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

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PETITIONERS' MEMORANDUM
IN LIEU OF CLOSING ARGUMENT

The Petitioners in this case, St. Rita's Roman Catholic Congregation, Inc. and the Family Crisis Center of Baltimore County, Inc. petitioned the Office of Administrative Hearings for the following relief:

> "Special Hearing to confirm that the proposed building addition is outside the RTA and RTA regulations do not apply to the proposed addition, existing building or modified parking on the site. In the alternative to grant an exception to the RTA to the proposed new uses and improvements pursuant to BCZR 1B01.1.B.1.g.(9). To permit the existing rectory within the RTA buffer and setback as a non-conforming use. Parking Determination:(Lot No.2) Request for a determination that the proposed joint use parking is sufficient for the proposed Community Care Center pursuant to BCZR 409.6.A. Parking Determination (Lot 1) Request for a determination that the non-conforming joint use parking is adequate for the existing church and rectory. Rooming or Boarding House: As an alternative to the special exception sought for a Community Care Center for a rooming and boarding house in an individual building for up to 15 units with kitchens facility pursuant to BCZR 408B.1.A. Additional relief: For such other and further relief as the nature of the development may require. Special Exception to allow the use of a Community Care Center in a D.R. 5.5 Zone pursuant to BCZR 1B01.1.C.5 or alternatively. To approve a rooming and boarding house with a community building used for civic, social and educational use pursuant to BCZR 1B01.1.C.4. Variance Lot No 1: Church and Rectory: From BCZR 1B01.2.C.1.a to permit a front yard setback of 19' for the Church in lieu of the required 40'. From BCZR 1B01.2.C.1.a to permit a street corner side yard setback of 20' for the Church in lieu of the required 35'. From BCZR 1B01.2.C.1.a to permit a front yard setback of 38' for the Rectory in lieu of the required 40'. From BCZR 1B01.2.C.1.a to permit a street corner side yard setback of 27' in lieu of the required 35'. 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. From BCZR 409.6.A.4 for a parking setback of 0' from the right of way line in lieu of the required 10'. From BCZR 1B01.1.B.1.c to allow reconfigured parking within the RTA buffer and setback. Lot No. 2: Community Care Center: From BCZR 1B01.2.C.1.a to permit a front yard setback from

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

Petitioners seek to subdivide the existing property into two lots with a joint use parking and access agreement. A church and rectory will continue to occupy Lot 1, as identified on Petitioners' Exhibit 2, with slightly reconfigured parking, but otherwise with no changes to either of the two buildings.

The Family Crisis Center of Baltimore County (the "Center") will own and occupy Lot 2, as identified on Petitioners' Exhibit 2, for the housing of abused women and their families and for the offices of the Center and meeting rooms. The building formerly occupied by the St. Rita's parish elementary school will be converted to twelve (12) to fifteen (15) apartments on three (3) levels (see Petitioner's Exhibit 5). The existing Parish Hall building will remain available for community and church meetings but will be used primarily for counseling rooms and offices. The existing convent building will be razed. A new main entrance will be constructed facing Dunglow Road. The entrance will connect the Parish Hall to the school building and will be compliant with the American Disabilities Act ("ADA"). Parking on Lot 2 will be reconfigured to come into compliance with zoning standards for parking spaces and to remove existing spaces from the county right of way on Mornington Road.

The Petition and the relief sought mostly stem from the imposition of current zoning regulations on a property which was developed for religious and educational use long before the adoption of the current regulations and from the situation of the current buildings on the lot with respect to the surrounding four (4) streets and housing across the street. The variances sought from the existing zoning regulations on Lot 1 derive solely from existing conditions. The variances sought on Lot 2 derive from existing conditions, the new entrance, and the reconfiguration of the parking

spaces. In fact, the impact of the proposed development will be more parking spaces actually located on-site than under the existing configuration, and due to the razing of the large convent building more open space and less building area.

APPLICABLE LEGAL FRAMEWORK

I. SPECIAL EXCEPTION

Petitioners have asked for a special exception for a Community Care Center or alternatively for approval of a Boarding or Rooming House with a special exception for a community building. The Baltimore County Zoning Regulations ("BCZR") §1B01.1.C.5 allows Community Care Centers by special exception in a D.R. zone, and §1B01.1.C.4 allows community buildings by special exception in a D.R. zone. Boarding- or Rooming Houses are permitted by means of a use permit as described in BCZR §408B.1. "Boarding- or Rooming House" and "Community Care Center" are both defined uses in BCZR §101.1.

> "BOARDING- OR ROOMING HOUSE
>
> A. A building:
> 1. Which is the domicile of the owner and in which rooms with or without meals are provided, for compensation, to three or more individuals who are 18 years old or older and not related by blood, marriage or adoption to the owner; or
> 2. Which is not the owner's domicile and which is occupied in its entirety, for compensation, by three or more individuals who are 18 years old or older and not related to each other by blood, marriage or adoption.
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> B. The term does not include a hotel, motel, apartment building or a facility for foster care (as defined in the Family Law Article, Section 5-501(g) of the Annotated Code of Maryland and COMAR 07.06.16). The term does include a care home (as defined in the Health General Article, Section 19-307(b) of the Annotated Code of Maryland.)
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> 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. [Bill No. 142-1979]"

There is no definition of a "community building" in the zoning regulations, but BCZR §1B01.1.C.4 makes the use pretty clear:

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

Two issues, however do arise with calling the proposed use on the St. Rita's property a Boarding-or Rooming House. Section 408B.1.B limits such uses to single family detached dwellings. Also Section 408B.1.C requires record keeping on the residents including private information and further requires such information to be made available to various county agencies including the Department of Permits, Approvals and Inspections.

The first issue of the Boarding-or Rooming House being in a single family, detached dwelling was not a barrier to the use in a Petition for Special Hearing, Special Exception and Variance before the County Board of Appeals in Case No. 13-1-3-SPHXA for Hosanna House. In that case Catholic Charities petitioned to use a former convent building for fourteen to sixteen women over age 50 as permanent supportive housing. Each resident had to be certified by HUD to be homeless and disabled. There was testimony that the convent functioned as a single family dwelling. Using the same argument a single building used as a school could become a boarding house.

More problematic are the disclosure requirements for the residents of the facility, battered or abused women. Ms. Post testified that they are not permitted to give out information about the residents to non-authorized groups and in this case that would include the Department of Permits, Approvals and Inspections.

The Community Care Center definition requires licensure by the State Department of Health or by Social Services. Neither of these agencies are in charge of abused persons. This is a problem with a definition where the approving authorities have changed since the definition was added to the

Regulations in 1979. According to the evidence at the hearing the care and services provided to abused persons was moved from the Department of Health to a different State Program, the Governor's Council of Crime Control and Prevention. Annotated Code of Maryland, Family Law, §4-515. Victims of domestic abuse are victims of a crime committed upon them or are in fear of imminent harm. Annotated Code of Maryland, Family Law, §4-513. In addition, Baltimore County considers this charitable organization and the services it provides as essential components in meeting its obligations under the State Code mandate that it have such a facility in a major population center. Id., at §4-515(b). Pursuant to this section of the Code the program is supervised by the State, which sets standards for care and admission and monitors the program.

If the requirement of licensure by the Departments or Health or Social Services is strictly construed, the provision in the definition for the "housing, counseling, supervision, or rehabilitation of ...abused individuals" loses its meaning, for those departments no longer oversee that use. The intent of the definition is that there be some certification or recognition by the State of the provision of such services and oversight by State of the charitable entity. This use at this location meets the definition. Indeed, if the provision is strictly construed that only licensure by the Departments of Health and Social Services will serve, then Baltimore County would not permit the services for abused persons with the necessary reporting limitations and supervision anywhere in the County, and that would be contrary to state law.

In *Landay v. Board of Zoning Appeals*, 173 Md. 460, at 466 (1938), the Court stated the proposition that zoning regulations are to be liberally construed to accomplish their plain purpose and intent; the statement has been frequently repeated by the appellate courts over the years. In addition, the decisions from the appellate courts have repeatedly held that if reasonably possible no word or phrase in as statute should be rendered surplusage or meaningless. *Mueller v. People's Counsel for Baltimore County,* 177 Md. App. 43 at 86, 934 A.2d 974, 999 (2006). The Court went on to state: "Further, we

are obligated to construe the statute as a whole, so that all provisions are considered together and, to the extent possible, reconciled and harmonized." *Id.* at 86, 934A.2d at 999. It would appear that the use of this site as proposed and as certified by the State of Maryland and by Baltimore County accomplishes the plain purpose and intent of the definition and use.

The zoning regulations specially regulate the special exception for Community Care Centers. Section 502.5 of the Baltimore County Zoning Regulations ("BCZR") places limitations on both Community Care Centers and Boarding-or Rooming Houses. A special exception or renewal thereof only lasts for five (5) years. At that time there must be a written request for continuation of the special exception use and an inspection of the facility to determine whether the use still meets the terms of the special exception order. These appear to be the only uses so limited by the special exception regulations, but presumably, the limitations are built into the regulations to protect both the users of such facilities and the surrounding communities.

Special exception uses are uses that are presumed to be in the interest of the general welfare, and they enjoy a presumption of validity. *Attar v. DMS Tollgate, LLC*, 451 Md. 272, 286, 152 A.3d 765, 773 (2017). A special exception use should be denied only if there is a showing the use at a particular location would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within a zone. *Schultz v. Pritts*, 291 Md. 1 at 22-23, 432 A. 2d, 1319 at 1331(1981).

Schultz v. Pritts is still considered the leading case in Maryland in the articulation of special exception law. The Court stated:

> "This Court has frequently expressed the applicable standards for judicial review of the grant or denial of a special exception use. 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 a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any fact or circumstance negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be*

adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood_ and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal [citations omitted] [emphasis in original] Id. at 11-12.

The Court cited and approved the following statement made in *Anderson v. Sawyer*, 23 Md. App. 612, 329 A.2d 716 (1974). *Anderson* involved a request for special exception of a funeral home in a residential zone.

"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."* *Anderson,* 23 Md. App. at 624-25, 329 A.2d at

724 (emphasis added in *Schultz* opinion). Schultz v. Pritts, 291 Md. 1, 13-14, 433 A.2d 1319, 1326-1327 (19810

In *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 68-69, 956 A. 2d 166, 174-175 (2007), the Court examined the provisions of BCZR §502.1 and the test of *Schultz*. In order to overcome the presumption of the validity of the use, there must be evidence of adverse impacts as stated in Section 502.1 from the location of a use on a particular property that are above and beyond the "inherent" impacts of the use. *Id.* at 104-106. Indeed, the issue becomes whether there is some special characteristic of the property that voids the presumption of validity of the special exception.

II. SETBACK VARIANCES

Variances, of course, do not enjoy any presumption of validity, but again, the uniqueness of the property is critical to the determination. The term "uniqueness" is generally associated with the case of *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). The context of that case, however, is very important to the statements made in it. First, it was a Court of Special Appeals decision following in the path of prior appellate decisions. Second, it was a case of self-inflicted hardship where the petitioner sought forgiveness for his actions instead of permission. Consequently, there were no peculiar factors pertaining to the property which were adduced to justify why a height variance should be given. Subsequent Court of Appeals decisions have made clear that factors other than soil, topography or shape of the property may contribute to the practical difficulty with strict compliance with the zoning regulations.

In *Stansbury v. Jones*, 372 Md. 172, 812 A.2d 312 (2002) the same author of *Cromwell* on the Court of Special Appeals was now writing for the Court of Appeals. The essential basis for obtaining a variance is not the action of the petitioner but rather the impact of the operation of the regulation.

Id. at 195; 812 A.2d at 325-326. The issue was the impact of zoning regulations on previously approved property. The purchase of property with knowledge that a variance would be needed was not a self-inflicted hardship. Zoning imposed on a property may create a non-conforming condition creating a practical difficulty with compliance. The Zoning Regulations clearly permit the reuse of the St. Rita's property, and virtually any reuse, but for reintroduction of the school and/or convent requires variances due to the location of the existing buildings and parking areas.

The variances sought in this case are all area variances. BCZR §307.1 permits such variances upon a showing of practical difficulty, a lesser requirement than undue hardship. Section 307.1 recognizes that interior parking requirements may also need a variance. Variances are frequently needed and applied where buildings which preexisted current standards are sought to be repurposed. These are not cases of self-inflicted hardship where the buildings were constructed in disregard for the regulations, and as such the buildings constitute as much of a unique factor in the consideration as the land to which they are attached. It would be the very definition of "practical difficulty" to call for the removal of legitimately constructed buildings from property to satisfy a subsequently adopted bulk, area or parking regulation. In this case in addition to the existence of buildings within setbacks is the fact that the use is totally surrounded by streets generating additional setbacks. There is no other property in the area similarly situated. Parking on the site has always been limited, and indeed has encroached into public right of ways. The proposed parking requires setback variances due to the building locations but does augment existing spaces on site.

III. RESIDENTIAL TRANSITION AREA

The Residential Transition Area ("RTA") requirements should not apply at all to the existing church and rectory on Lot 1, for these buildings and uses predated the enactment of the RTA regulations in 1970. No new use or new construction is proposed for Lot 1.

With respect to Lot 2, the only new construction is the ADA compliant entrance on Dunglow Road opposite the D.R. 16 zoned apartments. The entrance is outside the 100 foot RTA area. It is true, however, that portions of the existing Parish Hall and of the school are within the RTA buffer and setback. But it would appear that the RTA is aimed at new development, not existing buildings or uses. See *In the Matter of Michael R. Mardiney*, Case No. 13-171-SPHXA, a Board of Appeals case where no new development was being proposed in the residential zone where the RTA would be applicable.

The repurposing of the school for a community care center does involve a new residential use in the residential zone impacted by the RTA. Virtually any reuse of the school for other than religious purposes would trigger an examination of whether the RTA is applicable, and like the setback variances the only way for ultimate compliance would be to remove the building.

The Parish Hall building, which faces Mornington Road, also is in the RTA generated by the zoning and houses across Mornington. It could continue to function as a parish hall as a non-conforming structure and use under the RTA indefinitely. It also would easily qualify for an exemption as a religious purposed building inside the RTA. Although the actual functioning of the building as a community related building is continuing, it is doing so outside of the shield of the religious use. In order that the building remain, it must be determined either that the continuing functioning of the building for community meetings, offices and conference rooms is not changing inside the existing building, and the RTA is not applicable, or that a variance from the RTA is appropriate or that the use qualifies for an exemption from the RTA.

BCZR §1B01.1.B.1.c allows the Administrative Law Judge to modify the RTA under two circumstances. Subsection (1) allows a modification upon recommendation from certain County departments. In this case the Department of Planning recommended an exemption for the site and had no objection to a variance, if necessary. The section also limits the application of this variance to

a single tract in excess of two acres, a vacant property or one that contains no more than one single family, semi-detached or duplex dwelling. In this regard the property is in a single parcel although sought to be subdivided. The net dimensions of the property are 200 feet by 420 feet or 84,000 square feet as shown on Petitioners' Exhibit 2. The "net area" of the parcel, therefore, is 1.93 acres. "Net Area" is a defined term in the regulations. It is used in specific instances such as the small lot table. When density or size is being calculated, the regulations use gross area, which includes half of the right of way bordering the property up to 30 feet. Because the St. Rita's property is contained within four streets with a minimum width of 40 feet, its area as considered by zoning is much larger. The dimensions become 250 feet by 470 feet or 117,500 square feet, or 2.7 acres. Consequently, this parcel may be considered for this variance.

BCZR §1B01.1.B.1.c(2) allows modification and reduction of the RTA by the Administrative Law Judge if there is a finding that "such a reduction will not adversely impact the residential community or development on the land adjacent to the property to be developed." In this case no new construction is proposed within the RTA, and the parking within the RTA is actually being pulled further away from the property line than the parking which has existed for decades.

