IN THE MATTER OF GREY ROCK PROPERTIES, LLC, LEGAL OWNERS AND PETITIONERS FOR SPECIAL HEARING AND SPECIAL EXCEPTION ON THE PROPERTY LOCATED AT 400 GREY ROCK ROAD ALSO KNOWN AS 400 CLIFTON COURT (GREY ROCK MANSION)	* * * * *	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY
3rd ELECTION DISTRICT 2nd COUNCIL DISTRICT	* *	Case No. 21-273-SPHX

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OPINION

This matter comes before the Baltimore County Board of Appeals ("Board") on an appeal of the Opinion and Order of Administrative Law Judge Maureen E. Murphy dated March 3, 2022, which granted, in part, a Petition for Special Exception and a Petition for Special Hearing filed by Grey Rock Properties, LLC., ("Petitioner" or "Grey Rock") for its property located at 400 Grey Rock Road (a/k/a 400 Clifton Court and hereinafter the "Property") in the Pikesville community of Baltimore County. The appeal was filed by Grey Rock Maintenance Corporation, Grey Rock Flats Condominium Association, and Grey Rock Villas Association (collectively the "Protestants").

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(s); and

2. Approval of a Special Hearing, as permitted by BCZR §500.7, to approve an existing commercial meeting facility use and attendant parking as legal, non-conforming uses.

A *de novo* hearing was held before this Board on November 30, 2022, via Webex. Petitioners were represented by Lawrence E. Schmidt, Esquire and Smith, Gildea & Schmidt,

LLC. Protestants were represented by Michael R. McCann, Esquire. A public deliberation was held on February 22, 2023, via Webex.

BACKGROUND

The subject 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 Mansion building is entirely within the BR zone, as is a portion of the adjacent parking lot and a part of the lawn. The Special Exception Petitioner seeks is to allow a limited residential use in this commercial/business zone, specifically a caretaker's apartment for one individual and their partner/spouse.[1] Areas of the parking lot and lawn which are zoned DR 3.5 are the subject of the Special Hearing request for a non-conforming use designation. The second parcel is 0.7444 in area and contains a parking area which is used by the Petitioners in connection with activities at the Mansion and (by agreement with the residential neighbors) for parking at an adjacent community swimming pool. This second parcel is zoned DR 3.5 and the non-conforming use of this parcel for commercial parking is also requested by Petitioner. The parcels are within close proximity to one another near the terminus of a private road (*i.e.*, Grey Rock Road) which leads into the community from Reisterstown Road. This road ends as a circular driveway immediately in front of the Mansion Building. The Mansion building, parking area, and lawn are used by the Petitioner as a commercial venue to hold events such as weddings, memorial services, parties, etc.

[1] The ALJ below granted the special exception but limited the permission for a living quarters to one and only one person.

As to the history of the Property and its current use, 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, and was a confidant of George Washington. 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.

The first use of the Property as a catering/event venue occurred while the Trinitarians were owners. At that time, the Property was occasionally rented as a catering facility by the Trinitarians to generate income. The catering company affiliated with the site during the Trinitarians ownership was Valley Catering.

In the mid 1980's the Property was acquired by an entity (Simply Elegant Catering) of which Mr. Skudrna was a principal. The Property and Mansion was thereafter converted for exclusive use as a commercial event and catering venue. Mr. Skudrna initially owned both the Property and the catering business that was operated thereon. Later, he sold the business (retaining the Property) to Bill Clowney in 2003 and eventually (in 2010) sold the property to Mr. Clowney. Mr. Clowney operated the catering business on the Property during that time. The current owners acquired the Property at foreclosure in 2018 and have continued the catering operation since then.

The residential community of Grey Rock was approved and built in a series of phases beginning in 1989. The County Review Group ("CRG") was the entity of County government that approved residential development in the Grey Rock community when it was first proposed. 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 and their attendant uses (*i.e.*, parking), by right. Another subsequently 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.*)

In 2000, as part of the Comprehensive Zoning Map Process ("CZMP"), the zoning on the Mansion's property was changed from BR and BM to a combination of BR and DR 3.5. The area containing the Mansion, a small area of the lawn and a small area of the parking lot were changed to BR. The remaining parking area and most of the lawn were changed to DR 3.5.

On June 20, 2003, a Final Development Plan was approved for Phase 4 of the Grey Rock Residential Community (Petitioner's Ex. 6). On May 12, 2004, the First Amended Final Development Plan was approved. This plan shows the current zoning of the property. (*Id.*)

DISCUSSION

At the hearing before the Board, on behalf of the Petitioner, testimony was presented by Anne Pomykala, the managing member (principal) of Grey Rock Properties, LLC. Ms. Pomykala is experienced in operating facilities similar to the catering facility venue at Grey Rock, in that she owns and operates the Gramercy Manson in Baltimore County and also the 1840's Inn and Plaza in Baltimore City. Also testifying in support of the Petition was Robert Skudrna, a previous owner of the Property and business thereon, and Carl Richards, the longtime supervisor in the County Zoning Office who now serves as a consultant and qualified as an expert witness in the interpretation and application of the County's zoning ordinance. In addition to

these witnesses, the Petitioner submitted a number of documents (Exhibits 1-10A-B). These included photographs, plans depicting the development of the neighborhood, prior relevant decisions of the ALJ, newspaper articles and other relevant material.

On behalf of the Protestants, testimony was presented by Steven Weinstein, president of the Grey Rock Maintenance Corporation. This corporation owns and maintains the common areas of the Grey Rock community. Mr. Weinstein expressed concern that allowing a residential component to the Mansion would just add additional people and traffic coming in and out. He spoke about the problems that the community currently has with the patrons of the Mansion using the lawn area in front of the Mansion. He explained that, contrary to Ms. Pomykala's testimony, this area is used regularly during events, and Petitioners have never cleaned up the cups, bottles and other trash that are left behind after its events, nor have they contributed monetarily to the costs and maintenance of the access road or the lawn area. He expressed concern that the residential component could potentially be expanded in the future and the community would need to reach out to the County due to the non-conforming use. He also questioned the need for a caretaker given that the facility has not had one in the past and there have been no issues.

Three others testified, Richard Sopher, Doris Randall and Lawrence Levin. They all testified similarly to Mr. Weinstein. They expressed concerns about having a caretaker living in the Mansion.

DECISION

SPECIAL EXCEPTION

In order to grant a request for a Special Exception under BCZR, §502.1, 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.

In *Schultz v. Pritts*, 291 Md. 1, 22-23, 432 A.2d at 1331 (1981), the Court of Appeals held that "the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and therefore should be denied, is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." The Supreme of Maryland in *People's Counsel for Baltimore County v. Loyola College* in Md. 406 Md. 54, 106, 956 A.2d 166 (2008) upheld that longstanding Shultz analysis, explaining that a Special Exception use has "certain [inherent] adverse effects .... [which] are likely to occur". In its analysis, the *Loyola* Court observed that "[t]he special exception adds flexibility to a comprehensive legislative zoning scheme by serving as a 'middle ground' between permitted use and prohibited uses in a particular zone." (*Id.*, 406 Md. at 71, 956 A.2d at 176 (2008).) The *Schultz* and *Loyola* Courts, and more recently in *Attar v. DMS Tollgate, LLC*, 451 Md. 272,285 (2017) have expressly recognized that "[a] special exception is presumed to be in the interest of the general welfare, and therefore a special exception enjoys a presumption of validity." (*See also Loyola*, 406 Md. at 84, 88; 105 *Schultz*, 291 Md. at 11). This is in stark contrast to a variance request which seeks to do something within the zoning classification that is not otherwise permitted.

Based on the *Schultz* standard, once an applicant puts on its prima facie evidence in support of a special exception, the opponents must then "set forth sufficient evidence to indicate that the proposed [use] would have any adverse effects above and beyond those inherently associated with such use under the *Schultz* standard." *Attar*, 451 Md. at 287. (*See Montgomery County v. Butler*, 417 Md.271, 276-77 (2010) (opponent must show "non-inherent adverse effects" to "undercut the presumption of compatibility enjoyed by a proposed Special Exception use").) (*See also, Clarksville Residents Against Mortuary Defense Fund, Inc. v. Donaldson Properties*, 453 Md. 516, 543 (2017) ("there is a presumption that the [Special Exception] use is in the interest of the general welfare, a presumption that may only be overcome by probative evidence of unique adverse effects").)[2]

Ms. Pomykala presented testimony regarding the proposed caretaker's quarters. Pursuant to her testimony, a caretaker would be beneficial to the Mansion as well as the surrounding neighborhood because they would be there to provide 24-hour care of the premises. They would perform routine maintenance and repairs of the facilities and grounds. They would

