# . . . . . . . . MEMORANDUM AND ORDER

On June 22, 1965 the County Board of Appeals granted a specia exception in an R-6 zone for Mary K. Boyle to operate a day nursery. The burder is an an applicant for a special exception to adduce evidence that the criteria set forth in Sec. 502-1 of the zoning regulations are met. One such criterion is that a special exception should not tend to overcrowd land and cause undue concentration of population. Another criterion is that the special exception must not tend to create congestion in roads, streets or alicys. The Board, without stating any under lying reasons or relying on any specified testimony, concluded, by implication, that the evidence supported a finding that these criteria had been met. It is the opinion of this court that their conclusion was erroneous and not supported by the evidence This court should not substitute its judgment for that of the administrative tribunal, but where the matter is not fairly debutable it is the duty of this court to reverse.

The petitioner's property is 100 feet wide by 174 feet in depth, located on a dead end street where parking is permit 1, the width of the street being only 17 feet. Two cars cannot pass on this street opposite a legally parked automobile. Use of the subject premises for a day nursery will entail forty small children

being brought to the premises eight employees will be required to care for the children. and various service vehicles must come to the premises since the day nursery hours are from 7:30 a.m. to 4:30 p.m. and meals will have to be served. In addition to that. the petitioner herself resides on the premises. It seems to this court the conclusion in

in the Matter of Petition for Special Exception and Variano to Zoning Regulations - S. S. Intr Avenue 185' E. Marlyn Avenue, 15th District Kery Kathryn Boyle, Petitioner

Before the Zoning Counissione

1 No. 65-7/-X . . . . . . . .

# NOTICE OF APPEAL

Please note an Appeal by the Protestants in the above-captioned proceeding, Mr. and Mrs. August C. Reiber, Mr. and Mrs. Millur J. Foxwell. Mr. and Mrs. John .11sr, et al., by Clarence W. Sharp, their attorney, from the Order of the Zening Commissioner of Baltimore County, dated September 25, 1964 to the Baltimore County Board of Appeals.

Clarence W. Sharp 210 West Pennsylvania Avenue Towson 4, Maryland VAlley 8-8660

Attorney for Protestants

I HEREBY CERTIFY, that on this 22nd day of October, 1964 a copy of the foregoing Notice of Appeal was delivered to the Zoning Commissioner

OFT 22'64 H

inescapable that traffic congestion will result, as well as an undue concentration of people in this residentially zoned area. The court therefore reverses the Board of Appeals and orders that the special exception be denied.

John E. Raine, Jr.

February 17, 1967

#

S/S Lut.

BOYLE

185

PETITION FOR ZONING RE-CLASSIFICATION

AND/OR SPECIAL EXCEPTION + Variance

MAPV TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 15-B I NEXXX Mary Kati.ryn Boyle | legal owner of the property situate in Bal County and which is described in the description and plat attached hereto and made a part hereof.

Y/ hereby petition (1) that the zoning status of the herein described property he re-classified, to the Zoning Law of Baltimore County, from an. to an s/24/64 .... rone: for the following reasons:

Petition for Variance to Section 211.3 - Side Yards-To permit 8' and 10.7' on south 12 degrace
34 minutes 10 seconds Rast 17h feetline instead of required 20' for a principal building.

See Attached Description

and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimor County, to use the herein described property, for Day Nursery

Property is to be posted and advertised as prescribed by Zoning Regulations I, or we agree to pay expenses of above re-classification and/or Special Exception advertising posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning

May Halkyn Boyle
Mary Kathryn Boylegal Owner
Address 907 Lutz Avenue affeed L. Bren Baltimore 21, Md.

Maguire & Brennan Louglas & Betton 825 Eastern Blvd Baltimore 21 Md

ORDERED By The Zoning Com of July . 1964 ... that the subject matter of this petition be advertised a required by the Zoning Law of Baltimore County, in two newspapers of general circulation through out Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County on the 9th

JUL 31'64

1,000

PE- PETITION FOR SPECIAL EXCEPTION for a Day Nursery, and VAR from Section 211,3 of the Zoning Regulations, S/S Lutz Avenue 185' East of Marlyn Avenue, 15th District Mary Kathryn Boyle

REFORE

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY No. 65-74-XA

### OPINION

The patitioner here seeks a special exception in an R-6 Zone to operate a Day Nursery, and a variance from Section 211.3 of the Zoning Regulations to permit a side yard less than that required by the regulations. The property is a lot approximately 100 feet by 175 feet on the south side of Lutz Avenue in the Fifteenth District of Baltimore County and known as 907 Lutz Avenue. The west side of the subject property abuts the lots that face Marlyn Avenue that are used commercially, and is the first property past the commercially used land on the south side of Lutz Avenue

From the testimony of the witnesses the Board finds that there is a definite need for a well-run Day Nursery in this area and that the petitioner, by virtue of her past experience, is qualified to operate such a Nursery. Two of the witnesses opposing the petition operate Day Nurseries of their own, and one quite frankly stated that he felt that a Day Nursery here would hurt his business.