Although the Planning Department recommended Petitioner's application for an exemption pursuant to BCZR §1B01.1.B.1.g (9) for an addition to an existing community building or other structure devoted to civic, social, recreational, fraternal or educational activity, there is a problem with compliance with the terms of the section, for variances are being sought for setbacks. The proposed entrance meets the definition except for the requirement of maintenance with all other regulations.

An exemption pursuant to BCZR §1B01.1.B.1.g (10) would appear more apt. Although the buildings themselves are not new, the repurposing of the buildings for a community care center or Boarding-or Rooming House and community building for civic activity are planned in such a way that

compliance to the extent possible will be maintained and that the special exception sought may be expected to be compatible with the character and general welfare of the surrounding residences.

The regulations contemplated that certain uses should be given exemptions from the RTA under certain circumstances. The issue under the RTA is whether the plans for the uses on the site are compatible with the character and general welfare. The uses themselves are presumed to be compatible. Consequently, the examination would be confined to the buildings and layout of the site and its compatibility.

IV. PARKING

BCZR §409.6.A. allows the Administrative Law Judge in a hearing to determine the amount of parking necessary for any use not listed in the section. A Community Care Center is not listed, and the Administrative Law Judge may determine the appropriate parking.

A Boarding-or Rooming House requires one space for each tenant bed. In this case there could be up to 15 tenants. The children may be residing with their mothers but would not be signing any leases. Neither the definition of Boarding-or Rooming House nor its application takes into account minors as tenants. The regulations persistently speak of "tenants" not persons.

There also is no parking assigned to a community building. The current Parish Hall use would not have individual parking, for as a church related use, its parking is determined by the number of seats in the church. A community building may be comprised of various uses and some may have more open area or usage than others. Each case should be evaluated on its own for parking availability.

The regulations confer on the Administrative Law Judge discretion with respect to numerous uses when it comes to parking. The regulations mention factors as combination of uses and proximity

to public transportation when discussing office, commercial and industrial uses and recognize that parking situations vary.

DISCUSSION

No discussion of the proposed use of the site and of the impact of the site changes on the neighborhood can occur without recognizing the historical uses of the site. Neighbors who passionately oppose the proposed use were equally passionate in their support of the uses of the site for a church, school and convent. According to one neighbor at one time the convent housed twelve residents and the school had up to 900 pupils. Some of those students walked to school, and many more were dropped off and picked up by their parents. The church has seating for 250 parishioners plus there is a rectory. All of this activity was accommodated on this site for many decades.

There was some expressed bitterness from a couple of the residents over the closing of the school over a decade ago as well as the closing of the convent. There also was testimony that over the years the closed school and convent buildings have fallen into disrepair, and there have been incidents of vandalism and drug use on the site. A reopening of the buildings to a constructive use would be a positive development even though setback, RTA and parking variances would be required to allow any of the buildings to remain.

Not one complaint was raised at the hearing about the location of the buildings or of the on-site parking which supported those uses. Consequently, there was no testimony that the buildings or parking on the site as now configured were in any way incompatible with the surrounding properties.

The location of the site in the area is also important. This is an urbanized area. Planning recognized that the site was just across Dunmanway from the community center and the revitalization area. As shown on Petitioners' Exhibit 3A there is much public parking in direct proximity to St. Rita's church and rectory along Dunmanway and Shipping Place. The St. Rita's site currently is proposed to be part of the Commercial Revitalization District (See Proposed Dundalk Design Review

Guidelines at 3). As the Protestants noted in their testimony, many people walk to services from the immediate area.

Finally, it is important to recognize that the Family Crisis Center has been located at 10 Dunmanway and has been serving residents of Baltimore County for over forty years. See Petitioners' Exhibit 3A. The services provided at the current center are provided on an emergency basis, and as the county has grown in the last forty years, regrettably the need for assistance for abused persons has grown. The fact that virtually every community organization in the area has endorsed the use of the St. Rita's site by this organization is testament to the positive impact their services have had on the community. (See Petitioners' Ex. 7; Amie Post testimony). They have a proven record as a charitable non-profit of serving these victims, and the St. Rita's site provides convenient access to their existing facilities.

