RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE OFFICE
	*	OF ADMINISTRATIVE
Grey Rock Properties, LLC. Petitioner	*	HEARINGS
400 Grey Rock Road (400 Clifton Court)	*	FOR
3rd Election District 2nd Councilmanic District	*	BALTIMORE COUNTY
	*	**Case No.: 2021-0273-SPHX**

* *

PETITIONER'S MEMORANUDM IN LIEU OF CLOSING ARGUMENT

Grey Rock Properties, LLC., ("Petitioner" or "Owner") by and through their attorneys, Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, submits this Memorandum in Lieu of Closing Argument and respectfully states the following:

Introduction

This matter comes before the Office of Administrative Hearings ("OAH") for public hearing as a Petition for Special Exception as well as a Petition for Special Hearing filed for the Petitioner's property located at 400 Grey Rock Road (400 Clifton Court) (the "Property") in the Pikesville community of Baltimore County. A Special Exception is a conditional use, permitted subject to the provisions and requirements of Baltimore County Zoning Regulations ("BCZR") Sec. 502.1. (See *Attar v. DMS Tollgate, LLC*, 451 Md. 272, 280, 152 A.3d 765, 769 (2017). Additionally, the Special Hearing Petition is filed pursuant to BCZR Sec. 500.7, which allows an individual to petition the ALJ for an interpretation of the proper application of any zoning regulation. This specifically includes the determination of a nonconforming use. As filed, the petitions sought relief as follows:

1. Approval of a Special Exception, as permitted by § 236.2 of the Baltimore County Zoning Regulations ("BCZR"), to allow living quarters within a commercial building for a property caretaker; and

2. Approval of a Special Hearing, as permitted by § 104.1 of the BCZR, to permit the Property's nonconforming commercial use within a residential zoning designation.

Statement of Facts

The Grey Rock property consists of two parcels which total slightly over 2.7 acres in area. One parcel is a 2.025-acre parcel property on which is located a historic building known as the Grey Rock Mansion (the "Mansion"), an attached tent, an area of parking serving the same, and a lawn area used in connection with activities at the Mansion. This parcel is split zoned BR (Business-Roadside) and DR 3.5. The second parcel is .7444 in area and contains a parking area which is used by the Owners in connection with activities at the Mansion and also (by agreement with the residential neighbors) for parking at an adjacent community swimming pool. This second parcel is zoned DR 3.5. The parcels are within close proximity to one another at the terminus of a private road which leads into the community from Reisterstown Road. The Mansion building, parking area, and lawn are used by the Owner as a commercial venue to hold events such as weddings, memorial services, partis, etc.

The crux of Petitioner's case is two-fold; (1) to allow living quarters of approximately 1000 square feet within the Mansion to be occupied by a caretaker and (possibly) their partner, as permitted by special exception, for the purpose of further ensuring the safety and security of the Mansion and its surrounding grounds, and; (2) to confirm the continued utilization of the Mansion's surrounding grounds (parking and lawn) as an extension of the Mansion use for the events held thereat.

The Grey Rock Mansion was built between 1857 and 1861 and has substantial historical significance. It's located on a portion of the extensive property originally owned by the John Eager Howard family. Howard was a key figure in Maryland during colonial times and shortly after the formation of the United States. He served as governor of the State, was a confident of George Washington, and is a figure of historic importance in Maryland. For many years, the Mansion was used as a residence, however in the mid-20th century, the building was acquired and used as a retreat center by the Trinitarians, a Christian order.

In the mid 1980's the Property was acquired by Valley Catering which converted the Mansion and its surrounding grounds for use as a commercial event and catering venue. This use has continued from then to the present day. Mr. Bill Clowney, a former tenant/owner/operator of the Property and the commercial business that occurs within the Mansion, testified that he leased the Property from Valley Catering to operate his own commercial event and catering business for several years until he ultimately acquired the Property from Valley Catering in 1998 to further his commercial venue and catering business. After 21 years of owning and operating the Grey Rock Mansion Property as a commercial venue, Mr. Clowney sold the Property in 2019 to the current owners, Grey Rock Properties, LLC, who has since continued to operate the Mansion and its surrounding property as a commercial event and catering venue. Testimony was also received from the current owners of the Property (Anne Pomykala and Brian Pomykala, her son) about the ongoing commercial use of the Mansion and their desire to have a 24-hour presence (i.e. caretaker) on the Property.