The Board is also satisfied that the granting of the special exception here. subject to the restrictions set forth below, will not violate Section 502.1 of the Zoning Regulations. Since there was not sufficient showing by the petitioner that the denial of the variance requested would result in unreasonable hardship or practical difficulty to her, the request for a variance is denied. For the reasons set forth above the special exception is arouted, subject to the following restrictions:

- That the property shall have a circular driveway located substantially in accordance with the location shown on petitioner's exhibit #1
- 2. That the driveway shall be of sufficient width to allow parking on one side of the drive and have sufficient space for other vehicles to enter and leave the premises: that vehicles entering and leaving the drive shall travel in one dire only, from west to east
- That the drive shall be completely paved with bituminous concrete or other similar permanent

Pursuant to the advertisement, posting of property, and public hearing on the above petition and

the second set tell, polycope and talk his bank she know second

IT IS ORDERED by the Zoning Commissioner of Baltimore County this ... 254

day of \_September-\_\_\_w., 196.4., ikukika hondo klassikad property as arrawboold kis and

Noncoura in lassely, socionifical from announcemental announcement and ann

counted (one and after the water of the deed, subject, however, to complicate with the head of the media with the however, to complicate with the head of the management of day nursely the the head of the free of the head o

the above re-classification should NOT BE HAD, and/or the Special Exception should NOT BE

DENIED and that the above described property or area be and the same is hereby continued as and

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this.

ent, posting of property and public hearing on the above petition

..., 196 .... that the above re-classification be and the same is hereby

zone; and/or the Special Exception for

appearing that by reason of Jocation, the safety, health and general welfare of the

locality lovelyed nat being detrimentally affected,

a Special Exception for a ... Qay Bursery ....

and it appearing that by reason of.

GRANTED

that some remarker a Special Exception for a -- Day Morsery --

That the petitioner shall erect screening of into the petitioner shall erect screening of either a fence or compact planting at least four (4) feet high along the east, south, and west property lines if requested to do so by the abutting property owners

- 2 -

- That the Day Nursery be operated Monday through Saturday only, and that the hours of operation shall be limited from 6:00 a.m. in the morning to 6:00 p.m. in the evaning
- That the petitioner shall provide at least three (3) off-street parking spaces for employee
- That the Day Nursery shall be limited to not more than thirty-five (35) children

#### ORDER

For the reasons set forth in the aforegoing Opinion, it is this 22 day of June, 1965 by the County Board of Appeals, OR DERED, that the variance petitioned for, be and the same is hereby denied; and that the special exception petitioned for, be and the same is hereby granted, subject to the aforementioned restrictions.

Any appeal from this decision must be in accordance with Chapter 1100. subtitle B of Maryland Rules of Procedure, 1961 edition.

> COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

William S. Baldwin, Chairman

#45-74 XA

Description of the land in the 18th. Election Dist/ Baite. Co M. / S. & on Lutz avenue, shown on a Plat of even date to be filled for a Special Exception for a Day NUrsery . Beginning for the same at a point on the Bouth side of Luts Avenue laid out 20 ' wide at a distance of 185 ' measured along said side from the easternmost side of Marlyn Avenue ; said beginning being also at a corner of Lot # 20 and Lot # 18 as shown on the location Plat of Marlyn and Lutz Avenue recorded in Plat Bk. CW B Jr. #12 Felio 80 etc. thence binding on the south side of Lutz Avenue and along the fronts of of Lots # 19 and # 18 by True Maridian ,877 0 25 \* 50 " E 100.0" to a corner of Lot # 17 ; themes leaving said Avenue a,nd binding on the division line between Lot # 17 and 18 S 12 0 54 ' 10 " E 174.0 ' thence running along the rear of lot \$ 18 and Lot # 19 S 77 0 25 1 50 " H 100.0 1 to a corner of Lot # 22 thence running along the westermost side of Lot # 19 , the division line between Lot # 19 and Lots 22 , 21, and lot \$ 20 N 12 0 34 : 10 " W 174.0 : to the place of beginning Containing O.4- acres Heing allthe land in Lots 18 and 19 described in said Flat Boing all and the same land described in a deed dated Jan. 17 1980, recorded in Liber W. J. R No. 3813 foloi 132 which was a conveyance from Holabird Realty Co. to Mary K.

> Surveyed by A. lexis Rephel Reg. land Surveyor # 643

a Wedies Natibel

525 Alleghany Avenue Towson 4 Md July 14. 1964

Zoning Commissioner of Baltimore County

MICROFILMED

be and the same is hereby DENIED

--- should be and the same is

# BALTIMORE COUNTY, MARYLAND

TO Mr. John G. Rose, Zoning Commissioner Date. August 28, 1964

FROM Mr. George E. Gavrelis, Director

SUBJECT\_863-74-XA...Special\_Exception for a Day Nursery. Variance to permit side yards of 8 feet and 10.7 feet on south 12 degrees 34 minutes 10 meconds text 174 feet line instead of required 20 feet for a permit of the permit

15th District

HEARING: Wednesday, September 9, 1964 (1:00 P.M.)

The stafi of the Office of Planning and Ioning has reviewed the subject poition for a Special Exception for a Day Nursery together with Variances to the side yard requirements. Reference stages are supported by the subject of increase traffic generated by the proposed nursery use on narrow Latt Avenue. The petitioner should be well precongenitor of the proposed nursery use on narrow Latt Avenue. The petitioner should be well precongenitor of heard and the first proposed nursery that the standards set forth in Section 502.1 of the Ioning Regulations.

INVOICE BALTONRE COUNTY, MARSAND OFFICE OF FINANCE

No. 25203 DATE 7/20/64

COURT HOUSE

TOWSON 4, MARYLAND

MALOS 50.00 7-2064 6141 . 25203 IIP-

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

BALLOW ORE COUNTY, M. AND TELEPHONE No. 25350 OFFICE OF FINANCE Division of Collection and Receipts COURT HOUSE TOWSON 4, MARYLAND DILLERY Zoning Department of Baito, Co.

\$46.85 46.85 9-2561 6280 + 25350 IXP-1685

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, M RYLAND MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSE PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE. TOWSON 4, MARYLAND July 30, 196

HALTIMORE COUNTY OFFICE OF PLANNING AND ZONING COUNTY OFFICE BUILDING

TOWSON 4, MARYLAND

Alfred L. Brennan, Esq. 825 Eastern Blvd. Baltimore, Maryland

Mary Kathryn Bbyle, Location; S/S Lata Ave., 185' E of Marylyn Ave. Special Exception for Day SUBJECT: Hursery.

#65-74XA

map e

XA

8/2+/64

The Zoning Advisory Committee has reviewed the subject petition and makes the following comments:

HEALTH DEPARTMENT Subject to Health Department regulations.

FIRE DEPARTMENT

Subject to Fire Department regulations.

BUREAU OF TRAFFIC ENGINEERING

Traffic generated by this use night be expected to increase problems existing on this narrow dead and atrect.

OFFICE OF PLANNING & ZOIDE

Fire Eureau regulations governing the number of children per floor area will permit 50 children in the proposed building and 70 children if the proposed building and existing duelling are both used.

It is the opinion of this office, that an increase of the magnitude will tend to over tax the existing streets in the area.

The following numbers had no comment to make:

Redevelopment & Rebabilitation Commission Radevelopment & Rababilitation Com-State Roads Commission Industrial Development Commission Board of Education Buildings Department Bureau of Engineering

Yours very truly,

James B. Dyer Chief of Permit and

CERTIFICATE OF POSTING CONING DEPARTMENT OF BALTIMORE COUNTY

00 # 65-79

Yourson, Maryland

District Is the District of District Is the Portion of District Is the Province of District Is the District Is

on for a Variance to the g Regulations of Baltimore y to permit side yards of and 10.7 feet on south 13 a 24 minutes 10 exceeds 174 feet line instead of id 20 feet for a principal required 10 feet for a practipes LOCATION: South side of Luts Ave., 135 feet East of Mariya Avenue DATE & TIME: Wednesday, Sep-lember 9, 1964 at 1:10 P. M. PUBLIC HEARING Rosen 101, COUNTY Office Building, 111 W. Chesspeake Avenue, Towson, Md.

Chespeaks Arenus, Towese, Md.
The Senior Regulations to be excepted as frilews:
Section 211.3—dide Yards—30 ft.
The Zoning Commissioner of Baltimere County, by sutherty of the
Zoning Act and Regulations of Balbearing concerning all that parcel
of land in the Fifteenth District of
Baltimere County;

Transfer over the date of the control of the contro

CERTIFICATE OF PUBLICATION

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., onco: in each: of 1 time ...... serve sive weeks before the . 9th ..... day of Sapte ther 1956 the first publication appearing on the 21st day of August

THE JEFFERSONIAN, G. Leank Strucks

Cost of Advertisement, 8.

BALLMORE COUNTY, MARKLAND OFFICE OF FINANCE COURT HOUSE
TOWSON 4, MARYLAND

Clarence W. Sharp, Esq.,

No. 27531

Office of Planning & Zoning 119 County Office Bidg., Towson 4, Md.

COST Cost of appeal - Hary Kethryn Boyle \$70.00 102664 6321 e 27531 NP-70.00

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

BALTOORE COUNTY, MAINOAND No. 29923 OFFICE OF FINANCE court House TOTAL MIPUN 01.712 \$8.00 No. 65-74-XA Mary Kathryn Boyle S/S Lutz Avenue 165' Fort of Marlyn Avenue 9-2165 2037 \* 29923 TIP-8.00

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND

PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

