

Tax Map/Block/Parcel  
No. 45-16-542

Building Permit/Zoning  
Certificate No. 98-1190

Case 4324

OFFICIAL DECISION  
BOARD OF ZONING APPEALS  
CARROLL COUNTY, MARYLAND

**APPLICANTS:** Alice Cunningham  
Rainbows and Reasons, Inc.  
P.O. Box 788  
Finksburg, MD 21048

**ATTORNEY:** Clark R. Shaffer  
6 North Court Street  
Westminster, MD 21157

**REQUEST:** An appeal of the Zoning Administrator's April 7, 1998, decision regarding a day school on property zoned "C" Conservation District

**LOCATION:** East of Old New Windsor Road and north of Stone Chapel Road in Election District 7

**BASIS:** Basis: Article 15, Section 15.5.4; Ordinance 1E  
(The Carroll County Zoning Ordinance)

**HEARING HELD:** June 30, 1998 and August 10, 1998

FINDINGS AND CONCLUSION

On June 30, 1998, and August 10, 1998, the Board of Zoning Appeals (hereinafter the "Board") convened to hear the appeal filed by Alice Cunningham of the decision of the Zoning Administrator, dated April 7, 1998. The Appellant had petitioned the Zoning Administrator for a determination that the proposed use constitutes a school and thus is permitted as a principal use in the Conservation Zone. The Zoning Administrator determined that the use proposed does not constitute a school as envisioned by the Zoning Ordinance. Alice Cunningham filed a timely appeal of the determination to the Board.

The evidence before the Board is not in dispute. The Appellant is the contract purchaser of a 5.085 acres of parcel of land identified as Lot 3, of Parcel 542 of Tax Map 45, Block 16. The subject property is zoned "C" Conservation District. The Appellant seeks to purchase the property to erect a facility for 100 children, ages 6 weeks to 5 years old. Children will be dropped off in the morning and picked-up in the evenings. During the day, they will have play time, nap time, and age appropriate activities. There will be instructional activities to the children, ages two to five. The facility will have a library and

media center. There will be a director and staff.

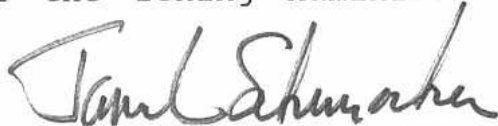
The issue before the Board is whether the use proposed is a school as contemplated by the Zoning Ordinance. For the following reasons, the Board concludes that the use proposed is not a school but rather a Day Care Center.

Section 5.1 of the Ordinance permits as a principal use "Schools and colleges, . . ." in the Conservation zone. Day Care Centers or Nursery Schools are not permitted in the Conservation Zone. In the R40,000 Residence Zone and the R20,000 Residence Zone "schools and colleges" are permitted as principal uses and "Nursery schools or day care centers" are permitted as conditional uses. The Ordinance draws a distinction between schools and day care centers. The question before the Board is what do these different terms mean. "The search for legislative intent, begins, . . . , with the words of the statute under review. (Citations omitted.)

Where, giving the words of the statute their ordinary and common meaning, (citations omitted), the statute is clear and unambiguous, both in meaning and application, (citations omitted), it usually is unnecessary to go further." Gordon Family Partnership v. Gar on Jer, 348 Md 129, 137-138 (1997) (emphasis added). The Appellant contends that the facility is a school. However, the plain and common meaning is that such a facility is a Day Care Center for children. The Appellant concedes that children ages six months to two years will receive no instruction. The facility is open before schools open and remains open past the school day. The facility is open on holidays when parents are normally working and schools are closed. There are no tests administered. Such a facility is commonly referred to as Day Care Center for children. While there may be learning at the facility, it is not a school. The primary purpose of the facility is one of child care. The use proposed is a subcategory of Day Care Centers, i.e., a day care center in which education takes place. To accept the Appellants contention would render much of the above quoted sections of the Ordinance as surplusage. [For a collection of cases of other jurisdictions which do not consider day care centers as schools, see 64ALR3d1087, 1104-10 (1975).]

Accordingly, the decision of the Zoning Administrator is affirmed.

August 10, 1998  
Date

  
James L. Schumacher, Chairman

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August 31, 1998