

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(2024 Cedar Circle Drive)	*	OFFICE OF
1 <sup>st</sup> Election District		
1 <sup>st</sup> Council District	*	ADMINISTRATIVE HEARINGS
John and Bonnie Ferrer	*	FOR BALTIMORE COUNTY
<i>Legal Owners</i>		
Petitioners	*	<b>Case No. 2019-0478-SPHA</b>
* * * * *		

**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 John and Bonnie Ferrer, legal owners (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 and Section 424.4 of the Baltimore County Zoning Regulations (“BCZR”) to permit a Class “A” Group Child Care Facility for a use permit up to 12 children. In addition, a Petition for Variance was filed: (1) to allow no solid wood stockade fence or panel for a group child care abutting residential property to be built in lieu of the required solid wood stockade or panel fence, a minimum of 5 ft. high with a 20 ft. setback to the property line per Section 424.1.B; (2) to allow a two-way driveway with a width of 12 ft. in lieu of the minimum 20 ft. with per Section 409.4 ; and (3) to allow two parking spaces (inside garage) for the residents portion of the building without direct access to an aisle when the residents are also the employees of the business per Section 409.4.B.2. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

John and Bonnie Ferrer and Bruce Doak, surveyor, appeared in support of the requests. There was one protestant in attendance. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (“ZAC”) comment were received from the Department of Planning (“DOP”). That agency did not oppose the request.

## SPECIAL HEARING

The record evidence establishes that Petitioners have satisfied the requirements of both Sec. 424.4 and Sec. 502.1 of the BCZR. Petitioners' Exhibit 4 is a letter addressing all the regulatory questions concerning: hours of operation, state licensing and capacity, parking, traffic and staffing. Based on the Exhibits offered and Petitioners' testimony I find that the proposed in home Class A Group Child Care Center will not substantially impact traffic or parking, will not cause overcrowding, will not interfere with adequate public facilities, will not be inconsistent with the vegetative retention provisions of the BCZR, will not be detrimental to the environmental and natural resources of the area, will not be inconsistent with the property's zoning classification, will not be detrimental to the health, safety or general welfare and will not be inconsistent with the spirit and intent of the BCZR.

## 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 is an older, established subdivision with varied topography and mature trees and landscaping. The driveway in question is bordered by large established shrubs and brick planting boxes that severely limit the ability to widen it. Further, the property is subject to various restrictive covenants, including a prohibition on tall or opaque fencing. As such the property is unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to operate the proposed Class "A" Group Childcare

Facility as an accessory use to their home. The evidence established that the Petitioners are responsible persons who have maintained their home in immaculate condition and who have been successfully operating an existing Child Care Center for seven children, including four of their own. They are in the process of securing State licensure to care for up to twelve children, which is why they are requesting the variance relief in question. 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 lack of County agency opposition. The one Protestant, Adal Jaraval, M.D., expressed concerns that he and some other neighbors have about allowing home businesses in the neighborhood. However, he did not voice any specific concerns about the requested variance relief.

THEREFORE, IT IS ORDERED this 9<sup>th</sup> day of **December, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing to permit a Class “A” Group Child Care Facility for a use permit up to 12 children, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to allow no solid wood stockade fence or panel for a group child care abutting residential property to be built in lieu of the required solid wood stockade or panel fence, a minimum of 5 ft. high with a 20 ft. setback to the property line per Section 424.1.B; (2) to allow a two-way driveway with a width of 12 ft. in lieu of the minimum 20 ft. with per Section 409.4 ; and (3) to allow two parking spaces (inside garage) for the residents portion of the building without direct access to an aisle when the residents are also the employees of the business per Section 409.4.B.2, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner shall plant effective and attractive vegetative screening along the east side of the macadam driveway from the rear of the garage to the rear property line.
2. 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.

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Signed \_\_\_\_\_  
PAUL M. MAYHEW  
Managing Administrative Law Judge  
for Baltimore County

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