

OFFICIAL DECISION  
BOARD OF ZONING APPEALS  
CARROLL COUNTY MARYLAND

APPLICANTS: Augustus C. Barnes and Bernice S. Barnes  
4353 Salem Bottom Road  
Westminster, Maryland 21157

REQUESTS: Conditional use requests for a child care center and two-family dwelling within the same proposed building; and, a variance reducing the minimum required lot area for the child care center from 20,000 square feet to 18,000 square feet.

LOCATION: On property located on the north side of East Main Street about 100 feet west of Fair Avenue intersection, adjacent to the City of Westminster, in Election District 7.

BASES: Article 8, Sections 8.2(a) and (e), and 8.5; Article 7, Sections 7.2(f) and 7.5; Article 15, Section 15.5; Zoning Ordinance 1E.

HEARING HELD: July 27, 1988

FINDINGS

The application, testimony and evidence comprising the record of this case are hereby included by reference in this decision. The pertinent findings include the following facts. The lot is located on the north side of East Main Street about 100 feet west of Fair Avenue intersection. Poole Road intersection is located about 150 feet further east. Colonial Avenue and South Colonial Avenue intersections, which are offset from each other are located slightly more than 200 feet and 350 feet, respectively to the west. It is one of the last, if not only remaining undeveloped lot in the area fronting of East Main Street. The zoning classification of the adjacent lots, as well as this lot, is "R-10,000" Residence District. Most of the existing buildings in the immediate area fronting on East Main Street were probably developed prior to adoption of the Carroll County Zoning Ordinance in 1965. Land use in the area is predominately residential, with several businesses located east of Poole Road, and a used car and service garage located on the northwest corner of Colonial Avenue.

The child care center is proposed for the lower level of the 40 feet by 70 feet building, with the two-family dwelling located on the upper level. The topography of the lot falls from the front to the rear, permitting a split foyer front entrance

with a two-story architectural rear facade having the lower level entrance at grade. The gross area of the child care center would be slightly less than 2,800 square feet. As proposed, the center would open with an enrollment of 20 children and have a maximum capacity of 55 children. The requirements for staffing the center were not provided. The plot plans submitted with the application shows 11 parking spaces perpendicular to the front of the building. These spaces would serve both the two-family dwelling, the staff of the center, and the drivers of vehicles picking up and discharging children. A minimum of 4 spaces would be required for the two-family dwelling, leaving 7 spaces for the child care center. One way traffic circulation is proposed within ingress at the easterly side of the lot and egress at the westerly side. Tentatively, the center would open at 6:30 a.m. and close at 5:30 p.m., Monday thru Friday. Children of school age would possibly be enrolled and supervised in using bussing to and from elementary schools.

The lot exceeds the minimum lot area and width requirements of the zoning ordinance for the two-family dwelling, but does not meet the minimum lot area requirement of 20,000 square feet for the child care center.

Testimony presented in opposition of the child care center cited the generation of vehicular traffic to and from the site, and the additional noise from the children playing in the rear yard. The increase in vehicular traffic would be significant, even with the initial opening enrollment of 20 children, and could more than double with the projected maximum enrollment of 55 children. Although the vehicular trips to the property would be spread over several hours in the early morning and late afternoon, the additional traffic would likely promote congestion at the site, adversely affecting the flow of vehicular traffic on East Main Street. Provisions of the zoning ordinance governing the requests include Article 17, Section 17.7 (adopted July 12, 1988), and Article 15, Sections 15.0 and 15.5, which read:

"The regulations specified in this ordinance shall be subject to the following exceptions, modifications, and interpretations:"

"The Board may authorize, upon appeal, in accordance with Section 17.2, variances from height, lot area, lot width, yard regulations, parking space requirements, sign regulations, and distance requirements specified in Section 4.12 and Section 14.31(c)4. The Board may grant such variance only in cases where strict compliance with the terms of this ordinance would result in practical difficulty and unreasonable hardship, and only if in strict harmony with the spirit and intent of such regulations and only in a manner so as to grant relief without substantial injury to public health, safety and general welfare."

#### CONCLUSION

In considering the provisions of Article 17, Section 17.7 relative to use of the lot for a two-family dwelling, it is evident that a two-family dwelling would be compatible with the existing dwellings and other uses in the immediate area, and would not adversely affect the growth of the community or vehicular traffic conditions. Accordingly, the conditional use request for a two-family dwelling is hereby authorized.

In contrast to the two-family dwelling, the child care center is recognized as a much more intense land use, requiring a minimum lot area of 20,000 square feet. Establishment of the child care center, with a potential capacity of 55 children, generating substantial increases of vehicular traffic with potential traffic congestion on East Main Street can not be considered to be either a compatible or appropriate use of the property.

In addition, although the applicant claims that denial of the requisite variance to the minimum required lot area would result in practical difficulty and unreasonable hardship, there is no evidence substantiating his claim. As a matter of fact, a single or two-family dwelling may be established on the lot in compliance with the provisions of the zoning ordinance. Consequently, the allegation of practical difficulty and unreasonable hardship in the use of the property merely expresses the applicant's opinion. Without probative evidence substantiating the need to relax the minimum requirement, the request is without merit.

Therefore, both the variance for the reduction of the minimum required lot area and the conditional use for the establishment of the child care center are hereby denied.

Aug 5, 1988

Date

John Totura

John Totura, Chairman