



JOHN A. OLSZEWSKI, JR.
County Executive

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

February 9, 2022

Scott Breza, Esquire – scottb@hblaw.com
Hofmeister & Breza
11019 McCormick Road
Suite 400
Hunt Valley, MD 21031

RE: **Second Amended Opinion and Order**
Case No. 2021-0255-SPHXA
Property: 7400 Holabird Avenue

Dear Mr. Breza:

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

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

Sincerely,

A handwritten signature in black ink that reads "Paul M. Mayhew".

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:dlw
Enclosure

c: John Blades – john@sillengineering.com
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**IN RE: PETITIONS FOR SPECIAL HEARING *
AND SPECIAL EXCEPTION &
VARIANCE ***

(7400 Holabird Avenue)
12th Election District
7th Council District
7400 Holabird Avenue, LLC
Dimitry Kargman, Member

BEFORE THE
OFFICE OF
ADMINISTRATIVE HEARINGS
FOR BALTIMORE COUNTY

Case No. 2021-0255-SPHXA

Legal Owners/Petitioners

* * * * *

**SECOND AMENDED
OPINION AND ORDER¹**

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing, Special Exception and Variance filed on behalf of 7400 Holabird Avenue, LLC and Dimitry Kargman, Member, legal owners (“Petitioners”). The Special Hearing is filed under the Baltimore County Zoning Regulations (“BCZR”) § 500.7 to permit non-residential parking and signage in a DR zone in order to reuse the existing commercial parking area and signage.

The Petition for Special Exception was filed pursuant to Baltimore County Zoning Regulations (“BCZR”) §§ 230.3 and 1B01.1 (C)(4) to use the herein described property for a community building with Adult Day Care and Medical Offices.

The requested Variances are from Baltimore County Zoning Regulations (“BCZR”) §§ 1B02.3.C, 232, 502.6, 409.6 and 450 to permit a rear yard setback of 11.3 ft. in lieu of 30 ft., corner street side setback of 5.6 ft. in lieu of 35 ft., and side yard interior setback of 0.9 ft. in lieu

¹ On January 11, 2022 an Amended Opinion and Order was entered in this case. On February 4, 2022 a timely Unopposed Motion for Reconsideration was filed by Petitioners seeking various modifications of the Amended Order. Good cause having been shown, the requested modifications are hereby granted and are shown in **bold** at the end of this Order.

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By D. Kargman

of 20 ft. in a DR 5.5 Zone; To permit corner side setback of 4.4 ft. in lieu of 10 ft., side setback of 0.9 ft. in lieu of 10 ft. in a BL Zone; to permit zero buffer and zero setback including relief from the landscaping requirements in a DR 5.5 Zone; to permit 23 parking spaces in lieu of the required 34;² and, finally, to permit a freestanding sign of 101 sq. ft., in lieu of 75 sq. ft.

The Petition was properly advertised and posted. Due to the ongoing COVID-19 restrictions a public virtual WebEx hearing was conducted on November 19th and December 14th, 2021 in lieu of an in-person hearing. Non-substantive Zoning Advisory Committee ("ZAC") comments were received from the Department of Planning ("DOP"). The Department of Plans Review ("DPR") commented that if the requested relief were granted that a landscape and lighting plan should be required.

Milana Klein, one of the owners of "Caring Hands Adult Medical Day Care Center of Dundalk," ("Petitioner"), was present at the hearing. Scott Breza, Esquire represented the Petitioner. Bruce Covahey, Esquire, represented Protestants, John and Jane-Winslow Olson, on the second day of the hearing. Paul Sill, P.E., the engineer who prepared and sealed the site plan also attended and the site plan was admitted as Petitioner's Exhibit 1 (on the second day of the hearing a redlined site plan was admitted as Petitioner's Exhibit 25). Joseph Caloggero, P.E., a traffic engineer, also appeared on behalf of Petitioner. There were several protesting neighbors in attendance. In addition, correspondence was received from other neighbors opposing the proposed "PRP" (psychiatric rehabilitation program), which they characterize as a "rehab facility."

² Petitioner was allowed to submit a redlined site plan which was admitted as Petitioner's Exhibit 25. Among the redline changes were the reduction of the medical office space from 4800 sq. ft. to 3900 sq. ft., which reduced the number of required parking spaces from 34 to 30. The redlined site plan also provides for an additional 7 parking spaces, for a total of 30 spaces if all are deemed to be permitted, in which case the parking variance would not be needed.

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PETITIONER'S CASE

Mr. Breza gave a brief overview of the requested relief, explaining that the site is currently occupied by a defunct and vacant Gavigan's Furniture Store that Petitioner intends to remodel and convert to an Adult Day Care center with medical and psychological services. Ms. Klein explained that Petitioner, "Caring Hands," has been open and operating in the heart of old Dundalk for 18 years, but they now want to move their operations to this site. She provided a "day in the life" description of their operations, as follows. They are licensed by the State of Maryland to provide Adult Day Care, including a Psychiatric Rehabilitation Program ("PRP"). (Their licenses were admitted as Petitioner's Exhibit 13A and B). They will have a maximum of 12 staff on the premises. This number of staff is authorized by the State to supervise as many as 120 adults, depending on the level of care the clientele needs. She explained that due to Covid and other factors they currently have only 80 clients. These clients are an average of 65 years old and have multiple disabilities, including some with psychological conditions such as dementia or Alzheimer's. Caring Hands has 11 vehicles, including one 26 ft. passenger bus and ten 22 ft. passenger vans that are used to transport the clients to and from the facility. Caring Hands' drivers pick the clients up at their homes early in the morning and would arrive at the facility between 8:30 and 9:30 a.m. Ms. Klein explained that the vans will arrive on a staggered schedule, so there should not be a problem with traffic congestion. The plan is that the clients will be dropped off at the entrance on Randolph Avenue, as depicted on the site plan. During the morning and early afternoon Caring Hands provides a variety of social activities, as well as medical and psychological services to these clients. At approximately 2:00 p.m. the Caring Hands staff begins loading the clients back onto the bus and vans to be transported home. Per State (COMAR) regulations this would be a secure facility, meaning that during their hours of operation the clients are locked within the facility and

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not allowed to leave unless they are accompanied by a staff member or family member. Ms. Klein further explained that family members and friends are not permitted to visit during hours of operation, other than to take their loved one to and from doctors' appointments – which she said was an infrequent occurrence. Ms. Klein further explained that there will be no food preparation done on the premises and that all meals are provided by an outside vendor that delivers the food to the facility. She further explained that the food waste is sorted between garbage and recyclable materials. The garbage and recyclables will be placed in dumpsters which will be emptied once or twice a week depending on volume. The medical waste will be stored according to State regulations and will be removed by a licensed vendor. Ms. Klein further explained that licensed medical staff will administer prescription and non-prescription medications to the clientele; however there will not be a pharmacy on site. Finally, she testified that the hours of operation will be Monday thru Saturday from approximately 8 a.m. until 3 p.m. However, she explained that they propose to park 7 of the vans on the premises overnight and these vehicles would not be returning from their afternoon drop-offs until as late as 4:30 p.m. She stated that the other 4 vans are currently driven home by the Caring Hands drivers.

Petitioner's next witness was Joseph Caloggero, a traffic engineer with The Traffic Group. His *curriculum vitae* was admitted as Petitioner's Exhibit 5 and he was accepted as an expert in traffic engineering. A "trip generation" report that he prepared was admitted as Petitioner's Exhibit 6. He testified that the intersections in the vicinity are all at an A, B, or C level of service, and that the traffic that this facility is expected to generate can be accommodated by the existing roads in the area. He explained that there are good "site distances" along both Holabird Avenue and Randolph Avenue. He further opined that Randolph Avenue was sufficiently wide that the drop-off and pick-up of clients by the Caring Hands vans will not impede traffic. He further explained

that it was his understanding that the DR 5.5 zoned areas on the southeast (Lot 44) and northwest corners of the site have historically been used for commercial parking associated with Gavigan's and the previous furniture store. However, upon questioning by the Protestants he acknowledged that he had no personal knowledge of this. He further testified that he thought that the 19 proposed parking spaces in Lot 44 and the 4 in front of the building – 23 total- were sufficient for the proposed facility because there would be at most 12 staff and no visitors. On the second day of the hearing Mr. Caloggero submitted an updated traffic study and parking assessment which was admitted as Petitioner's Exhibit 27. He testified that the modified parking plan, as depicted on the redlined site plan (Pet. Ex. 25) provided adequate parking. He further explained that he had performed traffic studies in the morning and afternoon rush hours at this site and had again determined that the wait times to turn into and out of Holabird and Randolph Avenues from the site were within County standards. He opined that the traffic associated with this proposed facility would not significantly change the existing traffic volume or patterns. Several of the immediate neighbors offered much different views of the traffic situation, especially in light of a new Amazon distribution center that had just opened. They also questioned how the vans and bus would get in and out of the site and how so many large vehicles could be parked on site. Mr. Caloggero largely deferred to the engineer, Mr. Sill, on these questions.

