

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(57 Caraway Road)</b>		
4 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
4 <sup>th</sup> Council District		
Julius Che Nyambi	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2016-0096-A</b>

\* \* \* \* \*

**AMENDED OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance on behalf of Julius Che Nyambi, owner of the subject property (“Petitioner”). Petitioner is requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §424.1.B to permit a 6 ft. high stockade fence with a 0 ft. setback from the property line in lieu of the required 20 ft. for a group child-care center. A site plan was marked as Petitioner’s Exhibit 1.

Julius Che Nyambi appeared in support of the petition. Bruce E. Doak, a property line surveyor whose firm prepared the site plan, assisted the Petitioner. The Petition was advertised and posted as required by the B.C.Z.R. No Protestants or interested citizens attended the hearing. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP), and are discussed below.

The subject property is approximately 8,255 square feet and is zoned DR 5.5. The property is improved with a single family dwelling (1,168 sq. ft.) constructed in 1968. The Petitioner and his wife reside in the home and operate as an accessory use a child day care. The Petitioner would like to increase the number of children attending the center, which would then be considered a

“Group Child Care Center, Class A”; i.e., a center having no more than 12 children enrolled. B.C.Z.R. §101.1. Petitioner will need to obtain a use permit for that proposed use, the procedures for which are set forth at B.C.Z.R. §424. The present request pertains only to the setback requirement for the wood stockade fence required by the Regulations.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

Petitioner has met this test. The property has irregular dimensions and is therefore unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because he would be unable to operate the proposed day care center. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare.

#### ZAC Comments

As noted earlier, both the DPR and DOP provided ZAC comments in this case. The DPR noted that a landscape plan is required, and a condition to that effect is included in the Order below.

The DOP objected to the request for a 0' setback for the fence, believing it could lead to a dispute with, or allegations of trespass by, the adjoining neighbor. I share that sentiment although Petitioner noted that when he purchased the home 2 years ago it had a 6' high wood fence already installed at the rear of the property and along one of the side yards. Photographs submitted at the hearing (Ex. 3 H-J) show the fence is in good condition and Petitioner would

prefer not to dismantle and rebuild it, which is understandable. The other side yard has a 4' high chain-link fence which is also on the property line. Petitioner will remove this fence and in its place construct a 6' wood fence as required by §424. While the variance will be granted, the newly installed fence shall be set back a minimum of 1' from the property line, as suggested in the DOP ZAC comment.

THEREFORE, IT IS ORDERED, this 22<sup>nd</sup> day of December, 2015, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations (“B.C.Z.R.”) §424.1.B to permit an existing 6 ft. high stockade fence (in the rear and one side yard) with a 0 ft. setback from the property line and a proposed 6 ft. high stockade fence with a minimum 1 ft. setback in the other side yard, all in lieu of the required 20 ft., be and 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 his 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. Petitioner must provide landscaping as determined in the sole discretion of the Baltimore County Landscape Architect.
3. Petitioner must obtain from Baltimore County and the State of Maryland all necessary licenses, permits and inspections prior to operating a Group Child Care Center at the subject property.

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

JEB:sln

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County