

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(201 North Branch Road) *	OFFICE OF
12 th Election District *	ADMINISTRATIVE HEARINGS
7 th Council District *	
Wanda I. Gonzalez, <i>Legal Owner</i> *	FOR BALTIMORE COUNTY
Petitioner *	Case No. 2019-0350-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 Wanda I. Gonzalez, 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 facility for up to 12 children. In addition, a Petition for Variance was filed: (1) to permit a proposed 5 foot high stockade style fence with a setback as close as 0 feet to the property line in lieu of the required 20 feet; and (2) 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. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Wanda I. Gonzalez and surveyor Bruce Doak appeared in support of the requests. Two neighbors attended the hearing to obtain additional information regarding the requests. 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 request.

SPECIAL HEARING

Section 424 of the BCZR permits Class A group child care centers as an accessory use in all residential zones, upon issuance of a use permit. Petitioner is a licensed child care provider and has cared for children at this location since she acquired the property approximately two years ago. Photos were submitted which show the property (and neighborhood) is attractive and well maintained. As such, I do not believe granting the special hearing request will have a detrimental impact upon the surrounding community.

VARIANCE

As to the variance, it requires 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 subject property is a corner lot which has an irregular shape. As such, the property is unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because she would be unable to operate a day care facility at this location. 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.

THEREFORE, IT IS ORDERED this 30th day of **July, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing to permit a Class A group child care facility for up to 12 children, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit a proposed 5 foot high stockade style fence with a setback as close as 0 feet to the property line in lieu of the required 20 feet; and (2) 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, 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. No temporary or banner-type signage is permitted on the subject property.
3. The day care facility shall operate only Monday-Friday between the hours of 6:00 AM to 6:00 PM.
4. Petitioner shall notify all parents (verbally and/or in the day care contract) not to block neighbors' driveways when dropping off or picking up children from the center.
5. Petitioner shall notify all parents to park when possible in front of her home or along the side of her home on East Branch Road.

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:dlw