

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(3617 Telmar Road)	*	OFFICE OF
3 rd Election District		
4 th Council District	*	ADMINISTRATIVE HEARINGS
Timothy Arnett	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
Petitioner	*	Case No. 2018-0323-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 Timothy Arnett, 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 for a maximum of 12 children. A petition for variance seeks: (1) to permit a fence with a setback of 0 ft. in lieu of the required 20 ft.; and (2) to permit a metal fence in lieu of the required solid wood stockade or panel fence. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Timothy and Tanya Arnett (“Petitioners”) and surveyor Bruce Doak 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. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (“DOP”). That agency did not oppose the requests.

SPECIAL HEARING

Class A Group Child Care Centers are permitted by right in all residential zones. BCZR §424. Petitioners stated there are no other day care centers on their street, and the subject property is the last house on a dead-end road. Petitioners have operated a day care with 6-8 children at the

property since 2015, and have never had a complaint or concern from neighbors. As such the petition for special hearing (allowing a maximum of 12 children) 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 variance request pertains only to the fence required by the child care regulations. Petitioners installed the fence in 2014 and thus they must contend with existing site conditions. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be required to install a new fence at great expense, and the required setbacks would leave only a 20 ft. wide section of the rear yard for the play area. 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 its ZAC comment the DOP suggested the existing metal fence was “potentially hazardous for young children.” The Petitioners disagreed, and noted their day care center has since 2014 used the fence without incident or complaint. In addition, Petitioners testified the State Department of Education inspects their home and grounds yearly as part of the day care licensure process, and that agency has never identified the fence as a safety issue or concern. As such, I do not believe Petitioners should be required to replace the existing fence.

THEREFORE, IT IS ORDERED this 24th 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 for a maximum of 12 children, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit a fence with a setback of 0 ft. in lieu of the required 20 ft.; and (2) to permit a metal fence in lieu of the required solid wood stockade or panel fence, 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.

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