Mr. Sill testified next. His *curriculum vitae* was admitted as Petitioner's Exhibit 4, and he was accepted as an expert in engineering and land use planning. He explained the site plan in some detail. He identified a series of aerial photos of the site ranging from 1953 to 2017, which were admitted as Petitioner's Exhibits 7A -7E. He asserted that the area at the northwest corner of the

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site had been used for commercial parking since before the DR 5.5 zoning was applied in 1955.³ Upon questions from Mr. Breza, Mr. Sill, offered his opinion that the proposed site plan met all the requirements of BCZR § 502.1. With regard to the requested variance relief, Mr. Sill explained that in his view the property was unique because it is bounded on three sides by public roads and because the existing structure occupies nearly the entire site. He further explained that if the variance relief were not granted the site could not be used for any purpose without razing most if not all of the existing structure. The Protestants questioned Mr. Sill extensively about how the vans and bus would get in and out of the site, and, more particularly, how that many large vehicles could possibly be parked there. He replied that, based on the square footage at the northwest corner of the site and the loading dock, that all of the vehicles should be able to be "shoehorned" in. Upon questioning from the undersigned he acknowledged that the site plan did not have the proposed van and bus spaces marked and measured, as required. The immediate neighbors further questioned Mr. Sill about where the BG&E service, the HVAC equipment, and the dumpster(s) would be located and he explained that these decisions had not yet been made (although on the original site plan the dumpster is located immediately adjacent to the residential property on School Lane). He was also questioned about how traffic flow would be maintained for thru traffic in the alley running behind the residences on School Lane and Holabird Avenue and then through Lot 44, as depicted on the original 1942 plat of the neighborhood, which was admitted as Protestants' Exhibit 3. He acknowledged that the site plan showed 8 parking spaces next to the building and directly within the alley as depicted on the neighborhood plat. However, he explained

³ Exhibit 7A is an aerial photo dated 1953. A red rectangle has been superimposed on what is purportedly the subject site. If it is in fact the subject site the photo was taken from too great a height, or from too wide a focus, to clearly show the site, let alone to demonstrate commercial vehicles parked at the northwest corner of the site.

that Gavigan's had used that parking configuration for many years and that the previous furniture store had evidently also done so.

At the end of the first full hearing day the undersigned suggested to Mr. Breza that he needed to confer again with his clients about these unresolved issues and have Mr. Sill prepare a redlined site plan providing sufficient detail concerning the parking, HVAC, dumpster, and BG&E locations. It was agreed we would reconvene the hearing at the earliest possible date.

As noted above, the hearing was reconvened on December 14, 2021. Scott Breza, Esquire, again appeared on behalf of Petitioner. Bruce Covahey, Esquire, appeared on behalf of Protestants, John and Jane Winslow-Olson, the owners of the adjoining residential property at 7408 Holabird Avenue. Two other adjoining neighbors also attended, as will be discussed below.

Mr. Sill was Petitioner's first witness. He identified the 2 sheet redlined site plan, which was admitted as Petitioner's Exhibit 25. He then described the proposed modifications. First, the outdoor garden area depicted on the original site plan at the northwest corner of the site would be removed, and that the area would be used to house the dumpster and HVAC equipment, as well as for parking for 8 passenger vehicles. He then explained that the existing loading dock would be removed and that the 26 ft. bus and 7 of the 22 ft. vans would be parked inside that area of the existing building. He also explained that the HVAC equipment would be shielded by a sound dampening privacy fence. He further explained that BG&E had agreed to keep its service at its current location on the pole at the northeast corner of the building. He further explained that they are proposing a sliding gate on Randolph Avenue for access into this area of the site, and a swinging gate on School Lane, which would open out into the street, which would only be used by cars. The parking and fence modifications are depicted on sheet 2 of the redlined plan. He then described the 8 ft. wide landscaping strip proposed along School Lane. Mr. Sill then explained that

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they now propose to reduce the medical office space from 4,800 sq. ft. to 3900 sq. ft., which would reduce the parking requirements from 34 spaces to 30 spaces, and that they are providing all 30 (26 in front and 4 in back). Finally, he described the reconfigured parking at the southeast corner of the site (Lot 44), adding three passenger car spaces. He then again opined that the proposed redlined plan conforms with all the requirements of BCZR § 502.1, and that this proposed facility would have no greater adverse impacts at this location than are inherently associated with the use.

The Protestants questioned Mr. Sill extensively about various aspects of his testimony. He acknowledged that the redlined plan now eliminates the one outdoor space that the clients would have had. He also acknowledged that the plan shows only one dumpster and he could not explain where the dumpster for recyclables would go. He also acknowledged that a "front-loading" dumpster truck would be used to empty the dumpster but he could not clearly articulate how this truck would maneuver through the sliding gate and into and out of the dumpster area without obstructing traffic on Randolph Road. Mr. Covahey also questioned him about the parking configuration on Lot 44, and specifically whether, under BCZR § 409 there was sufficient room for the proposed parking spaces and two-way travel aisles.

As noted above, at the second day of the hearing Mr. Caloggero also again testified and he identified an updated traffic study that was admitted as Petitioner's Exhibit 27. He too was questioned extensively by the Protestants. He acknowledged that the truck emptying the dumpster would likely have to back out of the site onto Randolph Avenue, as would the vans/bus that are proposed to be parked in the former loading dock area. He also acknowledged that the drop-off and pick up times for the Caring Hands clients would roughly coincide with the morning and afternoon school rush hours. He conceded that his traffic studies were conducted during the Covid pandemic when traffic is generally lighter, but he stated that the area roads have sufficient spare

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capacity to accommodate substantially more traffic. On re-direct examination he explained that the proposed parking spaces on Lot 44 are 90 degree "angled" spaces and therefore they need only be 18 ft. long and only require 22 ft. of aisle space behind them; and that based on this the redlined plan conforms with BCZR § 409. He also stated that tractor-trailers had previously accessed the site off of Randolph Road so that the vans and bus should also be able to. This concluded Petitioner's case in chief.

PROTESTANTS' CASE

Mr. Covahey first called John Olson. He identified a packet of exhibits that were admitted as Protestants' Exhibits 1 – 14. He testified as follows. He and his wife own 7408 Holabird Avenue, which is the dwelling immediately east of the subject site. He lived there as a boy and inherited the property in 1993 from his father, who had owned it since 1963. He has rented the property to residential tenants the entire time he has owned it. With the apparent consent of Gavigan's his tenants have always parked in Lot 44 and continue to do so. He and his wife are concerned about the high volume of people and traffic that will be coming in and out of the Caring Hands facility each day. They are also concerned about the number of large buses and vans that are proposed to be parked on the site. In addition, they are concerned that the number of clients and staff will continue to expand. They believe that this proposed facility will overwhelm the neighborhood with an increase in trash, noise, sewage and traffic. He pointed out that on the original 1942 plat of the "Mountain Farm Annex" subdivision (Prot. Ex. 3) the alley is depicted running directly adjacent to the former Gavigan's building, and that 11 of the proposed parking spaces on the redlined plan are directly within the alley. He also objected to the continued use of the oversized monument sign in the parking lot because the light it casts disturbs his tenants. On questioning by Mr. Breza he acknowledged that there is already an assisted living facility across the street in the former

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elementary school building, but he pointed out that there is sufficient parking and setbacks for that facility.

Mrs. Winslow-Olson echoed her husband's concerns and also voiced apprehension that this facility would be used for drug rehabilitation. She is also concerned about expanding numbers of staff and clients. In addition, she noted that Caring Hands has two dumpsters at its current location but has only shown one on the redlined plan. She stated there are already problems with rats and trash in the area. She also voiced concerns about the safety of pedestrians on Randolph Road, especially the school children in the area, with the proposed bus and van and trash truck traffic. On questioning by Mr. Breza she agreed that her largest concern is about the potential for a drug rehab program to move in there, and that her concerns would be somewhat alleviated if this were prohibited.