The development of the Grey Rock residential community which surrounds Grey Rock Mansion's Property began in 1989, *after* the Mansion had been converted to the commercial

operation. Petitioner submitted Newspaper articles[1] at the Administrative Hearing (Petitioner's Ex. 5) from the 1980's and 1990's as evidence establishing that the commercial catering business was in operation when the residential development of the Grey Rock community was first contemplated and approved. [2]

The County Review Group ("CRG") was that entity of County government that approved residential development in the Grey Rock community when it was first proposed. In fact, the first CRG plan for the Grey Rock residential community was approved on Sept. 7, 1989. The residential community of Grey Rock was approved and built in a series of phases and the CRG plan was amended accordingly as the development evolved. The "Grey Rock Partial Development Plan Phase II," dated April 1, 1991, visually depicts the Grey Rock Mansion and its Lawn, and indicates that the property immediately around the Mansion was zoned BR and much of the lawn and parking area (on both lots) was zoned BM at that time. (Petitioner's Ex. 6). Both of those classifications are commercial zones allowing catering facilities, by right. Another subsequent approved plan, the "Grey Rock First Amended Partial Development Plan, Phase I," dated November 30, 1993, also identifies the Grey Rock Mansion and its Lawn as zoned BR and BM, respectively. *Id*.

Baltimore County rezones land through its Comprehensive Zoning Map Process which occurs every four years (known as the "CZMP"). In the 2000 CZMP, the Grey Rock Mansion's Property was rezoned to what it is today, a combination of BR and DR 3.5. The location of the zone line adopted in 2000 and outlining the BR zone on the 2.025-acre parcel appears to be

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[1] "The houses will be next to the historic Grey Rock Mansion, which dates from about 1700, was restored around 1890, and now is leased by Valley Caterers." Edward Gunts, *Grey Rock community will feature villas, flats*, Baltimore Sun, June 9, 1991, § 3, at 1.

[2] "[T]he owner of Grey Rock agreed to preserve the 130-year-old mansion and the surrounding grounds in return for rezoning that allows 18 acres of condominiums and 30,000 square-feet of commercial space. Katherine Drew DeBoalt, *Housing could circle mansion*, The Jefferson, June 2, 1988.

haphazardly drawn, at best. That is, the adopted zoning map shows a rectangular box drawn around the Mansion, in which the zoning of BR was applied. This zoning line bisects the adjacent parking lot and lawn area. Outside the rectangle, the balance of the property is zoned DR 3.5 The "Partial Development Plan for Phase IV," approved June 10, 2003, depicts the Grey Rock Mansion property's present zoning designations. (Petitioner's Ex. 6) More to the point, note #9 on the 2003 Phase IV Plan indicates that the rezoning took place in 2000. *Id*. This Grey Rock residential development plan was ultimately approved by Baltimore County on February 14, 1994. *Id*. A review of these documents and the timing of the re-zoning leads to the clear conclusion that the re-zoning of the Property was done to permit the proposed adjacent residential development, in that residential uses are not permitted in the business zones. Apparently, when the new zoning map was approved, little thought was given to determining the precise acreage of the commercial activity occurring at and around the Mansion, and instead, commercial/business zone was retained to essentially include the Mansion building only, and not the entire parking and lawn/tent areas that are used in connection with the catering business.

At the Administrative Hearing on January 13, 2022, Petitioner established through testimony from the prior/current owners, previous zoning cases, and secondary sources such as newspaper articles that the Grey Rock Property has indisputably been continuously used as a commercial event and catering venue, without interruption, since prior to the residential development of the surrounding area. (Petitioner's Exhibits 5, 7A, and 7B) and, more importantly, prior to the rezoning in 2000.

Standard of Review

I. Special Exceptions in Baltimore County

A special exception use in Baltimore County refers to a permissive land use category authorized by the Baltimore County Council, which may be permitted pursuant to specific statutory standards. The special exception process is initiated by the filing of a special exception petition. The special exception petition is first reviewed and commented on by County agencies (Zoning Advisory Committee) and then proceeds forward to an evidentiary hearing before the Administrative Law Judge ("ALJ"). Comments issued by the Zoning Advisory Committee are advisory in nature and are part of the evidentiary record before the ALJ.

