTICES, AND PROCEDURES THAT IMPACT VICTIMS OF DOMESTIC VIOLENCE AND THEIR CHILDREN;

(3) the program shall accept from the police or any other referral source in the community any victim of domestic violence and the child of any victim of domestic violence; and

(4) housing may not be provided under this subtitle to an applicant for housing who is not a resident of this State at the time the application for housing is made.

(d) (1) As funds become available, the [Secretary] **EXECUTIVE DIRECTOR** may extend the domestic violence program to other areas in this State.

(2) Expansion of the domestic violence program may include:

(i) establishing additional shelters; or

(ii) providing funds and technical assistance to a local organization or agency that shows that it is able and willing to run a domestic violence program.

4–516.

(a) Subject to § 2–1246 of the State Government Article, the [Secretary] **EXECUTIVE DIRECTOR** shall submit to the General Assembly a report on the domestic violence program annually.

(b) In addition to receiving funds from the annual budget, the [Secretary] **EXECUTIVE DIRECTOR** shall attempt to secure funding, including in–kind contributions, for the establishment and operation of the domestic violence program from:

(1) the federal government;

(2) local governments; and

(3) private sources.

SECTION 2. AND BE IT FURTHER ENACTED, That certain appropriations held by the Department of Human Resources to carry out the functions and programs transferred under this Act shall be transferred to the Governor's Office of Crime Control and Prevention on the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That nothing in this Act affects the terms of office of an appointed or elected member of any division, board, commission, authority, council, committee, office, or unit. An individual who is a member of a division, board, commission, authority, council, committee, office, or unit on the effective date of this Act shall remain a member for the balance of the term to which the member is appointed or elected, unless the member sooner dies, resigns, or is removed under provisions of law.

SECTION 4. AND BE IT FURTHER ENACTED, That, except as expressly provided to the contrary in this Act, any transaction affected by or flowing from any statute here amended, repealed, or transferred, and validly entered into before the effective date of this Act, and every right, duty, or interest following from the transaction, remains valid after the effective date of this Act and may be terminated, completed, consummated, or enforced pursuant to law.

SECTION 5. AND BE IT FURTHER ENACTED, That the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, shall correct, with no further action required by the General Assembly, cross–references and terminology rendered incorrect by this Act or by any other Act of the General Assembly of 2011 that affects provisions enacted by this Act. The publishers shall adequately describe any such correction in an editor's note following the section affected.

SECTION 6. AND BE IT FURTHER ENACTED, That, except as otherwise provided by law, all existing laws, rules and regulations, proposed rules and regulations, standards and guidelines, policies, orders and other directives, forms, plans, memberships, contracts, property, investigations, administrative and judicial responsibilities, rights to sue and be sued, and all other duties and responsibilities associated with the functions of the sexual assault crisis programs and domestic violence programs located within the Department of Human Resources, prior to the effective date of this Act shall continue in effect under the Department of Human Resources until completed, withdrawn, canceled, modified, or otherwise changed pursuant to law.

SECTION 7. AND BE IT FURTHER ENACTED, That on July 1, 2011, all the functions, powers, duties, equipment, assets, and liabilities of the sexual assault crisis programs and domestic violence programs within the Department of Human Resources shall be transferred to the Governor's Office of Crime Control and Prevention.

SECTION 8. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2011.

Approved by the Governor, May 10, 2011.

Policy: Maintain zoning appropriate for major employment on infrastructure-served land with good access.

Actions:

(1) Recommend that the County Council evaluate rezoning and PUD proposals that convert M or OT zoned land to residential or retail use to consider the long-term effects on the economy.

(2) Ensure that adequate land and structures remain available to accommodate new and expanding primary employers not suited for mixed-use environments.

(3) Consider ways to guide new employment opportunities to quality mixed-use development.

(4) Preserve the County's limited deep-water access for industrial uses.

(5) Consider amending the BCZR to limit the amount of residential development permitted in the OT zoning classification.

LAND USE BALANCE

A fiscally strong jurisdiction must maintain a healthy balance between residential and non-residential land uses. Different types of land use have variant effects on a county's finances. Some land uses contribute more in tax revenue than they consume in public services, such as schools, police and fire services. Some land uses consume more services than they pay for directly through property taxes. A balanced economy is needed to provide a healthy place to live, work and play. A strong employment sector: industrial, office, and commercial, provide jobs and tax revenue. A diverse choice of housing is essential to providing a qualified work force to fuel the employment sector.

Policy: The County should maintain a healthy balance between residential and non-residential land uses inside the URDL.

Actions:

(1) Consider encouraging zoning requests that promote mixed-use development.

(2) Ensure that land use proposals contribute to a healthy balance of residential and non-residential uses and open space.

(3) Work proactively to promote employment driven projects compatible with residential uses.

(4) Direct mixed-use development to Community Enhancement Areas.