Rose Pawlowski testified next. She owns the home at 7402 School Lane, directly across from the rear of the subject site. She has lived there her entire life. She described a conversation she had with Caring Hands owner, Dimitry Kargman, in which he dismissively told her he was going to "do what I want to" with this property. He told her that part of the reason they want to move out of downtown Dundalk is the crime problem there. He explained that thieves continually break into their vans to steal the catalytic converters (a common crime among drug addicts because of their value on the black market). She is therefore worried about that sort of crime being imported to her neighborhood. She is also concerned about the increase in food waste at the site because the neighborhood is already plagued by a rodent problem. She noted that, as a furniture store, Gavigan's did not generate any garbage. She also expressed concerns about the prescription medication that will be dispensed by Caring Hands, and how it will be secured at night to prevent theft by drug addicts. She disputed that commercial vehicles had historically parked at the rear of

the building, as alleged by Mr. Sill and Mr. Caloggero. She testified that Gavigan's had two "box trucks" that would leave in the morning to deliver furniture and return in the late afternoon and then park *inside* the building. She further explained that approximately once a month a tractor trailer would deliver a bulk shipment to the loading dock at the rear and then leave. She noted that this was possible because there has never been a fence around the rear perimeter of the property as proposed on the redlined site plan. She is concerned about the proposed gate on School Lane, with gates opening into School Lane and across the existing sidewalk.

John Hewins also testified. He owns and resides at the dwelling immediately east of the subject site on School Lane. His garage backs to the alley referenced above and he is concerned that there will be inadequate room for trash trucks and fire trucks to make the turn from the alley into the proposed parking configuration on Lot 44. In the first day of the hearing he also voiced concerns about the location of the dumpster and HVAC equipment due to the noise and smells they would generate. He also questioned how three rows of large vans could be parked within the building, as proposed on the site plan. He is also concerned about the proposed gate, which would open onto School Lane right next to his property. He testified that traffic is already a big problem in the area and he noted that it has recently gotten worse with the opening of the Amazon distribution center.

PETITIONER'S REBUTTAL

Mr. Breza called Ms. Klein to address the neighbors' concerns. She testified that a fire safety plan had already been approved by the County's Fire Marshall.⁴ She explained that Caring Hands is not licensed to operate drug rehabilitation programs and that they would not be operating

⁴ It is unclear how this could be the case since a detailed floor plan and other necessary information has, to my knowledge, not yet been submitted. However, a use and occupancy permit cannot be issued for any such building or use unless and until the Fire Marshall's office gives its approval.

such programs at this site. She again explained that the medical waste would be kept in a locked container and would be picked up and disposed of by a licensed vendor once a week. She further explained that there will not be a pharmacy on site, as the neighbors feared. Rather, she explained that the medical staff on site will simply be administering the medications that the clients bring with them. She stated that they currently have 60 clients at their location in Baltimore City and that they have only one dumpster that is emptied once a week. She stated that with 80 clients at this proposed location they will have the one dumpster emptied twice a week, and that they would dispose of the recyclables themselves without a dumpster as they will be primarily empty cardboard boxes. She said that even if they expand to 120 clients they would not need more staff or vans because the 12 current staff is authorized to serve up to that number of clients; and the vans are currently only at 2/3 capacity. Finally, she stated that they only expect to have about 30 clients at the facility on Saturdays and that hours would be slightly shorter that day.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioners seek several different avenues of relief from the Baltimore County Zoning Regulations so that they can operate a "Community Building with Adult Day Care and Medical Office," including a "Psychiatric Rehabilitation Program" at the site. A "Community Building" is allowed by special exception in both the DR and BL zones. It is arguable whether this proposed Adult Day Care fits the definition of "Community Building." In both the DR and BL zones, a Community Building is defined as a building dedicated to "civic, social, recreational or educational uses." See, BCZR §1B01.1.C.4, and BCZR § 230.3. Here, the building will house a for-profit business that doesn't seem to directly serve any of these functions, but, as noted above, neither the Office of Zoning Review nor the Department of Planning has objected to the proposed use at this location. Further, the Zoning Commissioner's Policy Manual acknowledges that "[m]any facilities

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for the mentally and developmentally disabled have been preempted from County regulations by State law.” I therefore note that both an “Adult Day Care Center” and a “Psychiatric Rehabilitation Program for Adults” are regulated under State law. *See*, COMAR 10.08.03.02, and 10.63.03.09. Further, as noted above, Caring Hands is licensed by the State to perform these services. *See*, Petitioner’s Exhibit 13A and 13B. I therefore conclude that the proposed facility is permitted by special exception at this location.

That said, this is still a difficult case though because of the extensive relief the Petitioner is seeking from the BCZR. In fairness though, the need for such substantial relief is, at least in part, a product of the site itself. Several of the neighbors explained that prior to Gavigan’s another furniture store had operated for years at this site – for how long was unknown or unstated. According to the neighbors that store burned to the ground at some point in the 1980s in a fire that claimed the lives of several county firefighters. That structure was replaced by the current structure, which was then apparently owned and operated by Gavigan’s until the Petitioner purchased it in January, 2021.

The current structure is significantly non-conforming with the current DR 5.5 and BL setback requirements, and is entirely non-conforming with the Residential Transition Area (“RTA”) setbacks required under BCZR § 1B01.1. However, Petitioner does not argue that this structure is a valid non-conforming structure that was restored after the fire in accordance with BCZR § 104.2. Even if that were the case the Petitioner would have to show that the current building was reconstructed within the footprint of the original non-conforming building – unless specific relief had been requested and granted under BCZR § 104.3 to allow an expansion of that footprint. No such argument was made in this case and no such evidence was introduced. However, neither the Department of Planning nor any other county agency raised this issue, but neither did

any county agency object to the relief being sought. So I am left to determine whether the relief can be granted within the spirit and intent of the BCZR; and if so, what conditions, if any, are needed to protect the surrounding community. I will do so by addressing the different requests for relief in order.

SPECIAL EXCEPTION

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

In Baltimore County these common law principles must be considered alongside BCZR § 502.1, which also requires that the following conditions be satisfied:

Conditions determining granting of special exception.

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- F. Interfere with adequate light and air;
- G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor

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- I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone, and for consideration of a solar facility use under Article 4F, the inclusion of the R.C. 3, R.C. 6, and R.C. 8 Zones.

In this case I find that the record evidence establishes that the proposed Caring Hands Adult Day Care center will not, with the conditions imposed below, disproportionately impact this neighborhood beyond the inherent impacts of such a use. Again, the site itself, with this large commercial structure occupying most of the site, presents a host of potential problems. Primarily, the potential for "congestion in the roads, streets, and alleys," and "to overcrowd land," and "be inconsistent with the impermeable surface and vegetative retention provisions of [the BCZR]."

As detailed above, the Protestants have raised a variety of understandable concerns about the proposed Caring Hands facility, including crime, traffic, trash, noise, and parking. Balanced against those concerns are the rights of Petitioner to lawfully operate this business. According to the SDAT data Petitioner paid \$1,300,000.00 for this property, and according to the testimony of Ms. Klein and the architectural details in the redlined site plan they are prepared to invest substantially more to modernize and retrofit it in order to operate the proposed Adult Day Care center. Some of the Protestants claim that Petitioner did not do their "due diligence" when purchasing this property, given the substantial zoning relief that is required. While it may have been prudent for Petitioner to purchase the property on a contingent basis, those are not the facts before me. What is before me is a property owner who has already invested a substantial sum and is prepared to invest substantially more to operate a tax-paying business in Baltimore County. Moreover, the simple reality is that *something* is going to be located at this site, and it is unlikely that any person or entity would think it economically feasible to raze this existing building and construct another on the site that would conform to all the current setbacks. Again, it is unclear

from the record evidence how the existing structure was allowed to be constructed, but it was. So although the community may not fully support this Adult Day Care center there are many other uses permitted on this site by right or special exception, and the community may find some of those uses even less desirable.

When the County Council permitted Community Buildings in both the DR and BL zones they were presumably aware of the traffic, noise, and other impacts associated with this use. But given the legal presumption in favor of special exceptions I am not at liberty to gainsay the wisdom of the legislative body. *Schultz, Attar, supra*. I therefore find that, with the conditions set forth below, the special exception can be granted within the spirit and intent of the BCZR and without causing undue harm to the public health, safety, or welfare. With specific regard to the Protestants' fears concerning drug rehab programs at the site, I first note that the Petitioners are not seeking to operate such a program. Furthermore, drug rehabilitation facilities are not permitted in either the BL or DR zones, so this is a non-issue.

VARIANCES

The authority to grant variances in Baltimore County is governed by BCZR § 307.1, which states as follows:

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

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shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification.

And, under Maryland common law, a variance request involves a two-step analysis, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

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

As described above, the site is unique for a variety of reasons. First, it is split-zoned. The southwest portion of the site, in which approximately half the building is located, is zoned BL (business local). The remainder of the site, including the rest of the building, the open area at the northwest corner, and the parking area at the southeast corner (Lot 44) are zoned DR 5.5 (density residential). Second, it is surrounded on three sides by public roads, with one – Holabird Avenue – being an arterial road. The fourth side adjoins dwellings. Finally, and perhaps most significantly, the existing structure occupies a vast majority of the site - with virtually no setbacks from the roads or property lines.

Further, the dimensions of the existing building are what drive the need for all of the variances except the sign variance, which will be discussed below. Without these variances the Petitioner would obviously face practical difficulty and unreasonable hardship because they would have to raze a substantial portion of the building to bring it into compliance with the DR and BL setbacks – and perhaps raze all of the building to comply with the RTA regulations.

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Of course the hardship of the Petitioner is not considered in a vacuum. Under the common law and BCZR § 307.1 these variances should not be granted if they will cause undue harm to the public health, safety, or welfare.

Under the circumstances presented, denial of the requested variances would not just cause Petitioner "practical difficulty," it would cause them severe financial harm. In my judgment, with the conditions imposed below, this proposed Adult Day Care will not unduly harm the public health, safety or welfare, and is within the spirit and intent of the zoning regulations. I therefore find that the setback variances should also be granted.

I also find that BCZR § 1B01.1(B)(1)(g)(10) applies here and provides an exemption from the RTA setbacks. I base this on the fact that this new Community Building complies "to the extent possible" with the RTA. As noted above, in order to fully comply with the RTA the existing building on the site would need to be radically reduced in size, if not completely razed. Again, given the conditions imposed below, the building will comply to the extent possible with the RTA.

Finally, Petitioner seeks variance relief from BCZR § 450 to allow a freestanding sign with a square footage of 101 sq. ft. in lieu of the maximum permitted 75 sq. ft. The sign in question already exists, and as depicted in photos of the site and on the redlined site plan, it sits near the middle of Lot 44 near Holabird Road and in close proximity to the Olson's property. Unlike the other variance relief sought, I do not find that Petitioner will suffer undue hardship or practical difficulty if this variance is denied. Rather, given its described impact on the Olson property, i.e., glaring light shining into their tenants' bedrooms, and its general negative aesthetic impact on the other neighboring residences, I believe that the freestanding sign in Lot 44 should be removed altogether, and it will be so ordered below. Petitioner will be permitted to erect wall-mounted and

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D. Magnan

projection signage as permitted by BCZR § 450 that should adequately identify and advertise their facility.

SPECIAL HEARING

A petition for a Special Hearing under BCZR § 500.7 is in the nature of a request for a declaratory judgment. *Antwerpen v. Baltimore County*, 163 Md. App. 194, 209 (2005). Indeed, this regulation provides, in relevant part, that

any interested person [may] petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

Id. § 500.7.

Further, “the administrative practice in Baltimore County has been to determine whether the proposed Special Hearing would be compatible with the community and generally consistent with the spirit and intent of the regulations.” *Kiesling v. Long*, Unreported Opinion, No. 1485, Md. App. (Sept. Term 2016).

The Petitioner seeks a Special Hearing declaration as to two different aspects of relief. Namely, that they be allowed to “reuse commercial parking area and signage” in a DR zone. First, with regard to the parking issue, the record evidence is that there has been commercial *parking* in Lot 44, between the existing building and the Olsons’ residence. However, based on Ms. Pawlowski’s testimony – which I found entirely credible – the area outside the building at the corner of Randolph Avenue and School Lane has not consistently been used for commercial *parking*. Rather, over the years it has been traversed by delivery trucks on a daily basis, but those trucks were parked *inside* the building when on the premises. And approximately once a month

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Gavigan's would receive a shipment of furniture delivered by a tractor-trailer truck that was there only long enough to unload the delivery. Therefore, with respect to the area at the rear of the building, I do not believe there has been any historical parking of trucks. I further find that it would violate the spirit and intent of the BCZR to allow commercial parking in this DR zone because it would have a negative impact on the residents along School Lane.

With regard to the proposed parking in Lot 44, I find that there *has* been commercial parking on this lot for decades. I further find that Gavigan's, and most likely the previous furniture store, has allowed customer parking adjacent to the building and within the alley depicted on the original "Mountain Farm" subdivision plat. (Protestants' Exhibit 3). Further, I agree with Petitioner's engineer and traffic engineer, that the proposed parking configuration – with 90 degree parking next to the building and a two way aisle in the middle of the lot – is the more sensible parking and traffic pattern. I therefore find that the parking plan proposed on the redlined site plan should be approved. However, as set forth in the conditions below, given the historical use by the Olsons' tenants, I find that they should be allowed to continue to park there, at least overnight.

THEREFORE, IT IS ORDERED this 9th day of **February, 2022**, by this Administrative Law Judge, that the Petition for Special Hearing per Baltimore County Zoning Regulations ("BCZR") § 500.7 to permit non-residential parking and signage in a DR zone in order to reuse the existing commercial parking area and signage is hereby **GRANTED in part, and DENIED in part.**

IT IS FURTHER ORDERED, that the Petition for Special Exception under Baltimore County Zoning Regulations ("BCZR") §§ 230.3 and 1B01.1 (C)(4) to use the herein described property for a community building with Adult Day Care and Medical Office, including Psychiatric Rehabilitation Program, is hereby **GRANTED.**

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D. Mugnon

IT IS FURTHER ORDERED, that the Petition for Variance pursuant to Baltimore County Zoning Regulations ("BCZR") §§ 1B02.3.C, 232, 502.6, 409.6 and 450 to permit a rear yard setback of 11.3 ft. in lieu of 30 ft., corner street side setback of 5.6 ft. in lieu of 35 ft., and side yard interior setback of 0.9 ft. in lieu of 20 ft. in a DR 5.5 Zone; To permit corner side setback of 4.4 ft. in lieu of 10 ft., side setback of 0.9 ft. in lieu of 10 ft. in a BL Zone; to permit zero buffer and zero setback including relief from the landscaping requirements in a DR 5.5 Zone, and for an exemption from the RTA, is hereby **GRANTED**.

IT IS FURTHER ORDERED, that the Petition for Variance from Baltimore County Zoning Regulations ("BCZR") § 409.6 to allow 23 parking spaces in lieu of the required 34 spaces is **MOOT**, since the redlined site plan provides all of the required 30 spaces based on the reduction of the medical office square footage from 4800 sq. ft. to 3900 sq. ft.

IT IS FURTHER ORDERED, that the Petition for Variance from Baltimore County Zoning Regulations ("BCZR") § 450 to allow a freestanding sign of 101 sq. ft. in lieu of the permitted 75 sq. ft. is **DENIED**.

The relief granted herein shall be subject to the following:

- Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
- A maximum of **one hundred twenty (120)** clients and **the necessary** staff will be permitted in the facility at any one time.
- A maximum of one (1) 26 ft. bus, and three (3) 22 ft. vans shall be permitted to park overnight at the site and they shall be parked inside the facility as depicted on sheet 2 of the redlined site plan (Petitioner's Exh. 25). No other Caring Hands vehicles shall be parked at the site overnight.

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By

D. Mugnon

- Other than as described above, none of Petitioner's vans or buses shall be permitted to park at the site at any time, other than to temporarily park to discharge and load passengers.
- Hours of operation shall be from 7 a.m. to 6 p.m. **weekdays and weekends, however from 4 p.m. until 6 p.m. only staff shall be permitted on the premises.**
- There shall be no kitchen facilities (other than refrigerators and sinks) and no food preparation on the site.
- Petitioners shall obtain a valid use and occupancy permit prior to occupying the site.
- Petitioners shall submit architectural elevations and floor plans to the Department of Planning and the Office of Zoning Review for their approval.
- Petitioners shall submit Landscape and Lighting Plans to the Baltimore County Landscape Architect for approval.
- There shall be no vehicular entry or exit from the facility onto School Lane.
- The sidewalk on School Lane along the perimeter of the site shall be extended to Randolph Avenue at Petitioner's sole expense.
- The HVAC equipment shall be located and soundproofed as depicted on the redlined site plan.
- The dumpster(s) shall be located as depicted on the redlined site plan and the dumpster(s) shall only be emptied between the hours of 7 a.m. and 4 p.m.
- The Petitioners shall at all times have a pest control contract with a licensed pest control company that provides regular and ongoing pest control services.
- Petitioners shall not obstruct the vehicular ingress or egress of any of the residents along the alley.
- **Petitioners and John Olson, Jr. and Jane Winslow-Olson have entered into a license agreement to allow Mr. Olson, the owner of 7408 Holabird Avenue (the Olson Property) to have limited parking rights in Lot 44, which do not interfere with the required parking at the facility.**
- Petitioners shall remove the freestanding monument sign in Lot 44.

