

IN RE: PETITIONS FOR SPECIAL HEARING * BEFORE THE
VARIANCE * DEPUTY ZONING
W side of Rider Mill Court; 258 feet N *
of the c/l of Grist Stone Way *
4th Election District * COMMISSIONER
4th Councilmanic District *
(8 Rider Mill Court) * FOR BALTIMORE COUNTY

John and Dawn Mynaugh * Case No. 2009-0307-SPHA
Petitioners *

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the legal owners of the subject property, John and Dawn Mynaugh. The Special Hearing request was filed in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a Class A Group Child Care Center for no more than 12 children at one time. The Variance request is from Section 424.1.B of the B.C.Z.R. to permit a solid wood stockade fence with a 0 foot setback from the property line in lieu of the required 20 feet. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the requested Special Hearing and Variance petitions were Petitioners John and Dawn Mynaugh. There were no Protestants or interested citizens in attendance at the hearing.

Testimony and evidence presented revealed that the subject property is an irregular, pentagonal-shaped parcel located in the Rider Mill Court cul-de-sac, off Grist Stone Road to the north, in the Owings Mills area of Baltimore County. The subject property, zoned D.R.3.5, contains 0.215 acres, more or less, and is improved with a two-story, single-family dwelling, above ground pool, and sunroom addition. Other improvements include a substantial play area in

the back yard which is enclosed with an existing fence. Petitioners purchased the property in 2001, as indicated by the Real Property Data Search found in the case file. The home has served as both the main residence for Petitioners, but also has operated as a Group Child Care Center for eight children. Petitioner filed the instant petitions to minimally expand her child care operation so as to provide day care services for twelve children and to create a larger enclosed play area for the children by replacing the current fence that has an 8 foot setback with a new fence that will have a 0 foot setback.

Ms. Mynaugh indicated that she began providing child care services some 22 years ago. This service, originally for Petitioner's young children, has since expanded to eight kids of mostly pre-school age (3-5 years of age). Ms. Mynaugh offered that she operates her facility with an actual curriculum aiming to serve the role of teacher rather than babysitter. Most of the children who attend Petitioner's child care center are from the surrounding Owings Mills area and are dropped off between 7:15 – 8:30 a.m. and picked up intermittently from 3:00 and 5:00 p.m. Ms. Mynaugh indicated that expansion is necessary due to the existing waiting list and high demand for her services. A Use Permit Plan showing more in-depth details of the child care center was marked and accepted into evidence as Petitioners' Exhibit 2.

The uniqueness of the property, an irregular pentagon-shaped parcel, drives the need for the variance. The rear of the property, where the proposed fence would be located, is bordered by a significant amount of community open space and a neighbor whose property is enclosed by a fence at the property line. Petitioner's desire is to merely mirror this neighbor's fence location thereby creating a larger and safer outdoor environment for the children. Further, requiring strict adherence to the zoning regulations would result in practical difficulty and undue hardship. Petitioner opined that the current child care center does not adversely impact the general welfare

of the surrounding community and submitted a petition of support from Petitioners' surrounding neighbors that was marked and accepted into evidence as Petitioners' Exhibit 5A. Ms. Debbie Roebuck, Petitioner's adjacent neighbor to the west, submitted a letter that was marked and accepted into evidence as Petitioners' Exhibit 5B, attesting to the minimal disruption the child care center has caused and further providing her support for the relief requested.

The undersigned also received an email dated July 17, 2009 from Petitioners' adjacent neighbor, Mr. Steve Slessinger of 10 Rider Mill Court, expressing concerns regarding the relief requested. Specifically, Mr. Slessinger was concerned about cars dropping off and picking up children blocking his home's driveway. This email is contained in the case file.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. These comments do not indicate any opposition to the relief requested.

Turning first to the Petition for Special Hearing, I am persuaded to grant the requested relief. A Group Child Care Center, Class A, as defined in Section 101 of the Baltimore County Zoning Regulations (B.C.Z.R.) is a "group child care center wherein group child care is provided for no more than 12 children at one time." Section 424.4 of the B.C.Z.R. enumerates the specific requirements for a Group Child Care center as an accessory use. The Zoning Commissioner will consider the character of the surrounding community and any anticipated impacts in order to ensure that the proposed child care center will not be detrimental to the health, safety, or general welfare of the surrounding community. In my opinion, Petitioners' current child care center does not adversely impact the surrounding area and will continue to operate with four additional children without causing a detriment to the general welfare of the surrounding area.

As to the variance request, considering all of the testimony and evidence presented, I am convinced that the request should be granted. First, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. The unusual shape of the property and its proximity to community open space renders the property unique in a zoning sense.

I further find that the variance request can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and after considering the testimony and evidence offered by Petitioners, I find that Petitioners' Special Hearing and Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 10th day of August, 2009 that Petitioners' request for Special Hearing relief filed in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a Class A Group Child Care Center for no more than 12 children at one time be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioners' request for Variance from Section 424.1.B of the B.C.Z.R. to permit a solid wood stockade fence with a 0 foot setback from the property line in lieu of the required 20 feet be and is hereby GRANTED.

The granting of the relief herein shall be subject to the following:

1. Petitioners may apply for their permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.

2. Petitioners shall make every effort to ensure that vehicles dropping off and picking up children at Petitioners' child care center be done as expeditiously and orderly as possible, and in no event shall said vehicles be stopped or parked in a manner that prevents or interferes with access to the properties of adjacent neighbors, in particular the adjacent neighbor at 10 Rider Mill Court.

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

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz