

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b> *	BEFORE THE
<b>AND VARIANCE</b>	
(940 Olmstead Road) *	OFFICE OF
3 <sup>rd</sup> Election District	
2 <sup>nd</sup> Council District *	ADMINISTRATIVE HEARINGS
Ramon Gonzalez Vera &	
Ana Jimenez *	FOR BALTIMORE COUNTY
<i>Legal Owners</i>	
Petitioners *	<b>Case No. 2015-0170-SPHA</b>

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**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 the legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) for a use permit to allow a Class A Group Child Care Center. In addition, a Petition for Variance seeks the following: (1) to permit a chain-link fence in lieu of the required stockade fence; and (2) to allow a 0 ft. setback in lieu of 20 ft. for the fence.

The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1. Appearing at the public hearing in support of the requests was Ana Jimenez. There were no Protestants or interested citizens in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were submitted by the Department of Planning (DOP) and the Bureau of Development Plans Review. These will be discussed below.

The subject property is approximately 7500 sq. ft. and is zoned D.R. 5. The property is improved with a modest single family dwelling, and is situated in the Sudbrook Park community. The Petitioners purchased the home in July 2014, and since that time Ms. Jimenez has operated in her home a family day care with seven (7) children. Ms. Jimenez is licensed by the Maryland

State Department of Education (Ex. No. 5), and has an Associate's degree in early-childhood education. She is currently receiving training from the Montessori School, and will receive certification from that organization in June 2015.

The Bureau of DPR recommended Petitioners comply with the fence requirements and observe the 20' setback found in B.C.Z.R. §424.1. That agency also indicated a landscape plan would be required. The DOP opposed the request, citing the lack of adequate off-street parking, which could cause congested and/or dangerous conditions in the neighborhood.

The existing fence was erected many years ago, and Ms. Jiminez noted it is identical to the chain link fencing used to enclose the other small yards throughout the neighborhood. The Petitioners' lot, like others in the community, is 50' wide. If the 20' fence setback was observed, the Petitioners would have just a 10' wide strip of usable rear yard space. The reality is that the fence setback requirement has been historically relaxed or waived in cases of this nature; if the Regulations were strictly interpreted it is likely that most of the in-home child care centers throughout the County could not satisfy the requirements. The dwelling is attractive and well-kept, and I do not believe that a landscape plan should be required in this case, where the only change taking place is that the number of children in the day care is being increased from 7 to 9. Under the B.C.Z.R., a "Family Child Care Home" (§101.1) with "no more than eight children at one time" is permitted by right as an accessory use in a dwelling "in all zones." B.C.Z.R. §424.3. There are no parking, fencing or landscape requirements imposed on such a use.

With regard to the DOP's comment, it is true there is no off street parking available. Even so, Ms. Jiminez has operated for nearly a year a day care with 7 children, and there have been no complaints or incidents of any kind. Ms. Jiminez reminds parents in writing (Ex. No. 7) that the drop off and pick up process must be completed in 5 minutes or less, and that they should not double park on Olmstead Road. Finally, the Petitioners presented letters of support from all

adjacent neighbors (a few of which have children in Ms. Jiminez's care) and the Sudbrook Park Community Association. Exhibit Nos. 2-4.

To obtain variance relief a petitioner must show:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People's Counsel*, 407 Md. 53, 80 (2008).

Petitioners have met this test. The fence was installed 10+ years ago, and thus Petitioners are confronted with a unique and existing site condition. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty, given that Petitioners would be unable to operate the child care facility. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the support of Petitioners' neighbors and the Sudbrook Park Community Association.

The Petition for Special Hearing seeks a use permit for a Class A Group Child Care Center as an accessory use. Under the B.C.Z.R., such a use is permitted by right in all D.R. zones, B.C.Z.R. §424.4.A, subject to any restrictions imposed in the Order to ensure that the child-care center will not have a detrimental impact upon the community. The Order below will restrict the center to a maximum number of nine (9) children, and in my opinion the operation will not have a negative impact upon the neighborhood.

THEREFORE, IT IS ORDERED this 14<sup>th</sup> day of April, 2015, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R") for a use permit to allow a Class A Group Child Care Center, be and is hereby GRANTED;

IT IS FURTHER ORDERED that the Petition for Variance as follows: (1) to permit a chain-link fence in lieu of the required stockade fence; and (2) to allow a 0 ft. setback in lieu of 20 ft. for 280 linear ft. of fence , be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. 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.
2. The Group Child Care Center shall have a maximum of nine (9) children.
3. The child care facility shall operate only between the hours of 7:30 am to 6:00 pm Monday through Friday.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JEB/sln

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County