[2] The use of the word "presumption" in this context is confounding. The special exception **uses** have been legislatively pre-determined to be proper, under certain circumstances, within the zoning classification in question. Consequently, special exceptions are distinct from variances which involve uses not legislatively pre-approved. At the same time, there is absolutely nothing that eases the burden of persuasion as to the criteria in BCZR § 502, *et seq*. It is the applicant's obligation to present convincing evidence as to each aspect of the BCZR special exception requirements and to establish by a preponderance of the evidence that the special exception use is warranted in that particular location. There is no burden shifting to the protestants. Everyone knows and agrees that if the applicant filed its petition, showed that the sought-after use was permitted by special exception, and then rested, the applicant would lose because the applicant had failed to prove that the statutory criteria had been met. If there were some sort of meaningful evidentiary "presumption" in favor of the special exception, then the special exception would be granted based on that minimalist showing unless the protestants could affirmatively demonstrate that the BCZR criteria were **not** satisfied. The so-called presumption means only that the petitioner does not need to show that the special exception will benefit the area. Nonetheless, the applicant is still required to show that the proposed use will not be detrimental at the proposed location. *See generally Montgomery County v. Butler Landscape Design*, 417 Md. 271, 301-08 (2010). Justice Murphy's concurrence in *People's Counsel vs. Loyola College*, 406 Md. 107 (2008) (Murphy, J., concurring) is the most succinct explanation of how the Baltimore County special exception process fits into the law's fairly grand jurisprudence regarding presumptions. *Id.* at p. 109. Nothing in the Board's decision in this matter should be interpreted as approval of an evidentiary presumption that eases or shifts the burden of proof.

also be present in case of an emergency, such as a medical emergency or fire.

The living quarters would be located on the second floor. The quarters would consist of a bedroom, a kitchen area, and a bathroom. It would be approximately 800 square feet and would cover approximately one quarter of the area of the second floor. All the catered events occur on the first floor. The only current uses of the second floor are an office and separate bride and groom prep rooms. The living quarters would not require any build outs of the current building.

The building would not be used for a hotel or bed and breakfast. There would be no additional accommodations to the caretaker's quarters. Additionally, Ms. Pomykala is opposed to the restriction allowing only one person to occupy the living quarters because it is extremely difficult to find someone who is experienced enough for the job, and single. She testified that there is enough room for more than one person in the living quarters.

Mr. Richards provided expert testimony regarding the proposed living quarters. He testified that the proposed residential use would cause no detrimental impact to the neighborhood and would be a benefit because of the on-site supervision of the property. He also addressed all the factors listed in BCZR, §502.1 and concluded that the proposed residential use meets the standards of the section.

- **The Proposed addition of living quarters satisfies the applicable special exception standard.**

The Petitioner presented testimony and evidence that the proposed addition of a living quarters will not have a detrimental impact greater than those effects inherently associated with a living quarter irrespective of its location within the zone. Mr. Richards testified as an expert in zoning on this issue. He testified that there would be no adverse impacts in having a person,

or small family living in the quarters. Any impact at this location would not be more impactful than at a different location within the same zone.

- **The proposed use would not be detrimental to the health, safety or general welfare of the locality involved (BCZR § 502.1.A).**

Sufficient evidence exists to show that the addition of a living quarters will not be detrimental to the health, safety and welfare of the locality involved. In fact, as Petitioner points out, the addition of a caretaker on the premises would help promote health, safety and welfare. The caretaker would be on site in case a situation was to arise which demanded immediate attention such as a fire or a break-in.

- **The proposed use will not tend to create congestion in roads, streets or alleys therein (BCZR § 502.1.B).**

The Court in *Anderson*, 23 Md. App. 617-25 (a case that involved a funeral home seeking a special exception approval), reversed the Board's finding that the use would create traffic problems as there was no probative evidence to show "that the particularized proposed use has detrimental effects above and beyond the inherent ones ordinarily associated with such uses." Following that reasoning, there is no evidence to suggest that one person or one person with a partner/spouse will have the effect of creating congestion in the roads, alleys, or streets.

- **The proposed use will not create a potential hazard from fire, panic or other danger (BCZR § 502.1.C).**

As previously stated, the addition of a caretaker would help to alleviate any worries of fire, panic or danger because someone would be physically on the mansion's premises. Having someone live on the premises would help to protect the community in that regard.

- **The proposed use will not tend to overcrowd land and cause undue concentration of population (BCZR § 502.1.D).**

The subject site is approximately 2.7 acres with a mansion located on it. Having a caretaker or caretaker couple, reside on the already existing premises will not have the effect of overcrowding the land and causing undue concentration of population, even including a caretaker with their partner/spouse.

- **The proposed use will not interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements (BCZR § 502.1.E).**

There will be no impact on schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements. The mansion has been operating on the land for decades. Adding a caretaker with a partner/spouse would have virtually no impact on such public requirements, conveniences or improvements.

- **The proposed use will not interfere with adequate light and air (BCZR § 502.1.F).**

The addition of living quarters inside of an existing building will have no interference with adequate light and air.

- **The proposed use will not 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 (BCZR § 502.1.G).**

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 pre-approved by the Baltimore County Council and absent convincing evidence to the contrary, is valid. *See Schultz v. Pritts*, *supra* at p. 6-7.

- **The proposed use will not be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations (BCZR § 502.1.H).**

Nothing is proposed to the exterior of the building, including the surrounding grounds, Therefore, there is no impact on the impermeable surface or vegetation.

- **The proposed use will not 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 (BCZR § 502.1.I).**

There is no evidence that the addition of living quarters in an existing building will have any impact whatsoever on the environment and natural resources.

Based upon the evidence and testimony presented, the Board finds that the use for which the special exception is requested, including permission for a couple to reside in the requested caretaker quarters, will not violate Sections A – I of BCZR §502.1.

SPECIAL HEARING

A Special Hearing Petition is effectively a request for declaratory judgment. (BCZR § 500.7, *Antwerpen v. Baltimore County*, 163 Md. App. 194, 209 (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, 403 (1974); citing *Jahnigen v. Staley*, 245 Md. 130, 137, 225 A.2d 277 (1967).)

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).)

In this case, the issue is whether there exists a legal non-conforming use of the catering business on the Mansion property. The Mansion property consists of the Mansion itself, the lawn, and the parking lots. The testimony of Ms. Pomykala and Mr. Skudrna establish that, prior to the zoning change in 2000, the facility acted as an active catering facility. The Mansion itself was utilized for the catering and event hosting. The lawn area was used during the events, and the parking lots were utilized by the patrons of the catered events. After the change in zoning in 2000, the Mansion continued to operate as a catering facility. The testimony was clear that there has not been any interruption in the use of the Mansion. The catering and event hosting has been constant before and after the change in zoning. The shared parking lot has remained unchanged physically since prior to the zoning change, and its use has been constant

before and after the change in zoning. Between Mr. Skudrna and Ms. Pomykala's testimony, the mansion operated as a catering business constantly from the 1980s through present time.

Additionally, Mr. Skudrna testified that in 1999, a permanent tent structure measuring 40 feet x 60 feet was erected on the property to hold catered events. Mr. Skudrna further testified that the tent is still utilized today. Protestants assert that the tent is a non-conforming use that did not exist prior to the zoning change in 2000. They argue in their brief that the permanent tent did not exist until sometime after 2003, citing various plats, ariel photos and Mr. Clowney's testimony from the hearing before the Administrative Law Judge. Based on the evidence and testimony, the Board finds that the tent indeed existed prior to the zoning change in 2000. Even if the tent was replaced after 2003, as Protestants assert, we do not find an interruption in the use of the tent. Further, Mr. Richards testified as an expert in zoning regarding the non-conforming use. He testified that the existence of a tent is immaterial. The use of the land is what zoning considers. The tent was used for the catering business, which was permissible under the zoning prior to 2000. Protestants offered no expert testimony regarding this issue. The Board agrees with the assessment of Mr. Richards. The use of the tent is incidental to the use as a catering and event hosting business.

CONCLUSION

In summary, the Board approves the Special Exception to allow a residence for a caretaker and their partner/spouse in the Mansion in the location identified in the hearing before this Board, and approves the Special Hearing to permit the nonconforming use in the residential zoning designation.

ORDER

THEREFORE, IT IS THIS 29th day of June, 2023, by the Board of Appeals of Baltimore County, hereby:

ORDERED that the Petition for Special Exception, pursuant to BCZR §236.2, to permit living quarters for a caretaker and their partner/spouse in a commercial building, in the location within the building as presented to the Board in the hearing, is hereby **GRANTED**; and it is,

FURTHER ORDERED, that the Special Hearing, pursuant to BCZR §500.7, to approve an existing commercial meeting facility use and attendant parking as legal, non-conforming uses, is hereby **GRANTED.**

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through 7-210 of the *Maryland Rules*.

BOARD OF APPEALS OF
BALTIMORE COUNTY

Joseph L. Evans, Panel Chair

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Board of Appeals of Baltimore County

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June 29, 2023

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RE: In the Matter of: *Grey Rock Properties, LLC – Legal Owner*
Case No.: 21-273-SPHX

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Sunny Cannington Hay

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: See Distribution List following

Anne Pomykala and Brian Pomykala/Grey Rock Properties, LLC
Steven Weinstein, President/Grey Rock Maintenance Corporation
Richard Soypher, President/Grey Rock Flats Condominium Association
Lawrence Levin, President/Grey Rock Villas Association
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney/Office of Law