

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY, MARYLAND
Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6660
www.montgomerycountymd.gov/content/council/zah/index.asp**

**IN THE MATTER OF THE PETITION OF
NELLY AND MOSES SOLANO**

*
*
* Case No. 12-01-A
*

Before: Lynn A. Robeson, Hearing Examiner

OPINION AND ORDER GRANTING ADMINISTRATIVE MODIFICATION

Special Exception No. SE 12-01 was granted by the Hearing Examiner on May 25, 2012, to permit a child day care center for up to 30 children, at 13905 Darnestown Road, Darnestown, Maryland, in the R-200 Zone. The decision approving the special exception contained the following condition (Hearing Examiner’s Opinion and Decision, May 25, 2012, p. 42):

10. Petitioners must provide all the fencing and landscaping depicted on the Landscape Plan (Exhibit 18(b)); trees to be planted shall be no less than two and one half inches in caliper.

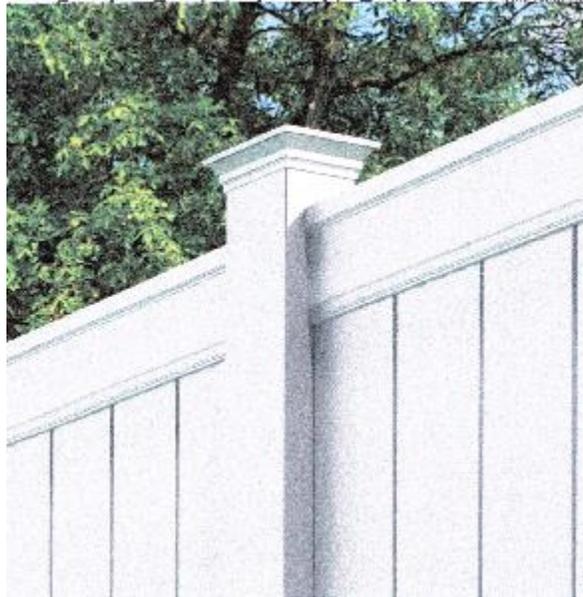
The approved Landscape Plan (Exhibit 18(b)) required the Petitioners to install the following:

A 6’ H. BOARD-ON-BOARD TYPE WOOD FENCE IS PROPOSED ALONG BOTH SIDE LOT LINES SCREENING THE PROPOSED PARKING AREA;

On May 16, 2016, the Hearing Examiner received a request from the Applicants to modify the special exception to substitute a 6-foot tall, solid white vinyl fence rather than the wooden board-on-board fence. Exhibit 39. The Applicants state that the purpose for the revision is to “provide the necessary screening of our parking lot, but it will allow easier lawn maintenance since weeds can grow between the fence boards with a board-on-board fence.” *Id.* No changes will be

made to the height or location of the fence, nor are there changes proposed to any other conditions of the original approval.

The documents attached to the Petitioner's request include a site plan showing that the fence will be in the same location as the board-on-board fence previously approved, as well as a photograph of the Emblem White Vinyl Privacy Fence proposed fence type (Exhibit 39(a)(ii)):



Because Case No. SE 12-01 was approved prior to October 30, 2014 and proposes no expansion of floor area, this modification request must be reviewed under the standards and procedures of the 2004 Zoning Ordinance. *See, 2014 Zoning Ordinance, §59.7.7.1.B.* This standard, contained in §59-G-1.3(c)(1) of the 2004 Ordinance, states:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the Board¹, without convening a public hearing to consider the proposed change, may modify the term or condition. . . .

¹ Pursuant to Zoning Ordinance §59-G-1.12, a petition for a child day care facility for up to 30 children is decided by the Hearing Examiner, not the Board of Appeals, and “All decisions and actions of the Hearing Examiner under this Section are subject to Sections 59-G-1.2 through 59-G-2.62.” Section 59-G-1.3(c)(1) falls within that list, and the Hearing Examiner is therefore authorized to modify the special exception in the manner specified in that section, even though the reference is to action by the Board.

A copy of the Board's resolution must be transmitted to the petitioner, the Planning Commission, the Department, the Department of Finance, all parties entitled to notice at the time of the original filing, and current adjoining and confronting property owners. The resolution must state that any party may, within 15 days after the Board's resolution is mailed, request a public hearing on the Board's action. The request must be in writing, and must specify the reasons for the request and the nature of the objections or relief desired. If a request for a hearing is received, the Board must suspend its decision and conduct a public hearing to consider the action taken.

The Hearing Examiner finds that the proposed modification is such that the terms or conditions could be modified in the manner requested without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood. Thus, the statutory standard for an administrative modification is satisfied, and it will be granted without a public hearing unless a request for one is received in accordance with the second paragraph of the statutory provision quoted above.

ORDER

Based on the foregoing, it is, this 19th Day of May, 2016,

ORDERED: That the request for an administrative modification to Special Exception Case No. SE 12-01, allowing the substitution of white vinyl fencing for the board-on-board wooden fence noted on the Landscape Plan, be and hereby is GRANTED; and, it is further

ORDERED: That Condition 10 of the Hearing Examiner's Opinion and Decision of March 19, 2008, is modified to read as follows:

10. Petitioners must provide all the fencing and landscaping depicted on the Landscape Plan (Exhibit 18(b)), except that Petitioners may substitute a 6-foot high white vinyl fence for a wooden board-on-board fence; trees to be planted shall be no less than two and one half inches in caliper.

and, it is further

ORDERED: That this modification and the continued use of the special exception are subject to all terms and conditions imposed in connection with the initial approval, except as

specifically amended by the Hearing Examiner in this Opinion and Order. Petitioners are directed to comply fully with all applicable county, state and federal regulations; and, it is further

ORDERED: That pursuant to Section 59-G-1.3(c) of the Zoning Ordinance, any party may, within fifteen (15) days of the date of this Order, request a public hearing only on the Hearing Examiner's decision to modify the application to substitute the style of fence. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Hearing Examiner shall suspend her decision and conduct a public hearing to consider the action taken.



Lynn A. Robeson
Hearing Examiner

cc: Parties of record
Adjoining and confronting property owner
Barbara Piczak, DPS
Montgomery County Planning Department
Finance Department
Board of Education
SHA
Local Civic Associations