

**TOWN OF INDIAN HEAD
BOARD OF ZONING APPEALS
Village Green Pavilion
PUBLIC HEARING #BZA03-01-23
May 24, 2023**

Chairman Pellegrino called Public Hearing #BZA03-01-23 to order at 7:06 p.m. Applicant Malkia Fogle was present to request a special exception for a home day care to be located at 6 Shelton Court.

Those in attendance were:

Michael Pellegrino
Thomas Blake
Andrea Brady, Town Clerk
Fred Sussman, Town Attorney
Nate Merkel, Zoning Administrator

The application and fee were received on March 28, 2023. Notice for the Public Hearing was published in the Maryland Independent on April 14, 2023, and republished on May 5, 2023. Certified letters were sent to adjoining property owners on April 10, 2023, and resent on April 24, 2023, with the revised hearing date. The applicant was notified of the date time and place of the hearing on April 10, 2023, and notified of the revised hearing date on April 24, 2023. The sign for the public hearing was posted on the property 6 Shelton Court on April 20, 2023, and the revised sign was posted on April 24, 2023, and remained in place until the date of the hearing, May 24, 2023. Ms. Fogle's hearing was originally scheduled for April 26, 2023, but was rescheduled due to the sign being posted late, and the office being closed due to COVID. Chairman Pellegrino administered the Oath to Malkia Fogle.

Ms. Fogle was given the opportunity to present her case. Ms. Fogle spoke about her proposed in-home day care. She had the idea after having difficulty finding day care for her own children and knowing friends and family in need of childcare. Ms. Fogle's goal is to be able to help not only herself but friends and family in need.

Ms. Fogle's application including a hand drawn site plan was made part of the record.

Mr. Sussman asked who resides in the home. Ms. Fogle stated that her two children, her fiancé, his mother, and Ms. Fogle's younger sister reside in the residence. The children are 3 and 5 years old.

Zoning Administrator, Nate Merkel, presented the Findings of Fact.

The proposed special exception request is for the use of a single family attached home to be used as a in home family daycare facility. The request is being made by homeowner, Malkia Fogle. The findings of fact covers public health/safety, enjoyment/property values, architectural changes, availability of public utilities, present and future transportation patterns, relationship to the Town's Comprehensive Plan, sustainability of the property for the intended use, changes in the character of the neighborhood or mistake in the original zoning, and zoning. The findings were as follows:

Public Health/Safety

The proposed special exemption request will not be detrimental to or endanger the public health, safety, convenience, morals, order, or general welfare of the community.

Enjoyment/Property values

The proposed special exemption request should not substantially diminish or impart property values within the neighborhood. As long as noise levels are kept to a minimum, it should not be injurious to the use and enjoyment of the surrounding properties.

Architectural

The proposed special exemption request does not propose any changes to the structure's architecture.

Availability of Public Utilities

The proposed rezoning request does not include a land development submission so the anticipated impact to public utilities that may result from the special exception request cannot be determined at this time. It should be noted that there would be an anticipated increase to the public utilities due to more people occupying the home during the day, but no significant impact is likely.

Present and Future Transportation Patterns

The proposed special exception request does not include a land development submission so the anticipated impact to present and future transportation patterns that may result from the special exception request cannot be determined; however, it is anticipated that additional traffic would be generated at peak hours for drop off and pick up. It should also be noted that street parking is shared along Shelton Court.

Relationship to the Town's Comprehensive Plan

The proposed special exception request is consistent with the Town's 2009 Comprehensive Plan.

Suitability of the Property for the Intended Use

The existing parcel is currently utilized for residential purposes and will continue to be utilized for residential purposes if the special exception request is approved.

Changes in the Character of the Neighborhood or Mistake in the Original Zoning

The proposed special exception request does not include a land development submission; however, the in-home daycare would not change the innate characteristics of the parcel.

Zoning

Property is Multifamily High Density Residential. Property is in compliance of 100 sq. ft. per child with a maximum of 8 children.

Mr. Merkel stated that the staff's recommendation is approval of the requested special exception of in-home daycare for the reasons discussed in the Findings of Fact. Due to parking, applicant shall specify drop off and pick up times to minimize congestion. To have full access to driveway, applicant shall park personal vehicle in a public parking zone.

Mr. Sussman asked if Ms. Fogle is proposing to have a sign on the property. Ms. Fogle is proposing to have a sign on the door of her home. Mr. Sussman asked for clarification on whether the 8 children will include her own. Ms. Fogle said that is correct. Ms. Fogle's process with the State of Maryland is complete other than obtaining approval from the Town's Board of Zoning Appeals. Ms. Fogle stated this was the last step in her process.

Chairman Pellegrino requested for those present supporting the applicant's position to approach the podium and state their name and address for the record. There being no comments at this time, Chairman Pellegrino asked for those present opposing the applicant's position to approach the podium and state their name and address for the record.

