

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
NW Corner of Hoyt Circle and	*	ZONING COMMISSIONER
Kings Point Road		
(9900 Hoyt Circle)	*	OF
2 nd Election District	*	BALTIMORE COUNTY
4 th Council District		
	*	
Sharneil L. Hodge		
Petitioner	*	Case No. 2010-0150-SPHA

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the owner of the subject property, Sharneil L. Hodge, a/k/a Sharneil Gamble on the Certificate of Registration (No. 78386) issued by the Maryland State Department of Education. The Petitioner requests special hearing relief, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve (A Use Permit for) a Class A Group-Child Care Center (maximum of 12 children) as an accessory use in a single-family dwelling. In addition, the Petitioner requests variance relief from Section 424.1.B of the B.C.Z.R. to permit a portion of the fence (existing at the north rear yard and west side yard property lines) to be chain link in lieu of the required stockade or panel fence and to permit an outdoor play area with a fence setback of zero (0) feet and 9 feet in lieu of the minimum required setback of 20 feet. The subject property and requested relief are more particularly described on the colorized site plan submitted, which was accepted into evidence and marked as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requests was Sharneil L. Hodge, property owner. There were no Protestants or other interested persons present. E-mail correspondence was received from residents of the Kings Park Community, namely Pearl and

Richard Kirby, Delores M. Ford, Henry and Tamara Pope, Sherrita S. Rose and Al Barnes – raising concerns of the number of children, parking and traffic, and the erecting of a chain link fence that would not conceal noise levels or buffer the view of day care toys in the yard.

Testimony and evidence offered disclosed that the subject property is roughly a square shaped (104' wide x 93' deep) corner lot abutting on and at the intersection of Hoyt Circle and Kings Point Road in Randallstown. The property known as Lot 15 in the Kings Point subdivision contains a lot area of 10,165 square feet (0.233 acres), zoned D.R.3.5 and is improved with a two-story, split-level style single-family dwelling with a finished sub-basement, wooden rear yard deck(s) and covered porch. The home built in 1964 with other improvements on the site, which include a 2,600 square foot play area in the rear yard, two (2) parking spaces (one - side yard and one - front yard), has always been enclosed with a fence at the property line. *See* Petitioner's Exhibit 1. After purchasing the home, Ms. Hodge upgraded the fence that extends from the rear of the house out to the property lines with a 6-foot high wooden stockade fence. This wooden fence also surrounds the eastern portion of the rear yard. Ms. Hodge, who possesses a family day care license and operates under the name of "Just Like Family Day Care", wanted to improve the fence as she operates a Family Child Care Home with up to eight (8) children and has done so successfully for the past 16 years (13 years at this location). She would like to move up to a Class A Group Child Care Center with up to twelve (12) children, again using the existing facilities in her home. As mentioned, the existing chain link portion of the fence illustrated on the site plan is on the abutting rear (western) property line with 9902 Hoyt Circle – the home of Darryl and Cheryl Kauffman and the rear/side yard property line with 3618 Kings Point Road – owned by James and Cynthia Hawkins. The regulations require such a fence to be solid wood and to be located no closer than 20 feet from the property line. Ms. Hodge indicated that while she could move these portions of the fence in 20 feet, that would greatly

restrict the size of the play area that would prevent the use of the wooden game deck area, which has functioned well for 13 years and without incident or complaint. In this regard, the adjoining neighbors on either side indicated no objection to the existing and proposed use. *See* Petitioner's Exhibit 4A and 4B. Additionally, there were no adverse Zoning Advisory Committee (ZAC) comments submitted. Apparently, the existing use has not caused detrimental impacts to the surrounding locale.

Ms. Hodge read the e-mail streams received by the undersigned prior to the hearing. She noted that there was apparently a great deal of confusion on behalf of her neighbors concerning the nature and scope of the request. Nothing is being removed. No new construction is taking place. She only wishes to legitimize the existing conditions as set forth above. She testified that it would be impractical to provide the 20-foot setbacks due to the steep hill or drop-off in the rear yard. Ms. Hodge has never advertised her services, there are no signs on the property and there is a strictly enforced three (3)-minute drop-off time for parents bringing their children to the day care facility. Her day care services have been greatly sought and many of the families have multiple children enrolled at the facility at the same time, further reducing daily trips/drop-offs.

I am persuaded that the (twelve [12]) is the maximum number of children who can safely and effectively be served given the small area of the property. The Petitioner is here primarily to comply with State licensing requirements for operating a day care center on the property. It is clear that practical difficulty or unreasonable hardship would result if the variance were not granted. It was established that special circumstances exist that are peculiar to the property which is the subject of this request and that the requirements from which the Petitioner seeks relief will, if not granted, unduly restrict the use of the land due to the special conditions (corner lot and topography) unique to this particular parcel. In addition and as noted above, the relief

requested will not cause any injury to the public, health, safety or general welfare, and meets the spirit and intent of the B.C.Z.R.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 1st day of February 2010 that the Petition for Special Hearing, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve (A Use Permit for) a Class A Group-Child Care Center as an accessory use in a single-family dwelling, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance, pursuant to Section 424.1.B of the B.C.Z.R., to permit a portion of the fence (existing at the north rear yard and west side yard property lines) to be chain link in lieu of the required stockade or panel fence and to permit an outdoor play area with a fence setback of zero (0) feet and 9 feet in lieu of the minimum required setback of 20 feet, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1. The Petitioner may apply for her Use Permit and be granted same upon the receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at her own risk until the thirty (30) day appeal period from the date of this Order has expired.
2. The hours of operations shall be restricted to 7:00 AM to 6:30 PM, five (5) days a week (Monday through Friday).
3. Petitioner agrees to replace the existing chain link fence with a 5-foot high solid wood stockade fence in the event:
 - (a) Complaints are received by the Division of Code Inspections and Enforcement concerning excessive noise levels or that day care toys or trash are becoming an eyesore to the aesthetics of neighboring homes, and
 - (b) The chain link fence needs replacement due to age and deterioration, whichever is first to occur.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

WJW:dlw

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County