

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(1301 Cheverly Road)		
9 th Election District	*	OFFICE OF
3 rd Councilmanic District		
The Belvedere Baptist Church of Baltimore,	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Davenport Preschool, LLC,	*	FOR BALTIMORE COUNTY
<i>Lessee</i>		
Petitioners	*	Case No. 2015-0004-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of The Belvedere Baptist Church of Baltimore, Legal Owner, and Davenport Preschool, LLC, Lessee (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to determine whether or not the Administrative Law Judge should approve an amendment to restriction #2 in Zoning Case No. 2013-0166-X to allow the petitioner/lessee to have a maximum of 150 children in the approved Class B Group Child Care Center in lieu of the previously granted 120 children.

Appearing at the public hearing in support of the requests was Liz Harlan, the owner of the Davenport Preschool which is operated on site, and Carl Dyhrberg with C.D. Design Consultants, the consulting firm that prepared the site plan. Matthew Vocci, Esquire, represented the Petitioners. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Several community residents attended the hearing and opposed the request and the file also contains several letters of opposition from neighbors. The only substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP), which did not oppose the request.

The subject property is 12.711 acres (553,691.16 sq. ft.) and is zoned DR 1. The Petitioners were granted special exception relief in 2013, permitting them to operate a Class B child care facility with a maximum of “120 children in the facility at any one time.” Case No. 2013-0166-X, Order p. 7. The current Petition seeks an amendment of that restriction, “to have a maximum of 150 children . . . in lieu of the previously granted 120 children.” As noted at the hearing, the previous Order did not contain an enrollment cap. In other words, the school could very well enroll 150 students, but given the various schedules offered, only 120 children would be in the center at any one time.

Ms. Harlan stated that the fall class which just began has 109 children; in other words, to date the school has not had the maximum number of students permitted by last year’s Order. Ms. Harlan would like to construct one additional classroom which would accommodate 16 children. She believes 150 would be the maximum number of students that could be accommodated at the site, and State regulations provide a similar numerical restriction based on the size of the existing and proposed classrooms. Petitioners’ Ex. No. 2.

The neighbors expressed many of the same concerns which were discussed at the prior hearing: increased traffic in the community, safety of pedestrians and neighborhood children, and the potential for an expansion of the site if Ms. Harlan eventually purchases the property. Many area residents also complained Ms. Harlan did not notify them about her plans to seek approval for additional children at the School.

At this juncture, I do not believe the Petition should be granted. The special exception approval for 120 children was granted in March 2013, over the objection of many area residents. The Petitioner has not indicated why that restriction should not remain in place and no appeal was filed to challenge this aspect of the previous Order. Ms. Harlan conceded she has yet to

reach the maximum number of students, and thus the community rightly notes that it has not had time to evaluate the impact of the school when it is operating at permitted capacity.

Therefore, I believe the current Petition, filed after the preschool has been operating for just one year, is premature. In addition, the law also requires some change in circumstances that would justify a different restriction; i.e., an increased demand for enrollment or waiting list for preschool admissions. Calvert County v. Howlin Realty, Inc., 364 Md. 301, 325 (2001) (agency may reconsider action taken previously upon a showing that “some new or different factual situation exists that justifies the different conclusion”). I do not believe the Petitioners presented any evidence of such changed circumstances here.

THEREFORE, IT IS ORDERED this 12th day of September, 2014, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to determine whether or not the Administrative Law Judge should approve an amendment to restriction #2 in Zoning Case No. 2013-0166-X to allow the petitioners/lessee to have a maximum of 150 children in the approved Class B Group Child Care Center in lieu of the previously granted 120 children, be and is hereby DENIED.

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/sln