

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(4620 Forge Road)	*	OFFICE OF
11 th Election District		
5 th Council District	*	ADMINISTRATIVE HEARINGS
Ashley Suprik	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
Petitioner	*	Case No. 2018-0311-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of Ashley Suprik, legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to permit a Class A Group Child Care Center.

A petition for variance seeks to permit a steel rail fence in lieu of the required wood stockade style fence and to allow a fence setback of 17 ft. to the residential property line in lieu of the required 20 ft. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Ashley Suprik appeared in support of the requests. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and the Bureau of Development Plans Review (“DPR”).

SPECIAL HEARING

Petitioner is licensed by the State of Maryland as a day care provider, and she has for the last year or so cared for approximately 6 children in her home. She would like to expand and provide day care for up to 12 children, which under the BCZR is considered a Class A Group

Child Care Center. Such centers are permitted by right as an accessory use in residential zones when located within a single-family dwelling. BCZR §424.4.A.

The subject property is improved with a single-family dwelling and the rear yard has an attractive and fenced play area 3,200 sq. ft. in size. The day care center will be operated primarily on the lower-level of the dwelling, which is the Petitioner's principal residence. The subject property and play area are more than sufficient to provide care for up to 12 children and Petitioner satisfies the requirements for a use permit set forth in the aforementioned regulation. As such, the petition for special hearing will be granted.

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).

The property has irregular dimensions and is therefore unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because she could not operate the child care center. Finally, I find that the variance can be granted in harmony with the spirit and intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety and general welfare. This is demonstrated by the absence of County and/or community opposition. In fact, Petitioner submitted letters of support from all of the potentially impacted neighbors in her community. Pet. Ex. 4. As such, the petition for variance will be granted.

Both the DOP and DPR expressed concern with the variance request for the fence, the requirements for which are found at BCZR §424.1.B. Both agencies noted the existing metal fence

appears to be located outside of the property boundary. But Petitioner explained the fence is in fact located on property she owns, and thus I do not believe this is a concern.

Approximately ten years ago, Petitioner's father created a three lot minor subdivision (Pet. Ex. 2), Lot 1 of which is the subject property. All three lots were deeded to Petitioner, and Lots 2 & 3 are unimproved. The existing fence is situated outside of the Lot 1 property boundary, and it intrudes approximately 7' upon the 24' wide private easement which exists to provide access to Lots 2 & 3, assuming they are developed in the future. Regardless, all of the property in question is owned by the Petitioner, and she understands (as discussed at the hearing) the fence might need to be removed or relocated if dwellings are later constructed on Lots 2 & 3.

The DOP also objected to the design and height of the existing fence, and requested that a solid wood fence with a minimum height of 5 ft. be installed, as required by BCZR §424.1.B. Petitioner submitted photographs of the existing fence, which is made of metal and is 42" in height. Pet. Ex. 3. This fence was installed several years ago, and Petitioner uses the play area which is enclosed by the fence for both her children and the children now enrolled at her day care. In addition, several parents of children who attend the center indicated they prefer the metal fence, since it allows them to observe their children in the play area and allows the teacher to be "aware of what is going on around her." Pet. Ex. 5. Several neighbors indicated they also prefer the existing fence, which unlike a solid wood stockade fence provides them with an "open space we can see looking out our windows." Pet. Ex. 4. This evidence, along with Petitioner's testimony and the photographs, convinces me that the existing fence (which is attractive and in good condition) should be permitted to remain.

THEREFORE, IT IS ORDERED this 18th day of **July, 2018**, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to Section 500.7 of the Baltimore County

Zoning Regulations (“BCZR”) to permit a Class A Group Child Care Center, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit a steel rail fence 42" in height in lieu of the required 5 ft. tall wood stockade style fence, and to allow a fence setback of 17 ft. to the residential property line 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 her 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 obtain all licenses and inspections as required by State and County law.
- 3. No more than twelve (12) children may be enrolled in the day care center.
- 4. The day care center shall be permitted to operate only Monday-Friday, with no weekend (Saturday & Sunday) operations.

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