

**IN RE: PETITIONS FOR SPECIAL HEARING,
SPECIAL EXCEPTION & VARIANCE**

SW corner of intersection of Chesapeake
Avenue and Bosley Avenue
9th Election District
5th Councilmanic District
(301 West Chesapeake Avenue)

West Chesapeake, LLC
Legal Owner

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY

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Case No. 2011-0026-SPHXA
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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing, Special Exception, and Variance, filed by the legal owner of the subject property, West Chesapeake, LLC. Special Hearing relief is requested pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) at the request of the Zoning Review Office to confirm that parking on the site is located on a single lot in accordance with Section 409.7.B.2 of the B.C.Z.R. The Special Exception is requested to approve the use of the property for a Class B Group Child Care Center with more than 40 children in the R.O. Zone pursuant to Section 424.5.B of the B.C.Z.R. In addition, Petitioners seek Variance relief as follows:

- From Section 424.7.A of the B.C.Z.R. to permit a lot size of 1.02 acres in lieu of the required 1.46 acres for a group child care center with a maximum of 80 children; and
- From Section 424.7.B of the B.C.Z.R. to permit side setbacks of 5 feet from the property line with a 0 foot buffer and 28 feet from the property line with a 0 foot buffer in lieu of the required 50 foot setback from the property line with a 20 foot buffer; and
- From Section 424.7.B of the B.C.Z.R. to permit a rear setback of 19 feet from the property line with a 19 foot buffer in lieu of the required 50 foot setback from the property line with a 20 foot buffer; and
- From Section 424.7.C of the B.C.Z.R. to permit a parking, drop-off and delivery area in the front yard in lieu of the side or rear yards; and

- From Section 424.7.E of the B.C.Z.R. to permit a maximum impervious surface area of 52% of gross area in lieu of the permitted 25% of gross area; and
- From Section 409.8.A.4 of the B.C.Z.R. to permit parking spaces in a surface parking facility for a nonresidential use to be set back 8.5 feet from the right-of-way line of a public street in lieu of the required 10 feet.

The subject property and the requested relief are depicted on the redlined site plan that was marked and accepted into evidence as Petitioner's Exhibit 8.

At the requisite public hearing, David H. Karceski, Esquire with Venable LLP appeared as attorney for Petitioner. Also appearing in support of the requested relief were John Bremermann and Tom Obrecht on behalf of the legal owner of the property, West Chesapeake, LLC, Kristy Bischoff and Mitch Kellman with Daft McCune Walker, Inc., the professional engineering firm that prepared the site plan, Shannon Comer with Shannon Comer Architects, Inc., the project architect, and Gene Oaksmith, Vice President of Strategic Development for the Y of Central Maryland (hereinafter as the "Y"). Richard Reinhardt, owner of nearby 220 Bosley Avenue, which is improved with an office building and surface off-street parking, was also present as an interested citizen.

Petitioner identified the Y of Central Maryland as the contract lessee and intended operator for the proposed group child-care facility. Mr. Oaksmith explained that the Y's current facilities west of the subject property on Chesapeake Avenue, which include a fitness gym, tennis courts, an aquatic program and outdoor recreation areas known as the "Family Y," will be upgraded and, as part of that effort, the Y has no choice but to find another location for its child-care facility. Upon receipt of their resumes, which were marked and accepted into evidence as Petitioner's Exhibits 4, 5 and 6, Ms. Bischoff was offered and accepted as an expert in the field of professional engineering, Mr. Kellman as a zoning specialist with detailed knowledge of the B.C.Z.R. and Ms. Comer in the field of architecture.

It is important to note that the subject property is within the boundaries of the Southland Hills Improvement Association (“S.H.I.A.”). A letter of support authored by the President of S.H.I.A. was marked and accepted into evidence as Petitioner’s Exhibit 2 and indicated that the Southland Hills Board supports the project and does not object to the requested zoning relief. The undersigned was also provided with a letter of support signed by the President of the West Towson Neighborhood Association (“W.T.N.A.”), the southern boundary of which is immediately to the north of the subject property. W.T.N.A. by its letter also indicated its support for the project. As there were no Protestants in attendance and without objection, the public hearing proceeded on a proffer from Mr. Karceski in combination with testimony provided by Petitioner’s witnesses.

