

**BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY**

**IN RE: BAY SHORE COMMUNITY CHURCH**

**(Case No. 12443)**

A hearing was held after due notice on August 3, 2020. The Board members present were: Ms. Ellen Magee, Mr. John Williamson and Mr. Brent Workman. A second hearing was held on August 17, 2020, and the Board members present were: Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception to operate a daycare center and a variance from the fence height requirement.

Findings of Fact

The Board found that the Applicant is seeking a special use exception to operate a day care center for 55 children and a variance of 2.5 feet from the fence height requirement of 3.5 feet for a proposed fence near Lighthouse Road. This application pertains to certain real property located on the east side of London Avenue approximately 513 feet southwest of Lighthouse Road (Route 54) (911 Address: 38288 London Avenue, Unit 6, Selbyville) said property being identified as Sussex County Tax Map Parcel Number 5-33-18.00-61.02. After a public hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a petition supporting the Application, a business plan, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received a 65-signature petition in support of and no correspondence in opposition to the Application.
3. The Board found that Jeremy Ferruccio and Rachel Hall were sworn in to give testimony about the Application.
4. The Board found that Mr. Ferruccio testified that Bayshore Community Church recently began a church campus at the subject property and that Bayshore Community Church has operated its day school at its Gumboro location for approximately 16 years. The Applicant seeks to serve the community in Selbyville by opening a dayschool at this location to serve up to 55 children.
5. The Board found that Mr. Ferruccio testified that the daycare will not substantially affect adversely the uses of neighboring properties because there is adequate parking for drop off and pick up. He noted that drop off is generally early mornings and pick up is late afternoons and there is minimal traffic throughout the day.
6. The Board found that Mr. Ferruccio testified that there are commercial buildings nearby and to the rear of the site and there is a construction storage building nearby as well.
7. The Board found that Mr. Ferruccio testified that children will be inside the building except during limited outside time and the outside playground area will be fenced in and away from traffic.
8. The Board found that Mr. Ferruccio testified that he spoke with neighboring businesses which include a bakery and a thrift shop and they do not object to the request.
9. The Board found that Mr. Ferruccio testified that childcare licensing review is forthcoming.



10. The Board found that Ms. Hall testified that she operates the daycare at the other location which has 100 children and there was a drop in children due to Covid-19.
11. The Board found that Ms. Hall testified that the facility will have two preschool rooms and two school age rooms with a ratio of 15:1.
12. The Board found that Ms. Hall testified that there will be two exit points on the building.
13. The Board found that Ms. Hall testified that the only entrance onto the playground will be through the building.
14. The Board found that Ms. Hall testified that this is the first step in the licensing process.
15. The Board found that Ms. Hall testified that the Property is serviced by well and septic.
16. The Board found that Ms. Hall testified that the hours of operation will be Monday through Friday 6:30 am – 6:00 pm and there will be 5 – 6 employees.
17. The Board found that Ms. Hall testified that the building will be used as a church on Sunday.
18. The Board found that Mr. Ferruccio testified that there will be approximately 20 feet from the edge of Lighthouse Road to the playground.
19. The Board found that Mr. Ferruccio testified that there will be strict security measures including a keyless entry system with a pin pad for parents and there will be closed circuit TV.
20. The Board found that Mr. Ferruccio testified that there is no other area to place the playground and that there is a ditch in the rear yard.
21. The Board found that Ms. Hall testified that the fence needs to be 6 feet tall due to childcare licensing regulations.
22. The Board found that Ms. Hall testified that the Property is unique as it is a leased property with an L shaped building with a large parking lot and the only area to build a playground would be in the front of the building closest to Lighthouse Road.
23. The Board found that Ms. Hall testified that a fence measuring 6 feet tall is necessary for the safety of the children who will use the playground.
24. The Board found that Ms. Hall testified that the exceptional practical difficulty was not caused by the Applicant but by the uniqueness of the lot.
25. The Board found that Ms. Hall testified that the fence, which will be a white, vinyl fence, will not block visibility along Lighthouse Road. She testified that she tested the visibility of the fence when pulling out onto Lighthouse Road from London Avenue.
26. The Board found that no one appeared in support of or opposition to the Application.
27. The Board voted to leave the record open for the Applicant to submit a site plan and photographs and for the Board to ask questions of the Applicant. Those items were submitted to the Board and a second hearing was held on August 17, 2020, where Mr. Ferruccio was present to testify about the Application.
28. The Board found that Mr. Ferruccio testified that the area for the playground measures is 34 feet by 21 feet with a small walkway of 4 feet by 18 feet along the building.
29. The Board found that Mr. Ferruccio testified that most of the fenced area will be on the blacktop that will be resurfaced with a rubberized playground material.
30. The Board found that Mr. Ferruccio testified that the dumpsters will be moved to a new location.
31. The Board found that Mr. Ferruccio testified that no more than 15 children would be on the playground at any given time.
32. The Board tabled its vote on the Application until September 14, 2020.
33. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive and un rebutted, the Board determined that the application met the standards for



