

IN RE: **PETITIONS FOR SPECIAL HEARING *
AND VARIANCE, N/Side Canberra Drive,
581' W of c/line of Waterview Way *
(1334 Canberra Drive)
15th Election District *
7th Council District *
Pamela D. Colbert
Petitioner ***

BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY

Case No. 2010-0332-SPHA

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the owner of the subject property, Pamela Colbert. The Petitioner requests a special hearing to approve a Class “A” Group Child Care Center on the subject property, pursuant to Section 424.4.A.5 of the Baltimore County Zoning Regulations (B.C.Z.R.). In addition, the Petitioner requests variance relief from Section 424.1B of the B.C.Z.R. to permit a Group Child Care Center fence for the play area to be located as close as 6 feet to the abutting residential property in lieu of the minimum required 20 feet. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the request was Pamela Colbert, property owner. Appearing on behalf of the WaterView Homeowners Association was Michael R. McCann, Esquire. Letters of support were received from adjacent neighbors, Francis Martin and Jewel Daniel-Martin (1336 Canberra Drive) and William Spencer (1302 Canberra Drive). *See* Petitioner’s Exhibits 3A and 3B.

Testimony and evidence offered revealed that the subject property is a rectangular shaped lot (55' wide x 110' deep) on the north side of Canberra Drive, not far from Eastern

Avenue and Orville Road in the subdivision of “WaterView” in Essex. The property contains 6,050 square feet, more or less, zoned D.R.3.5 and is improved with a two-story, single-family dwelling and detached garage. The Petitioner filed the instant Petition to expand an existing child day care facility within the home.

An understanding of the relevant provisions of the B.C.Z.R. relative to child care operations is fundamental to the issue in this case. Section 101 of the B.C.Z.R. defines the words and terms used throughout the regulations. A “family child care home” is defined as a private residence wherein care, protection and supervision is provided for a fee for part or all of a day, at least twice a week, to no more than eight children at one time.” Section 424.3 of the B.C.Z.R. indicates that family child care homes are permitted by right and as an accessory use within dwellings in all zones. Thus, under the B.C.Z.R., a family child care home is permitted on the subject property by right. In fact, testimony and evidence presented established that the Petitioner is a licensed daycare provider and has been operating such a facility without complaint for the past two (2) years known as the “Giggle Box Learn N Play”.

Section 101 of the B.C.Z.R. also defines a “group child care center” as “A building or structure wherein care, protection and supervision is provided for part or all of a day, on a regular schedule, at least twice a week to at least nine children.” A Class “A” group child care center is a facility where care is provided for between 9 and 12 children. A Class “B” group child care center is a facility where care is provided for more than 12 children. In the instant case, the Petitioner proposes expanding her operation from eight (8) to ten (10) children, again using the existing facilities. Thus, approval is requested for a Class “A” group child care facility. Apparently, the existing use has not caused detrimental impacts to the surrounding locale and there were no adverse Zoning Advisory Committee (ZAC) comments submitted.

Section 424.4 of the B.C.Z.R. sets out the process for the application of such approval. Under that process, notice of the application for a use permit for a Class A Group Child Care Center is posted on the property at issue for a period of at least 30 days. Within that period, any owner/occupant within 1,000 feet of the property may file a formal request for a public hearing before the Zoning Commissioner. In this case, and although my file lacks the formal request, this matter was scheduled for public hearing which was conducted in its entirety on Friday, August 27, 2010.

Section 424.4.6 of the B.C.Z.R. provides that the Zoning Commissioner review the application. Approval or denial of the application shall be based upon factors relating to the character of the surrounding community and the anticipated impact of the proposed use on that community. Additionally, the Zoning Commissioner may impose requirements upon the approval of any application in order to assure that the use will not be detrimental to the health, safety and general welfare of the locale. The full breadth of these regulations is set out in Section 424 of the B.C.Z.R.

Testimony and evidence offered at the hearing revealed that Ms. Colbert has been a resident in the neighborhood for some five (5) years and has owned the subject property since September 2005 which has operated as a child care facility since 2008 and she presently has eight (8) children enrolled. The property contains an outdoor play area and as will be discussed below is fenced with a six-foot high board-on-board stockade-type fence. She indicated that the children typically begin to arrive at the property around 7:30 AM and are picked up by their parents or family between 4:00 and 5:30 PM. The facility operates five (5) days a week (Monday - Friday). Ms. Colbert indicated that there is a high demand for her services and most of her clients come from the neighborhood and reside within a 5-mile radius. There is no

advertising and clients are obtained by word of mouth. The facility currently has a waiting list which prompted Ms. Colbert to seek approval of a Class “A” group child care facility to allow her to have up to 12 children. Ms. Colbert fully described her qualifications and background as a day care provider as well as the number of employees, her licensing and the general day-to-day operations at the facility. *See* Certificate of Registration No. 154540 from the Maryland State Department of Education – Petitioner’s Exhibit 4.