This case arose because of the proposed subdivision of the St. Rita's site by the St. Rita's Roman Catholic Congregation. The Congregation looked for various uses for the site before the Family Crisis Center was selected.

What is proposed for the site in its simplest terms is housing. The school will house 12 to 15 family units. These families may be a single member adult or an adult with dependent children. The proposed use is not intended to be simple rental apartments where people may stay indefinitely or where apartments may house various combinations of adults and children. In this case the occupants will be very carefully screened, and while they will not be "supervised," they will be expected to adhere to a code of conduct which goes beyond what typical leases require. They will be asked to abide by that code of conduct with the understanding that their occupancy ceases upon breach of those conditions. In this respect there will be far more control over the behavior of the occupants than of the occupants of the apartments across Dunglow Road from the site. Not only are the residents subjected to a code of conduct, but the Family Crisis Center itself is reviewed by both County and

State agencies for its performance and for the services it provides so that it is not a conventional landlord renting space to tenants. There are accessory uses of offices for the Petitioner and counseling rooms. The Family Crisis Center has responsibilities for its programs and is expected by the State and County agencies, which monitor it, to offer counseling and educational opportunities.

At the hearing the only expert witness was Petitioners' civil engineer and zoning expert Kevin Anderson. He testified as to the existing site conditions and the impact of the proposed use. He testified as to the criteria of BCZR §502.1. The use of the site for a Community Care Center will not be injurious to the health, safety or welfare of the community. The residents have little demand for parking given their typical economic status, and the thirty-nine on-site parking spaces should be much more than is needed to support residents and staff during the week and evenings. During church services the typical demand for church parking which has existed for almost 100 years will continue to exist. It is not the special exception, however, which will create the demand for parking, and the parking has been accommodated without complaint by any of the neighbors in the past. The special exception, if granted, will not create congestion. Indeed, this use is not only requires less parking than the historical use of the site but also less parking on a day to day basis than virtually any other use of the site.

The use will not overcrowd the land. The proposed new entrance is located away from the single family houses, is located on a street front where the setbacks are already generous, and will have no impact on any neighboring property. The removal of the convent will result in the removal of 11,500 square feet of building area. The area will now be used as open space. Interestingly, none of the Protestants raised an issue with the razing of the convent and the conversion of the area to open space rather than to additional parking. The proposed use will be less intense than the existing site with respect to use of the land.

The use will not interfere with any public services, and indeed by having activity in the buildings and use of the land, there should be a lesser demand for public services to supervise and guard the property. There will be security on the buildings which does not now exist, and the use of the site for the housing of these women should not only make for a safer site than now exists but also by extension will make the community safer.

The purpose of Community Care Centers is to provide places to assist the most vulnerable in society. Whether it be homeless persons, persons needing assistance in battling addiction, afflicted with mental or emotional disability, or in this case victims of someone else's violent behavior, the County Council has recognized that the county has a responsibility to these people. The abused persons at this facility are not predators, nor are they likely to attract predators, for the entire purpose of this facility is to protect them from predators. They come from every economic strata and neighborhood. As Ms. Post described in her testimony, they are seeking stability as well as safety. It would be difficult to imagine a better location for the assistance of these people than in a setting such as this which is close to commercial and institutional services, nearby schools, parks and playgrounds for their children, public transportation and employment.

The number of variances sought for the site is daunting. The only new construction, however, is the new entrance, and that generates only one of the variances. ADA compliance for an entrance requires space. The buildings are uniquely positioned so that they are on different levels; one cannot simply walk from one building into the other without climbing or descending stairs. Consequently, in connecting the buildings ramps have to be constructed as well as an elevator for accommodation of disabilities. It would be difficult, if not impossible, to construct an accessible entrance to the buildings without a variance. The variance is the minimum amount necessary to accommodate the requirements of the codes. The new entrance will be close to the right of way, but the testimony was that this eighty (80) foot wide right of way is somewhat unique in its provision for parking as part of

the right of way so that the apparent setback of the new entrance is far larger than the formal setback. Although there was concerned expressed over the variance itself, none of the concerned residents opposed the new entrance, its location, or its purpose.

