

Submitted: February 2, 2023

Approved: February 9, 2023

**MINUTES OF THE ROCKVILLE BOARD OF APPEALS
MEETING NO. 1-2023
Thursday, January 12, 2023**

The City of Rockville Board of Appeals convened
virtually via WebEx and in person at City Hall at 7:00 p.m.
Thursday, January 12, 2023

PRESENT

Alan Frankle, Chair

Jimmy Hauer

Absent: Roy Deitchman
Nicholas Kutchak, Alternate

Staff: Jim Wasilak, Chief of Zoning
Nick Dumais, Senior Assistant City Attorney
Shaun Ryan, Development Review Supervisor
Christopher Davis, Senior Planner

Chair Frankle convened the hybrid meeting at 7:00 p.m. and began with Board and staff introductions. He noted that the meeting is hybrid, and that applicants must agree to waive the right to an in-person meeting in order to be heard virtually at the meeting.

I. REVIEW AND ACTION

- A. Special Exception Application SPX2023-00404, Chuti's Childcare:** for the expansion of an existing child care home serving eight (8) children to a child care center serving twelve (12) children within the residence located at 312 Linthicum Street in the R-60 Zone.

Christopher Davis presented the staff report and recommendation, which was for approval, subject to conditions and based on the findings in the staff report. He noted that the area meeting requirements were met, and that the Planning Commission found that the application is in compliance with the Comprehensive Plan. The application also meets all zoning requirements for a child care center of this size.

Mr. Hauser asked if the existing child care home required a Special Exception, and Mr. Davis clarified that it did not, being a by right use.

In response to a question from Chair Frankle, Amy Macomber, representing the applicant, responded that she did not have anything to add. Chair Frankle asked if

there was enough space provided, and Ms. Macomber responded that she thought that there was.

Akka Wanigasinha, daughter of the owner, spoke in favor of the application. Kevin Love, whose son goes to the day care, also spoke in favor of the application.

Mr. Wasilak noted that there was no one online or present that wished to address the Board in opposition to the application, and the Chair closed the hearing.

Mr. Hauer and Chair Frankle agreed with the staff recommendations.

Chair Frankle moved, seconded by Mr. Hauer, to grant Special Exception Application SPX2023-00404, based on the recommended findings in the staff report, to allow an increase to not more than 12 children, that the center must be in accordance with the plans as submitted and that all inspections and licenses be obtained. The motion passed by a vote of 2-0.

- B. Variance Application VAR2023-00108, Christopher Kern:** for a variance of two feet from the front yard height restrictions for fences in order to construct a fence with a height of six feet at 201 Upton Street in the R-60 Zone.

Mr. Davis presented the staff recommendation, which was for approval to allow the fence to be constructed in the front yard area along Beall Avenue.

Mr. Hauer asked about the fence at 115 Upton Street, and Mr. Wasilak responded that the permit had been issued in error, and that staff would be addressing it shortly. Mr. Hauer also asked if the fence would not be constructed around the entire rear yard as shown on the plans, and Mr. Davis confirmed that this is correct.

Chair Frankle confirmed with Mr. Davis that the fence is proposed in what appears and functions as a rear yard but is deemed a front yard by the Zoning Ordinance. Chair Frankle further asked about the unique characteristics of the property, and Mr. David responded that the topography and the existing underground infrastructure, in combination with the presence of deer on the property, create a unique condition on the property. He further asked what if the deer were not present, and Mr. Davis stated that he felt that the unique conditions would still exist.

Chris Kern, applicant, spoke in favor of the application. He noted for the Board that the rear corner of his property allows the opportunity for the deer to lay down and not be visible from the street, which has kept the deer coming back to the property. Chair Frankle asked Mr. Kern if he would be requesting a variance if the deer were not present, and Mr. Kern responded that they would not, as they liked the open character of their property.

Mr. Kern thanked Mr. Davis for guiding him through the process.

Chair Frankle asked if the fence was to be extended across the rear yard, and Mr. Davis responded that it would not. The Chair also asked Mr. Kern what would prohibit the deer from accessing the yard even with the new fence. Mr. Kern responded that there is an existing 6-foot wooden fence along the rear property line, to which the proposed fence would attach. Mr. Hauer asked if the entire rear yard would be enclosed by a 6-foot fence, and Mr. Kern responded that it would.

Mr. Hauer thanked the applicant for clarifying aspects of the application, and he thought that the property is a peculiar lot. Chair Frankle also stated that he also felt that the property was unique.

Mr. Hauer moved, seconded by Chair Frankle, that Variance Application VAR2023-00108 be approved, based on the findings in the staff report and subject to the conditions listed in the staff report. The motion passed by a vote of 2-0.

II. COMMISSION ITEMS

A. MINUTES – Meeting No. 9-2022, October 13, 2022. The Chair announced that the minutes would be acted on at the next meeting, as he was not present at that meeting.

B. OLD BUSINESS – Mr. Wasilak reported that the Mayor and Council will consider whether to authorize the filing of text amendments to allow accessory apartments and accessory dwelling units as a conditional use. Mr. Frankle thanks Mr. Wasilak for the update.

Chair Frankle asked Mr. Wasilak if the carport that was denied by the Board after having been built without permits and was appealed, had been removed, and Mr. Wasilak confirmed that it had been.

C. NEW BUSINESS – Future Meeting Dates for 2023 – The Board discussed whether to move the meeting date to a different night of the week. The Chair suggested that the dates be approved, subject for further discussion. Chair Frankle asked that Mr. Wasilak look at other days for the Board meeting for that discussion. Chair Frankle moved, seconded by Mr. Hauer, to approved the meeting dates as shown on the second Thursday of the month. The motion passed 2-0.

Chair Frankle noted that the has no problem with serving another year as chair. Mr. Hauer moved, seconded by Chair Frankle, to be chair for the next calendar.

D. ADJOURN

There being no further business to come before the Board of Appeals, Chair Frankle moved, seconded by Mr. Hauer, that the meeting be adjourned at 7:56 p.m. The motion was approved 2-0.