IN RE: PETITIONS FOR SPECIAL HEARING AND SPECIAL EXCEPTION	*	BEFORE THE
(400 Grey Rock Road)(400 Clifton Court)	*	OFFICE OF ADMINISTRATIVE
3rd Election District		
2nd Council District	*	HEARINGS FOR
Grey Rock Properties, LLC		
	*	BALTIMORE COUNTY
Legal Owners/Petitioners	*	**Case No. 2021-0273-SPHX**

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") for consideration of Petitions for Special Hearing and Special Exception were filed by Grey Rock Properties, LLC ("Petitioner") for the property located at 400 Grey Rock Rd. and 400 Clifton Ct., Pikesville (the "Property"). The Special Hearing Petition was filed pursuant to Baltimore County Zoning Regulations ("BCZR"), §500.7 to approve an existing commercial meeting facility use and the attendant parking as legal, nonconforming uses, and from the BCZR, §409.12.B to approve a modified parking plan, as well as for approval of a Special Exception pursuant to BCZR, §236.2 to permit living quarters in a commercial building.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Anne Pomykala and her son, Brian Pomykala, members of the Petitioner, appeared in support of the Petitions along with Lily Tien, landscape architect, of P.E.L.A. Design, Inc. who prepared and sealed a site plan (the "Site Plan"). (Pet. Ex. 1). Larry Schmidt, Esquire and Smith, Gildea & Schmidt, LLC represented the Petitioner. Michael R. McCann, Esquire represented (1) Grey Rock Maintenance Corp; (2) Grey Rock Flats Condominiums; and (3) Grey Rock Villas, who were opposed to the

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requested relief. Memorandums in Lieu of Closing Argument were filed by the Parties by agreement on February 16, 2022.

Zoning Advisory Committee ("ZAC") comments were received from the Department of Planning ("DOP"), Department of Environmental Protection and Sustainability ("DEPS"), and Development Plans Review ("DPR") which agencies did not oppose the requested relief.

Counsel for the Parties agreed to proceed by way of modified proffer. The Site Plan shows that the Property consists of two (2) separate lots of record which total 2.7 acres as follows: (1) a triangular-shaped lot which is 2.025 acres, is improved with the historic Grey Rock Mansion (BA-39) which was built between 1857-1861 by the John Eager Howard family; a tent used for catering events; a paved parking area with 60 parking spaces, a gravel lot with an additional four (4) parking spaces, as well as a lawn area on the eastern side (the "Mansion Lot"); and (2) a rectangular-shaped lot which is 0.744 acres, is paved with 40 parking spaces and is used by the Petitioner in connection with events/activities on the Mansion Lot, and also by private agreement, with the adjacent community swimming pool (the "Shared Parking Lot"). The Mansion Lot is split-zoned Business-Roadside (BR) and Density Residential (DR 5.5). The Shared Parking Lot is zoned DR 5.5. According to Mr. McCann, his client, Grey Rock Maintenance Corporation owns the circular driveway leading up to the Mansion from Reisterstown Rd. as well as the front (southern) lawn area.

As shown on the Site Plan, the zoning lines for the BR zone on the Mansion Lot encompass the following: (1) the Mansion; (2) most of a 60-space, paved parking lot; (3) a 4-space gravel parking lot; (4) part of the area where an outdoor, white tent is located; and (5) the lawn on the eastern side of the Property. (Pet. Ex. 1). Because the remainder of the Mansion Lot is zoned DR 5.5, the Office of Zoning Review is requiring approval of the commercial uses in the DR 5.5 zone

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as non-conforming. Based on Mr. Schmidt's proffer, both the Mansion Lot and the Shared Parking Lot have been used since the 1980s, as a community meeting facility where catered events take place. As of June 10, 1991, the County Review Group ("CRG") approved a First Amended Final Development Plan for Phase 2 for the adjacent Grey Rock Residential Community (the "1991 CRG Plan"). (Pet. Ex. 6). The 1991 CRG Plan shows the original shape of the Mansion Lot was larger than it appears on the Site Plan. The Mansion Lot was zoned BR and BM and the Shared Parking Lot area was zoned BM. On February 14, 1994, a First Amended Final Development Plan was approved (the "1994 CRG Plan") and shows the same BR/BM zoning for the Mansion Lot and for the Shared Parking Lot (Phase 4). (Pet. Ex. 6). Protestants assert, however, that neither the 1991 CRG Plan, nor the 1994 CRG Plan, show a catering tent, only the Mansion building.