None of the Protestants addressed the RTA issues of buffer and setback. The buffers and setbacks are not changing from what has been on the site long before the enactment of RTA's in 1970. The buildings have by their existence come to define the community as much as the surrounding dwellings. Their arrangement on the site along with the parking lots are compatible with the surrounding area.

The Parish Hall has been used for church and school activities and primarily as a meeting and gathering space. It will continue to be used as a meeting and gathering space. Ms. Post testified that it will be open upon request to community groups and to the church for meetings and gatherings. It will also be sued by the Family Crisis Center for counseling and meetings. It will be repurposed from a building used for religious activities to a building used for community, civic, social and educational activities. It will remain no less compatible with the surrounding community.

The school will no longer be a building for religious activity. To the extent that the Community Care Center can be viewed as a civic or social activity the exemption fits the use. The Planning Department believed it to be an appropriate use of the site regardless of whether an RTA exemption or variance was granted.

Not all of the neighbors who testified were in opposition. Some neighbors simply had legitimate questions about the operation. But those residents in opposition were vehement in their belief that this use should be located anywhere but next to them. Although these abused women and their families are victims and not perpetrators, it was implied that they are somehow responsible for situation in which they have been placed and would be a burden to the community. However, one of the Protestants testified that if the use were across Dunmanway in the commercial area, it

would be appropriate. The residential character of the proposed use was either misunderstood or ignored by those in opposition.

The case law, however, is clear that the County Council by allowing the use as a special exception has deemed the use of the site for this purpose to be an appropriate use subject only to strong, probative evidence showing that the use at this location will harm the community. That evidence was not provided.

The residents pointed out that during the week there is not much on street parking available. However, during the week the proposed facility will only require less than half of the available on-site parking. During church services some of the attendees might have to use public parking spaces, but that is no different than what now occurs, and with the additional spaces being provided on-site, there should be no congestion in the roads, streets or alleys of the community.

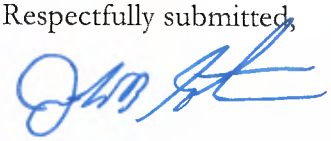
Testimony was also given that residents believed it might negatively impact their property values. Baltimore County unlike other jurisdictions does not have a provision considering property values as an issue in special exceptions. Conceivably, however, it could be considered in the general welfare provision. However, an opinion as to this use's impact on future property values given by non-experts is only speculation, not probative evidence, especially since this would be the only facility of its type in the County. It will not have any special signage or other indicia as to the use inside the building. Indeed, as Ms. Post testified the location of the facility would not be generally broadcast for the safety of the residents.

In *Benn Ray v. Mayor and City Council of Baltimore*, 430 Md. 74, 59 A.3d 545 (2013) the Court held that residents could not give competent testimony about the impact of a proposed use on their future property values. It takes expert testimony to give probative evidence as to the impact on future property values. *Id.* at 98-99; 59 A.3d at 559-560.

CONCLUSION

Petitioners believe that they have met their burdens of production and proof in their request for a special exception for a Community Care Center and for zoning variance relief from setbacks and the RTA. The site is uniquely configured with older structures predating the now controlling zoning requirements. The proposed use is one that is highly regulated but which is an absolute benefit not only to the site but to the community at large and will not be in any way be injurious to the health, safety or welfare of the community.

Respectfully submitted,



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CERTIFICATION OF SERVICE

I hereby certify that on June 21, 2021, a copy of the foregoing Petitioners' Memorandum in Lieu of Closing Argument was electronically transmitted and mailed by first class mail, postage prepaid, to James L. Shea, Jr., Esquire, Royston, Mueller, McLean & Reid, LLP, 102 W. Pennsylvania Avenue, Suite 600, Towson, Maryland 21204

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