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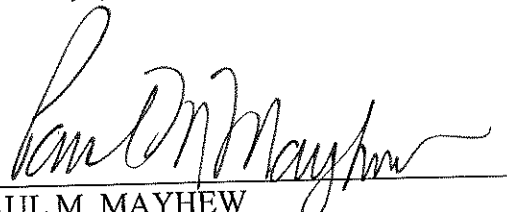
Date

2/9/22

By

D. M. Magon

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


PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:dlm

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Date

2/9/22

By

DMGman



JOHN A. OLSZEWSKI, JR.
County Executive

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

January 11, 2022

Scott Breza, Esquire – scottb@hbllaw.com
11019 McCormick Road
Suite 400
Hunt Valley, MD 21031

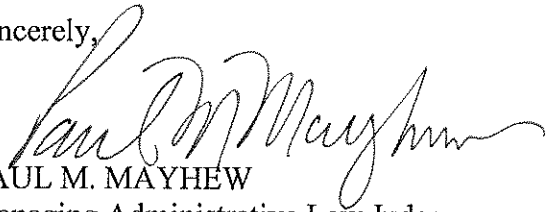
RE: Petitions for Special Hearing. Special Exception and Variance
Case No. 2021-0255-SPHXA
Property: 7400 Holabird Avenue

Dear Mr. Breza:

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

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

Sincerely,


PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:dlm
Enclosure

c: John Blades – john@sillengineering.com
Quetsy Bosque-Lugo – questsy@gmail.com
Barbara Brennan – lydimae1@aol.com
Joe Caloggero – jcaloggero@trafficgroup.com
Bruce E. Covahey, Esq. – bcovahey@cablaw.com
Robbie DiCarlo – robbiestagtitle@gmail.com

Case No. 2021-0255-SPHXA
Property: 7400 Holabird Avenue
Page 2

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Dimitry Kargman – dkargman@caring-hands.org
Milana Klein – milanak@caring-hands.org
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Michaela Olson – molson1@live.ndm.edu

IN RE: PETITIONS FOR SPECIAL HEARING *		BEFORE THE
AND SPECIAL EXCEPTION &		
VARIANCE *		OFFICE OF
(7400 Holabird Avenue)		
12th Election District *		ADMINISTRATIVE HEARINGS
7th Council District		
7400 Holabird Avenue, LLC *		FOR BALTIMORE COUNTY
Dimitry Kargman, Member		
Legal Owners/Petitioners *		Case No. 2021-0255-SPHXA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing, Special Exception and Variance filed on behalf of 7400 Holabird Avenue, LLC and Dimitry Kargman, Member, legal owners (“Petitioners”). The Special Hearing is filed under the Baltimore County Zoning Regulations (“BCZR”) § 500.7 to permit non-residential parking and signage in a DR zone in order to reuse the existing commercial parking area and signage.

The Petition for Special Exception was filed pursuant to Baltimore County Zoning Regulations (“BCZR”) §§ 230.3 and 1B01.1 (C)(4) to use the herein described property for a community building with Adult Day Care and Medical Offices.

The requested Variances are from Baltimore County Zoning Regulations (“BCZR”) §§ 1B02.3.C, 232, 502.6, 409.6 and 450 to permit a rear yard setback of 11.3 ft. in lieu of 30 ft., corner street side setback of 5.6 ft. in lieu of 35 ft., and side yard interior setback of 0.9 ft. in lieu of 20 ft. in a DR 5.5 Zone; To permit corner side setback of 4.4 ft. in lieu of 10 ft., side setback of 0.9 ft. in lieu of 10 ft. in a BL Zone; to permit zero buffer and zero setback including relief from

the landscaping requirements in a DR 5.5 Zone; to permit 23 parking spaces in lieu of the required 34;¹ and, finally, to permit a freestanding sign of 101 sq. ft., in lieu of 75 sq. ft.

The Petition was properly advertised and posted. Due to the ongoing COVID-19 restrictions a public virtual WebEx hearing was conducted on November 19th and December 14th, 2021 in lieu of an in-person hearing. Non-substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”). The Department of Plans Review (“DPR”) commented that if the requested relief were granted that a landscape and lighting plan should be required.

Milana Klein, one of the owners of “Caring Hands Adult Medical Day Care Center of Dundalk,” (“Petitioner”), was present at the hearing. Scott Breza, Esquire represented the Petitioner. Bruce Covahey, Esquire, represented Protestants, John and Jane-Winslow Olson, on the second day of the hearing. Paul Sill, P.E., the engineer who prepared and sealed the site plan also attended and the site plan was admitted as Petitioner’s Exhibit 1 (on the second day of the hearing a redlined site plan was admitted as Petitioner’s Exhibit 25). Joseph Caloggero, P.E., a traffic engineer, also appeared on behalf of Petitioner. There were several protesting neighbors in attendance. In addition, correspondence was received from other neighbors opposing the proposed “PRP” (psychiatric rehabilitation program), which they characterize as a “rehab facility.”

¹ Petitioner was allowed to submit a redlined site plan which was admitted as Petitioner’s Exhibit 25. Among the redline changes were the reduction of the medical office space from 4800 sq. ft. to 3900 sq. ft., which reduced the number of required parking spaces from 34 to 30. The redlined site plan also provides for an additional 7 parking spaces, for a total of 30 spaces if all are deemed to be permitted, in which case the parking variance would not be needed.

PETITIONER'S CASE

Mr. Breza gave a brief overview of the requested relief, explaining that the site is currently occupied by a defunct and vacant Gavigan's Furniture Store that Petitioner intends to remodel and convert to an Adult Day Care center with medical and psychological services. Ms. Klein explained that Petitioner, "Caring Hands," has been open and operating in the heart of old Dundalk for 18 years, but they now want to move their operations to this site. She provided a "day in the life" description of their operations, as follows. They are licensed by the State of Maryland to provide Adult Day Care, including a Psychiatric Rehabilitation Program ("PRP"). (Their licenses were admitted as Petitioner's Exhibit 13A and B). They will have a maximum of 12 staff on the premises. This number of staff is authorized by the State to supervise as many as 120 adults, depending on the level of care the clientele needs. She explained that due to Covid and other factors they currently have only 80 clients. These clients are an average of 65 years old and have multiple disabilities, including some with psychological conditions such as dementia or Alzheimer's. Caring Hands has 11 vehicles, including one 26 ft. passenger bus and ten 22 ft. passenger vans that are used to transport the clients to and from the facility. Caring Hands' drivers pick the clients up at their homes early in the morning and would arrive at the facility between 8:30 and 9:30 a.m. Ms. Klein explained that the vans will arrive on a staggered schedule, so there should not be a problem with traffic congestion. The plan is that the clients will be dropped off at the entrance on Randolph Avenue, as depicted on the site plan. During the morning and early afternoon Caring Hands provides a variety of social activities, as well as medical and psychological services to these clients. At approximately 2:00 p.m. the Caring Hands staff begins loading the clients back onto the bus and vans to be transported home. Per State (COMAR) regulations this would be a secure facility, meaning that during their hours of operation the clients are locked within the facility and

not allowed to leave unless they are accompanied by a staff member or family member. Ms. Klein further explained that family members and friends are not permitted to visit during hours of operation, other than to take their loved one to and from doctors' appointments – which she said was an infrequent occurrence. Ms. Klein further explained that there will be no food preparation done on the premises and that all meals are provided by an outside vendor that delivers the food to the facility. She further explained that the food waste is sorted between garbage and recyclable materials. The garbage and recyclables will be placed in dumpsters which will be emptied once or twice a week depending on volume. The medical waste will be stored according to State regulations and will be removed by a licensed vendor. Ms. Klein further explained that licensed medical staff will administer prescription and non-prescription medications to the clientele; however there will not be a pharmacy on site. Finally, she testified that the hours of operation will be Monday thru Saturday from approximately 8 a.m. until 3 p.m. However, she explained that they propose to park 7 of the vans on the premises overnight and these vehicles would not be returning from their afternoon drop-offs until as late as 4:30 p.m. She stated that the other 4 vans are currently driven home by the Caring Hands drivers.

Petitioner's next witness was Joseph Caloggero, a traffic engineer with The Traffic Group. His *curriculum vitae* was admitted as Petitioner's Exhibit 5 and he was accepted as an expert in traffic engineering. A "trip generation" report that he prepared was admitted as Petitioner's Exhibit 6. He testified that the intersections in the vicinity are all at an A, B, or C level of service, and that the traffic that this facility is expected to generate can be accommodated by the existing roads in the area. He explained that there are good "site distances" along both Holabird Avenue and Randolph Avenue. He further opined that Randolph Avenue was sufficiently wide that the drop-off and pick-up of clients by the Caring Hands vans will not impede traffic. He further explained

that it was his understanding that the DR 5.5 zoned areas on the southeast (Lot 44) and northwest corners of the site have historically been used for commercial parking associated with Gavigan's and the previous furniture store. However, upon questioning by the Protestants he acknowledged that he had no personal knowledge of this. He further testified that he thought that the 19 proposed parking spaces in Lot 44 and the 4 in front of the building – 23 total- were sufficient for the proposed facility because there would be at most 12 staff and no visitors. On the second day of the hearing Mr. Caloggero submitted an updated traffic study and parking assessment which was admitted as Petitioner's Exhibit 27. He testified that the modified parking plan, as depicted on the redlined site plan (Pet. Ex. 25) provided adequate parking. He further explained that he had performed traffic studies in the morning and afternoon rush hours at this site and had again determined that the wait times to turn into and out of Holabird and Randolph Avenues from the site were within County standards. He opined that the traffic associated with this proposed facility would not significantly change the existing traffic volume or patterns. Several of the immediate neighbors offered much different views of the traffic situation, especially in light of a new Amazon distribution center that had just opened. They also questioned how the vans and bus would get in and out of the site and how so many large vehicles could be parked on site. Mr. Caloggero largely deferred to the engineer, Mr. Sill, on these questions.

