

**IN RE: PETITIONS FOR SPECIAL  
EXCEPTION AND VARIANCE  
(6844 Fait Avenue)  
12<sup>th</sup> Election District  
7<sup>th</sup> Council District  
Blessing Groups of Company  
*Legal Owner*  
Petitioner**

\* BEFORE THE  
\* OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* FOR BALTIMORE COUNTY  
\* **Case No. 2017-0183-XA**

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 6844 Fait Avenue. The Petitions were filed on behalf of Blessing Groups of Company, legal owner of the subject property. The Special Exception petition seeks to permit living quarters in a commercial building.

The Petition for Variance as originally filed seeks the following: (1) To allow a solid wood stockade or panel fence with a minimum height of 5 ft. to be 0 ft. from the property line in lieu of the required 20 ft.; (2) To allow a front yard setback for a commercial building to be 30 ft. from the center line of the street in lieu of the required 40 ft.; (3) Variance not to require design, screening and landscaping in accordance with the Landscape Manual; (4) To permit parking spaces in a surface parking facility for a non-residential use 0 ft. to the right-of-way of a public street in lieu of the required 10 ft.; (5) To permit parking spaces for employee use only without direct access to an aisle; and (6) To permit 0 parking spaces in lieu of the required 2 parking spaces for the residential portion of the building when the resident is also an employee of the business. At the hearing Petitioner indicated variance request number 6 would be withdrawn. A site plan was marked as Petitioner’s Exhibit 1.

Appearing at the hearing in support of the petitions was Georgia Bartrum, Blessing Okoro and Bruce Doak, surveyor. Timothy Kotroco, Esq., represented the Petitioner. No protestants or interested citizens attended the hearing. The Petition was advertised and posted as required by the B.C.Z.R. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP).

The subject property is approximately 5,625 square feet and is zoned BL. The property is located in Dundalk, very close to the border with Baltimore City. The property is improved with a commercial building constructed in 1919. The building was used for many years as a doctor's office and most recently a construction contractor operated it business at the property. Petitioner proposes to operate a Class B group child care center, a use permitted by right in the BL zone.

#### 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 *Attar v. DMS Tollgate, LLC*, \_\_\_ Md. \_\_\_, 152 A.3d 765 (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.

Here, Mr. Doak testified (via proffer) Petitioner satisfied the requirements of B.C.Z.R. §502.1, and I concur. It is common for day care facilities to be operated from one's residence, and I do not believe the use (i.e., living quarters in a commercial building) will have a detrimental impact on the community. In fact, by residing on site the owner will be able to oversee the safe and efficient operation of the day care, and will at the same time be a positive influence and

presence in the community.

### VARIANCE

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 is bordered by two public roadways and is therefore unique. If the B.C.Z.R. were strictly interpreted Petitioner would suffer a practical difficulty since it would be unable to operate a child care facility at the site. Finally, I find that the variances 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/or community opposition.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 21<sup>st</sup> day of March, **2017**, that the Petition for Special Exception to permit living quarters in a commercial building, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance pursuant to the Baltimore County Zoning Regulations (B.C.Z.R.): (1) To allow a solid wood stockade or panel fence with a minimum height of 5 ft. to be 0 ft. from the property line in lieu of the required 20 ft.; (2) To allow a front yard setback for a commercial building to be 30 ft. from the center line of the street in lieu of the required 40 ft.; (3) Variance not to require design, screening and landscaping in accordance with the Landscape Manual; (4) To permit parking spaces in a surface parking facility for a non-residential use 0 ft. to the right-of-way of a public street in lieu of the required 10 ft.; and (5) To

permit parking spaces for employee use only without direct access to an aisle, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon 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 its 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 evergreen shrubs along the Fait Avenue frontage.

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