

IN RE: **PETITIONS FOR SPECIAL HEARING *
AND VARIANCE**

BEFORE THE

(1312 Burleigh Road) *
Edgardo and Felisa Quiogue *
Petitioners *

OFFICE OF *
ADMINISTRATIVE HEARINGS *
FOR BALTIMORE COUNTY *
Case No. 2013-0018-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed by Edgardo and Felisa Quiogue, legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to determine whether or not the Administrative Law Judge should approve a Use Permit for a Class A Group Child Care Center for a maximum of 12 children. In addition, a Petition for Variance was filed from § 424.1.B of the B.C.Z.R., to permit an existing 168 linear foot fence with a height of 6' and a setback of 6", in lieu of the required 20' property line setbacks. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the requests was Felisa M. Quiogue and Anna Quiogue Hernandez. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants in attendance, and the file does not contain any letters of protest or opposition.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. There were no adverse ZAC comments received from any of the County reviewing agencies.

The subject property is 7,840 square feet and is zoned DR 5.5. The Petitioners have owned and lived in the home for approximately nine (9) years, and Mrs. Quiogue has operated a child day care facility (with State licensure for up to eight [8] children) for the past seven (7) years. She now would like to expand to accommodate up to 12 children, which requires zoning relief.

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. 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 this case, the available evidence suggests the answer to this inquiry is “definitely not.” The Petitioner has operated such a business for over seven (7) years at the site, and many of her neighbors have children that attend the facility. Mrs. Quiogue indicated her neighbors are very supportive of her request. Neither of the Petitioners’ adjoining neighbors operates a child day care center.

Based on the evidence presented, I also find that the variance can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R., as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995). I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Indeed, the fence is an existing site condition, and the variance will allow it to remain. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship, given that Petitioners would essentially lose the use of their rear yard if the 20' setback requirements were enforced. 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 absence of opposition from the community and County reviewing agencies.

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

THEREFORE, IT IS ORDERED this 1st day of October, 2012, by this Administrative Law Judge, that Petitioners' request for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to determine whether or not the Administrative Law Judge should approve a Use Permit for a Class A Group Child Care Center for a maximum of 12 children, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioners' Variance request from § 424.1.B of the B.C.Z.R., to permit an existing 168 linear foot fence with a height of 6' and a setback of 6", in lieu of the required 20' property line setbacks, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for their appropriate 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.

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

JEB/dlw

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County