Mr. Sill testified next. His *curriculum vitae* was admitted as Petitioner's Exhibit 4, and he was accepted as an expert in engineering and land use planning. He explained the site plan in some detail. He identified a series of aerial photos of the site ranging from 1953 to 2017, which were admitted as Petitioner's Exhibits 7A -7E. He asserted that the area at the northwest corner of the

site had been used for commercial parking since before the DR 5.5 zoning was applied in 1955.² Upon questions from Mr. Breza, Mr. Sill, offered his opinion that the proposed site plan met all the requirements of BCZR § 502.1. With regard to the requested variance relief, Mr. Sill explained that in his view the property was unique because it is bounded on three sides by public roads and because the existing structure occupies nearly the entire site. He further explained that if the variance relief were not granted the site could not be used for any purpose without razing most if not all of the existing structure. The Protestants questioned Mr. Sill extensively about how the vans and bus would get in and out of the site, and, more particularly, how that many large vehicles could possibly be parked there. He replied that, based on the square footage at the northwest corner of the site and the loading dock, that all of the vehicles should be able to be “shoehorned” in. Upon questioning from the undersigned he acknowledged that the site plan did not have the proposed van and bus spaces marked and measured, as required. The immediate neighbors further questioned Mr. Sill about where the BG&E service, the HVAC equipment, and the dumpster(s) would be located and he explained that these decisions had not yet been made (although on the original site plan the dumpster is located immediately adjacent to the residential property on School Lane). He was also questioned about how traffic flow would be maintained for thru traffic in the alley running behind the residences on School Lane and Holabird Avenue and then through Lot 44, as depicted on the original 1942 plat of the neighborhood, which was admitted as Protestants’ Exhibit 3. He acknowledged that the site plan showed 8 parking spaces next to the building and directly within the alley as depicted on the neighborhood plat. However, he explained

² Exhibit 7A is an aerial photo dated 1953. A red rectangle has been superimposed on what is purportedly the subject site. If it is in fact the subject site the photo was taken from too great a height, or from too wide a focus, to clearly show the site, let alone to demonstrate commercial vehicles parked at the northwest corner of the site.

that Gavigan's had used that parking configuration for many years and that the previous furniture store had evidently also done so.

At the end of the first full hearing day the undersigned suggested to Mr. Breza that he needed to confer again with his clients about these unresolved issues and have Mr. Sill prepare a redlined site plan providing sufficient detail concerning the parking, HVAC, dumpster, and BG&E locations. It was agreed we would reconvene the hearing at the earliest possible date.

As noted above, the hearing was reconvened on December 14, 2021. Scott Breza, Esquire, again appeared on behalf of Petitioner. Bruce Covahey, Esquire, appeared on behalf of Protestants, John and Jane Winslow-Olson, the owners of the adjoining residential property at 7402 Holabird Avenue. Two other adjoining neighbors also attended, as will be discussed below.

Mr. Sill was Petitioner's first witness. He identified the 2 sheet redlined site plan, which was admitted as Petitioner's Exhibit 25. He then described the proposed modifications. First, the outdoor garden area depicted on the original site plan at the northwest corner of the site would be removed, and that the area would be used to house the dumpster and HVAC equipment, as well as for parking for 8 passenger vehicles. He then explained that the existing loading dock would be removed and that the 26 ft. bus and 7 of the 22 ft. vans would be parked inside that area of the existing building. He also explained that the HVAC equipment would be shielded by a sound dampening privacy fence. He further explained that BG&E had agreed to keep its service at its current location on the pole at the northeast corner of the building. He further explained that they are proposing a sliding gate on Randolph Avenue for access into this area of the site, and a swinging gate on School Lane, which would open out into the street, which would only be used by cars. The parking and fence modifications are depicted on sheet 2 of the redlined plan. He then described the 8 ft. wide landscaping strip proposed along School Lane. Mr. Sill then explained that

they now propose to reduce the medical office space from 4,800 sq. ft. to 3900 sq. ft., which would reduce the parking requirements from 34 spaces to 30 spaces, and that they are providing all 30 (26 in front and 4 in back). Finally, he described the reconfigured parking at the southeast corner of the site (Lot 44), adding three passenger car spaces. He then again opined that the proposed redlined plan conforms with all the requirements of BCZR § 502.1, and that this proposed facility would have no greater adverse impacts at this location than are inherently associated with the use.

The Protestants questioned Mr. Sill extensively about various aspects of his testimony. He acknowledged that the redlined plan now eliminates the one outdoor space that the clients would have had. He also acknowledged that the plan shows only one dumpster and he could not explain where the dumpster for recyclables would go. He also acknowledged that a “front-loading” dumpster truck would be used to empty the dumpster but he could not clearly articulate how this truck would maneuver through the sliding gate and into and out of the dumpster area without obstructing traffic on Randolph Road. Mr. Covahey also questioned him about the parking configuration on Lot 44, and specifically whether, under BCZR § 409 there was sufficient room for the proposed parking spaces and two-way travel aisles.

As noted above, at the second day of the hearing Mr. Caloggero also again testified and he identified an updated traffic study that was admitted as Petitioner’s Exhibit 27. He too was questioned extensively by the Protestants. He acknowledged that the truck emptying the dumpster would likely have to back out of the site onto Randolph Avenue, as would the vans/bus that are proposed to be parked in the former loading dock area. He also acknowledged that the drop-off and pick up times for the Caring Hands clients would roughly coincide with the morning and afternoon school rush hours. He conceded that his traffic studies were conducted during the Covid pandemic when traffic is generally lighter, but he stated that the area roads have sufficient spare

capacity to accommodate substantially more traffic. On re-direct examination he explained that the proposed parking spaces on Lot 44 are 90 degree “angled” spaces and therefore they need only be 18 ft. long and only require 22 ft. of aisle space behind them; and that based on this the redlined plan conforms with BCZR § 409. He also stated that tractor-trailers had previously accessed the site off of Randolph Road so that the vans and bus should also be able to. This concluded Petitioner’s case in chief.

PROTESTANTS’ CASE

Mr. Covahey first called John Olson. He identified a packet of exhibits that were admitted as Protestants’ Exhibits 1 – 14. He testified as follows. He and his wife own 7402 Holabird Avenue, which is the dwelling immediately east of the subject site. He lived there as a boy and inherited the property in 1993 from his father, who had owned it since 1963. He has rented the property to residential tenants the entire time he has owned it. With the apparent consent of Gavigan’s his tenants have always parked in Lot 44 and continue to do so. He and his wife are concerned about the high volume of people and traffic that will be coming in and out of the Caring Hands facility each day. They are also concerned about the number of large buses and vans that are proposed to be parked on the site. In addition, they are concerned that the number of clients and staff will continue to expand. They believe that this proposed facility will overwhelm the neighborhood with an increase in trash, noise, sewage and traffic. He pointed out that on the original 1942 plat of the “Mountain Farm Annex” subdivision (Prot. Ex. 3) the alley is depicted running directly adjacent to the former Gavigan’s building, and that 11 of the proposed parking spaces on the redlined plan are directly within the alley. He also objected to the continued use of the oversized monument sign in the parking lot because the light it casts disturbs his tenants. On questioning by Mr. Breza he acknowledged that there is already an assisted living facility across the street in the former

elementary school building, but he pointed out that there is sufficient parking and setbacks for that facility.

Mrs. Winslow-Olson echoed her husband's concerns and also voiced apprehension that this facility would be used for drug rehabilitation. She is also concerned about expanding numbers of staff and clients. In addition, she noted that Caring Hands has two dumpsters at its current location but has only shown one on the redlined plan. She stated there are already problems with rats and trash in the area. She also voiced concerns about the safety of pedestrians on Randolph Road, especially the school children in the area, with the proposed bus and van and trash truck traffic. On questioning by Mr. Breza she agreed that her largest concern is about the potential for a drug rehab program to move in there, and that her concerns would be somewhat alleviated if this were prohibited.

Rose Pawlowski testified next. She owns the home at 7402 School Lane, directly across from the rear of the subject site. She has lived there her entire life. She described a conversation she had with Caring Hands owner, Dimitry Kargman, in which he dismissively told her he was going to "do what I want to" with this property. He told her that part of the reason they want to move out of downtown Dundalk is the crime problem there. He explained that thieves continually break into their vans to steal the catalytic converters (a common crime among drug addicts because of their value on the black market). She is therefore worried about that sort of crime being imported to her neighborhood. She is also concerned about the increase in food waste at the site because the neighborhood is already plagued by a rodent problem. She noted that, as a furniture store, Gavigan's did not generate any garbage. She also expressed concerns about the prescription medication that will be dispensed by Caring Hands, and how it will be secured at night to prevent theft by drug addicts. She disputed that commercial vehicles had historically parked at the rear of

the building, as alleged by Mr. Sill and Mr. Caloggero. She testified that Gavigan's had two "box trucks" that would leave in the morning to deliver furniture and return in the late afternoon and then park *inside* the building. She further explained that approximately once a month a tractor trailer would deliver a bulk shipment to the loading dock at the rear and then leave. She noted that this was possible because there has never been a fence around the rear perimeter of the property as proposed on the redlined site plan. She is concerned about the proposed gate on School Lane, with gates opening into School Lane and across the existing sidewalk.

John Hewins also testified. He owns and resides at the dwelling immediately east of the subject site on School Lane. His garage backs to the alley referenced above and he is concerned that there will be inadequate room for trash trucks and fire trucks to make the turn from the alley into the proposed parking configuration on Lot 44. In the first day of the hearing he also voiced concerns about the location of the dumpster and HVAC equipment due to the noise and smells they would generate. He also questioned how three rows of large vans could be parked within the building, as proposed on the site plan. He is also concerned about the proposed gate, which would open onto School Lane right next to his property. He testified that traffic is already a big problem in the area and he noted that it has recently gotten worse with the opening of the Amazon distribution center.

PETITIONER'S REBUTTAL

Mr. Breza called Ms. Klein to address the neighbors' concerns. She testified that a fire safety plan had already been approved by the County's Fire Marshall.³ She explained that Caring Hands is not licensed to operate drug rehabilitation programs and that they would not be operating

³ It is unclear how this could be the case since a detailed floor plan and other necessary information has, to my knowledge, not yet been submitted. However, a use and occupancy permit cannot be issued for any such building or use unless and until the Fire Marshall's office gives its approval.

such programs at this site. She again explained that the medical waste would be kept in a locked container and would be picked up and disposed of by a licensed vendor once a week. She further explained that there will not be a pharmacy on site, as the neighbors feared. Rather, she explained that the medical staff on site will simply be administering the medications that the clients bring with them. She stated that they currently have 60 clients at their location in Baltimore City and that they have only one dumpster that is emptied once a week. She stated that with 80 clients at this proposed location they will have the one dumpster emptied twice a week, and that they would dispose of the recyclables themselves without a dumpster as they will be primarily empty cardboard boxes. She said that even if they expand to 120 clients they would not need more staff or vans because the 12 current staff is authorized to serve up to that number of clients; and the vans are currently only at 2/3 capacity. Finally, she stated that they only expect to have about 30 clients at the facility on Saturdays and that hours would be slightly shorter that day.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioners seek several different avenues of relief from the Baltimore County Zoning Regulations so that they can operate a “Community Building with Adult Day Care and Medical Office,” including a “Psychiatric Rehabilitation Program” at the site. A “Community Building” is allowed by special exception in both the DR and BL zones. It is arguable whether this proposed Adult Day Care fits the definition of “Community Building.” In both the DR and BL zones, a Community Building is defined as a building dedicated to “civic, social, recreational or educational uses.” *See*, BCZR §1B01.1.C.4, and BCZR § 230.3. Here, the building will house a for-profit business that doesn’t seem to directly serve any of these functions, But, as noted above, neither the Office of Zoning Review nor the Department of Planning has objected to the proposed use at this location. Further, the Zoning Commissioner’s Policy Manual acknowledges that “[m]any

facilities for the mentally and developmentally disabled have been preempted from County regulations by State law.” I therefore note that both an “Adult Day Care Center” and a “Psychiatric Rehabilitation Program for Adults” are regulated under State law. *See*, COMAR 10.08.03.02, and 10.63.03.09. Further, as noted above, Caring Hands is licensed by the State to perform these services. *See*, Petitioner’s Exhibit 13A and 13B. I therefore conclude that the proposed facility is permitted by special exception at this location.

That said, this is still a difficult case though because of the extensive relief the Petitioner is seeking from the BCZR. In fairness though, the need for such substantial relief is, at least in part, a product of the site itself. Several of the neighbors explained that prior to Gavigan’s another furniture store had operated for years at this site – for how long was unknown or unstated. According to the neighbors that store burned to the ground at some point in the 1980s in a fire that claimed the lives of several county firefighters. That structure was replaced by the current structure, which was then apparently owned and operated by Gavigan’s until the Petitioner purchased it in January, 2021.

The current structure is significantly non-conforming with the current DR 5.5 and BL setback requirements, and is entirely non-conforming with the Residential Transition Area (“RTA”) setbacks required under BCZR § 1B01.1. However, Petitioner does not argue that this structure is a valid non-conforming structure that was restored after the fire in accordance with BCZR § 104.2. Even if that were the case the Petitioner would have to show that the current building was reconstructed within the footprint of the original non-conforming building – unless specific relief had been requested and granted under BCZR § 104.3 to allow an expansion of that footprint. No such argument was made in this case and no such evidence was introduced. However, neither the Department of Planning nor any other county agency raised this issue, but neither did

any county agency object to the relief being sought. So I am left to determine whether the relief can be granted within the spirit and intent of the BCZR; and if so, what conditions, if any, are needed to protect the surrounding community. I will do so by addressing the different requests for relief in order.

SPECIAL EXCEPTION

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

In Baltimore County these common law principles must be considered alongside BCZR § 502.1, which also requires that the following conditions be satisfied:

Conditions determining granting of special exception.

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- F. Interfere with adequate light and air;
- G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor

- I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone, and for consideration of a solar facility use under Article 4F, the inclusion of the R.C. 3, R.C. 6, and R.C. 8 Zones.

In this case I find that the record evidence establishes that the proposed Caring Hands Adult Day Care center will not, with the conditions imposed below, disproportionately impact this neighborhood beyond the inherent impacts of such a use. Again, the site itself, with this large commercial structure occupying most of the site, presents a host of potential problems. Primarily, the potential for “congestion in the roads, streets, and alleys,” and “to overcrowd land,” and “be inconsistent with the impermeable surface and vegetative retention provisions of [the BCZR].”

As detailed above, the Protestants have raised a variety of understandable concerns about the proposed Caring Hands facility, including crime, traffic, trash, noise, and parking. Balanced against those concerns are the rights of Petitioner to lawfully operate this business. According to the SDAT data Petitioner paid \$1,300,000.00 for this property, and according to the testimony of Ms. Klein and the architectural details in the redlined site plan they are prepared to invest substantially more to modernize and retrofit it in order to operate the proposed Adult Day Care center. Some of the Protestants claim that Petitioner did not do their “due diligence” when purchasing this property, given the substantial zoning relief that is required. While it may have been prudent for Petitioner to purchase the property on a contingent basis, those are not the facts before me. What is before me is a property owner who has already invested a substantial sum and is prepared to invest substantially more to operate a tax-paying business in Baltimore County. Moreover, the simple reality is that *something* is going to be located at this site, and it is unlikely that any person or entity would think it economically feasible to raze this existing building and construct another on the site that would conform to all the current setbacks. Again, it is unclear

from the record evidence how the existing structure was allowed to be constructed, but it was. So although the community may not fully support this Adult Day Care center there are many other uses permitted on this site by right or special exception, and the community may find some of those uses even less desirable.

When the County Council permitted Community Buildings in both the DR and BL zones they were presumably aware of the traffic, noise, and other impacts associated with this use. But given the legal presumption in favor of special exceptions I am not at liberty to gainsay the wisdom of the legislative body. *Schultz, Attar, supra*. I therefore find that, with the conditions set forth below, the special exception can be granted within the spirit and intent of the BCZR and without causing undue harm to the public health, safety, or welfare. With specific regard to the Protestants' fears concerning drug rehab programs at the site, I first note that the Petitioners are not seeking to operate such a program. Furthermore, drug rehabilitation facilities are not permitted in either the BL or DR zones, so this is a non-issue.

VARIANCES

The authority to grant variances in Baltimore County is governed by BCZR § 307.1, which states as follows:

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.

And, under Maryland common law, a variance request involves a two-step analysis, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

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

As described above, the site is unique for a variety of reasons. First, it is split-zoned. The southwest portion of the site, in which approximately half the building is located, is zoned BL (business local). The remainder of the site, including the rest of the building, the open area at the northwest corner, and the parking area at the southeast corner (Lot 44) are zoned DR 5.5 (density residential). Second, it is surrounded on three sides by public roads, with one – Holabird Avenue – being an arterial road. The fourth side adjoins dwellings. Finally, and perhaps most significantly, the existing structure occupies a vast majority of the site - with virtually no setbacks from the roads or property lines.

