

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
S/Side of Tampa Road, corner of Waterford	*	OFFICE OF
Road and Tampa Road		
15 th Election District	*	ADMINISTRATIVE HEARINGS
7 th Councilmanic District		
(601 Tampa Road)	*	FOR BALTIMORE COUNTY
Jesse Goles	*	Case No. 2012-0263-SPHA
<i>Petitioner</i>		

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for consideration of Petitions for Special Hearing and Variance filed by Jesse Goles, the legal property owner. Petitioner is requesting Special Hearing relief in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve a Use Permit for a Class A Group Child Care Center (maximum of 12 children). Petitioner is also requesting Variance relief from Section 424.1.B of the B.C.Z.R. to permit an existing 146 linear foot fence with a height of 40" and a setback of 6" from the property line and an existing 138 linear foot fence with a height of 6' and a setback of 6" from the property line in lieu of the required 20' and 20' property line setbacks, respectively. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the public hearing in support of the requested relief was Petitioner Jesse Goles and his wife Ashley. There were no Protestants in attendance, and the file does not contain any letters of protest or opposition.

Testimony and evidence revealed that the subject property is approximately 13,680 square feet and is zoned D.R.5.5.

Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Environmental Protection and Sustainability (DEPS), dated May 18, 2012, which indicate that Petitioner must comply with certain Critical Area laws, as set forth at B.C.Z.R. 500.14.

After due consideration of the testimony and evidence presented, I am persuaded to grant the relief requested.

The first issue concerns the “use permit” required for a Group Child Care Center, Class A, which allows an owner to provide care for not more than 12 children. Ms. Goles, who owns and lives at the subject property indicated she has a State license for a Group Large Child Care Center for a maximum of 12 children. Under the B.C.Z.R, the primary test used to determine whether such use is appropriate is whether the proposed operation would be detrimental to the “health, safety or general welfare of the surrounding community.” B.C.Z.R. § 424.4.A.6.c. In essence, this is akin to the standard for special exception relief.

Ms. Goles and her husband are articulate and sincere individuals. They also have the strong support of the entire neighborhood, as indicated by the Petition marked as Exhibit 4. The Petitioner’s home is attractive and sits on a corner lot, with ample play space for children and a large driveway for the parents to drop off and pick up their children.

Petitioner testified the center will operate 5 days/week (from 7:30 a.m. to 5:00 p.m.) and would likely generate five to six vehicle trips in the morning and five to six in the evening when the children are picked up. At least three or four of the families are within walking distance. In these circumstances, I find that the operation of the Group Child Care Center, Class A, would not be in any way injurious to the public health, safety and welfare. To the contrary, the center will be

a positive addition to the community and provide a valuable, much needed service to working parents, as well as enhanced economic opportunities for Petitioner and her staff of two employees.

As to the variance request, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. As explained by Mr. Goles, the property is of irregular dimensions, and to even construct the home on the site required variance relief (2007-327-A) due to the irregular shape and the frontage on Waterford Road. Also, the fences were constructed some time ago, and the variance therefore legitimizes the “on site” conditions.

I further find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship. Finally, I find the variance 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, as amply demonstrated by the lack of County agency and/or community opposition and the letters of support from adjoining neighbors.

Pursuant to the advertisement, posting of the property and public hearing, and after considering the testimony and evidence offered, I find that Petitioner’s Special Hearing and Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County this 20 day of June, 2012 that Petitioner’s Special Hearing request in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve a Use Permit for a Class A Group Child Care Center (maximum of 12 children), be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioners’ Variance request from Section 424.1.B of the B.C.Z.R. to permit an existing 146 linear foot fence with a height of 40" (in lieu of the required 5 feet) and a setback of 6" from the property line and an existing 138 linear foot fence with a

height of 6' and a setback of 6" from the property line in lieu of the required 20' setbacks, respectively, be and is hereby GRANTED.

The relief granted herein is subject to the following condition:

1. Petitioner is advised that she may apply for any required permits 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 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. Petitioner must comply with the ZAC comment received from DEPS, dated May 18, 2012; a copy of which is attached and made a part hereof.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:pz