As with any special exception, the subject request must be adjudged in accordance with the provisions of BCZR § 502.1 entitled "Special Exceptions." BCZR § 502.1 states:

> "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, sewage, 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 the 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, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.["]

The law of special exceptions in Maryland has been comprehensively addressed by the appellate courts of this state. As is well settled, the criteria stated in BCZR § 502.1 is to be applied to each petition in the manner as outlined in the seminal case of *Schultz v. Pritts,* 291 Md. 1 (1981).

In *Schultz,* the court discussed the role of special exceptions in the comprehensive zoning scheme enacted by the local jurisdiction and opined, "[t]he special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid." *Id.* at 11. Thus, a special exception use is not an exception to the zoning ordinance at all, rather, it's a conditional use that shares the legal presumption of validity, absent a showing that it should be denied because of particular egregious impacts at the locale considered. As stated by the Court in *Schultz*, "[t]he appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that a particular use proposed at the particular location proposed would have an adverse effect above and beyond those inherently associated with such special exception use irrespective of its location within the zone." *Id.* at 15.

In *Mossburg v. Montgomery Co.,* 107 Md. App. 1 (1995), the Court of Special Appeals further clarified this standard and stated that impacts from special exception uses are not, in and of themselves, a basis by which the special exception can be denied. *Id.* at 8-9. As held by the Court, it is the existence of these impacts in the first instance that justify the use being a special exception use (rather than allowed by right). *Id.*

The holding that detrimental impacts from a proposed special exception must be greater than those normally associated with impacts in similarly zoned areas is premised upon the concept that special exceptions are part of the contemplated zoning process established by the County

Council. As such, all special exceptions are presumptively permissible and, therefore, in the interest of the general welfare of the public. See *Schultz,* 291 Md. at 11.

As such, the *Schultz* Court found:

> "The special exception use is a valid zoning mechanism that delegates to an administrative body a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption."

Schultz, 291 Md. at 11.

Therefore, the ALJ is guided by the special exception factors listed in § 502 of the BCZR with special attention placed upon whether detrimental effects would be any greater at the subject location, compared with other locations generally in the zone. The test is not whether the proposed use provides a benefit to the community. Likewise, the question here is not to compare one permitted use to another. Additionally, the *Schultz* standard shoulders no evidentiary burden on the petitioner (nor analysis by the zoning decision maker) to consider other sites in the zone for comparison. See *People's Counsel v. Loyola College,* 406 Md. 54, 103-104 (2008).

II. Petition for Special Hearing to Permit Nonconforming Uses in Baltimore County

A Special Hearing has been likened to an action for declaratory judgment. (See *Antwerpen v. Baltimore County*, 163 Md. App. 194, (2005)). The applicable County law, BCZR § 101.1, defines a nonconforming use as follows:

> "[a] legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective "nonconforming" is a nonconforming use."

BCZR § 104 is entitled "Nonconforming Uses" and provides:

> "[a] nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations, provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate."

BCZR § 104.1 allows nonconforming uses to continue unless changed, abandoned or discontinued. The burden of establishing a nonconforming use is on the Petitioner. Such burden can be satisfied by showing that the use in question was well known throughout the neighborhood at the pertinent time. *Calhoun v. County Board of Appeals,* 262 Md. 265 (1971). Mere change in ownership does not destroy the nonconforming use. *Green v. Garrett,* 192 Md. 52 (1949). The nature and extent of the use must have remained unchanged and substantially the same facilities have to be used throughout the years in question. *Kastendike v. Baltimore Association for Retarded Children,* 267 Md. 389 (1974). In addition, "a nonconforming use is not personal to the current owner or tenant but attaches to the land itself." 83 Am. Jur. 2d, Zoning & Planning, § 587. Further, an "established nonconforming use runs with the land, and hence a change in ownership will not destroy the right to continue the use." 8A McQuillin, *The Law of Municipal Corp*. §25.183.50.

Discussion

I. The addition of living quarters within the Grey Rock Mansion to permit a caretaker's quarters for the purpose of ensuring the safety and security of the Mansion and its surrounding grounds is not detrimental, and actually provides benefit, to the surrounding locale.

As noted above, BCZR § 502.1 contains the criteria which must be specifically applied to any requested special exception. Moreover, as previously noted, it is not merely the existence of impacts by the proposed use in these subject areas which is to be considered, it is whether the effects are more egregious here than elsewhere in the zone. Significantly, the inherent impact on the locality of adding living quarters within the Mansion here are virtually nonexistent. More importantly, the impacts (to whatever degree they even exist) are no more impactful here than elsewhere in the zone. In this regard, it's hard to fathom the reasons for any opposition to this request. Having a 24-hour presence on the Property is beneficial as it ensures that any emergencies or issues on the Property can be addressed immediately. As was made clear from the testimony of

certain residents in the area, the Mansion's activities and responsibility to fund common expenses (i.e. private road maintenance, landscaping, gate security, etc.) are issues of contention between the parties. But these issues are entirely unrelated to the question presented in the instant special exception petition; to wit, should the residential quarters be allowed? Apparently, to use as leverage to support their demands for monetary contribution by the Petitioners, the Protestants who appeared oppose the Petitions.

§ 502.1 (a) The Proposed Living Quarters Will Not Be Detrimental To The Health, Safety Or General Welfare Of The Locality Involved.

BCZR § 502.1 (a) is broadly written and is a general catch all provision. Petitioners presented ample evidence that the grant of a special exception for the requested living quarters will not be detrimental to the health, safety, or general welfare of the locale.

In fact, considering the intent behind Petitioner's proposition of adding living quarters for an on-sight property caretaker, the locality will realize an added benefit of enhanced safety and security. Whereas previously the Mansion and its surrounding property was left unattended, the addition of a caretaker on the premises will add an extra layer of protection to the Property and locality as an "extra set of eyes" will undoubtedly limit any crime or unexpected disasters that could impact the Grey Rock Mansion Property and quite possibly the neighboring community.

§ 502.1 (b) – The Proposed Living Quarters Will Not Tend To Create Congestion In The Roads, Streets Or Alleys Therein.

Based on the uncontroverted evidence, the proposed living quarters will generate minimal/no traffic. This is a single individual added to the makeup of a sprawling community. Petitioner anticipates extremely limited traffic to and from the subject property. As such, there is no "adverse impact" in this regard.

§ 502.1(c) – The Proposed Living Quarters Will Not Create A Potential Hazard From Fire, Panic Or Other Danger.

The living quarters will not create any hazards as it relates to fire, panic, or other danger. As discussed before, the addition of a caretaker to the property will provide an added veil of protection against any hazard that could impact the surrounding community. The activity on the property is such that it will not create a panic or public nuisance.

§ 502.1 (d) – The Proposed Living Quarters Will Not Tend To Overcrowd Land And Cause Undue Concentration Of Population.

The living quarters will not overcrowd the land or inappropriately concentrate population as it's inconceivable that a single individual would render the concentration of the area as overcrowded. Further, there is nothing in the proposition that includes an extension of the current property that would "overcrowd" the land. There are no area or bulk standard variances requested and thus all setback and size restrictions in the zone are observed.

§ 502.1 (e) – The Proposed Living Quarters Will Not Interfere With Adequate Provisions For Schools, Parks, Water, Sewage, Transportation And Other Public Requirements, Conveniences Or Improvements.

Surely a single individual will not impact schools or parks. The use does not increase the enrollment in local schools or generate use of public parks and open space. The impact of one added individual to the locality's public facilities will go nearly unrealized.

§ 502.1 (f) – The Proposed Living Quarters Will Not Interfere With Adequate Light And Air.

The proposed living quarters will not interfere with adequate light and air. The footprint of the existing building will not change. It will not cast a shadow on adjacent properties. There are no smells to be generated. There is no additional noise that is generated.

§ 502.1 (g) – The Proposed Living Quarters Are Consistent With The Purpose Of The Property's Zoning Classification And Are Consistent With The Spirit And Intent Of These Zoning Regulations.

Simply stated, there is no adverse impact. The living quarters is not "inconsistent with the spirit and intent of these zoning regulations." Living quarters within a commercial building are permitted by special exception in the BR zone. As an enumerated special exception use, the proposal is part of the zoning scheme legislatively adopted by Baltimore County and is thus presumptively valid (See *Schultz v. Pritts,* infra).

§ 502.1 (h) – The Proposed Living Quarters Are Consistent With The Impermeable Surface And Vegetative Retention Provisions Of These Zoning Regulations.

There is no impact under this criterion. Nothing is being changed to the exterior structure of the Mansion or Property.

§ 502.1 (i) – The Proposed Living Quarters Will Not Be Detrimental To The Environmental And Natural Resources Of The Site And The Vicinity, Including Forests, Streams, Wetlands, Aquifers And Floodplains In An RC-2, RC-4, RC-5 And RC-7 Zones.

There is no environmental impact caused by the addition of living quarters and a subsequent single individual on the multi-acre property. They produce no chemicals, toxins or other impacts that might produce environmental degradation or impact the underground water table.

As discussed in *Schultz*, this special exception use is not an exception to the zoning ordinance at all, rather, it's a conditional use that shares the legal presumption of validity, absent a showing that it should be denied because of particular egregious impacts at the locale considered. Since there is no showing that there are any particular egregious or adverse impacts as a result of living quarters being added to the Grey Rock Mansion, there is no basis for the ALJ's denial of the special exception. *Schultz v. Pritts,* 291 Md. 1 (1981).

For the reasons stated above, the Honorable Administrative Law Judge should grant the requested relief regarding the special exception.

II. The commercial use of the Grey Rock Property's "surrounding grounds" or "Lawn" is permitted as a right of law, regardless of its current zoning designation, as it qualifies as a "grandfathered" nonconforming use.

As discussed above, a nonconforming use is permitted in accordance with BCZR § 104 upon the existence of two elements within the facts:

1) The previous zoning designation of the land, before the change to its current zoning designation, permitted the current use, and;
2) The current use has continued, without abandonment of one year or greater, since prior to the change in zoning designation to present day.

A. The Grey Rock Property's previous zoning designation of BM, which permits the Property's current commercial use, existed prior to the inception of its current zoning designation of DR 3.5 which subsequently prohibits the Property's current commercial use.

The Court of Appeals has consistently held whether a non-conforming use is permitted, and the standard is clear and well settled:

> A non-conforming use is a "grandfathered" use. The BCZR recognizes that some uses of land are not permitted under a property's existing zoning classification but that those uses pre-date the date when the zoning classification/regulation prohibiting the use became applicable. A valid and lawful nonconforming use is established if the owner can demonstrate that *before and at the time* of the adoption of a new zoning classification/ordinance, the property was being used in a lawful manner that, by later legislation, became non-permitted.

Trip Assocs., Inc. v. Mayor and City Council of Baltimore, 392 Md. 563, 569 (2006).

As noted above, the area "outside of the rectangle" on the 2.025 acre parcel and the entire .7444 acre "lawn-parcel" of the Grey Rock Property was changed from BM to DR 3.5 in the 2000 CZMP. This residential zone was adopted in order to permit residential development on the adjacent properties. The DR 3.5 zone does not permit a catering business.

Petitioner submitted substantial and overwhelming proof that the Grey Rock lawn and parking areas were used to support the commercial catering business prior to the zoning change.

As noted above, the "Grey Rock Partial Development Plan Phase II," dated April 1, 1991, depicts the Grey Rock Mansion's Property, and indicates the Mansion was zoned BR and the Lawn or surrounding area was zoned BM. (Petitioner's Ex. 6). Further to that point, the "Grey Rock First Amended Partial Development Plan, Phase I," dated November 30, 1993, also identifies the Grey Rock Mansion's Lawn as zoned BM. *Id*. As noted above, The "Partial Development Plan for Phase IV" from 2003 reflects the Grey Rock lawn as it's presently zoned – DR 3.5. *Id*. As noted above, this change in the Property's zoning designation can be accredited to the 2000 CZMP as, on the plan submitted in the 2003 case, note #9 indicates that the rezoning of the Property took place in the 2000 CZMP to accommodate the residential development. *Id*. Regardless of the 2000 change, Petitioner provided substantial and overwhelming evidence showing that the entire Grey Rock Property was used for the catering business prior to the zoning change. Specifically, the testimony of the former owner/tenant/operator (Bill Clowney) was undisputed. It is also clear that activity outside the Mansion building itself and the rectangle now containing the BR zone occurred prior to the rezoning. This is in the areas now zoned DR 3.5. This included parking (where guests of the Mansion parked while attending functions at the Property); as well as a tent and lawn area that were used for events, particularly during the months of favorable weather. In sum, the non-conforming use existed across the entire Property, as the commercial activities occurred prior to the zoning change and have been consistent ever since.

Petitioner has indisputably ascertained that the Grey Rock Property was previously zoned BR and BM; thus, as the Court of Appeals established in *Trip Assocs., Inc. v. Mayor and City Council of Baltimore*, even though the Lawn-parcel's current residential zoning of DR 3.5 prohibits the current use of the parcel, the valid and lawful nonconforming use is established as Petitioner has demonstrated that *before and at the time* of the adoption of the change in zoning

designation, the property was being used in a lawful manner that, by the 2020 CZMP, became non-conforming.

Ultimately, the Administrative Law Judge should find that the uses permitted for BR and BM under the Baltimore County Zoning Regulations should be "grandfathered" or "preserved" to the Grey Rock Property to present day contingent on the fact that the respective use of the Property has been uninterrupted since prior to the change.

B. The current use of the Grey Rock Property has continued, without abandonment for a period of one year or more, since prior to the change to the Property's current zoning designation which subsequently prohibits the Property's current use.

The nonconforming use of the Grey Rock Property was not lost due to abandonment or discontinued use under the applicable State law. Courts have held, an "established nonconforming use runs with the land, and hence a change in ownership will not destroy the right to continue the use." 8A McQuillin, *The Law of Municipal Corp*. §25.183.50.

Through exhibits consisting of zoning maps, testimony from Bill Clowney and the current owner of the Property, stating the commercial use has been consistent since long before the change in zoning, and dated newspaper articles detailing the background of the Grey Rock Property, Petitioner established that the zoning regulations prior to the change in 2000 are operative in this case and as discussed, Petitioner established that the nonconforming commercial use within the DR 3.5 zone has continued uninterruptedly since before the inception of the DR 3.5 zoning in 2000. (Petitioner's Ex. 5, 6, 7A). There is no testimony or evidence offered that the nonconforming commercial use has been discontinued or abandoned on the Property for a period greater than one year. *McLay v. Maryland Assemblies, Inc*., 269 Md. 465, 466-67 (1973).

Per the Baltimore County Code, catering venues as well as commercial enterprises are permitted within the BM zoning designation. (See BCZR § 233.1B). Thus, since the Grey Rock

Property's Lawn-parcel has been utilized as a commercial event and catering venue in connection with the Mansion-parcel without interruption, the ALJ should grant the Petition for special hearing permitting the Lawn-parcel's continued use as such.

As reiterated above, Petitioner, through evidence and testimony from the Property's prior owner, past zoning maps which depict the Property, and newspaper articles which detail the background of the Property can establish that the Grey Rock Mansion Property's use as a commercial catering and event venue has operated continuously and has not been abandoned for one year or more between 1991 to present day.

Ultimately, the Administrative Law Judge should find that the use of the Grey Rock Mansion Property's Lawn/Parking Area must be preserved or "grandfathered" since that use has existed prior to the 2000 CZMP's changing of the Lawn-parcel's zoning to DR 3.5, and that permitted commercial use has not been interrupted for one year or greater, thus permitting the continued commercial use of the parcel in accordance with BCZR § 233.

III. No conditions or limitations should be imposed as a condition on the grant of the Special Exception.

It is anticipated that the Protestants may well request that the ALJ impose certain restrictions and/or limitations as part of the grant of any zoning relief. However, any such imposition is improper in this case unless it relates specifically to the requested relief (i.e. a Special Exception for residential quarters). Certainly, the ALJ is empowered to impose reasonable and appropriate conditions upon the grant of any special exception (See. BCZR 502.2). However, such conditions must be reasonable and relate to the impact of the particular special exception use granted (See *Mossburg, Infra.* and *Skipjack Cove Marina, Inc. v. Board of County Comm'rs* 264 Md. 381 (1972)).

The Protestants expressed concerns here are as to the impact of the commercial business (which is permitted by right) and their claim that the Mansion owners should be obligated to help fund "common expenses" in the overall community of Grey Rock. But neither of these issues are relevant to the matter at hand. The relief granted here is for residential quarters and any imposed restriction/condition must relate to the impacts of *that use* and not corollary issues. One can scarcely imagine any appropriate restriction that could be imposed to mitigate the impact of a caretaker living within the Mansion.

Conclusion

For the reasons stated above, the Honorable Administrative Law Judge should grant the requested relief within both the Petition for Special Exception as well as the Petition for Special Hearing.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of February, 2022, that a copy of Petitioner's Memorandum in Lieu of Closing Argument was sent via email to:

Michael McCann – michael@mmccannlaw.net
Attorney for Respondents

Lawrence E. Schmidt