

<b>IN RE: PETITIONS FOR SPECIAL HEARING,</b>	*	BEFORE THE
<b>SPECIAL EXCEPTION &amp; VARIANCE</b>		
<b>(3900 Annapolis Road)</b>	*	OFFICE OF
13 <sup>th</sup> Election District		
1 <sup>st</sup> Council District	*	ADMINISTRATIVE HEARINGS
Douglas & Jennifer Smith		
<i>Legal Owners</i>	*	FOR BALTIMORE COUNTY
Rene Rodgers, <i>Contract Purchaser</i>		
	*	<b>Case No. 2017-0045-SPHXA</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of Petitions for Special Hearing, Special Exception and Variance filed on behalf of Douglas & Jennifer Smith, legal owners and Rene Rodgers, contract purchaser (“Petitioners”).

The Petition for Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”): (1) to allow a multi-use building in an R-O zone as being in compliance with Section 102.2 of the B.C.Z.R. The principal use will be a Class B group child care center. The accessory use will be a second story residence for the owner and operator of the Class B group child care center. In addition, a Petition for Variance seeks: (1) to allow a freestanding enterprise sign facing a residential zone; and (2) to permit a rear yard setback of 24 ft. in lieu of the required 30 ft. Finally, a Petition for Special Exception was filed to permit a class B group child care center as a principal use in an R-O zone.

Appearing at the public hearing in support of the requests was Anthony Cortéal, Rene Rodgers and Doug Smith. Timothy M. Kotroco, Esq., represented the Petitioners. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were submitted by the Bureau of Development

Plans Review (DPR) and the Department of Planning (DOP). Neither agency opposed the requests, and conditions will be included in the Order below to address the concerns raised in the ZAC comments.

The subject property is approximately 0.709 acres in size and is split-zoned R-O & D.R. 5.5. The site is improved with a structure (approximately 1,900 sq. ft.) built in 1922, which was originally used as a single-family dwelling. Most recently, it was used as a real estate office. Ms. Rodgers, who at present operates a child care facility in this same neighborhood, proposes to construct a 2,300 sq. ft. addition to the existing structure. The first floor of the building would be used for a Class B group child care facility, and Ms. Rodgers' residence would be on the second floor of the enlarged structure, which is the subject of the special hearing request.

In the original zoning petition multiple variances and other relief was sought, primarily due to the fact that the proposed improvements for the child care center were situated in both the R-O and D.R. 5.5 zoned portions of the property. Following extensive discussions between Petitioners and the DOP, the plan and petition were revised such that all site improvements will now be in the R.O. zone, and this in turn allowed Petitioners to withdraw four of the variances initially sought.

### **Special Hearing**

It is not entirely clear what sort of relief is sought in this request. The Petition references B.C.Z.R. 102.2, which is a prohibition on the sharing of yard space or minimum area required for a building or use. The lot is 30,883 sq. ft., while the D.R. 5.5 regulations (which also provide the bulk and area standards for the R-O zone) require a minimum lot size of only 6,000 sq. ft. The child care center regulations specify a one acre minimum lot size, but that is applicable only for centers located in a D.R. zone. B.C.Z.R. §424.7.A. The request also makes reference to a "multi-use building," which I assume relates to the child care facility on the first floor and the residence

on the second floor. As noted, the group child care facility is designated as the principal use of the building, while the accessory use is the residence on the second floor. It is indeed customary for the owner/operator of a child care facility to reside on the premises, and both uses (residential and child care) are permitted in the R-O zone. As such, the petition for special hearing will be granted.

### **Variances**

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 irregular dimensions and is bordered on three sides by public roadways. As such the property is unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to construct the proposed improvements. 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 lack of Baltimore County and community opposition.

### **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. Mr. Matz opined (via proffer) that Petitioners satisfied the conditions set forth in B.C.Z.R. §502.1, and no testimony was presented to rebut this opinion. As such petition for special exception will be granted.

The only remaining issue concerns one item in the DOP's revised ZAC comment. Therein, that agency suggested that a sidewalk could be accommodated along a portion of the site by rerouting the walk to avoid a utility pole which is now in the way. The plan indicates that not only is a utility pole present in this area, but there are also "guy wires" that support the pole. As such, to navigate around the pole and wires (or to have the pole relocated) would be a Herculean task that would also be prohibitively expensive in the circumstances of this case. While Petitioners will provide and/or improve sidewalk along Annapolis Road and a portion of Alderwood Avenue terminating at the driveway entrance to the facility, I do not believe they should be required to provide a sidewalk along that portion of the property to the west of the driveway on Alderwood Avenue.

THEREFORE, IT IS ORDERED this 26th day of **October, 2016**, by this Administrative Law Judge, that the Petition for Special Hearing to allow a multi-use building in an R-O zone as being in compliance with Section 102.2 of the B.C.Z.R., be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Exception to permit a class B group child care center as a principal use in an R-O zone, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to allow a freestanding enterprise sign facing a residential zone; and (2) to permit a 24 ft. rear yard setback in lieu of the required 30 ft., 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. Prior to issuance of permits Petitioners must submit for approval by Baltimore County landscape and lighting plans for the site.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:slh