At the outset of the hearing, Mr. Karceski submitted redlined amended zoning petitions that were marked and accepted into evidence as Petitioner’s Exhibit 1A through 1C, which reflected that Petitioner West Chesapeake, LLC acquired the subject property prior to the public hearing in this case. Petitioner’s Exhibit 1A (the amended Petition for Variance) reflected a reduction in the maximum number of children requested for the Y’s group child-care facility down from 111 as originally filed to a total of 80 children. A redlined site plan was also submitted, which showed minor revisions to the plan as originally filed, including the following: (1) the addition of an on-site vehicular connection between two off-street parking areas; (2) related adjustments to the location and striping of off-street parking spaces; (3) a sidewalk connection and cross-walk from the street edge of Chesapeake Avenue leading to the front entrance of the existing building; and (4) the elimination of two proposed building additions. Mr. Karceski also indicated that the two building additions previously shown are not needed at this time for the Y’s child-care program and, as such, were removed from the site plan. As explained below, with the exception

of the plan change to eliminate building additions, these redlined revisions were made to accommodate requests made by the Office of Planning through its Zoning Advisory Committee (“ZAC”) comments.

The testimony and evidence presented revealed that the subject property is comprised of approximately 1.02 acres of land situated at the southwest corner of the intersection of West Chesapeake and Bosley Avenues, in the Towson area of Baltimore County. The site is zoned R.O. as shown and indicated on the redlined site plan and the aerial photograph/zoning maps that were marked and accepted into evidence as Petitioner’s Exhibits 7A and 7B. These exhibits also show the much larger area of R.O. zoned land within which 301 Chesapeake Avenue is located, that runs along the west side of Bosley Avenue and includes numerous properties utilized for general office purposes. On the opposite side of Bosley Avenue from this R.O. Zone is the western edge of the C.T. (Commercial, Town-Center Core) District of Towson. It is within this C.T. District that the County government buildings, Circuit Court building, numerous office buildings and other commercial uses and high-density residential apartment buildings are located. As explained by Mr. Karceski and Mr. Kellman, the site within this R.O. zoned area, is an “ideal” one for the relocation of the Y’s group child-care facility. The R.O. Zone is a “transitional zone,” and this particular swath of R.O. zoning and the commercial uses in it are situated between and act as a transition between the residential zoning to the west and south of the site and Towson’s CT District to the east. As indicated by Mr. Oaksmith, the Y of Central Maryland now operates at its current location, and at the proposed site will continue to provide convenient child-care services to the residents of Towson’s neighborhoods, including those within the W.T.N.A and S.H.I.A. community groups, as well as the government offices and other businesses in the C.T. District.

The aerial photographs and site plan also help demonstrate some of the unique aspects of the property. These include: (1) its frontage on three different public roadways, West Chesapeake Avenue, Bosley Avenue and Old Bosley Avenue; (2) its irregular shape, due in part to the alignment of these surrounding roadways; and (3) the proposed re-adaptive use of the site's existing improvements from its prior use as a school. Additionally, the site's location is unique in this "transitional" RO Zone located at the edge of Towson's C.T. District between it and the residential neighborhoods to the west. Again, as explained by Mr. Kellman and Mr. Oaksmith, this location is the perfect one for the relocation of the Y's child-care facility.

As alluded to above, Petitioner proposes a re-adaptive use of the property, which is presently improved with a two-story school building and off-street parking spaces located in the side yard. A single vehicular ingress and egress point now serves the site on its Bosley Avenue frontage. At this juncture, Petitioner proposes a number of site improvements for use of the property by the Y of Central Maryland, including the following: (1) installation of additional surface parking spaces and a drop-off / pick-up area in the front yard; (2) an internal vehicular connection between this new parking area and the parking located in the side yard; (3) reconfiguration of the parking spaces located in the side yard; (4) installation of two outdoor play areas, one in the rear yard and one in a side yard; (5) a pedestrian connection from West Chesapeake Avenue into the property; and (6) multiple sidewalk connections internal to the site. A color rendering with building elevations was marked and accepted into evidence as Petitioner's Exhibit 11 and offered for the limited purpose of identifying locations on the building where Petitioner may add to or change the arrangement of windows and doors on the building's exterior facades. This exhibit was offered for illustrative purposes only. A color landscape plan marked and accepted into evidence as Petitioner's Exhibit 9 was also offered for illustrative purposes, and

shows approximate locations for supplemental landscaping on the property. A review of the landscape plan indicates that Petitioner intends to install supplemental landscaping along the site's northern, eastern, and southern property lines and near the front entrance for the building. It is important to note that Mr. Reinhardt's property, located immediately to the south of the subject site, stands to benefit from evergreen plantings to be installed along the shared property line with Petitioner. A preliminary floor plan marked and accepted into evidence as Petitioner's Exhibit 10 and also provided for illustrative purposes shows a possible interior layout for re-use of the school building by the Y.

