

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
NW of Lightfoot Drive, 78' SW of		
the c/line of Rohr Road	*	OFFICE OF ADMINISTRATIVE
3 rd Election District		
2 nd Council District	*	HEARINGS FOR
(2422 Lightfoot Drive)		
	*	BALTIMORE COUNTY
Moshe Y. and Malka Markowitz		
Petitioners	*	CASE NO. 2012-0274-SPH

* * * * *

ORDER ON PETITIONERS' MOTION FOR RECONSIDERATION

On June 19, 2012, the Petitioner filed in the above case a Motion for Reconsideration of the Order and Opinion dated June 25, 2012. A response to Petitioners' Motion was filed on July 27, 2012 by attorney Gordon M. Levenson. I have had an opportunity to review both of these papers, and will deny the Motion for Reconsideration.

At the outset, it is important to note that the Petitioners in this case sought to determine whether or not an after school religious and cultural study program in a residence for as many as 12 elementary school students at any one time was a permissible accessory use. In their Motion for Reconsideration, the Petitioners have recharacterized the activities under consideration, contending that the use would be proper under other provisions of the Baltimore County Zoning Regulations ("B.C.Z.R."). As a general matter, I do not think this is the proper function of a Motion for Reconsideration; in effect, it in reality would constitute an amendment to the zoning petition, which would be inappropriate at this juncture.

In the first portion of their memorandum, the Petitioners contend that home occupations are permitted as an accessory use in the DR zones, a statement which is no doubt correct. The Petitioners also correctly note that tutoring is considered under the Zoning Commissioner's Policy Manual ("Z.C.P.M.") as a bona fide "home occupation." However, that same manual provides that "tutoring is one-to-one or two-to-one basis." Z.C.P.M., p. 1-18.1. The testimony in

the above matter indicated that up to 12 elementary school students would be brought to the home at the same time, and that would obviously be antithetical to the definition and notion of tutoring.

While it is conceivable, as Petitioners argue in the next portion of their Motion, that they could offer tutoring services on the premises, the Petitioners would need to adhere to the strictures set forth in the Z.C.P.M. As described at the hearing, I do not believe the operation described by Petitioners would qualify under the regulations as a tutoring service. This determination has nothing to do with the content or subject matter of the instruction, but concerns the number of students per day, and the lack of personal or individual instruction for the children.

The Petitioners next content that the described activities would qualify as a school, which is permitted as of right in the DR 5.5 zone. But, as noted at the outset, the Petition in this case did not seek such a determination, and as such the argument cannot be considered on the Motion for Reconsideration. The Petition in this case referred to the whether the described activities qualify as a legal “accessory use” in a residential zone. In such a zone, schools are permitted as a principal use, not an accessory use. B.C.Z.R. § 1B01.1.a.14. Based on the testimony in this case, I do not believe this single family dwelling could qualify as a school. Even if (for sake of argument only) it could be considered a school, the Petitioners would need to satisfy the requirements of B.C.Z.R. § 1B01.B.1.g.10, which they have not done. That provision contemplates a “new” building or structure devoted to educational activity. Here, we have an existing single family dwelling, and the Petitioners have proposed no external construction of any sort. In addition, there was no testimony in the case concerning whether or not the proposal (again assuming that a school use was proposed) would comply, to the extent possible, with the RTA requirements of the B.C.Z.R. as required under the aforementioned regulation.

Finally, the Petitioners contend that they are entitled to use the subject property as a “family child care home” but again, the Petition in this case did not seek such a determination, and it would be inappropriate to do so at this stage. In addition, the Petitioners indicated that the proposed use would be for up to 12 elementary school children, which would also disqualify the proposed use from being classified as a “family child care home,” which permits a maximum of eight students including the owner/operator’s own children. In addition, there was no evidence presented that the Petitioners or the subject premises are licensed by the State to operate as a family child care home, and that would also serve as a legal impediment to such a determination. B.C.Z.R. § 424.1.A.

For the foregoing reasons, the Motion for Reconsideration will be DENIED.

Dated this 30 day of July, 2012.

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:pz