

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(920 Essex Avenue)		
15 th Election District	*	OFFICE OF
7 th Council District		
Boulevard Christian Church	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Churches for Streets of Hope, Inc.	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
	*	Case No. 2020-0005-X
Petitioners		
* * * * *		

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) of a Petition for Special Exception filed on behalf of Boulevard Christian Church, legal owner, and Churches for Streets of Hope, Inc., lessee (collectively “Petitioners”) for the property located at 920 Essex Avenue, Essex (the “Property”) pursuant to Baltimore County Zoning Regulations (“BCZR”) §502.1 to approve a Community Care Center.

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 on December 18, 2020 by the posting of two (2) signs as directed by the Department of Permits, Approvals and Inspections (“PAI”), and re-photographed and certified under oath by sworn statement on January 3, 2021 by Linda O’Keefe, pursuant to BCZR, §500.7. Appearing in support of the Petition were Barbara Koch, Pastor Ken White, Patrick Dickerson, and Amelia Jackson, along with Matthew Sichel, PE of KCI Technologies who prepared a site plan which accompanied the Petition (the “Site Plan”). (Pet. Ex. 1). Michael J. Moran, Esquire represented the Petitioners. There were several Protestants/interested citizens in attendance who testified in opposition.

ZAC comments were received from the Department of Planning (“DOP”), the Bureau of Development Plans Review (“DPR”). Neither agency opposed the requested relief.

FACTS AND EVIDENCE

The Property is 5.89 acres (169,620 sf) located between Essex Avenue and Catherine Avenue and zoned density-residential (DR 5.5). It is improved with an 'L' shaped, 2-story building constructed in 1962 and occupied by the Boulevard Christian Church (the "Church"). (Pet. Ex. 2). The Church fronts on Essex Avenue, with mature trees in the rear, and a parking lot on both sides of the building. On the eastern side of the Property is a 6 ft. alley and a series of brick row homes which face Leeanne Road. On the western side is Trinity Temple Church. (*Id.*). The Church also owns the adjoining property located at 913 Catherine Avenue.

Churches for Streets of Hope, Inc. ("Streets of Hope") was incorporated in January of 2011 and received 501(c)(3) status in 2012. Streets of Hope is governed by a Board of Directors with the members elected to serve for 1 year and employees running the day-to-day operations. (Pet. Ex. 4). The mission of Streets of Hope is to provide housing and food to homeless men in the southeast community of Baltimore County between November and April of each year. (Pet. Ex. 5). The proposal here is for Streets of Hope to operate a permanent shelter for homeless men in the Church as depicted on the Site Plan. (Pet. Ex. 1). Additionally, Streets of Hope seeks to assist homeless men with job opportunities, training and permanent shelter. A detailed description of Streets of Hope was provided. (Pet. Ex. 18).

The first witness to testify for the Petitioner was Barbara Koch, 8819 Walther Blvd., Apt 1313, Parkville. She is currently the Secretary of the Board of Directors of Streets of Hope and also served as Past-President. In 2009, responding to a letter sent by Back River United Methodist Church in regard to a homeless man who died during the winter, Ms. Koch explained that 12 churches in the area elected to act as a shelter on a rotating basis beginning in 2011. In 2010, in preparation for the rotating shelter, Baltimore County, through the Office of Planning, provided a

grant to pay for staffing. While one of the churches would provide the shelter, the other churches would prepare food off-site and bring it to shelter to feed the homeless men. Since its inception, the number of churches contributing to the mission has grown to 30. (Pet. Ex. 6).

Pastor Ken White, 930 Essex Avenue, works for the Church which has been in existence since the 1960s. Pastor White has a financial background in accounting and economics. He testified that, prior to the COVID pandemic, 60-75 members attended church services. Currently, services are operating virtually with Bible studies during the week and services on the weekends. The Church is governed by a Board of Elders (4) who meet weekly. Pastor White testified that the Church has the physical space to provide Streets of Hope with a permanent shelter and is also interested in providing ministry to the community. Toward this end, the shelter would occupy the first floor (1,488 sf) and the Church would continue to occupy the second floor. (Pet. Ex. 1).

Patrick Dickerson, 2905 Kathleen Drive, Forest Hill, MD 21050, is the former executive director of Streets of Hope. In that capacity, he acted as the representative of the Board of Directors and worked with the community, did fund raising, applied for grants, met with Office of Planning and oversaw a staff of 200 volunteers. In October of 2019, Streets of Hope initially sought to open the shelter on the second floor of the Eastern Family Resource Center. Unfortunately, that location closed. (Pet. Ex. 3). As a result, Mr. Dickerson, as member of the Church, approached the Board of Elders about a permanent shelter there.

