

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(1015 & 1017 Back River Neck Road)		
15 th Election District	*	OFFICE OF
7 th Council District		
Holly Neck, LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2018-0223-X

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Exception filed on behalf of Holly Neck, LLC, legal owner (“Petitioner”). The petition was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) to permit a portion of a Class B group child care center for 15 children in an existing building located in a DR 3.5 zone and on the same property as the existing group day care building which is located in a BL zone.

Nicholas Dinicola, Doris Salvo and surveyor Bruce Doak appeared in support of the petition. Alfred Brennan, Jr., Esq. represented the Petitioner. There were no protestants or interested citizens in attendance. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), the Bureau of Development Plans Review (DPR) and the Department of Environmental Protection and Sustainability (DEPS). None of the reviewing agencies opposed the request.

The subject property is approximately 3.889 acres in size and is split-zoned BL, DR 3.5 RC-5 and RC-20. The property is improved with two structures: a large commercial building used as a group child care center and a single-family dwelling. Petitioner proposes to convert the single family dwelling into a group child care center for up to 15 infants from 6 weeks to 17 months of

age. The single family dwelling is located in the DR 3.5 zone, which permits a child care center by special exception.

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*, 451 Md. 272 (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.

Mr. Doak testified Petitioner satisfied the requirements of BCZR §502.1 and the case law interpreting that provision. No evidence was offered in opposition, and I believe Petitioner has established a *prima facie* case entitling it to the special exception.

THEREFORE, IT IS ORDERED this 4th day of **May, 2018**, by this Administrative Law Judge, that the Petition for Special Exception to permit a portion of a Class B group child care center for 15 children in an existing building located in a DR 3.5 zone and on the same property as the existing group day care building which is located in a BL zone, 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 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 prior to issuance of permits comply with the critical area regulations.

3. Petitioner must provide landscaping around the base of the existing sign and for the building at 1017 Back River Neck Road, as determined in the sole discretion of the Baltimore County landscape architect.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln