

<b>IN RE: PETITIONS FOR SPECIAL HEARING, *</b>	BEFORE THE
<b>SPECIAL EXCEPTION &amp; VARIANCE</b>	OFFICE OF
<b>(10932 Philadelphia Road) *</b>	ADMINISTRATIVE HEARINGS
11 <sup>th</sup> Election District	
6 <sup>th</sup> Council District *	FOR BALTIMORE COUNTY
Christina Kesting *	<b>Case No. 2018-0191-SPHXA</b>
<i>Legal Owner</i> *	
Petitioner *	

\* \* \* \* \*

**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 Christina Kesting, legal owner (“Petitioner”). The Petition for Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to confirm that the proposed Class B Group Child Day Care Center is exempt from RTA because the proposed improvements are compatible with the and general welfare of the surrounding residential premises. A Petition for Variance seeks the following: (1) to permit an area of 1.052 acres for the group child-care center in lieu of the required 1.689 acres; (2) to permit a front yard setback of 15 ft. from a street line in lieu of the required 25 ft.; (3) to permit a side yard setback of 20 ft. in lieu of the required 50 ft.; (4) to permit a rear yard setback of 20 ft. in lieu of the required 50 ft. ; (5) to permit a perimeter vegetative buffer of 0 ft. in lieu of the required 20 ft.; and (6) to permit an impervious surface area of 44% in lieu of the maximum required 25%. Finally, a Petition for Special Exception was filed to permit a Class B Group Child Care Center for up to 100 children.

Appearing at the public hearing in support of the requests was Christina Kesting and surveyor Bruce Doak. Two neighbors attended the hearing and opposed the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive

Zoning Advisory Committee (ZAC) comments were submitted by the Bureau of Development Plans Review (DPR), the Department of Environmental Protection and Sustainability (DEPS), the Department of Public Works (DPW) and the State Highway Administration (SHA).

This case involves a 1.5 acre parcel of land in White Marsh. The property is improved with a small single-family dwelling (“SFD”) and detached garage. Petitioner proposes, through use division lines (Z.C.P.M. §102-2) to divide the property into a ½ acre parcel containing the SFD and a 1 acre parcel on which a commercial building would be constructed for the operation of a Class B child care facility with up to 100 children.

Under the B.C.Z.R. bulk regulations, one acre is required for a child care facility with a maximum of 40 children. B.C.Z.R. §424.7. Petitioner seeks to have up to 100 children in a one acre area, which is 250% of the maximum number permitted by the Regulations. I believe that is simply too many children for the small site, which could present safety concerns not only for the children but also for the large volume of traffic which would have to enter and exit the site on a daily basis.

In addition, the DPW noted the property is situated within a riverine floodplain, and the neighbors testified the property and dwelling have flooded on many occasions. Although Petitioner revised the site plan so that only the proposed parking lot is within the floodplain, state and county law forbids new construction in riverine floodplains. At the very least Petitioner would need to request a waiver (BCC §32-4-107) from the DPW, which must be accompanied by a site plan prepared by a professional engineer. Although Mr. Doak indicated a waiver would be sought at the time of building permit application, the long-standing practice is for such waiver actions to be filed at the same time as, and considered with, zoning cases involving the property.

THEREFORE, IT IS ORDERED this 16<sup>th</sup> day of **March, 2018**, 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 confirm that the proposed Class B Group Child Day Care Center is exempt from RTA because the proposed improvements are compatible with the and general welfare of the surrounding residential premises, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Special Exception to permit a Class B Group Child Care Center for up to 100 children, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Variance to allow: (1) to permit an area of 1.052 acres for the group child-care center in lieu of the required 1.689 acres; (2) to permit a front yard setback of 15 ft. from a street line in lieu of the required 25 ft.; (3) to permit a side yard setback of 20 ft. in lieu of the required 50 ft.; (4) to permit a rear yard setback of 20 ft. in lieu of the required 50 ft. ; (5) to permit a perimeter vegetative buffer of 0 ft. in lieu of the required 20 ft.; and (6) to permit an impervious surface area of 44% in lieu of the maximum required 25%, be and is hereby DENIED.

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