COMMERCIAL REVITALIZATION DISTRICTS

Baltimore County has 14 officially designated Commercial Revitalization Districts (CRDs). These areas were once the commercial hubs of the County's older beltway communities and offered a range of retail, service, and entertainment uses. However, beginning in the 1960s and 70s, changes

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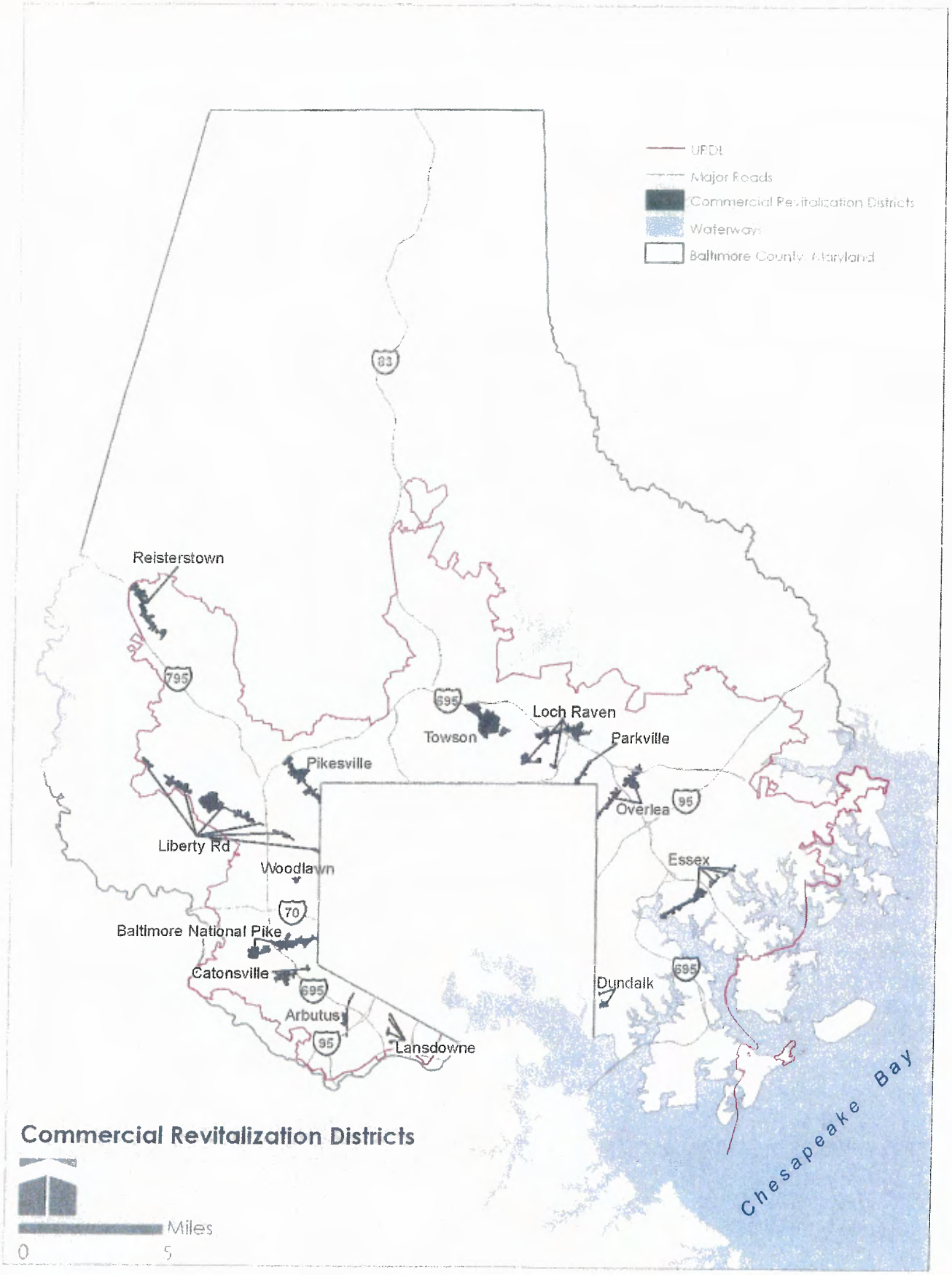
Map 35: Commercial Revitalization Districts



in demographics and retail shopping preferences fundamentally altered the role of these main street commercial centers. As people became more dependant upon the automobile, they moved farther out preferring the greater range of retail choices and convenient free parking over smaller mom and pop neighborhood shops along older commercial main streets. This trend continues. Most suburbanites patronize full service grocery stores, big and junior box retailers (e.g. Target, Wal-Mart, Pet Smart, Best Buy), chain specialty shops, and national restaurants.

To remain viable, the CRDs must differentiate themselves by capitalizing upon their downtown development patterns, strengthening the existing base of small businesses, and attracting new and different uses. Each district is unique with its own set of attributes and liabilities and revitalization efforts must be tailored to address these differences. Successful revitalization in smaller districts is built upon a series of small complementary successes and larger districts may benefit from key redevelopment projects that restructure the local economy. Attaining a sufficient and balanced mix of quality uses is an important goal that should be accompanied with creating a safe, attractive, and walkable environment. Another goal is using creative marketing of the districts to businesses and customers.

The most successful downtowns have a mix of synergistic uses that support each other. Downtown housing and office uses have residents and employees that patronize retail shops, restaurants, and service uses such as hair salons, banks, and dry cleaners. Theaters and other entertainment uses are destinations that draw customers into the downtown, who then also patronize restaurants and bars before and after a movie or performance. Institutional uses, supply a high number of patrons and employees for retail and restaurants, and students for downtown housing.

When compared to newer town centers that are trying to replicate the character and qualities of real downtowns, original town centers often have unique challenges. Redevelopment costs can be higher with land assemblage and parking; surrounding household incomes and densities may be more diverse; multiple owners have different perspectives; and the infrastructure may be aging and outdated. Jurisdictions must have an extensive toolbox of incentives to retain and attract the mix of uses needed to keep a CRD healthy. The County has a range of incentives that can be tailored to individual project needs, including: low interest loans, tax credits, and specialized grants, key infrastructure improvements such as parking garages, sewer expansions, and road realignments and improvements, sale of publicly owned land, demolition of obsolete structures, permitting process assistance, flexible zoning, and liquor licensing.

Policy: Retain and attract quality retail, office, service, residential, entertainment, and institutional uses that create well balanced and economically vital mixed-use.

Actions:

(1) Use targeted public investment to encourage private reinvestment.

(2) Identify redevelopment/revitalization opportunities in the CRDs and establish a process to determine land use and development goals of the area.

(3) Conduct specialized analyses of properties and redevelopment proposals.

(4) Utilize the Consultant on Call Program to provide expedited professional studies on market feasibility.

(5) Continue familiarization tours to provide education about the County's CRDs and community enhancement areas to upgrade and expand the types of uses, improve poorly managed properties and marginal businesses, and fill vacancies.

(6) Promote the increased use of the Small Business Resource Center that provides free technical, financial, and marketing assistance.

(7) Study the use of mixed-use codes in designated community enhancement areas.

(8) Periodically review the range and scope of incentives to maximize their effectiveness.

The districts, like community enhancement areas, should be the "front door" to the residential neighborhoods, and help establish the overall image of a community. The appearance of the CRD is important to the business and residential communities, and is both a private and public responsibility. The government, primarily through streetscape programs, is generally responsible for the streets, sidewalks, medians, and sometimes alleys. Individual property owners are responsible for a building's façades, and any private parking lots. Improvements should focus on views from the public areas. A commercial center or corridor with attractive curb appeal and stable and desirable uses may encourage people to invest in the community.

Policy: Improve the appearance and walkability of the Districts.

Actions:

(1) Continue to promote the Architect on Call Program that provides free professional design advice for business or property owners seeking to improve the exterior of their building and/or lot.

(2) Promote the Building Investment Loan Program that provides zero percent loans for exterior and interior improvements through annual mailings to property and business owners, the business organizations, specialized advertising, and "word of mouth" examples.

(3) Promote walkability and enhance the attractiveness of older village centers through implementation of streetscape programs managed by the Baltimore County Office of Community Conservation.

(4) Develop streetscape design around a Complete Streets Program.

(5) Continue beautification-landscaping partnerships with business organizations.

(6) Enforce the County code and fund the Commercial Revitalization Action grants for programs to improve the physical appearance of the business environment.

Some of the web versions of the Preservation Briefs differ somewhat from the printed versions. Many illustrations are new and in color; Captions are simplified and some complex charts are omitted. To order hard copies of the Briefs, see Printed Publications.

PRESERVATION BRIEFS

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Making Historic Properties Accessible

Thomas C. Jester and Sharon C. Park, AIA

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Accessible historic building. Photo: NPS files.

Historically, most buildings and landscapes were not designed to be readily accessible for people with disabilities. In recent years, however, emphasis has been placed on preserving historically significant properties, and on making these properties-and the activities within them-more accessible to people with disabilities. With the passage of the Americans with Disabilities Act in 1990, access to properties open to the public is now a civil right.

A significant entrance may be difficult to modify. Although a special challenge, sensitive changes can almost always be made to provide access while preserving the unique historic character. Photo: NPS files.

This Preservation Brief introduces the complex issue of providing accessibility at historic properties, and underscores the need to balance accessibility and historic preservation. It provides guidance on making historic properties accessible while preserving their historic character; the Brief also provides examples to show that independent physical accessibility at historic properties can be achieved with careful planning, consultation, and sensitive design. While the Brief focuses primarily on making buildings and their sites accessible, it also includes a section on historic landscapes. The Brief will assist historic property owners, design professionals, and administrators in evaluating their historic properties so that the highest level of accessibility can be provided while minimizing changes to historic materials and features. Because many projects encompassing accessibility work are complex, it is advisable to consult with experts in the fields of historic preservation and accessibility before proceeding with permanent physical changes to historic properties.

Modifications to historic properties to increase accessibility may be as simple as a small, inexpensive ramp to overcome one entrance step, or may involve changes to exterior and interior features. The Brief does not provide a detailed explanation of local or State accessibility laws as they vary from jurisdiction to jurisdiction. A concise explanation of several federal accessibility laws is included below.

Planning Accessibility Modifications

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Historic properties are distinguished by features, materials, spaces, and spatial relationships that contribute to their historic character. Often these elements, such as steep terrain, monumental steps, narrow or heavy doors, decorative ornamental hardware, and narrow pathways and corridors, pose barriers to persons with disabilities, particularly to wheelchair users.

A three-step approach is recommended to identify and implement accessibility modifications that will protect the integrity and historic character of historic properties:

1. Review the historical significance of the property and identify character-defining features;
2. Assess the property's existing and required level of accessibility; and
3. Evaluate accessibility options within a preservation context.

1. Review the Historical Significance

If the property has been designated as historic (properties that are listed in, or eligible for listing in the National Register of Historic Places, or designated under State or local law), the property's nomination file should be reviewed to learn about its significance. Local preservation commissions and State Historic Preservation Offices can usually provide copies of the nomination file and are also resources for additional information and assistance. Review of the written documentation should always be supplemented with a physical investigation to identify which character defining features and spaces must be protected whenever any changes are anticipated. If the level of documentation for a property's significance is limited, it may be necessary to have a preservation professional identify specific historic features, materials, and spaces that should be protected.

This accessibility ramp is compatible with the historic building in scale and materials. Photo: William Smith.

