

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(4910 Black Rock Road)	*	OFFICE OF
5 th Election District		
3 rd Council District	*	ADMINISTRATIVE HEARINGS
Ryan & Kimberly Cook and		
George & Shirl Scaletta	*	FOR BALTIMORE COUNTY
<i>Legal Owners</i>		
Petitioners	*	Case No. 2017-0069-SPHA

* * * * *

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 Ryan & Kimberly Cook and George & Shirl Scaletta, legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R) for a class “A” group child care center with a maximum of 12 children. In addition, a Petition for Variance seeks to permit a 3 ft. high picket fence in lieu of the required 5 ft. high solid wood stockade/panel fence, and to permit a 0 ft. fence setback in lieu of the minimum required 20 ft. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the requests was Kimberly Cook. There were no Protestants or interested citizens in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A Substantive Zoning Advisory Committee (ZAC) comment was received from Department of Planning (DOP), and is discussed below.

The subject property is approximately 4 acres in size and is zoned RC 2. The property is located in a rural portion of the county and it adjoins several large parcels on which agricultural operations are conducted. Petitioners purchased the property in 2013 and constructed a single-family dwelling on the lot in 2015. Since that time Ms. Cook has operated a child care center in her home caring for eight (8) children. Ms. Cook stated she has been a licensed child care provider since 2005, and would like to expand her

operation (known as “Tiny Treasures”) to provide care for up to 12 children; i.e., a “group child care center, class A.” B.C.Z.R. §101.1.

SPECIAL HEARING

The petition for special hearing seeks a use permit to operate the group child care center. The Administrative Law Judge could grant such a permit in this case without a hearing, since no formal request(s) for hearing were received from any nearby neighbor. B.C.Z.R. §424.4.A.4. However, Petitioners also seek variance relief which does require a public hearing. As such, the zoning review office suggested the special hearing request be included in the petition and decided at the same time.

Under the B.C.Z.R., an accessory class A group child care center is permitted by right in all residential zones, with the exception of the RC-4 zone. B.C.Z.R. §424.4.A. This property is zoned RC-2 and the single-family dwelling on the property is the principal residence of Petitioners. The Regulations specify certain information which must be included in an application for a use permit, including the hours of operation (6 a.m.-6 p.m., Mon.-Fri.), number of employees (3 or fewer), anticipated traffic (12 vehicle trips in the a.m. and p.m. periods) and the number of children to be enrolled (up to 12 children). B.C.Z.R. §424.4.A. The Petitioners’ site plan provides all of the information required, and photographs of the property were also submitted. Petitioners’ Ex. 3. The plan indicates the child care center will occupy the entire basement of the dwelling, which is 1,200 sq. ft. The large site appears to be well-suited for a child care center, and I do not believe the use would have a detrimental impact upon the community. As such, the use permit will be granted.

VARIANCE

Two variances are sought and both pertain to the fence enclosing the outdoor play space (5,753 sq. ft.). Under Maryland law, a variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

Petitioners have met this test. The property has a very irregular shape and is therefore unique. Petitioners would experience practical difficulty if the regulations were strictly interpreted because they would be unable to use the existing fencing which was recently installed for the child care facility. Finally, as demonstrated by the lack of community opposition, I do not believe granting the requests would have a detrimental impact upon the community.

The DOP indicated it did not oppose the use permit request, but that agency suggested the 20 ft. fence setback should be observed to ensure the health and safety of the children at the day care center. The subject property is bordered by large pastures which are actively farmed, and the DOP believed the setback is necessary to provide a buffer against potentially “undesirable conditions.” In addition, the DOP cited a portion of Master Plan 2020 wherein the stated goal is to protect and preserve prime agricultural lands to ensure the continued vitality of the agricultural industry and to prevent conflicts between potentially incompatible uses.

Ms. Cook stated she has operated a day care center at this site for nearly two years, during which time there have been two planting and harvesting cycles. She stated the farming operations have not had any detrimental impact upon the children, and she noted that if conditions on any

given day warranted it the children could be brought inside from the play area. The site is inspected by the State on a yearly basis to ensure that all safety and health requirements are observed. Ms. Cook also noted that while a portion of the fence is on the property line, the adjoining property contains a single-family dwelling and yard area, such that a minimum 40 ft. buffer already exists between the play area and the fields which are actively farmed. In these circumstances, I believe granting the variance would not jeopardize the health or welfare of the children.

The more salient issue raised by DOP concerns the County's goal of promoting and protecting farming operations in rural areas. The DOP suggested Petitioners have parents sign an acknowledgement whereby they recognize and agree that farming operations are conducted in the vicinity and that such uses—if conducted in accordance with the law—shall not be considered a nuisance. I agree, and Ms. Cook provided an addendum (Petitioners' Ex. 2) to her day care contract entitled "Agricultural Land Risk," which makes the disclosures suggested by the DOP. A condition will be included in the order below concerning this issue.

THEREFORE, IT IS ORDERED this **2nd** day of November, **2016**, 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 operate a class "A" Group child care center for a maximum of 12 children, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the petition for variance to permit a 3 ft. high picket fence in lieu of the required 5 ft. high solid wood stockade/panel fence, and to permit a 0 ft. fence setback in lieu of the minimum required 20 ft., 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. Petitioners shall require the parent(s) of each child enrolled at the center to sign and acknowledge receipt of an "Agricultural Land Risk" disclosure (as contained in Petitioners' Ex. 2), which may be included as part of the enrollment agreement or contract. Petitioners shall retain all records related to this disclosure and acknowledgement for a period of not less than 3 years.

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

JEB/sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County