Mr. Dickerson testified that the Church is an ideal location for the shelter because it is located in a high traffic area, near a bus line, and behind Middlesex Shopping Center where there are many homeless men. Access to the first floor is by an entrance that is separate from the second floor Church entrance. The first floor will have an office, a storage room, 2 rooms for 16 cots and a larger room for dining. (Pet. Ex. 1). Mr. Dickerson confirmed that the proposal is to shelter 16

homeless men between November through April of every year. A case manager will meet with each man to help them find resources for housing assistance and rehabilitative needs. Streets of Hope has prepared written documents for: Emergency Protocols (Pet. Ex. 7), Emergency Prevention Procedures (Pet. Ex. 8), Staff Policies and Procedures. (Pet. Ex. 9), Drug-Free Workplace Policy (Pet. Ex. 10), and a Resource Guide for Advocates, Staff and Clients (Pet. Ex. 11).

Mr. Dickerson testified that the daily schedule for the shelter will mirror the schedule used by the rotating churches with two (2) shifts for staff: 5:30 pm -12:00 midnight and 12:00 midnight -7:30 am. A shift manager will monitor the clients who will enter through one (1) access point at the lower level of the Church where each client and his bags will be searched. All medications are kept separate from personal belongings. Meals are eaten with staff and bedtime is 9:00 pm. There are no shower facilities at the Church. All volunteers who work at the shelter will check-in for scheduled shifts and will wear name tags. (Pet. Exs. 20, 27).

Importantly, only homeless men over age 18 are potential clients. Photographs of some of the clients were provided. (Pet. Ex. 25). Streets of Hope does not accept sex offenders. Each client is screened and cleared through the Baltimore County Department of Social Services before entry to the shelter is allowed. Once cleared for entry, if a client does not check-in at the scheduled time, the bed will be held for 3 days and then will be given to another client. The proposed shelter will operate like other shelters operated by Baltimore County in that no client can enter unless cleared through DSS, no drug tests are administered to clients, and all client information is entered into the Human Management Information Systems (“HMIS”), the same database used by Baltimore County. Only the Executive Director and another Board member/officer have access to this HMIS information.

Mr. Dickerson provided information about fundraising efforts on behalf of Streets of Hope. These activities include a yearly bull-roast and walk-a-thon. (Pet. Ex. 12, 13, 14, 19). Community groups such as boy scouts, girl scouts, and sports organizations provide donations and volunteers. (Pet. Ex. 20). Photographs of volunteers and clients were provided. (Pet. Ex. 27).

Community outreach efforts were conducted to inform the Essex community about the proposed shelter in the Church. Programs and meetings were held prior to filing the Petition. (Pet. Ex. 15, 16, 17). In May of 2019, a presentation was made to the Essex Community Association. (Pet. Ex. 18). A separate meeting was held with Sussex Community Association. Photographs of the outreach efforts and programs were provided. (Pet. Ex. 26). Streets of Hope volunteers went to residences and to various businesses to inform them of the Petition. It also participated in Essex Day held at Franklyn Square Hospital. In 2018 and 2019, a trash pick-up day along both Essex Avenue and Catherine Avenue was conducted during which the clients and volunteers picked up trash.

Mr. Dickerson also confirmed that Streets for Hope is not required to be licensed by Maryland State Department of Health and Mental Hygiene or by the Maryland State Department of Social Services for Community-Based Behavioral Health Programs and Services per COMAR 10.63.01.04 and BCZR 101.1 for a Community Care Center. (Pet. Ex. 21). The Maryland Department of Health provided a written exemption from the license requirements. (Pet. Ex. 22).

Amelia Jackson, 3 Paula Place, Apt. 30, Rosedale, was admitted as an expert board-certified family nurse practitioner with a concentration in homeless and vulnerable population. Ms. Jackson graduated from Johns Hopkins University with a Master of Science in Nursing. With experience as an emergency room nurse who primarily cares for Medicaid recipients, Ms. Jackson provides care for the homeless and vulnerable population during the majority of her workday. She

testified that she is familiar with Streets of Hope and has provided care to their clients and also meets with the Board of Directors.

Ms. Jackson opined that there is a mutual correlation between homeless/vulnerable males and the following risk factors: mental health issues, incarceration, alcoholism, substance abuse, adverse childhood events (foster care), chronic health issues, limited education, unemployment, no family support and poor coping skills. When faced with those type of inherent risks, both unemployment and homelessness increase. At the same time, homelessness exacerbates those risk factors when left untreated. Ms. Jackson reviewed Intake Sheets completed by Streets of Hope staff of their clients which revealed that the above risks are prevalent in the homeless population they serve.

Gathering the information from the Intake Sheets, Ms. Jackson compiled a Summary which confirmed that clients of Streets of Hope are men with mental health problems, alcohol and drug abuse as well as physical and development disabilities. (Pet. Ex. 23, 28). This Summary revealed that 31 of 37 clients at Streets of Hope had mental, physical and/or chronic health problems. The Summary mirrored the trend nationally that risk factors lead to perpetual homelessness. It was Ms. Jackson's professional opinion that the proposed homeless shelter meets the definition of Community Care Center in BCZR, 101.1 because it will house, counsel, supervise and find rehabilitation services for homeless men who are at risk for alcoholism, drug abuse, and have physical and/or mental disabilities.