For most historic properties, the construction materials, the form and style of the property, the principal elevations, the major architectural or landscape features, and the principal public spaces constitute some of the elements that should be preserved. Every effort should be made to minimize damage to the materials and features that convey a property's historical significance when making modifications for accessibility. Very small or highly significant properties that have never been altered may be extremely difficult to modify.

Secondary spaces and finishes and features that may be less important to the historic character should also be identified; these may generally be altered without jeopardizing the historical significance of a property. Nonsignificant spaces, secondary pathways, later additions, previously altered areas, utilitarian spaces, and service areas can usually be modified without threatening or destroying a property's historical significance.

2. Assess the Property's Existing and Required Level of Accessibility

A building survey or assessment will provide a thorough evaluation of a property's accessibility. Most surveys identify accessibility barriers in the following areas: building and site entrances; surface textures, widths and slopes of walkways; parking; grade changes; size, weight and configuration of doorways; interior corridors and path of travel restrictions; elevators; and public toilets and amenities. Simple audits can be completed by property owners using readily available checklists (See Further Reading). Accessibility specialists can be hired to assess barriers in more complex properties, especially those with multiple buildings, steep terrain, or interpretive programs. Persons with disabilities can be particularly helpful in assessing specific barriers.

All applicable accessibility requirements—local codes, State codes and federal laws—should be reviewed carefully before undertaking any accessibility modification. Since many States and localities have their own accessibility regulations and codes (each with their own requirements for dimensions and technical requirements), owners should use the most stringent accessibility requirements when implementing modifications. The Americans with Disability Act Accessibility Guidelines (ADAAG) is the document that should be consulted when complying with the Americans with Disabilities Act (ADA) requirements.

3. Identify and Evaluate Accessibility Options within a Preservation Context

Once a property's significant materials and features have been identified, and existing and required levels of accessibility have been established, solutions can be developed. Solutions should provide the greatest amount of accessibility without threatening or destroying those materials and features that make a property significant. Modifications may usually be phased over time as funds are available, and interim solutions can be considered until more permanent solutions are implemented. A team comprised of persons with disabilities, accessibility and historic preservation professionals, and building inspectors should be consulted as accessibility solutions are developed.

Modifications to improve accessibility should generally be based on the following priorities:

1. Making the main or a prominent public entrance and primary public spaces accessible, including a path to the entrance;
2. Providing access to goods, services, and programs;
3. Providing accessible restroom facilities; and,
4. Creating access to amenities and secondary spaces.

The ramp's scale and materials are inconsistent with the historic character of the building. Photo: NPS files.

All proposed changes should be evaluated for conformance with the Secretary of the Interior's "Standards for the Treatment of Historic Properties," which were created for property owners to guide preservation work. These Standards stress the importance of retaining and protecting the materials and features that convey a property's historical significance. Thus, when new features are incorporated for accessibility, historic materials and features should be retained whenever possible. Accessibility modifications should be in scale with the historic property, visually compatible, and, whenever possible, reversible. Reversible means that if the new feature were removed at a later date, the essential form and integrity of the property would be unimpaired. The design of new features should also be differentiated from the design of the historic property so that the evolution of the property is evident.

In general, when historic properties are altered, they should be made as accessible as possible. However, if an owner or a project team believes that certain modifications would threaten or destroy the significance of the property, the State Historic Preservation Officer should be consulted to determine whether or not any special accessibility provisions may be used. Special accessibility provisions for historic properties will vary depending on the applicable accessibility requirements.

In some cases, programmatic access may be the only option for extremely small or unaltered historic properties, such as a two-story house museum with no internal elevator. Programmatic access for historic properties refers to alternative methods of providing services, information, and experiences when physical access cannot be provided. It may mean offering an audio-visual program showing an inaccessible upper floor of a historic house museum, providing interpretive panels from a vista at an inaccessible terraced garden, or creating a tactile model of a historic monument for people with visual impairments.

Accessibility Solutions

The goal in selecting appropriate solutions for specific historic properties is to provide a high level of accessibility without compromising significant features or the overall character of the property. The following sections describe accessibility solutions and offer guidance on specific historic property components, namely the building site, entrances, interiors, landscapes, amenities, and new additions. Several solutions are discussed in each section, referencing dimensions and technical requirements from the ADA's accessibility guidelines, ADAAG. State and local requirements, however, may differ from the ADA requirements. Before making any modification owners should be aware of all applicable accessibility requirements.

The Building Site

An accessible route from a parking lot, sidewalk, and public street to the entrance of a historic building or facility is essential. An accessible route, to the maximum extent possible, should be the circulation route used by the general public. Critical elements of accessible routes are their widths, slopes, cross slopes, and surface texture. Each of these route elements must be appropriately designed so that the route can be used by everyone, including people with disabilities.

The significant building site is now accessible to people with disabilities (note steps in front of ramp). Photo: NPS files.

The distance between the arrival and destination points should also be as short as possible. Sites containing designed landscapes should be carefully evaluated before making accessibility modifications. Historic landscapes are described in greater detail below.

Providing Convenient Parking

If parking is provided, it should be as convenient as possible for people with disabilities. Specially designated parking can often be created to improve accessibility. Modifications to parking configurations and pathways should not alter significant landscape features.

Creating an Accessible Route

The route or path through a site to a historic building's entrance should be wide enough, generally at least 3 feet (91 cm), to accommodate visitors with disabilities and must be appropriately graded with a stable, firm, and slip-resistant surface. Existing paths should be modified to meet these requirements whenever possible as long as doing so would not threaten or destroy significant materials and features.

