

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b> *	BEFORE THE
<b>AND VARIANCE</b>	
(1509 Rita Road) *	OFFICE OF
12 <sup>th</sup> Election District	
7 <sup>th</sup> Council District *	ADMINISTRATIVE HEARINGS
Ralph Raymond & Ethel Charlene Ridge	
<i>Legal Owners</i> *	FOR BALTIMORE COUNTY
Petitioners *	<b>Case No. 2015-0101-SPHA</b>
* * * * *	

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of the legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve a Child Care Center Class A Use Permit. In addition, a Petition for Variance seeks to permit an existing fence (for a child care center) with 0 ft. setback in lieu of the required 20 ft. setback.

The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1. Appearing at the public hearing in support of the requests was Ralph & Ethel Ridge. No protestants or interested citizens attended the hearing. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were submitted by the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR). The DOP indicated that it did not support the request as filed, but would not oppose a family child care center with a maximum of 8 (not 12) children. The DPR noted a landscape plan may be required.

The subject property is approximately 5,950 square feet and is zoned DR 5.5. Ms. Ridge has been a licensed child care provider since 1986, and has provided care for 8 children at this

location since 1999, when she and her husband purchased the home. She would like to care for up to 12 children, but requires zoning relief to do so.

A class “A” Group Child Care Center is permitted by use permit in the DR 5.5 zone. In fact, since a hearing was not requested in this case, the use permit could be granted by the ALJ without a public hearing. But since variance relief was also requested, the zoning office prefers that a hearing be conducted to resolve all issues in one proceeding.

As noted above, Petitioner has a wealth of experience in child care, and she submitted several letters (Exhibit 4) and a petition signed by numerous neighbors expressing support for the request. Ms. Ridge testified she has never had a complaint filed with respect to her day care operation, and she explained that with her driveway and on-street parking there has never been a problem with ingress and egress from the site.

The DOP’s ZAC comment noted that 12 children would be out of context for the area, and would impart a “commercial” feel to the neighborhood. But, as Petitioners note, the B.C.Z.R. permits child care facilities by right (§1B01.1.A.12) in all DR zones. The use here would be accessory to the property’s principal use as a single family dwelling. There are no signs or other indications that a business is conducted at the home. As such, I respectfully disagree with the DOP’s assessment.

The DPR noted in its ZAC comment that a landscape plan would be required if the use or occupancy changes. Here, there will be no change in occupancy and the use will remain as a dwelling with an accessory use as a child care home, albeit with four more children than at present. As such, a landscape plan will not be required.

To obtain variance relief a petitioner must show:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People's Counsel*, 407 Md. 53, 80 (2008).

Petitioners have met this test. The fence has been in place for many years and thus Petitioners must contend with unique and existing site conditions. The Petitioners would experience a practical difficulty if the regulations were strictly interpreted, since they would not be able to obtain a use permit for the child care center. Finally, the relief will not be injurious to the public welfare, as demonstrated by the support of the community.

THEREFORE, IT IS ORDERED this 30<sup>th</sup> day of December, 2014, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R") to approve a Child Care Center Class A Use Permit, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit an existing fence with 0 ft. setback in lieu of the required 20 ft. setback, be and 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.
2. Petitioners must store the boats located on site in accordance with B.C.Z.R. §415A.

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

JEB/sln

Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County