

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(3436 Lynne Haven Dr.)	*	OFFICE OF
2 nd Election District		
4 th Councilmanic District	*	ADMINISTRATIVE HEARINGS
Crystal & Michael Barksdale		
	*	FOR BALTIMORE COUNTY
	*	Case No. 2013-0156-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 Crystal & Michael Barksdale, legal owners. The Special Hearing was filed pursuant to § 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 for a maximum of 12 children. The variance relief sought to permit a 4 ft. tall, chain link fence with a 0 ft. setback in lieu of the required 5 ft. tall solid wood stockade or panel fence and a minimum setback of 20 ft., respectively. 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 were Crystal and Michael Barksdale. 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.

No substantive Zoning Advisory Committee (ZAC) comments were received from any County agencies.

The subject property is 6,720 square feet in size and is zoned DR 5.5. The property is improved with a single family dwelling, owned by the Petitioners for more than 20 years. Ms. Barksdale has been licensed to provide child care for over 16 years, and she would now like to expand from 8 to 12 children. To do so requires zoning relief, a predicate to the issuance of the appropriate state license.

Ms. Barksdale explained that she provides transportation for several of the children (pick up and drop off), and that parents will drop off children between 6:30- 7:15 a.m. The children are picked up at the end of the day between 5:30-6:00 p.m. Ms. Barksdale estimates that there will be a maximum of 5 vehicle round trips on a daily basis, and she said that her driveway and curbside on Lynne Haven Drive can easily accommodate the traffic. The Petitioners indicated they have good relationships with their neighbors, all of whom are supportive of the petitions. In addition, the Petitioners confirmed that there are no other child care facilities in the immediate vicinity of their home.

In light of the above, I will grant the petition for Special Hearing, and approve a use permit for a Class A group child care center at the subject property.

Based upon the testimony and evidence presented, I will also grant the request for variance relief. Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

The Petitioners have met this test. The Petitioners must contend with existing site conditions, and they explained the chain link fence (which, like the exterior of the home, is well maintained) has been in place for over 20 years. Thus, the property is unique. The Petitioners

would experience a practical difficulty if relief were denied, given they would incur great expense to install a new fence, and (if they observed the setbacks in the regulations) would be left with a deficient, undersized play area for the children.

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.

Pursuant to the advertisement, posting of the property, and the 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 14th day of March 2013, by this Administrative Law Judge, that Petitioners' request for Special Hearing to approve a use Permit for a Class A Group Child Care Center for a maximum of 12 children, filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioners' Variance request from B.C.Z.R. § 424.1.B to permit a 4 ft. tall, chain link fence with a 0 ft. setback in lieu of the required 5 ft. tall solid wood stockade or panel fence and a minimum setback of 20 ft. respectively, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for 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/sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County