As noted above, the property is an interior lot located on the north side of Canberra Drive described as a quiet street as depicted on the site plan with a portion of the Homeowners’ Association common area and Forest Conservation Easement which abuts the immediate rear of the property. Access to the subject property is provided by dropping children off at the driveway in front of the home. The garage and macadam driveway are used by the Petitioner and her employee. Photographs were submitted at the hearing which show the subject property, driveway access and the side and front door access to the dwelling. These photographs also show that this is a well kept property in a new neighborhood featuring nice homes on relatively average sized lots.

Although Ms. Colbert has operated without incident for several years and apparently enjoys the support of many of the residents of WaterView, the Homeowners Association engaged the services of Mr. McCann to make certain the child care home use would be limited to no more than ten (10) children at any one time and that there would be no adverse impact to the property values of homes in the area. Although the regulations require a play area fence to be located no closer than 20 feet from the property line, the Association, nor the neighbors, objected to its present location since it has functioned well for years.

I am persuaded that ten (10) children is the maximum number of children who can safely and effectively be served given the small area of the property. It is clear that practical difficulty or unreasonable hardship would result if the variance were not granted. It is persuasive that the existing operation of a day care facility for up to eight (8) children is permitted by right and has apparently existed on the site for more than two (2) years. The addition of two (2) children mandates the special hearing relief requested herein. In my view, the impact of these two (2) additional children will be minimal. This is particularly so, given the young age of the children who are cared for at this site. A Zoning Advisory Committee (ZAC) comment received from the Office of Planning shares in my findings, stating in pertinent part, "... the subject property is well maintained and the use is appropriate in a residential community. The Office of Planning does not oppose the requested use or the accessory fence ...".

Turning to the Variance request, the plan shows that the perimeter of the property is enclosed with a board-on-board fence that comes as close as 6 feet along the western boundary. Indeed, this seems appropriate and necessary given the narrow lot width in order to provide security for the children and privacy of neighbors. Additionally, wood fence screening, as shown on the plan and photographs, will prevent noise and other impacts associated with the use of the site from disrupting neighboring property owners, particularly the adjacent neighbor on the Petitioner's east and west sides. In this case, I will grant the variance from Section 424.1.B requiring a fence to be no closer to a property line than 20 feet. There is no objection concerning the fence's location which has existed in its current configuration since the home was built in 2005. In fact, the neighbors prefer the present location and there are no adverse agency comments in this regard.

Based upon the testimony and evidence offered, I am persuaded to grant the Petition for Special Hearing. In my view, the proposed increase from eight (8) to ten (10) children will not detrimentally impact the neighborhood from the standpoint of visual impact on adjacent properties. I am persuaded that the existing road system and staggered drop-off and pick-up can accommodate the modest increase in use. However, pursuant to Section 424.4.6.C of the B.C.Z.R. and the WaterView Homeowners' Association concerns, I will impose certain conditions to protect the health, safety or general welfare of the surrounding locale and the children attending the facility. The special hearing relief granted to the Petitioner herein is personal in nature and shall not run with the land as to inure to the benefit of any subsequent property lessor or owner. The hours of operation shall be restricted to 6:00 AM to 6:00 PM, five days a week (Monday through Friday).

Pursuant to the advertising, posting of the property, and public hearing on these Petitions held, and for the reasons set forth herein, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 30th day of August 2010 that the Petition for Special Hearing to approve a Class "A" Group Child Care Center on the subject property, pursuant to Section 424.4.A.5 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions; and

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 424.1B of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a Group Child Care Center fence with a setback of six (6) feet in lieu of the minimum required 20 feet, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioner may apply for her use permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at her own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

- 2) The proposed use shall be limited to ten (10) children.
- 3) The Petitioner shall permit a representative of the Code Enforcement Division of the Department of Permits and Development Management (DPDM) reasonable access to the principal dwelling to insure compliance with this Order.
- 4) The hours of operation shall be restricted to 6:00 AM to 6:00 PM, five days a week (Monday through Friday).
- 5) The Special Hearing relief is granted for use by Pamela Colbert, personally, and shall not run with the land so as to inure to the benefit of any subsequent property lessor or owner.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

WJW:dlw

_____SIGNED_____
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County