Further, the dimensions of the existing building are what drive the need for all of the variances except the sign variance, which will be discussed below. Without these variances the Petitioner would obviously face practical difficulty and unreasonable hardship because they would have to raze a substantial portion of the building to bring it into compliance with the DR and BL setbacks – and perhaps raze all of the building to comply with the RTA regulations.

Of course the hardship of the Petitioner is not considered in a vacuum. Under the common law and BCZR § 307.1 these variances should not be granted if they will cause undue harm to the public health, safety, or welfare.

Under the circumstances presented, denial of the requested variances would not just cause Petitioner “practical difficulty,” it would cause them severe financial harm. In my judgment, with the conditions imposed below, this proposed Adult Day Care will not unduly harm the public health, safety or welfare, and is within the spirit and intent of the zoning regulations. I therefore find that the setback variances should also be granted.

I also find that BCZR § 1B01.1(B)(1)(g)(10) applies here and provides an exemption from the RTA setbacks. I base this on the fact that this new Community Building complies “to the extent possible” with the RTA. As noted above, in order to fully comply with the RTA the existing building on the site would need to be radically reduced in size, if not completely razed. Again, given the conditions imposed below, the building will comply to the extent possible with the RTA.

Finally, Petitioner seeks variance relief from BCZR § 450 to allow a freestanding sign with a square footage of 101 sq. ft. in lieu of the maximum permitted 75 sq. ft. The sign in question already exists, and as depicted in photos of the site and on the redlined site plan, it sits near the middle of Lot 44 near Holabird Road and in close proximity to the Olson’s property. Unlike the other variance relief sought, I do not find that Petitioner will suffer undue hardship or practical difficulty if this variance is denied. Rather, given its described impact on the Olson property, i.e., glaring light shining into their tenants’ bedrooms, and its general negative aesthetic impact on the other neighboring residences, I believe that the freestanding sign in Lot 44 should be removed altogether, and it will be so ordered below. Petitioner will be permitted to erect wall-mounted and

projection signage as permitted by BCZR § 450 that should adequately identify and advertise their facility.

SPECIAL HEARING

A petition for a Special Hearing under BCZR § 500.7 is in the nature of a request for a declaratory judgment. *Antwerpen v. Baltimore County*, 163 Md. App. 194, 209 (2005). Indeed, this regulation provides, in relevant part, that

any interested person [may] petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

Id. § 500.7.

Further, “the administrative practice in Baltimore County has been to determine whether the proposed Special Hearing would be compatible with the community and generally consistent with the spirit and intent of the regulations.” *Kiesling v. Long*, Unreported Opinion, No. 1485, Md. App. (Sept. Term 2016).

The Petitioner seeks a Special Hearing declaration as to two different aspects of relief. Namely, that they be allowed to “reuse commercial parking area and signage” in a DR zone. First, with regard to the parking issue, the record evidence is that there has been commercial *parking* in Lot 44, between the existing building and the Olsons’ residence. However, based on Ms. Pawlowski’s testimony – which I found entirely credible – the area outside the building at the corner of Randolph Avenue and School Lane has not consistently been used for commercial *parking*. Rather, over the years it has been traversed by delivery trucks on a daily basis, but those trucks were parked *inside* the building when on the premises. And approximately once a month

Gavigan's would receive a shipment of furniture delivered by a tractor-trailer truck that was there only long enough to unload the delivery. Therefore, with respect to the area at the rear of the building, I do not believe there has been any historical parking of trucks. I further find that it would violate the spirit and intent of the BCZR to allow commercial parking in this DR zone because it would have a negative impact on the residents along School Lane.

With regard to the proposed parking in Lot 44, I find that there *has* been commercial parking on this lot for decades. I further find that Gavigan's, and most likely the previous furniture store, has allowed customer parking adjacent to the building and within the alley depicted on the original "Mountain Farm" subdivision plat. (Protestants' Exhibit 3). Further, I agree with Petitioner's engineer and traffic engineer, that the proposed parking configuration – with 90 degree parking next to the building and a two way aisle in the middle of the lot – is the more sensible parking and traffic pattern. I therefore find that the parking plan proposed on the redlined site plan should be approved. However, as set forth in the conditions below, given the historical use by the Olsons' tenants, I find that they should be allowed to continue to park there, at least overnight.

THEREFORE, IT IS ORDERED this 11th day of **January, 2022**, by this Administrative Law Judge, that the Petition for Special Hearing per Baltimore County Zoning Regulations ("BCZR") § 500.7 to permit non-residential parking and signage in a DR zone in order to reuse the existing commercial parking area and signage is hereby **GRANTED in part, and DENIED in part.**

IT IS FURTHER ORDERED, that the Petition for Special Exception under Baltimore County Zoning Regulations ("BCZR") §§ 230.3 and 1B01.1 (C)(4) to use the herein described property for a community building with Adult Day Care and Medical Office, including Psychiatric Rehabilitation Program, is hereby **GRANTED.**

IT IS FURTHER ORDERED, that the Petition for Variance pursuant to Baltimore County Zoning Regulations ("BCZR") §§ 1B02.3.C, 232, 502.6, 409.6 and 450 to permit a rear yard setback of 11.3 ft. in lieu of 30 ft., corner street side setback of 5.6 ft. in lieu of 35 ft., and side yard interior setback of 0.9 ft. in lieu of 20 ft. in a DR 5.5 Zone; To permit corner side setback of 4.4 ft. in lieu of 10 ft., side setback of 0.9 ft. in lieu of 10 ft. in a BL Zone; to permit zero buffer and zero setback including relief from the landscaping requirements in a DR 5.5 Zone, and for an exemption from the RTA, is hereby **GRANTED**.

IT IS FURTHER ORDERED, that the Petition for Variance from Baltimore County Zoning Regulations ("BCZR") § 409.6 to allow 23 parking spaces in lieu of the required 34 spaces is **MOOT**, since the redlined site plan provides all of the required 30 spaces based on the reduction of the medical office square footage from 4800 sq. ft. to 3900 sq. ft.

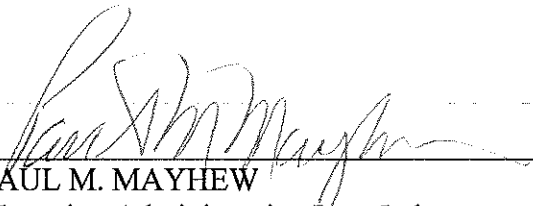
IT IS FURTHER ORDERED, that the Petition for Variance from Baltimore County Zoning Regulations ("BCZR") § 450 to allow a freestanding sign of 101 sq. ft. in lieu of the permitted 75 sq. ft. is **DENIED**.

The relief granted herein shall be subject to the following:

- Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
- A maximum of one hundred (100) clients and twelve (12) staff will be permitted in the facility at any one time.
- A maximum of one (1) 26 ft. bus, and three (3) 22 ft. vans shall be permitted to park overnight at the site and they shall be parked inside the facility as depicted on sheet 2 of the redlined site plan (Petitioner's Exh. 25). No other Caring Hands vehicles shall be parked at the site overnight.

- Other than as described above, none of Petitioner's vans or buses shall be permitted to park at the site at any time, other than to temporarily park to discharge and load passengers.
- Hours of operation shall be from 7 a.m. to 4 p.m. Monday thru Saturday only.
- There shall be no kitchen facilities (other than refrigerators and sinks) and no food preparation on the site.
- Petitioners shall obtain a valid use and occupancy permit prior to occupying the site.
- Petitioners shall submit architectural elevations and floor plans to the Department of Planning and the Office of Zoning Review for their approval.
- Petitioners shall submit Landscape and Lighting Plans to the Baltimore County Landscape Architect for approval.
- There shall be no vehicular entry or exit from the facility onto School Lane.
- The sidewalk on School Lane along the perimeter of the site shall be extended to Randolph Avenue at Petitioner's sole expense.
- The HVAC equipment shall be located and soundproofed as depicted on the redlined site plan.
- The dumpster(s) shall be located as depicted on the redlined site plan and the dumpster(s) shall only be emptied between the hours of 7 a.m. and 4 p.m.
- The Petitioners shall at all times have a pest control contract with a licensed pest control company that provides regular and ongoing pest control services.
- Petitioners shall not obstruct the vehicular ingress or egress of any of the residents along the alley.
- Petitioners shall not unreasonably restrict the right of the tenants at 7402 Holabird Avenue (the Olson property) from parking in Lot 44 after 4 p.m. and before 7 a.m.
- Petitioners shall remove the freestanding monument sign in Lot 44.

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



PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:dlm