Existing surfaces can often be stabilized by providing a new base and resetting the paving materials, or by modifying the path surface. In some situations it may be appropriate to create a new path through an inaccessible area. At large properties, it may be possible to regrade a slope to less than 1:20 (5%), or to introduce one or more carefully planned ramps. Clear directional signs should mark the path from arrival to destination.

Entrances

The historic threshold was made accessible with a 1/2" wood bevel. Photo: NPS files.

Whenever possible, access to historic buildings should be through a primary public entrance. In historic buildings, if this cannot be achieved without permanent damage to character-defining features, at least one entrance used by the public should be made accessible. If the accessible entrance is not the primary public entrance, directional signs should direct visitors to the accessible entrance. A rear or service entrance should be avoided as the only mean of entering a building.

Creating an accessible entrance usually involves overcoming a change in elevation. Steps, landings, doors, and thresholds, all part of the entrance, often pose barriers for persons with disabilities. To preserve the integrity of these features, a number of solutions are available to increase accessibility. Typical solutions include regrading, incorporating ramps, installing wheelchair lifts, creating new entrances, and modifying doors, hardware, and thresholds.

Regrading an Entrance

In some cases, when the entrance steps and landscape features are not highly significant, it may be possible to regrade to provide a smooth entrance into a building. If the existing steps are historic masonry, they should be buried, whenever possible, and not removed.

Incorporating Ramps

Permanent ramps are perhaps the most common means to make an entrance accessible. As a new feature, ramps should be carefully designed and appropriately located to preserve a property's historic character.

A new elevator entrance was provided next to the stairs to provide universal access to the services inside. Photo: Courtesy, GSA.

Ramps should be located at public entrances used by everyone whenever possible, preferably where there is minimal change in grade. Ramps should also be located to minimize the loss of historic features at the connection points-porch railings, steps, and windows-and should preserve the overall historic setting and character of the property. Larger buildings may have below grade areas that can accommodate a ramp down to an entrance. Below grade entrances can be considered if the ramp leads to a publicly used interior, such as an auditorium, or if the building is serviced by a public elevator. Ramps can often be incorporated behind historic features, such as cheek-walls or railings, to minimize the visual effect.

The steepest allowable slope for a ramp is usually 1:12 (8%), but gentler slopes should be used whenever possible to accommodate people with limited strength. Greater changes in elevation require larger and longer ramps to meet accessibility scoping provisions and may require an intermediate landing. Most codes allow a slightly steeper ramp for historic buildings to overcome one step.

Ramps can be faced with a variety of materials, including wood, brick, and stone. Often the type and quality of the materials determines how compatible a ramp design will be with a historic property. Unpainted pressure-treated wood should not be used to construct ramps because it usually appears temporary and is not visually compatible with most historic properties.

Railings should be simple in design, distinguishable from other historic features, and should extend one foot beyond the sloped area.

Ramp landings must be large enough for wheelchair users, usually at least 5 feet by 5 feet (152.5 cm by 152.5 cm), and the top landing must be at the level of the door threshold. It may be possible to reset steps by creating a ramp to accommodate minor level changes and to meet the threshold without significantly altering a property's historic character. If a building's existing landing is not wide or deep enough to accommodate a ramp, it may be necessary to modify the entry to create a wider landing. Long ramps, such as switchbacks, require intermediate landings, and all ramps should be detailed with an appropriate edge and railing for wheelchair users and visually impaired individuals.

Temporary or portable ramps are usually constructed of light-weight materials and, thus, are rarely safe or visually compatible with historic properties. Moreover, portable ramps are often stored until needed and, therefore, do not meet accessibility requirements for independent access. Temporary and portable ramps, however, may be an acceptable interim solution to improve accessibility until a permanent solution can be implemented.

Installing Wheelchair Lifts

Platform lifts and inclined stair lifts, both of which accommodate only one person, can be used to overcome changes of elevation ranging from three to 10 feet (.9 m-3 m) in height. However, many States have restrictions on the use of wheelchair lifts, so all applicable codes should be reviewed carefully before installing one. Inclined stair lifts, which carry a wheelchair on a platform up a flight of stairs, may be employed selectively. They tend to be visually intrusive, although they are relatively reversible. Platform lifts can be used when there is inadequate space for a ramp. However, such lifts should be installed in unobtrusive locations and under cover to minimize maintenance if at all possible. A similar, but more expensive platform lift has a retracting railing that lowers into the ground, minimizing the visual effect to historic properties. Mechanical lifts have drawbacks at historic properties with high public visitation because their capacity is limited, they sometimes cannot be operated independently, and they require frequent maintenance.

Considering a New Entrance

When it is not possible to modify an existing entrance, it may be possible to develop a new entrance by creating an entirely new opening in an appropriate location, or by using a secondary window for an opening. This solution should only be considered after exhausting all possibilities for modifying existing entrances.

Retrofitting Doors

Historic doors generally should not be replaced, nor should door frames on the primary elevation be widened, as this may alter an important feature of a historic design. However, if a building's historic doors have been removed, there may be greater latitude in designing a compatible new entrance. Most accessibility standards require at least a 32" (82 cm) clear opening with manageable door opening pressures. The most desirable preservation solution to improve accessibility is retaining historic doors and upgrading the door pressure with one of several devices. Automatic door openers (operated by push buttons, mats, or electronic eyes) and power-assisted door openers can eliminate or reduce door pressures that are accessibility barriers, and make single or double-leaf doors fully operational.