With regard to Mr. Reinhardt's property at 220 Bosley Avenue, Mr. Karceski and Mr. Reinhardt explained that they had met prior to the public hearing in this case to discuss the Y's plans for the intended group child-care center. At the public hearing, Mr. Reinhardt indicated that he is not opposed to the requested zoning relief, provided certain conditions are made a part of this Commission's Order. First, Mr. Reinhardt requested that a fence be installed along the rear property line of 303 West Chesapeake Avenue, which is also owned by West Chesapeake, LLC, to discourage pedestrian travel from West Chesapeake Avenue through Mr. Reinhardt's property. Petitioner agreed to installation of a fence in this area, the length and approximate location of which is redlined on Petitioner's Exhibit 8 and labeled "FENCE LOCATION." Second, a request was made by Mr. Reinhardt to limit the total number of children at the group child-care facility at any one time to 80. He suggested that another public hearing be required before the Zoning Commissioner to increase the number of children to more than 80. Petitioner is also agreeable to this condition and amended the request for special exception accordingly. Third, Mr. Reinhardt was concerned that the Y of Central Maryland might lease parking spaces to the proposed Towson Swim Club for eventual use by the swim club. At the public hearing, the Y stated that it has no

intention of entering into a lease or any other arrangement with the Towson Swim Club for the swim club's use of parking spaces on the subject property. Fourth, Mr. Reinhardt described a change in grade and retaining wall on his property near the rear property line of the subject property. His concern was that construction activity related to the Y's group child-care facility or installation of new plantings in accordance with Petitioner's Exhibit 9 would damage this retaining wall. Petitioner agreed to make any necessary repairs to the existing retaining wall caused by the installation of landscape plantings on the subject property or related to construction activities for the Y's use of the property.

The Zoning Advisory Committee ("ZAC") comments were received by this Commission and are made a part of the record in this case. Comments were received from the Department of Environmental Protection and Resource Management dated September 8, 2010, which indicate that development of the property must comply with the Forest Conservation Regulations. Comments from the Office of Planning dated September 15, 2010 indicated that Planning does not oppose the requested zoning relief. Planning did request that certain items be added to Petitioner's site plan and made comments related to the proposed use and its layout. Planning requested that two on-site parking areas be "joined" together by an internal access drive and that a sidewalk connection from the main building entrance to West Chesapeake Avenue be added to the plan. Petitioner revised the site plan to accommodate these requests. Planning also commented that it was concerned about the "intensity" of the proposed use due to the proposal to have as many as 111 children at the group child-care center at any one time. Subsequent to the issuance of Planning's comments, but prior to the public hearing in this case, Petitioner selected the Y to operate the proposed child-care facility, and also reduced the total number of children from a maximum 111 to 80. Mr. Oaksmith on behalf of the Y, as well as DMW's representatives,

testified at the public hearing that the site layout, as shown and indicated on the redlined site plan, will safely accommodate the use and a maximum of 80 children as proposed.

Planning also requested that a landscape plan be prepared to show locations for additional plantings on the site and for screening of the parking areas. As mentioned above, Petitioner met with W.T.N.A and S.H.I.A. and hired a landscape architect selected by those community associations to address landscaping for the use. The result of these efforts is the illustrative landscape plan, which shows that Petitioner has satisfied the requests made by Planning regarding site landscaping. With regard to fencing, Planning requested that a new fence be installed around the entire perimeter of the property. In lieu of installing a new fence around the entire site, Petitioner proposed installation of fences around the two proposed play areas that will better contain the children during outside play times. Mr. Reinhardt preferred these smaller fenced-in areas rather than a fence around the site's perimeter, and the undersigned agrees that such fencing is sufficient for the property's use by the Y. With regard to signage for the Y, Planning requested information on where the freestanding sign for the Y will be located on the property and a sign detail for this sign, prior to issuance of permits for the Y. The undersigned will make this request by Planning a condition in the Order. Finally, Planning also requested that a grading plan be provided to show the existing trees along Bosley and Chesapeake Avenues that will be retained. Petitioner's landscape architect designed the landscape plan to incorporate existing trees along these road frontages, and Petitioner explained that it will use its best efforts to retain trees in these areas. Although it cannot guarantee that all of the trees along these road frontages will be retained, Petitioner volunteered to provide a grading plan to Planning, as requested.

