

IN THE MATTER OF : **BEFORE THE FAIRVIEW TOWNSHIP**
THE APPLICATION OF : **ZONING HEARING BOARD**
ANGELA MAYBERRY : **YORK COUNTY, PENNSYLVANIA**
 : **DOCKET NO. 2014-01**

**DECISION GRANTING THE REQUEST FOR A SPECIAL
EXCEPTION TO THE FAIRVIEW TOWNSHIP ZONING ORDINANCE SECTION 502**

The Applicant applied for a special exception under the Fairview Township Zoning Ordinance, Section 502, for the purpose of operating a family day care at her residence located at 313 Shuey Road, New Cumberland, Pennsylvania 17070. Hearings on the application was held on March 20, 2014, and on April 17, 2014, at 7:00 p.m. at the Fairview Township Municipal Building, 599 Lewisberry Road, New Cumberland, PA 17070.

FINDINGS OF FACT

1. The applicant is Angela Mayberry, 313 Shuey Road, New Cumberland, Pennsylvania, 17070.
2. The property is owned by Kevin Quirk and Angela Mayberry, father and daughter; and is in the Single Family Residential Zoning District of Fairview Township.
3. Notice of the hearing was properly advertised; the property was properly posted; and all neighboring property owners required to be notified of the hearing were notified in accordance with the Township Ordinance and the Pennsylvania Municipalities Planning Code.
4. A family day care, which allows for 4 to 6 non-resident children, is permitted as a special exception in the single family residential zoning district under the Fairview Township Zoning Ordinance provided that Ordinance criteria are met. The criteria specifically applicable to a family day care are in Section 1008.G and include: all principal structures maintain an

exterior appearance that resembles and is compatible with any existing dwellings in the neighborhood; fire escapes, where required, be located in the rear or side of the building and shall not be located on any wall facing a street right-of-way, excluding alleys; and an outdoor play area for children, meeting the specifications of the Ordinance, be provided. The detailed specifications were addressed in the testimony at the hearing and the Applicant demonstrated that the proposed family day care will comply in all respects with these Ordinance requirements, except as noted with respect to the dimensional variances discussed below.

5. The proposed day care will be operated by Angela Mayberry; Mr. Quirk, who also resides at the premises, will assist with the children. The children will be cared for completely within their home and the adjoining yard, as required by state regulations. Appropriate yard fencing has been completed for the safety of the children. There will be no more than six non-resident children being cared for at any one time. Special needs children will be accepted on a case-by-case basis. Children will be cared for between 6:30 a.m. and 6:00 p.m., Monday through Friday. Ms. Mayberry, who is experienced in the child care field, presented a detailed description of her plans for programming and care for the children's health, safety, education and welfare.

6. With respect to the outdoor play area, the Ordinance instructs that in the RS District the fencing shall be at least 4 feet in height and screened in accordance with the buffer and screening requirements of Part 7 of the zoning ordinance, which require 80% opacity. Fairview Township Zoning Ordinance Section 706, Table 7-1. The applicant requests relief from the opacity and height requirements because, with respect to the opacity issue, the topography of two adjoining properties is higher than the Applicant's parcel so that the fencing does not impact the view and the opacity would serve no purpose. Also, there is or will be vegetative screening

where the adjoining parcel is not raised. With respect to the height requirement, the Applicant requests allowance for a fence at least 3 feet in height because the fencing around the child play area is secondary to and in addition to a five (5) foot fence already present at the property line in the yard surrounding the play area. Thus, the height requirement of the Ordinance is met by the existing fencing.

CONCLUSIONS

1. Pursuant to Section 502, Table 5-2.C of the Zoning Ordinance, a family day care business is permitted in the Single Family Residential Zoning District of Fairview Township by special exception, subject to compliance with the specific criteria of Section 1008.G of the Zoning Ordinance and the general requirements for special exceptions.

2. The applicant demonstrated, except with respect to the dimensional variances granted below, that her family day care business will meet all of the specific standards established under the Zoning Ordinance, Section 1008.G, and will meet all of the general criteria for special exceptions set forth in Section 1216.E.3 of the Zoning Ordinance.

3. Because of the pre-existing fencing at the perimeter of the applicant's property, and the topography of two of the adjoining parcels, the applicant should be granted limited dimensional variances from the fence height and screening requirements of Section 1008.G.3 and Section 706.A, Table 7-1, to allow an interior fence of at least 3 feet in height and a variance from the opacity requirements of the external fence, subject to the condition that the planned vegetative screening be established and maintained.

4. The proposed family day care should, therefore, be permitted, with the variances as stated.

DECISION

On the basis of the foregoing findings and conclusions and on the basis of all the testimony and evidence presented at the hearings, the Zoning Hearing Board hereby grants the application for a special exception, with dimensional variances from the fence height and screening requirements, authorizing a family day care at the Applicant's residence at 313 Shuey Road, New Cumberland, Pennsylvania, 17070.

The application was approved upon the motion made by Mr. Guy, seconded by Mr. Shaffer and adopted 3-0 by the Board members present and voting.

FAIRVIEW TOWNSHIP ZONING HEARING
BOARD

Dated: May 2, 2014

By: 

David R. Guy, Chairman

Distribution:
Applicant