Adapting Door Hardware

If a door opening is within an inch or two of meeting the 32" (81 cm) clear opening requirement, it may be possible to replace the standard hinges with off-set hinges to increase the size of the door opening as much as 1 Ω" (3.8 cm). Historic hardware can be retained in place, or adapted with the addition of an automatic opener, of which there are several types. Door hardware can also be retrofitted to reduce door pressures. For example, friction hinges can be retrofitted with ball-bearing inserts, and door closers can be rethreaded to reduce the door pressure.

This door handle has been retrofitted to meet ADA requirements. Photo: NPS files.

Altering Door Thresholds

A door threshold that exceeds the allowable height, generally 1/2" (1.3 cm), can be altered or removed with one that meets applicable accessibility requirements. If the threshold is deemed to be significant, a bevel can be added on each side to reduce its height. Another solution is to replace the threshold with one that meets applicable accessibility requirements and is visually compatible with the historic entrance.

Readily Acheivable Accesibility Options

Many accessibility solutions can be implemented easily and inexpensively without destroying the significance of historic properties. While it may not be possible to undertake all of the modifications listed below, each change will improve accessibility.

Sites and Entrances

- Creating a designated parking space.
- Installing ramps.
- Making curb cuts.

Interiors

- Repositioning shelves.
- Rearranging tables, displays, and furniture.

- Repositioning telephones.
- Adding raised markings on elevator control buttons.
- Installing flashing alarm lights.
- Installing offset hinges to widen doorways.
- Installing or adding accessible door hardware.
- Adding an accessible water fountain, or providing a paper cup dispenser at an inaccessible water fountain.

Restrooms

- Installing grab bars in toilet stalls.
- Rearranging toilet partitions to increase maneuvering space.
- Insulating lavatory pipes under sinks to prevent burns.
- Installing a higher toilet seat.
- Installing a full-length bathroom mirror.
- Repositioning the paper towel dispenser.

A retractable lift for this historic building foyer was created using "like" materials. Photo: NPS files.

Moving Through Historic Interiors

Persons with disabilities should have independent access to all public areas and facilities inside historic buildings. The extent to which a historic interior can be modified depends on the significance of its materials, plan, spaces, features, and finishes. Primary spaces are often more difficult to modify without changing their character. Secondary spaces may generally be changed without compromising a building's historic character. Signs should clearly mark the route to accessible restrooms, telephones, and other accessible areas.

Installing Ramps and Wheelchair Lifts

If space permits, ramps and wheelchair lifts can also be used to increase accessibility inside buildings. However, some States and localities restrict interior uses of wheelchair lifts for life-safety reasons. Care should be taken to install these new features where they can be readily accessed. Ramps and wheelchair lifts are described below.

Upgrading Elevators

Elevators are an efficient means of providing accessibility between floors. Some buildings have existing historic elevators that are not adequately accessible for persons with disabilities because of their size, location, or detailing, but they may also contribute to the historical significance of a building. Significant historic elevators can usually be upgraded to improve accessibility. Control panels can be modified with a "wand" on a cord to make the control panel accessible, and timing devices can usually be adjusted.

Retrofitting Door Knobs

Historic door knobs and other hardware may be difficult to grip and turn. In recent years, lever-handles have been developed to replace door knobs. Other lever-handle devices can be added to existing hardware. If it is not possible or appropriate to retrofit existing door knobs, doors can be left open during operating hours (unless doing so would violate life safety codes), and power-assisted door openers can be installed. It may only be necessary to retrofit specific doorknobs to create an accessible path of travel and accessible restrooms.

Modifying Interior Stairs

Stairs are the primary barriers for many people with disabilities. However, there are some ways to modify stairs to assist people who are able to navigate them. It may be appropriate to add hand railings if none exist. Railings should be 1 ½" (3.8 cm) in diameter and return to the wall so straps and bags do not catch. Color-contrasting, slip-resistant strips will help people with visual impairments. Finally, beveled or closed risers are recommended unless the stairs are highly significant, because open risers catch feet.

Building Amenities

Some amenities in historic buildings, such as restrooms, seating, telephones, drinking fountains, counters, may contribute to a building's historic character. They will often require modification to improve their use by persons with disabilities. In many cases, supplementing existing amenities, rather than changing or removing them, will increase access and minimize changes to historic features and materials.

Upgrading Restrooms

Restrooms may have historic fixtures such as sinks, urinals, or marble partitions that can be retained in the process of making modifications. For example, larger restrooms can sometimes be reconfigured by relocating or combining partitions to create an accessible toilet stall. Other changes to consider are adding grab bars around toilets, covering hot water pipes under sinks with insulation to prevent burns, and providing a sink, mirror, and paper dispenser at a height suitable for wheelchair users. A unisex restroom may be created if it is technically infeasible to create two fully accessible restrooms, or if doing so would threaten or destroy the significance of the building. It is important to remember that restroom fixtures, such as sinks, urinals, and partitions, may be historic, and therefore, should be preserved whenever possible.

Modifying Other Amenities

Other amenities inside historic buildings may require modification. Seating in a theater, for example, can be made accessible by removing some seats in several areas. New seating that is accessible can also be added at the end of existing rows, either with or without a level floor surface. Readily removable seats may be installed in wheelchair spaces when the spaces are not required to accommodate wheelchair users. Historic water fountains can be retained and new, two-tiered fountains installed if space permits. If public telephones are provided, it may be necessary to install at least a Text Telephone (TT), also known as a Telecommunication Device for the Deaf (TDD. Historic service counters commonly found in banks, theaters, and hotels generally should not be altered. It is preferable to add an accessible counter on the end of a historic counter if feasible. Modified or new counters should not exceed 36" (91.5 cm) in height.

Considering a New Addition as an Accessibility Solution

Many new additions are constructed specifically to incorporate modern amenities such as elevators, restrooms, fire stairs, and new mechanical equipment. These new additions often create opportunities to incorporate access for people with disabilities. It may be possible, for example, to create an accessible entrance, path to public levels via a ramp, lift, or elevator. However, a new addition has the potential to change a historic property's appearance and destroy significant building and landscape features. Thus, all new additions should be compatible with the size, scale, and proportions of historic features and materials that characterize a property.

New additions should be carefully located to minimize connection points with the historic building, such that if the addition were to be removed in the future, the essential form and integrity of the building would remain intact. On the other hand, new additions should also be conveniently located near parking that is connected to an accessible route for people with disabilities. As new additions are incorporated, care should be taken to protect significant landscape features and archeological resources. Finally, the design for any new addition should be differentiated from the historic design so that the property's evolution over time is clear. New additions frequently make it possible to increase accessibility, while simultaneously reducing the level of change to historic features, materials, and spaces.

Making Historic Landscapes Accessible

To successfully incorporate access into historic landscapes, the planning process is similar to that of other historic properties. Careful research and inventory should be undertaken to determine which materials and features convey the landscape's historical significance. As part of this evaluation, those features that are character-defining (topographical variation, vegetation, circulation, structures, furnishings, objects) should be identified. Historic finishes, details, and materials that also contribute to a landscape's significance should also be documented and evaluated prior to determining an approach to landscape accessibility. For example, aspects of the pedestrian circulation system that need to be understood include walk width, aggregate size, pavement pattern, texture, relief, and joint details. The context of the walk should be understood including its edges and surrounding area. Modifications to surface textures or widths of pathways can often be made with minimal effect on significant landscape features.

Additionally, areas of secondary importance such as altered paths should be identified-especially those where the accessibility modifications will not destroy a landscape's significance. By identifying those features that are contributing or non-contributing, a sympathetic circulation experience can then be developed.

After assessing a landscape's integrity, accessibility solutions can be considered. Full access throughout a historic landscape may not always be possible. Generally, it is easier to provide accessibility to larger, more open sites where there is a greater variety of public experiences. However, when a landscape is uniformly steep, it may only be possible to make discrete portions of a historic landscape accessible, and viewers may only be able to experience the landscape from selected vantage points along a prescribed pedestrian or vehicular access route. When defining such a route, the interpretive value of the user experience should be considered; in other words, does the route provide physical or visual access to those areas that are critical to understand the meaning of the landscape?

Federal Accessibility Laws

The automatic door to this museum building is a practical solution for universal entry. Photo: NPS files.

Today, few building owners are exempt from providing accessibility for people with disabilities. Before making any accessibility modification, it is imperative to determine which laws and codes are applicable. In addition to local and State accessibility codes, the following federal accessibility laws are currently in effect:

Architectural Barriers Act (1968)

The Architectural Barriers Act stipulates that all buildings designed, constructed, and altered by the Federal Government, or with federal assistance, must be accessible. Changes made to federal buildings must meet the Uniform Federal Accessibility Standards (UFAS). Special provisions are included in UFAS for historic buildings that would be threatened or destroyed by meeting full accessibility requirements.

Rehabilitation Act (1973)

The Rehabilitation Act requires recipients of federal financial assistance to make their programs and activities accessible to everyone. Recipients are allowed to make their properties accessible by altering their building, by moving programs and activities to accessible spaces, or by making other accommodations.

Americans with Disabilities Act (1990)

Historic properties are not exempt from the Americans with Disabilities Act (ADA) requirements. To the greatest extent possible, historic buildings must be as accessible as non-historic buildings. However, it may not be possible for some historic properties to meet the general accessibility requirements.

Under Title II of the ADA, State and local governments must remove accessibility barriers either by shifting services and programs to accessible buildings, or by making alterations to existing buildings. For instance, a licensing office may be moved from a second floor to an accessible first floor space, or if this is not feasible, a mail service might be provided. However, State and local government facilities that have historic preservation as their main purpose-State-owned historic museums, historic State capitols that offer tours-must give priority to physical accessibility.

Under Title III of the ADA, owners of "public accommodations" (theaters, restaurants, retail shops, private museums) must make "readily achievable" changes; that is, changes that can be easily accomplished without much expense. This might mean installing a ramp, creating accessible parking, adding grab bars in bathrooms, or modifying door hardware. The requirement to remove barriers when it is "readily achievable" is an ongoing responsibility. When alterations, including restoration and rehabilitation work, are made, specific accessibility requirements are triggered.

Recognizing the national interest in preserving historic properties, Congress established alternative requirements for properties that cannot be made accessible without "threatening or destroying" their significance. A consultation process is outlined in the ADA's Accessibility Guidelines for owners of historic properties who believe that making specific accessibility modifications would "threaten or destroy" the significance of their property. In these situations, after consulting with persons with disabilities and disability organizations, building owners should contact the State Historic Preservation Officer (SHPO) to determine if the special accessibility provisions for historic properties may be used. Further, if it is determined in consultation with the SHPO that compliance with the minimum requirements would also 'threaten or destroy" the significance of the property, alternative methods of access, such as home delivery and audio-visual programs, may be used.