As to the requested special exception, Mr. Karceski went on to explain how the proposed use is permitted on the property. Section 424 of the B.C.Z.R. contains the Zoning Regulations

specific to Group Child-Care Centers, and Section 424.5, entitled “Child-care centers as principal use,” provides that a group child-care center *with more than 40 children* is permitted by special exception in the R.O. Zone. (emphasis added). Gene Oaksmith, Vice President of Strategic Development for the Y, is responsible for developing new opportunities for the Y to expand its presence in Central Maryland and is familiar with the day-to-day operations of the Y’s existing facilities in Towson. It was Mr. Oaksmith’s opinion that the subject site is ideal for the relocation of the Y in Towson and that its operation will not have any detrimental impact on the surrounding area. Additionally, Mr. Oaksmith provided Petitioner’s Exhibit 12 to this Commission, which notes that the Y’s Baltimore County “Head Start” program is one of only 10 “Centers of Excellence” in the United States, as acknowledged by the Secretary of Health and Human Services. In addition to the information provided by the Y, Petitioner through Mr. Kellman, DMW’s zoning specialist, Ms. Bischoff, the project engineer, and Mr. Obrecht, provided persuasive testimony that the group child-care center proposed by the Y meets each of the criteria outlined in Section 502.1 of the B.C.Z.R. The landscape plan (Petitioner’s Exhibit 9) shows that the site will be well landscaped along its property lines and that an effective screen will be provided between Mr. Reinhardt’s property and the subject site. The letters of support provided by W.T.N.A and S.H.I.A. are a further indication that the proposed child-care facility will have no adverse impact on the surrounding area. Based on the testimony provided and on Petitioners’ Exhibit 8, I find that the proposed group child-care center meets the criteria of B.C.Z.R. Section 502.1.A through 1.H, including the requirement that it will not be detrimental to the health, safety, and general welfare of the locality involved.

Mr. Karceski and Mr. Kellman then identified the individual variances necessary for the re-adaptive use of the property. Variance relief specific to group child-care centers only is

requested from Section 424 of the B.C.Z.R and relates to the following: (1) the total acreage of the site; (2) side and rear yard setback and perimeter vegetative buffer requirements; (3) use of the site's front yard for parking spaces, a drop-off / pick-up area, and deliveries; and (4) the total amount of impervious surface area proposed on the site. Additionally, a parking variance is requested from Section 409 of the B.C.Z.R. for the distance of parking spaces to the right-of-way line of a public street.

The Zoning Commissioner is permitted to grant variances, pursuant to Section 307 of the B.C.Z.R., upon finding that special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests and that requiring strict compliance with the Zoning Regulations would result in a practical difficulty for Petitioner. Having heard the testimony and considered the requests, I find that sufficient evidence and justification exists to grant the requested variances. I find that all of the requested variance relief is appropriate in this instance, given the property's unique characteristics, which include: (1) frontage on three public roadways; (2) the irregular configuration of the property dictated in part by these roads; (3) the site's existing improvements and prior use as a school in combination with the challenge of accomplishing a re-adaptive use for a group child-care facility; and (4) the site's unique location in a transitional R.O. Zone situated at the edge of Towson's only C.T. District. I also find that strict compliance with the applicable Zoning Regulations would result in a practical difficulty and unreasonable hardship for Petitioner and the Y and that the relief requested will not result in any adverse impact on the surrounding area. In fact, all of the testimony and evidence presented indicates that the proposed use at this particular location will provide a benefit to the surrounding residential communities. Thus, I find that all the variances can be granted in such a manner as to

meet the requirements of Section 307 of the B.C.Z.R., as interpreted in *Cromwell v. Ward*, 102 Md.App. 691 (1995).

