

**IN RE: PETITIONS FOR SPECIAL  
EXCEPTION AND VARIANCE  
(11421 Reisterstown Road)  
4<sup>th</sup> Election District  
2<sup>nd</sup> Council District  
Comprehensive Caring Angels  
Daycare, LLC  
Legal Owner**

\* BEFORE THE  
\* OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* FOR BALTIMORE COUNTY  
\* **Case No. 2019-0546-XA**

**Petitioner**

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Exception and Variance filed for property located at 11421 Reisterstown Road. The Petitions were filed on behalf of Comprehensive Caring Angels Daycare, LLC, legal owner of the subject property (“Petitioner”). The Special Exception petition seeks to approve a Child Care Center Class B Group with more than 40 children in RO (Residential Office) zone pursuant to §§ 424.5.B and 1B01.C.6 of the Baltimore County Zoning Regulations (“BCZR”). The Petition for Variance seeks to permit a fence for outdoor play space with a rear and side yard setback of five (5) feet in lieu of the required twenty (20) feet pursuant to § 424.1.B. A site plan prepared by surveyor Brian Dietz was marked as Petitioner’s Exhibit 1.

Appearing in support of the petitions was Julius Nyambi and surveyor Brian Dietz. Edward C. Covahey, Jr., Esq. represented the Petitioner. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Bureau of Development Plans Review (“DPR”), the Department of Planning (“DOP”) and the State Highway Administration (“SHA”).

The subject property is approximately 19,845 square feet in size and is split- zoned RO and DR 3.5. Petitioner proposes to operate a Class B child care center with up to 40 children. Such a center is permitted by special exception in the DR zones.

Mr. Covahey explained that they had only recently received the agency comments and that the surveyor, Mr. Dietz, had drafted a revised site plan in response to these comments. The revised plan was admitted as Petitioner's Exhibit 1A. Based on his credentials and experience Mr. Dietz was accepted as an expert in surveying, land use planning, and the BCZR. He testified that in response to the comments of DPR and DOP he had revised the site plan by moving the proposed ingress/egress driveway several feet south and by widening it to the required 24 feet. The north side of the driveway, as depicted on Exhibit 1A, is now just south of the existing utility pole. The existing handicap parking space will be moved from the front of the building to the back in order to accommodate the driveway. Further, there will be two way traffic along the driveway from Reisterstown Road back to the underpass between the two existing structures on the property. Mr. Dietz explained that this section of the driveway is approximately 85 feet long and will be able to accommodate at least six vehicles in a queue. The driveway then turns and goes under the elevated walkway between the structures and loops around the back structure on the property, creating more queueing room. In his expert opinion this traffic flow will eliminate any traffic congesting or back-up on Reisterstown Road. He noted that this section of Reisterstown Road has five lanes, with a turning lane in the middle and that this should further alleviate any congestion caused by vehicles turning into the proposed daycare facility from southbound Reisterstown Road.

Mr. Dietz also discussed the surrounding properties and the fact that the proposed setback variances will not adversely impact any residential uses. Finally, Mr. Dietz testified that this

proposed daycare use conforms to all the special exception factors of BCZR § 502.1, and that it will have no greater impact in this location than is generally associated with this use.

The petitioner, Mr. Nyambi, testified that he and his wife are both state-licensed daycare providers. He is also a Sergeant with the Maryland Department of Corrections. They currently operate a daycare center in Reisterstown that serves 24 children. They recently purchased this property in order to open an additional facility for as many as 40 children. As with their current facility they intend to allow parents to drop their kids off from 6 a.m. to 9 a.m. and to pick-up from 4 p.m. to 7 p.m. Mr. Nyambi explained that they have not had traffic problems at their existing daycare because the parents drop off and pick up at varying times based on their work schedules. He testified that he is aware of the landscaping and lighting requirements outlined in the DOP comments and that he is also aware that he will need to obtain an “entrance permit” from the SHA, as noted in their file comments. He testified that he is fully prepared to comply with all these conditions.

#### 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.

Based on the exhibits and testimony, including the expert testimony of Mr. Dietz, I find that the petitioner is entitled to a special exception in this case. I find that this proposed use

conforms with the requirements of BCZR § 502.1, and is generally within 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 has two structures which are connected by an enclosed overhead bridge or connecting walkway. It is split-zoned with a small area of DR 3.5 at the rear of the parcel. However, the adjoining properties on all three sides are commercial. B.G. & E. owns the adjoining property to the rear, which is entirely wooded. The property is therefore unique. If the BCZR were strictly interpreted Petitioner would suffer a practical difficulty since it would be unable to construct the required outdoor play area at the rear of the property. Finally, I find that the variances 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 Baltimore County and/or community opposition.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this **13<sup>th</sup>** day of **March, 2020** that the Petition for Special Exception to approve a Class B child care center for as many as 40 children, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance to permit a fence for outdoor play space with a rear and side yard setback of five (5) feet in lieu of the required twenty (20) feet, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon 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. A maximum of 40 children may be enrolled at the center.
3. Prior to issuance of permits Petitioner must submit for approval by Baltimore County landscape and lighting plans for the site.
4. Prior to issuance of Permits Petitioner must contact the State Highway Administration to obtain an entrance permit.
5. The child care center may operate only Monday-Friday from 6 a.m. until 7 p.m.
6. There shall be no other uses permitted on the site.
7. No temporary freestanding signs shall be permitted along the Reisterstown Road frontage, and all signage shall comply with BCZR § 450.

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

PMM/sln