Mona Lisa Marie Patopie, LDG Property Management – Ms. Patopie stated that she manages nine properties in the neighborhood and listed the residences she manages. Ms. Patopie stated their issue is that the neighborhood is a cul-de-sac with one way in and one way out. There is a loitering issue in front of this particular unit, cars in constant state of repair, and the state of the yard is also an issue. Since the shooting on February 13, 2023, which was through no fault of the applicant, the residents are hyper vigilant and aware of the goings on in the neighborhood. Ms. Patopie feels the sheer volume of traffic already in the neighborhood is already problematic and the loitering that occurs there is problematic. Ms. Patopie stated there were many residents who wanted to speak against the proposed day care, but they were afraid to come in fear of backlash. She feels this is an inappropriate use of the residence and it would not be supported. Ms. Patopie spoke about Claire's Day Care that is less than a block from the neighborhood, and their current availability. Ms. Patopie talked about the neighborhood having no sidewalks and no speed bumps. She stated that she, and other residents are wondering about drop off and pick up and the issue of a one way in one way out neighborhood. Ms. Patopie spoke about evictions they are in the process of completing at several of the homes she manages. She feels this will change the condition and the mode of this residential neighborhood. Ms. Patopie says she has been bombarded with phone calls and emails from Shelton Court residents who are against the proposed day care. She stated that while they don't want to keep Ms. Fogle from making money, and she may be qualified and certified, but the feeling of the neighborhood as a whole is that they don't support the traffic or a business that does not contribute to the feel and look of the neighborhood. Ms. Patopie said she is "voting" no nine times for the properties she manages.

Mr. Merkel for the record asked if the day care would be utilized for friends and family. Ms. Fogle said that is correct.

Jessica Fowler, 5 Shelton Court – Ms. Fowler asked to speak in support of the applicant. Ms. Fowler thinks the day care is a great idea. She has three children of her own, and having a day care next-door is a great opportunity for her children. Ms. Fowler works in DC, and this would be beneficial for her. Ms. Fowler stated that while the neighborhood did have a dramatic situation, that has never been an issue there before. Ms. Fowler has never had an issue with her neighbor Ms. Fogle, and has no negative things to say about her, and said she is a nice person. Ms. Fowler feels that Ms. Fogle's day care will be affordable. She wanted to speak on her behalf and state it is a great idea, and that she believes a lot of other residents feel it is a great idea. Ms. Fowler does not anticipate it being a big impact to traffic in the neighborhood and sees no reason why Ms. Fogle could not operate a day care. Ms. Fowler feels this is needed on their court.

Ms. Patopie asked how many children the day care will have. Ms. Fogle stated there will be 8 children including her own.

Mr. Blake asked to reaffirm that the state licensing process is complete. Ms. Fogle stated it has been completed.

Ms. Fogle gave up her full-time job to be able to start her in home day care.

Mr. Blake feels there is a lack of childcare in this area, and an affordable day care is needed. Mr. Blake stated that the day care people choose to utilize is up to their comfort level with that specific day care, and while there might be one around the corner there may be parents who choose not to utilize that facility. As a member of the Board Mr. Blake feels the exception should be granted, it is needed, and Ms. Fogle has completed all necessary steps for state licensing.

Chairman Pellegrino, asked about the day care that is close to the proposed home day care. Ms. Fogle stated it is about 5 minutes from her home. It was determined it is more than 500 feet from the home. Mr. Merkel measured it off and it is over 1,000 feet away.

Chairman Pellegrino asked if Ms. Fogle would have staff. Ms. Fogle said she will have a substitute available which would be her sister, but no other staff. He asked for hours of operation. Ms. Fogle stated it will be 6am to 6pm.

Chairman Pellegrino's biggest issue would be parking access since there is not a lot of public parking available. Mr. Pellegrino asked if the driveway will be available during business hours. Ms. Fogle will park in public parking and leave her two spaces available for pickup and drop off. Mr. Merkel went over the portion of the staff report that addressed the parking/traffic concerns.

Ms. Fogle was given the opportunity to provide a closing statement. Ms. Fogle thanked everyone for their time and expressed her hope for approval.

Mr. Sussman asked if there is a fence around the property. Ms. Fogle stated that is correct, and she has no issue keeping the fence in place, and it is also a state requirement.

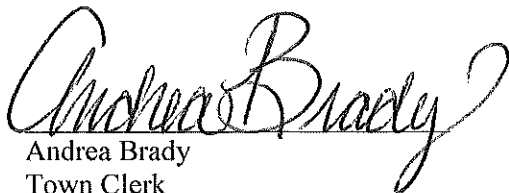
Chairman Pellegrino closed the hearing at 7:42pm and opened the Board of Zoning Appeals meeting to move into disposition of the case.

Mr. Blake made a motion that subject to the qualifications already discussed as it relates to parking, that the Board ask legal counsel to prepare a Resolution to approve Ms. Fogle's request for special exception with conditions.

Mr. Pellegrino seconds the motion. The motion was passed by voice vote 2-Aye 0-Nay.

Mr. Sussman will prepare a draft Resolution for the Board's approval and a meeting will be called for the Board's discussion and approval or reconsideration of the prepared Resolution.

The meeting adjourned at 7:47pm.


Andrea Brady
Town Clerk