Finally, by way of the requested special hearing, Petitioner asks for confirmation that the off-street parking spaces provided on the subject site are located on the same lot as the proposed use in accordance with Section 409.7.B.2 of the B.Z.C.R. The purpose of this section of the Zoning Regulations is to ensure that required parking spaces for a use are located on the same property as the land use those parking spaces will serve. In the instant case, a review of Petitioner's Exhibit 8 indicates that, while internal lot lines run through the property, the entire site will be utilized for a single use from a zoning perspective -- the Y's group child-care facility. Additionally, as shown on the redlined site plan, a total of 24 parking spaces are required by the Zoning Regulations for the proposed use and 28 parking spaces are proposed. The layout proposed for the Y is, therefore, sufficient for parking purposes. It is on this basis that I will grant the Petition for Special Hearing.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and after considering the testimony and evidence offered, I find that Petitioner's requests for special hearing, special exception and variance should be granted, though as explained above, the undersigned will impose conditions on the relief granted that relate to requests made by the Office of Planning and Mr. Reinhardt.

THEREFORE, IT IS ORDERED this 22nd day of December, 2010 by the Deputy Zoning Commissioner that Petitioner's request for Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to confirm that parking on the site is located on a single lot in accordance with Section 409.7.B of the B.C.Z.R., be and is hereby **GRANTED**; and

IT IS FURTHER ORDERED that Petitioner's request for Special Exception to approve the use of the property for a Class B Group Child Care Center with more than 40 children in the R.O. Zone pursuant to Section 424.5.B of the B.C.Z.R. be and is hereby **GRANTED**; and

IT IS FURTHER ORDERED that Petitioner's requests for Variance relief as follows:

- From Section 424.7.A of the B.C.Z.R. to permit a lot size of 1.02 acres in lieu of the required 1.46 acres for a group child care center with a maximum of 80 children; and
- From Section 424.7.B of the B.C.Z.R. to permit side setbacks of 5 feet from the property line with a 0 foot buffer and 28 feet from the property line with a 0 foot buffer in lieu of the required 50 foot setback from the property line with a 20 foot buffer; and
- From Section 424.7.B of the B.C.Z.R. to permit a rear setback of 19 feet from the property line with a 19 foot buffer in lieu of the required 50 foot setback from the property line with a 20 foot buffer; and
- From Section 424.7.C of the B.C.Z.R. to permit a parking, drop-off and delivery area in the front yard in lieu of the side or rear yards; and
- From Section 424.7.E of the B.C.Z.R. to permit a maximum impervious surface area of 52% of gross area in lieu of the permitted 25% of gross area; and
- From Section 409.8.A.4 of the B.C.Z.R. to permit parking spaces in a surface parking facility for a nonresidential use to be set back 8.5 feet from the right-of-way line of a public street in lieu of the required 10 feet,

be and are hereby **GRANTED**.

This Order is subject to the following restrictions which are conditions precedent to the relief granted herein:

The relief granted herein is subject to the following conditions:

1. Petitioner is advised that it may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until the 30-day appeal period from the date of this Order has expired. If for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Development of this property must comply with the Forest Conservation Regulations (Sections 3-6-101 through 33-6-122 of the Baltimore County Code).

3. Petitioner shall install a new fence on the adjacent property known as 303 West Chesapeake Avenue, along the rear property line of 303 West Chesapeake Avenue and in the approximate location shown and indicated in red and labeled “FENCE LOCATION” on Petitioner’s Exhibit 8, provided Petitioner is able to obtain all necessary approvals and permits from Baltimore County. Installation of the fence shall be at Petitioner’s expense.
4. The special exception use granted herein is for a Class B Group Child-Care Center with a maximum of 80 children on the subject property at any one time. In the event that the Y or another group child-care center operator desires to operate such a use with more than 80 children on the site at any one time, another public hearing before the Zoning Commissioner shall be required to amend the special exception approval granted in this case.
5. For the term of its lease, the Y shall install and maintain a sign on the subject property and a sign on the adjacent property, known as 303 West Chesapeake Avenue, with the following notice regarding on-site parking spaces: “This parking is for the exclusive use of Y employees, Y members and Y guests while using the Y facilities located at 301 West Chesapeake Avenue, 303 West Chesapeake Avenue and 600 West Chesapeake Avenue only.”
6. In the event that the retaining wall located on 220 Bosley Avenue, in close proximity to the subject property, is damaged due to the installation of landscape plantings on the subject property or by construction activities related to the Y’s use of the property, Petitioner shall make any necessary repairs to the retaining wall.
7. Prior to the issuance of a use and occupancy permit for the Y’s group child-care center, a sign detail for the Y’s freestanding sign shall be provided to the Office of Planning for review.

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