Summary and References

Historic properties are irreplaceable and require special care to ensure their preservation for future generations. With the passage of the Americans with Disabilities Act, access to historic properties open to the public is a now civil right, and owners of historic properties must evaluate existing buildings and determine how they can be made more accessible. It is a challenge to evaluate properties thoroughly, to identify the applicable accessibility requirements, to explore alternatives and to implement solutions that provide independent access and are consistent with accepted historic preservation standards. Solutions for accessibility should not destroy a property's significant materials, features and spaces, but should increase accessibility as much as possible. Most historic buildings are not exempt from providing accessibility, and with careful planning, historic properties can be made more accessible, so that all citizens can enjoy our Nation's diverse heritage.

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This publication has been prepared pursuant to the National Historic Preservation Act of 1966, as amended, which directs the Secretary of the Interior to develop and make available information concerning historic properties. Technical Preservation Services (TPS), National Park Service prepares standards, guidelines, and other educational materials on responsible historic preservation treatments for a broad public.

September 1993

Reading List

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Smith, William D. and Tara Goodwin Frier. *Access to History: A Guide to Providing Access to Historic Buildings for People with Disabilities.* Boston: Massachusetts Historical Commission, 1989.

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4.1.7 Accessible Buildings: Historic Preservation

1. * Applicability:

General Rule

Alterations to a qualified historic building or facility shall comply with 4.1.6 (Accessible Buildings: Alterations), the applicable technical specifications of section 4 and the applicable special application sections unless it is determined in accordance with the procedures in 4.1.7(2) that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility in which case the alternative requirements in 4.1.7(3) may be used for the feature. Appendix Note 4.1.7(1).
EXCEPTION: (Reserved).

Definition.A qualified historic building or facility is a building or facility that is:
(i) Listed in or eligible for listing in the National Register of Historic Places; or
(ii) Designated as historic under an appropriate State or local law.

2. Procedures:
   a. Alterations to Qualified Historic Buildings and Facilities Subject to Section 106 of the National Historic Preservation Act:
      i. Section 106 Process. Section 106 of the National Historic Preservation Act (16 U.S.C. 470 f) requires that a Federal agency with jurisdiction over a Federal, federally assisted, or federally licensed undertaking consider the effects of the agency's undertaking on buildings and facilities listed in or eligible for listing in the National Register of Historic Places and give the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking prior to approval of the undertaking.
      ii. ADA Application. Where alterations are undertaken to a qualified historic building or facility that is subject to section 106 of the National Historic Preservation Act, the Federal agency with jurisdiction over the undertaking shall follow the section 106 process. If the State Historic Preservation Officer or Advisory Council on Historic Preservation agrees that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility, the alternative requirements in 4.1.7(3) may be used for the feature.
   b. Alterations to Qualified Historic Buildings and Facilities Not Subject to Section 106 of the National Historic Preservation Act. Where alterations are undertaken to a qualified historic building or facility that is not subject to section 106 of the National Historic Preservation Act, if the entity undertaking the alterations believes that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility and that the alternative requirements in 4.1.7(3) should be used for the feature, the entity should consult with the State Historic Preservation Officer. If the State Historic Preservation Officer agrees that compliance with the accessibility requirements for accessible routes (exterior and interior), ramps, entrances or toilets would threaten or destroy the historical significance of the building or facility, the alternative requirements in 4.1.7(3) may be used.

c. Consultation With Interested Persons. Interested persons should be invited to participate in the consultation process, including State or local accessibility officials, individuals with disabilities, and organizations representing individuals with disabilities.

d. Certified Local Government Historic Preservation Programs. Where the State Historic Preservation Officer has delegated the consultation responsibility for purposes of this section to a local government historic preservation program that has been certified in accordance with section 101(c) of the National Historic Preservation Act of 1966 (16 U.S.C. 470a (c)) and implementing regulations (36 C.F.R. 61.5), the responsibility may be carried out by the appropriate local government body or official.

3. Historic Preservation: Minimum Requirements:

a. At least one accessible route complying with 4.3 from a site access point to an accessible entrance shall be provided.
EXCEPTION: A ramp with a slope no greater than 1:6 for a run not to exceed 2 ft (610 mm) may be used as part of an accessible route to an entrance.

b. At least one accessible entrance complying with 4.14 which is used by the public shall be provided.
EXCEPTION: If it is determined that no entrance used by the public can comply with 4.14, then access at any entrance not used by the general public but open (unlocked) with directional signage at the primary entrance may be used. The accessible entrance shall alsohave a notification system. Where security is a problem, remote monitoring may be used.

c. If toilets are provided, then at least one toilet facility complying with 4.22 and 4.1.6 shall be provided along an accessible route that complies with 4.3. Such toilet facility may be unisex in design.

d. Accessible routes from an accessible entrance to all publicly used spaces on at least the level of the accessible entrance shall be provided. Access shall be provided to all levels of a building or facility in compliance with 4.1 whenever practical.

e. Displays and written information, documents, etc., should be located where they can be seen by a seated person. Exhibits and signage displayed horizontally (e.g., open books), should be no higher than 44 in (1120 mm) above the floor surface.

U.S. Access Board
Advancing Full Access and Inclusion for All

ADA Accessibility Guidelines (ADAAG)

1991 edition and later supplements, As amended through September 2002

1. PURPOSE

This document contains scoping and technical requirements for accessibility to buildings and facilities by individuals with disabilities under the Americans with Disabilities Act (ADA) of 1990. These scoping and technical requirements are to be applied during the design, construction, and alteration of buildings and facilities covered by titles II and III of the ADA to the extent required by regulations issued by Federal agencies, including the Department of Justice and the Department of Transportation, under the ADA.

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Paragraphs marked with an asterisk have related, nonmandatory material in the Appendix. In the Appendix, the corresponding paragraph numbers are preceded by an A.

2. GENERAL