

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND SPECIAL EXCEPTION		
(9420 Dogwood Road)	*	OFFICE OF
2 nd Election District		
4 th Council District	*	ADMINISTRATIVE HEARINGS
Arthur O. and Sharon Y. Jackson		
<i>Legal Owners</i>	*	FOR BALTIMORE COUNTY
Petitioners	*	Case No. 2016-0188-SPHX
* * * * *		

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Special Exception filed on behalf of Arthur and Sharon Jackson, legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to confirm that two principal uses (single family dwelling & Class B Group Child Care Center) are both allowed on the same property. A Petition for Special Exception was filed pursuant to § 424.5.A to allow a Class B Group Child Care Center with a maximum of 40 children.

Appearing at the public hearing in support of the requests was Arthur & Sharon Jackson and Bruce E. Doak, a professional surveyor whose firm prepared the site plan. Petitioners were represented by J. Neil Lanzi, Esq. Several neighbors attended the hearing to obtain additional information about the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations.

Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Department of Environmental Protection and Sustainability (DEPS). A condition will be included in the Order below to address the concern raised by DEPS. The DOP requested vegetative screening between the subject property and the residence at 9419 Dogwood.

Petitioners explained the owner of that home (which is in fact located at 9416 Dogwood) removed a row of trees and bushes that originally separated their homes, to provide a more open vista and view shed. As such, I will not require Petitioners to provide landscaping.

Special Hearing

The B.C.Z.R. does not contain an explicit prohibition upon multiple principal uses on the same lot. In a recent case of first impression, an Ohio court held that for zoning purposes “it is permissible for property to have multiple principle uses.” Phillips Supply Co. v. Cincinnati Zoning Bd., 17 N.E.3d 1 (Ohio 2014). The subject property is nearly 5 acres in size, and though it is zoned RC 2 there was no evidence presented which would suggest the child care facility and/or single family dwelling would be detrimental in any way to the agricultural uses in the area. While the result might be otherwise in a case involving a smaller lot, I believe the subject property is of a sufficient size to accommodate the proposed principal uses. As such, the special hearing request will be granted.

Special Exception

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. Schultz v. Pritts, 291 Md. 1 (1981). The Schultz standard was revisited in People’s Counsel v. Loyola College, 406 Md. 54 (2008), where the court emphasized that a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use. In this case Mr. Doak, who was accepted as an expert, opined Petitioners satisfied the requirements of B.C.Z.R. §502.1, which governs the special exception process. In fact, Mr. Doak testified this was perhaps the largest site he has seen proposed for a child care facility.

Members of the community suggested there would be an increase in traffic, which may be the case. But traffic would increase in any scenario where a Class B child care facility is operated in the RC 2 zone. In other words, I believe increased traffic is an adverse impact inherent in the operation of such a facility. According to Maryland case law, the special exception cannot be denied on this basis. In addition, Petitioners have in an effort to lessen the impact upon the community agreed to certain conditions and restrictions upon the operation of the child care center, and a declaration containing those terms will be incorporated into the Order below. In these circumstances, I believe the special exception should be granted.

THEREFORE, IT IS ORDERED this 3rd day of August, 2016, by this Administrative Law Judge, that the Petition for Special Hearing to confirm that two principal uses (single-family dwelling & Class B Group Child Care Center) are both allowed on the same subject property, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Special Exception pursuant to B.C.Z.R. § 424.5.A to allow a Class B Group Child Care Center, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon 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 restrictive covenant agreement attached hereto shall be incorporated into this Order and the relief granted herein shall be expressly subject to the terms and restrictions of that agreement.
3. Prior to issuance of permits Petitioners shall obtain approval from the Ground Water Management section of DEPS.

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