granting a special use exception because the daycare facility will not substantially affect adversely the uses of neighboring and adjacent properties. The findings below further support the Board's decision to approve the Application.

- a. The Applicant proposes to operate a daycare facility to care for up to 55 children.
- b. Based on a review of the aerial photograph, there is adequate parking on the Property. There is also adequate room for the children to safely play outside.
- c. The number of children served at the daycare is limited and reasonable.
- d. The hours of the facility are reasonable.
- e. The daycare facility has a limited number of employees and will serve as a church when not in use as a daycare.
- f. The Property is surrounded by commercial properties and neighbors have advised the Applicant that they do not object to the request.
- g. No one appeared in opposition to the Application and no evidence was presented which would demonstrate that the daycare facility would have a substantial adverse effect on neighboring and adjacent properties.

34. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and unrebutted, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.

- a. The Property is unique due to the size, shape, orientation, and development of the lot. The Property is within a commercial area and the daycare will be within a building that is L-shaped. The main entrance to the site comes from London Avenue but the site also borders Lighthouse Road. In order to use the site for a daycare, the Applicant is required to have a playground and a fence measuring at least 6 feet tall but the only location where the playground and fence can be located is near Lighthouse Road. The site is also improved by a well and septic system which further limit the developable area of the lot. Due to these unique conditions, the playground and fence cannot otherwise be located and it is due these unique conditions that a variance is necessary. Consequently, the unique conditions of the lot and the prior development of the lot have created an unnecessary hardship and exceptional practical difficulty for the Applicant who seeks to construct a fence on the lot.
- b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
- c. Due to the uniqueness of the Property and the situation, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicant seeks to construct a fence in compliance with childcare licensing regulations for the playground associated with the daycare but is unable to do so while complying with the Sussex County Zoning Code. The Board is thus convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicant to construct the necessary fence on the lot. The Board is convinced that the size, shape, and location of the fence are reasonable. Furthermore, the Applicant has convinced the Board that there is no other location on the lot where the playground and fence can be located.
- d. The unnecessary hardship and exceptional practical difficulty were not created by the Applicant. As discussed above, the Property has unique conditions which have limited the Applicant's ability to reasonably develop the Property for a daycare. The Applicant did not create the unique conditions of the lot or construct the L-shaped building. The Board was



convinced that the Applicant has not created the exceptional practical difficulty and unnecessary hardship. Furthermore, the Board is convinced that the Applicant did not come to the Property with an illegal use in mind. Rather, the Applicant is limited by the physical conditions of the Property and the prior development thereof and the Applicant needs the variances in order to construct a fence on the lot.

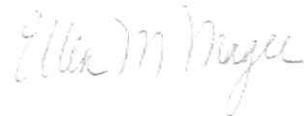
- e. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the variance will have no effect on the character of the neighborhood. The area is commercial in nature and the fence will provide safety for children using the playground with the daycare. The fence will also keep the children away from traffic along Lighthouse Road. Based on the pictures and testimony provided by the Applicant, the fence does not appear to present visibility concerns or otherwise impair traffic along Lighthouse Road or London Avenue. No evidence was presented which demonstrate that the variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance sought will allow the Applicant to construct a fence which meets the minimum childcare licensing regulations on the Property.
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

The Board granted the special use exception and variance application finding that it met the standards for granting a special use exception and a variance.

Decision of the Board

Upon motion duly made and seconded, the special use exception and variance application was approved. The Board Members in favor were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, and Mr. John Williamson. No Board Member voted against the Motion to approve the special use exception application and variance application. Mr. Brent Workman did not participate in the vote on this application.

BOARD OF ADJUSTMENT  
OF SUSSEX COUNTY



Ellen M. Magee  
Chair

If the use is not established within two (2) years from the date below the application becomes void.

Date November 2, 2020