IN RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
W/side of Maudes Way **(5516 Maudes Way)**	*	OFFICE OF ADMINISTRATIVE
11th Election District	*	HEARINGS FOR
5th Council District	*	BALTIMORE COUNTY
John C. and Maleena M. Kantorski Petitioners	*	**CASE NO. 2012-0227-SPHA**

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ORDER ON MOTION FOR RECONSIDERATION

By letter dated May 29, 2012, the Office of People's Counsel filed a Motion for Reconsideration in the above-captioned case, "mainly for the purpose of clarification and the addition of a condition to reflect that the operator of the child care facility must also reside on the premises." By way of background, the Petitioners, John and Maleena Kantorski, were granted special hearing and variance relief by Order dated April 30, 2012, to operate a Class A Child Care facility in their home in the Honeygo area.

In People's Counsel's motion for reconsideration, Mr. Zimmerman asks that the April 30, 2012 Order be amended to include a condition that the operator of the child care facility must also be a resident of the dwelling. In this case, Mr. and Mrs. Kantorski are in fact the owners and residents of the single family dwelling at 5516 Maudes Way, and they would therefore satisfy this condition, which I am more than willing to include as an amendment or clarification of the prior Order.

Leaving this case aside for a moment, I was unable to find any Maryland law addressing this specific issue, nor does the Baltimore County Zoning Regulations or Zoning Commissioner's Policy Manual specifically state whether or not an accessory use in a residential dwelling must be conducted by an occupier of the premises. I was however able to locate two fairly recent out-of-

state cases, both of which held that an "accessory use" does not include a proprietary enterprise conducted or operated by non-occupiers of the premises in question. Harbour Town Associates, Ltd., v. City of Noblesville, 540 N.E. 2d 1283 (Ind. Ct. App.1989) (apartment owners leasing boat docks to non-residents constitutes a commercial use that was not permissible accessory use of the property); Oronoque Village Condominium Association v. Bargas, 1990 WL 272029 (Conn. 1990) (same). Thus, it would appear that under generally applicable principles of zoning law, an accessory use in residential premises must be conducted by an owner or occupier of that dwelling.

As such, and in light of the above, this shall serve as a clarification of the April 30, 2012 Order issued in the above-referenced case, and a condition is hereby added to reflect that the operator of the Class A Child Care facility must also reside on the residential premises on which the facility is operated.

Dated this _____**5**_____ day of June, 2012.

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

_____Signed_____
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:pz