The last witness to testify for the Petitioner was Matthew Sichel, PE who was admitted as an expert in land use planning and design. Mr. Sichel opined that the proposed use met each of the Special Exception factors set forth in BCZR, §502.1 and the definition of Community Care Center in BCZR, §101.1. He testified that, based on the organizational structure and safety

protocols in place, the use of the Church for a permanent homeless shelter will not be detrimental to the health, safety and general welfare of the locality. He stated that given that homeless men do not own or drive vehicles but instead take buses, there will not be congestion in the roads, streets of alleys. He further explained that there is not potential hazard from fire, panic or danger in that the lower level occupied by the shelter will have sprinklers installed to meet the Fire Code and the County will inspect prior to issuing a permit. Moreover, he opined that there will not be overcrowding of the land because it is a small shelter with a max number of 16 men and limited staff.

Mr. Sichel further testified that there will not be any interference with schools, parks, water, sewer, transportation as all of the public improvements already exist. The use does not bring children to the Property so there is no impact on schools. There is no interference with light or air as the building footprint will not change and has been in place since the 1960s. Moreover, Mr. Sichel opined that the proposed use is consistent with the DR 5.5 zoning classification. It meets the BCZR definition of Community Care Center in that there is a direct correlation between mental and physical disabilities and the homelessness. Mr. Sichel testified that there is no additional impervious surface being proposed and all of the paved portion of the Property including the parking lots will remain. Finally, Mr. Sichel stated that there is no impact on environmental or natural resources of the Property or the vicinity. The Property is not located in a floodplain and there are no wetlands, forest, or streams at issue.

PROTESTANTS

Eric Davis, Sr., 336 Leeanne Rd., Essex resides in the adjacent community of row homes on the eastern side of the Property. Mr. Davis commented that the community outreach efforts were lacking in that neither he, nor the 60 homes in his neighborhood, received any flyers or

information about the Petition. Mr. Davis asked if the shelter would have shower facilities and ADA compliant bathrooms. He questioned whether the volunteers who were handling food for the clients were licensed. He testified that he was concerned for neighborhood children if the shelter were approved.

Kim Balas, 318 Townsend Rd., Essex lives less than 1 mile from the Property. Ms. Balas questioned the Petitioner's witnesses in regard to the lack of drug testing of the clients entering the shelter. She believes that breathalyzer tests and drug testing should be given to each client before they enter the shelter.

Leah Biddinger, 327 Margaret Avenue, Essex stated that she was testifying on behalf of the Sussex Community Association which is opposed to the Petition. Ms. Biddinger testified that the Church had a prior Code Violation case in August of 2017 (Case No. 1711087) because the Church permitted a man to live in the building. In another Code Violation case, she stated that a correction notice was issued in January of 2019 for trash left outside of trash containers. It was Ms. Biddinger's testimony that there is no need for another shelter because the Eastern Community Center has 16 beds for homeless men and an additional 35 beds which can be used during Code Blue weather conditions. Ms. Biddinger expressed frustration at the ongoing problem with homeless, crime and drugs in the Essex area.

DECISION

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 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.

I find that the evidence presented by the Petitioner meets each of the BCZR, §502.1 special exception factors and should therefore be granted. There is no new construction, expansion or paving of the Property. The Church has existed since 1962 and is agreeable to permitting its first floor to be used for the proposed small shelter. The evidence was clear that both the Church and Streets of Hope are structured organizations with a community-based mission of providing shelter and food to 16 homeless men between November and April of each year. The operation of this shelter will mirror the County-operated shelters, which do not administer drug or alcohol test but use DSS screening of individuals prior to entry.

I find that the shelter meets the definition of BCZR, §101.1 Community Care Center. The evidence revealed that the proposed shelter is a small-scale facility (exempt from licensing by the Maryland State Department of Health and Mental Hygiene and the Maryland State Department of Social Services) for the housing, counseling and supervision of homeless males who have or had alcohol and/or drug problems and/or are physically and/or mentally handicapped or abused which in turn, puts them at higher risk for homelessness.

In zoning this Property as DR 5.5, the County Council already decided that a Community Care Center/homeless shelter is an appropriate use for this Property. The evidence revealed that any adverse impacts of a homeless shelter at this location (as raised by the Protestants) are inherently associated with this type of use. I am not persuaded that the adverse impacts of this use are worse at this particular location than at any other location. Indeed, I find that a permanent shelter in this existing Church which is located in an area that has a homeless population, is in the best interests of health, safety and general welfare of the Essex area.

THEREFORE, IT IS ORDERED this **19th** day of **January, 2021**, by this Administrative Law Judge, that the Petition for Special Exception to approve a Community Care Center be, and it is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. 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.

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

Signed _____
MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlm