

<b>IN RE: PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
S/Side of Prestwood Road, 230' E of c/line of	*	OFFICE OF
Moorehead Road		
1 <sup>st</sup> Election District	*	ADMINISTRATIVE HEARINGS
1 <sup>st</sup> Councilmanic District		
<b>(907 Prestwood Road)</b>	*	FOR BALTIMORE COUNTY
Thomas M. & Lynda A. Davenport	*	<b>Case No. 2011-0327-SPHA</b>
<i>Petitioners</i>		

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings for consideration of Petitions for Special Hearing and Variance filed by Thomas M. and Lynda A. Davenport, the legal property owners. Petitioners are requesting Special Hearing relief in accordance with 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). Petitioners are also requesting Variance relief from Section 424.1 of the B.C.Z.R. to permit a fence for the play area of a Class A Group Child Care Center to be located zero (0) feet from the property line in lieu of the required 20 feet. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the public hearing in support of the requested relief were Thomas and Lynda Davenport, property owners. Walter Hollman, President of the Westview Park Community Association, attended the hearing and advised that the Association was not opposed to Petitioners' requests. There were no Protestants in attendance, and the file does not contain any letters of protest or opposition.

Testimony and evidence revealed that the subject property is approximately 7,000 square feet, zoned D.R.5.5, and is improved by a single family dwelling.

Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments received from the Office of Planning on June 2, 2011, oppose the Petitioners' request for the following reasons:

1. The Deputy Zoning Commissioner on 10/31/05 denied the previous request for a Class A Group Child Care Center at this location.
2. The petitioner's site plan isn't in compliance with Section 424.4.A.1.e of the BCZR. It doesn't show the parking arrangement, and it doesn't show the proximity of dwellings on two adjacent lots (i.e., 906 and 908 Bardswell Road).
3. The petitioner currently operates a Family Child Care Home as an accessory use at this location. Denial of this request doesn't deprive the petitioner of a reasonable use of the property for childcare.
4. The site is a small residential lot located in a neighborhood of similar sized lots. The proposed use is excessive for this particular lot and the neighborhood.
5. The site doesn't have adequate parking. The lot whereon the proposed Class A Group Child Care Center would be located is also used as a private residence. This lot has two off-street parking spaces. The parking spaces are located side-by-side in the front yard. Pursuant to Section 409.6 of the BCZR, at least 4 off-street parking spaces should be provided (two spaces for the residence and at least 2 spaces for the Group Child Care Center). Although 4 parking spaces should be provided, it would be necessary to remove vertical curbing and pave a substantial portion of the front yard in order to provide 2 additional spaces. The arrangement and location of the 4 parking spaces would be greatly inconsistent and incompatible with the parking pattern on surrounding properties.
6. There does not appear to be any legitimate justification for practical difficulty or unreasonable hardship to grant the requested variance."

In addition, the Office of Planning stated in its ZAC comment, the following:

The Administrative Law Judge should determine whether the proposed Class A Group Child Care Center must comply with the following sections of the BCZR: minimum lot size (424.7.A), setbacks (424.7.B), and location of parking, drop-off and delivery areas (424.7.C).

After due consideration of the testimony and evidence presented, I am persuaded to grant the relief requested.

The first issue concerns the "use permit" required for a Group Child Care Center, Class A, which allows an owner to provide care for not more than 12 children. Under the B.C.Z.R, the primary test used to determine whether such use is appropriate is whether the proposed operation

would be detrimental to the “health, safety or general welfare of the surrounding community.” B.C.Z.R. § 424.4.A.6.c. In this case, the available evidence suggests the answer to this inquiry is “definitely not.”

Petitioner is licensed by the State of Maryland and has been a child care provider for over 20 years. She currently cares for up to 8 children, and seeks to have up to 12 children at any one time. In 2003, she constructed an addition at the rear of her home to accommodate the day care operation, and she has a generous sized play area with the requisite stockade fence, as shown on Exhibit 1. The Petitioner has received no community complaints concerning the operation of her facility; indeed, the file contains ten (10) letters from neighbors/clients expressing enthusiastic support for Petitioner’s requests. See Exhibit 4. In addition, the file contains a petition signed by sixteen (16) adjoining neighbors on Prestwood and Bradshaw Roads, indicating support for Petitioner’s requests. See Exhibit 3.

Petitioner testified the center will operate 5 days/week and would likely generate six (6) vehicle trips in the morning and six in the evening when the children are picked up. In these circumstances, and especially in light of the unanimous support from the neighbors and community association, I find that the operation of the Group Child Care Center, Class A would not be in any way injurious to the public health, safety and welfare. To the contrary, Petitioner’s proven track record of success and excellence in the child care field suggests the center will be a positive addition to the community and provide a valuable, much needed service to working parents, as well as enhanced economic opportunities for Petitioner and her staff of one or two employees.

I am not unmindful of Deputy Zoning Commissioner Murphy’s prior Order with respect to this property or the Office of Planning’s adverse comments. As to the former, at the time of the

2005 hearing in that case, the Westview Park Community Association voiced opposition to Petitioner's request, which understandably factored into the denial of the use permit. That is not the case in the present setting. As to the Office of Planning's comments, I do not believe that Petitioner's request is subject to B.C.Z.R. 424.7.A (lot size), 424.7.B (setbacks) and 424.7.C (parking). These requirements are more germane to Group Child Care Centers operated as a principal, rather than accessory, use. I reviewed several prior zoning Orders concerning Group Child Care Centers, and none discussed or even motioned these provisions. Perhaps more to the point, Petitioner presented a series of photographs of several Group Child Care Facilities located in Baltimore County (See Exhibit 2) and it is obvious none of the operations comply with B.C.Z.R. 424.7.A, B and C.

As to the variance request, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. The stockade fence (mandated by the B.C.Z.R.) has been in its present location for over 8 years, and the variance therefore legitimizes the "on site" conditions.

I further find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship. Finally, I find the variance can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare, as amply demonstrated by the lack of community opposition and the letters of support from adjoining neighbors.

Pursuant to the advertisement, posting of the property and public hearing held, and after considering the testimony and evidence offered, I find that Petitioners' Special Hearing and Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County this 17 day of June, 2011 that Petitioners' Special Hearing request in accordance with 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), be and is hereby GRANTED, and

IT IS FURTHER ORDERED that Petitioners' Variance request from Section 424.1 of the B.C.Z.R. to permit a fence for the play area of a Class A Group Child Care Center to be located zero (0) feet from the property line in lieu of the required 20 feet, be and is hereby GRANTED.

The relief granted herein is subject to the following condition:

1. Petitioners are advised that they may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said 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 \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:pz