

**IN RE: PETITIONS FOR SPECIAL HEARING, \***  
**SPECIAL EXCEPTION & VARIANCE \***  
**(9300 Lyons Mill Road) \***  
2<sup>nd</sup> Election District  
4<sup>th</sup> Council District \*  
Judith & Jerry Nelsestuen and Andrew Fraser  
*Legal Owners* \*  
John Woodward, *Contract Purchaser* \*

BEFORE THE  
OFFICE OF  
ADMINISTRATIVE HEARINGS  
FOR BALTIMORE COUNTY  
**Case No. 2017-0085-SPHXA**

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of Petitions for Special Hearing, Special Exception and Variance filed on behalf of Jerry & Judith Nelsestuen and Andrew Fraser, legal owners and John Woodward, contract purchaser (“Petitioners”).

The Petition for Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to permit a 21 sq. ft. (3 ft. x 7 ft.) freestanding externally illuminated monument sign 5 ft. in height. A Petition for Variance seeks: (1) To allow three Nameplate signs of area/face square footages of 35 sq. ft., 16 sq. ft. and 16 sq. ft. each in lieu of the required maximum area/face of 1 sq. ft. per sign; (2) To allow two wall-mounted multi-sided Nameplate signs to project 60 inches away from the wall in lieu of the required maximum distance of 18 inches; (3) To permit a Class B group child care center with 171 children within an area of 69,565 sq. ft., in lieu of the required 109,060 sq. ft. [The required area is based on one acre or 43,650 sq. ft. and each child above 40 children requires an additional 500 sq. ft. per child]; (4) To permit 48% impervious surface area in lieu of the maximum 25% of the gross area; (5) To permit a side yard setback of 30 feet in lieu of the required 50 feet; and (6) To permit parking, drop-off and delivery along the front of the building in lieu of the required side and rear yard areas only.

Finally, a Petition for Special Exception seeks approval to permit a Class B group child care center as a principal use in a DR zone.

Appearing at the public hearing in support of the requests was professional engineer Richard E. Matz, Santo Perri, John Woodward and Beth Elbassiouny. Timothy M. Kotroco, Esq., represented the Petitioners. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A substantive Zoning Advisory Committee (ZAC) comment was submitted by the Department of Planning (DOP). That agency did not oppose the requests, but noted that landscape and lighting plans would be required.

The subject property is comprised of two lots totaling approximately 1.597 acres in size, and is zoned D.R. 16. At present the property is improved with two single-family dwellings, both of which are vacant. Petitioners will raze both dwellings and construct a large building to accommodate a child care facility known as “The Learning Experience.” Petitioners explained this is one of the nation’s largest day care providers, with franchise locations throughout the country. The site will also have parking for approximately 50 vehicles and a playground (6,000 sq. ft.) for the children.

### **Special Hearing**

The request for special hearing seeks to permit a ground mounted monument sign for the center. As with the two variance requests for “nameplate” signs, the difficulty in this case is that while a large group child care center is permitted by special exception in a residential zone, the sign regulations (to which one is referred by §424.6) permit only a 1 square foot “nameplate” sign in the D.R. zones. Such a small sign would be insufficient for a large commercial enterprise such as that proposed.

While in most or many instances signs are properly forbidden in residential areas, this case highlights one exception for which the B.C.Z.R. does not make allowance. The proposed day care facility would be located along a busy thoroughfare, and directly across the street is another group child care facility (“Happy Acres”) with a large two-sided sign, as shown in the photographs in the file. Lyons Mill Road has been widened in this area, and the intersection with Owings Mills Boulevard is a short distance from the property. In these circumstances the proposed signs would not be excessive or disruptive to the surrounding community, and would serve an important public safety goal: i.e., letting parents know where the center is located when traversing this crowded and often congested area of the County.

### **Variances**

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).

Petitioners have met this test. The large property has irregular dimensions and is therefore unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to construct the proposed improvements. 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. This is demonstrated by the lack of Baltimore County and community opposition.

### 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 People's Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that 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.

Here, Mr. Matz opined Petitioners satisfied all requirements set forth in B.C.Z.R. §502.1, and I concur. As noted above, the proposed facility would be located along a heavily travelled roadway, and would be within a short distance of several new housing projects being constructed. Petitioners chose this location to meet the expected demand from the new residents, and will provide a valuable service for many families. While most special exception uses generate traffic and have some impact upon the community, there is no evidence in this case to suggest those impacts would be greater at this particular location. To the contrary, the roadways in this area have been widened and improved and are sufficient to accommodate the proposed use, which is certainly not the case for many residential properties where a group child care center would also be permitted by special exception.

THEREFORE, IT IS ORDERED this 8<sup>th</sup> day of December, **2016**, by this Administrative Law Judge, that the Petition for Special Hearing to permit a 21 sq. ft. (3 ft. x 7 ft.) freestanding externally illuminated monument sign 5 ft. in height, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception to permit a Class B group child care center as a principal use in a DR zone, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) To allow three Nameplate

signs of area/face square footages of 35 sq. ft., 16 sq. ft. and 16 sq. ft. each in lieu of the required maximum area/face of 1 sq. ft. per sign; (2) To allow two wall-mounted multi-sided Nameplate signs to project 60 inches from the wall in lieu of the required maximum distance of 18 inches; (3) To permit a Class B group child care center with 171 children within an area of 69,565 sq. ft., in lieu of the required 109,060 sq. ft.; (4) To permit 48% impervious surface area in lieu of the required 25% of the gross area; (5) To permit a side yard setback of 30 feet in lieu of the required 50 feet; and (6) To permit parking, drop-off and delivery along the front of the building in lieu of the required side and rear yard areas only, 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. Prior to issuance of permits Petitioners must submit for approval by Baltimore County landscape and lighting plans for the site.

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

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:sln