In their Closing Memorandums, the Parties agree that, in 2000, as part of the Comprehensive Zoning Map Process ("CZMP"), the zoning on the Mansion Lot was changed from BR/BM to BR/DR 3.5, and the zoning on the Shared Parking Lot was changed from BM to DR 3.5. On June 20, 2003, a Final Development Plan was approved for Phase 4 of the Grey Rock Residential Community (the "2003 CRG Plan") and on May 12, 2004, the First Amended Partial Development Plan was approved showing the current zoning (Pet. Ex. 6). Protestants assert that neither the 2003 CRG Plan, nor the 2004 CRG Plan, show a catering tent as it appears today but rather a patio area with walkways to the main building and parking lot.

Testifying for the Petitioner on the non-conforming use issue was Bill Clowney, the previous owner of the Property, and operator of the catering business, who sold both to the Petitioner in 2018. Mr. Clowney testified that, in 1998, he began working as an employee for the previous owners of the Property in their catering business. Mr. Clowney testified that, in 1998, a permanent catering tent measuring 40 x 60 was erected and has existed in the same place as it does

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today. He stated that it was and is used to hold catered events. The 1998 tent had a portable HVAC unit, strings of lights, a center chandelier but no doors. Mr. Clowney relayed that he purchased the business in 2003, and in 2004, he replaced the tent with one of the same size because the older one was worn. The 2004 tent also had HVAC, the lighting was upgraded, a slate floor was constructed and doors to the tent were installed. The 2004 tent was erected in the same place as the 1998 tent. Mr. Clowney did not recall any permits being obtained for either tent. Mr. Clowney also testified that while he was associated with the business and the Property between 1998 – 2018, there was a total of 75-80 parking spaces for the catering business.

Also testifying for the Petitioner was Brian Pomykala and his mom, Anne Pomykala, who expressed their desire to have either Brian Pomykala or another caretaker reside in the Mansion in the event of an emergency and to take care of small maintenance. There have been emergencies including a fire in a bathroom and flooding in basement. The Pomykalas, or an entity owned by them, also own and operate Gramercy Mansion. They testified that the proposed use as a caretaker's quarters will consume approximately 1,000 sf including one (1) bedroom, kitchen and one (1) bathroom. Other than light maintenance, the Petitioner will continue to employ outside contractors. The Pomykalas testified that the current tent which is used for catered events is the same 2004 tent. There is no bathroom in the tent.

Mr. Schmidt also proffered that the Special Exception request to permit a caretaker to live in the Mansion met all of the BCZR, §502.1 factors. He stated that allowing the caretaker to be present in the Mansion 24/7 meets the health, safety and general welfare of the neighborhood. Further, permitting this residential use in a commercial facility has no impact on traffic, lights, sounds, environmental features, public improvements and is consistent with the spirit and intent of the BCZR.

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Testifying in opposition to the relief was Steven Weinstein, as President of Grey Rock Maintenance Corporation ("GRMC"), who stated that GRMC owns and maintains the common areas including the main driveway from Reisterstown Rd. to the Mansion, the gatehouse, fencing, storm water management pond(s) and the community swimming pool. Mr. Weinstein testified that when catered events occur, the property owned and maintained by GRMC has been damaged by vehicles parking in the grass along the main driveway and circle as well as discarded trash. He has resided in the adjacent neighborhood for 13 years and "does not remember" seeing a tent. GRMC is opposed to the relief seeking approval of a caretaker residing in the Mansion and pointed out that no one has lived in the Mansion. Mr. Weinstein acknowledged that a catering business has taken place at the Mansion since he moved in 2013. If he had to choose, Mr. Weinstein would select one (1) resident caretaker over a significant other, a spouse or family.

Richard Soyphen, President of Grey Rock Flats Condominiums, testified on behalf of the 160 residents that they are opposed to a resident caretaker. He moved into his condominium at 20 Joanna Court in 1999/2000. Mr. Soyphen also did not recall seeing the tent when he moved in. He echoed the issues with the events at the Property due to loud noise, parking problems, trash left after events. He cannot see the tent from his home.

Lawrence Levin, 8823 Howard Forest lane, is the President of Grey Rock-Villas Condominiums. In his view, the Plat to Accompany Special Hearing dated April 9, 2003 (Pet. Ex. 7B) shows a patio and not a tent.

SPECIAL HEARING

A hearing to request special zoning relief is proper under BCZR, §500.7 as follows:

> The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning

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> regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to 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.

"A request for special hearing is, in legal effect, a request for a declaratory judgment." *Antwerpen v. Baltimore County*, 163 Md. App. 194, 877 A.2d 1166, 1175 (2005). And, "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).

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 Assoc., Inc. v. Mayor and City Council of Baltimore*, 392 Md. 563, 569 (2006). Change in ownership does not destroy the non-conforming use status. *Kastendike v. Balto., Ass'n for Retarded Children*, 267 MD. 389, 396 (1974). A use transferred to a successor in interest will continue to be legal so long as the nature and character of that use is unchanged and substantially the same facilities are used. Green v. Garrett, 192 Md. 52 (1949). In Baltimore County, the law regarding nonconforming uses is set forth in BCZR, §104.1, 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.

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The definition of non-conforming use in BCZR, §101.1 is:

> NONCONFORMING USE — 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.

An intensification of a nonconforming use is permissible as long as the nature and character of the use is unchanged and substantially the same facilities are utilized. *Wilson v. Mayor and Com'rs of Town of Elkton*, 35 Md. App. 417, 425 (1977) (citing *Johnigen v. Staley*, 245 Md. 130, 137 (1967)). A property owner does not have the right to change, or add to the use, a new and different use, amounting to a drastic enlargement or extension of the prior existing use. In BCZR, §104.3, there is a limit on extension of nonconforming buildings and uses as follows:

> No nonconforming building or structure and no nonconforming use of a building, structure or parcel of land shall hereafter be extended more than 25 percent of the ground floor area of the building so used. This provision does not apply to structures or uses restored pursuant to Section 104.2, except as authorized by the Zoning Commissioner pursuant to Section 307.

The issues in this case are first, whether there was a legal non-conforming use of the community meeting facility/catering business on the Mansion Lot (which includes the tent, the 60-space parking lot, the 4-space gravel lot, and the lawn on the eastern side of the Property) and the Shared Parking Lot. The second issue is whether there has been an illegal intensification of the use.

Upon agreement of the Parties, I find that the applicable year is 2000 when the CZMP reclassified the Mansion Lot from the BR/BM zone to BR/DR 3.5 and the Shared Parking Lot from BM to DR 3.5. Weighing the evidence in this case, I find that Mr. Clowney, who was

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associated with the catering business at the Property beginning as an employee in 1998, and later as an owner/operator until 2018, testified credibly as to the continuous and uninterrupted use of the Mansion Lot as a catering business and specifically that the catering tent was in place in 1998 and was used for events. He stated that the 2004 tent is the same dimensions as the 1998 tent and is in the same location. Both tents have/had HVAC and lighting; the fact the 2004 tent has doors or walkways to the lawn area does not make the tent an illegal intensification because the nature and character of the use is unchanged and substantially the same facilities are utilized. (See *Wilson*, *supra*, at 425).

Protestants' contention that the 1991 and 1994 CRG Plans do not show a tent does not equate to an illegal intensification of the nonconforming use. However, on both the 1991 and 1994 CRG Plans, the Mansion Lot and the Shared Parking Lot were zoned BR and BM. As such, at that time, the commercial meeting facility was permitted by right on the entire Property and therefore, the use of a tent, lawn area and associated parking for the commercial purposes was conforming. While both the 2003 and 2004 CRG Plans show a square-outlined area in the same location as the tent, given that a tent is not a building, it would be unlikely that it would be depicted on a CRG Plan. That fact notwithstanding, I find that whether or not a tent was erected and/or used in 1991, 1994, 2003 or 2004, does not change the use of the Property for a commercial meeting facility. There was no evidence of abandonment or interruption of the use.

In regard to parking, Mr. Clowney testified that the community meeting facility/catering business has always had 80 parking spaces. On the 2003 Plan to Accompany Special Hearing (Pet. Ex. 7B), the Mansion Lot shows that more than 60-parking spaces were provided. It also shows that the Shared Parking Lot was labeled as 'Parcel 'C' Parking Easement 0.744 ac +/-. Comparing the 2003 Plan to Accompany Special Hearing with the Site Plan, it is clear that at least 20 spaces

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were moved from the Mansion Lot to the Shared Parking Lot, and that at least two (2) trees were planted on the Mansion Lot where those previous parking spaces were located, likely to buffer the new adjacent Grey Rock Residential Community. The Parties did not dispute that the Shared Parking Lot has been used by both guests of the community meeting facility/catering business, and by patrons of the community pool.

Based on this evidence, I find that the parking spaces on the Mansion Lot and the parking spaces on the Shared Parking lot, which are now located within the DR 3.5 zone, are the same parking spaces which existed prior to, and during, 2000 and are therefore, legally nonconforming. The change in location of parking spaces from the Mansion Lot to the Shared Parking Lot does not change the nature of the commercial parking use, and is therefore not an illegal intensification. Because of this, I find that the alternative relief for approval of a modified parking plan under BCZR, §409.12.B is moot and will be dismissed. As a result, I will not require the 60-space parking lot or the 4-space gravel parking lot to be striped or paved/repaved as recommended by DOP. Given the non-conforming use status approved herein, I do not find that a Landscape Plan or a Lighting Plan is required as recommended by DPR because there is no exterior development proposed here. All renovations are interior to accommodate a single caretaker residence.

For these reasons, I find that the approval of the Property as a nonconforming, commercial meeting facility use and associated parking should be granted.

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 (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

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emphasized a special exception is properly denied only when there are facts and circumstances showing 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.

As noted above, the Petitioner is requesting approval to permit a caretaker and spouse or significant other to live in the Mansion. I find the request for a single caretaker (not a spouse, significant other, children or other related or unrelated persons) to reside in the Mansion, serves the health, safety and general welfare of the community by having someone present for emergency situations and general maintenance. There were no facts or circumstances which showed any adverse impacts of having a resident caretaker live in the Mansion, much less adverse impacts above and beyond those inherently associated with living quarters in a commercial building. Indeed, this particular building, with its historic significance and prior use as a home, is an appropriate place to house a caretaker, and is within the spirit and intent of the BCZR. Given the testimony of the Protestants as to the loud events that occur at the Property, the person who will be most affected by those events will be the caretaker, who may then be able to observe and control these events. The Petitioner, through the proffer of Mr. Schmidt, provided uncontroverted testimony that the proposed living quarters in a commercial building, meets all of the BCZR, §502.1 factors.

THEREFORE, IT IS ORDERED this 3rd day of **March, 2022**, by this Administrative Law Judge that the Petition for Special Hearing under BCZR, §500.7 to approve the existing commercial meeting facility use and attendant parking as legal, nonconforming uses, be, and they are hereby **GRANTED**; and

IT IS FURTHER ORDERED that the Special Hearing request to approve a modified parking plan pursuant to BCZR, §409.12.B be, and it is hereby, **DISMISSED AS MOOT**; and

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IT IS FURTHER ORDERED that the Petition for Special Exception under BCZR, §236.2 to permit living quarters in a commercial building be, and it is hereby, **GRANTED**.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its 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, Petitioner would be required to return the subject property to its original condition.

2. One (1) resident caretaker shall be permitted to reside in the Mansion. No other persons, including without limitation, spouses, significant others, children, or persons related by blood, marriage or unrelated persons, shall reside on the Property.

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

Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlm

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JOHN A. OLSZEWSKI, JR.
County Executive

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

March 3, 2022

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RE: Petitions for Special Hearing and Special Exception
Case No. 2021-0273-SPHX
Property: 400 Grey Rock Road (400 Clifton Court)

Dear Counsel:

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,

Maureen E. Murphy

MAUREEN M. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlm
Attachment

c: *See* Email Addresses Next Page

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