

IN RE: PETITION FOR SPECIAL HEARING	*	THE
SW corner of Liberty Road and		
Forest Hill Road	*	BALTIMORE COUNTY
2 nd Election District		
2 nd Councilmanic District	*	BOARD
(6411 Liberty Road)		
	*	OF APPEALS
Dennis K. and Elizabeth J. Agboh	*	CASE NO. 10-004-SPH
<i>Petitioners</i>		

* * * * *

OPINION

BACKGROUND

This matter comes before the Board of Appeals for consideration of a Petition for Special Hearing filed by the legal property owners, Dennis K. and Elizabeth J. Agboh. Petitioners request Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) for the removal of restriction #1 in Case No. 86-493-SPH that states that a Class A Group Childcare Center may only be operated on the site so long as Francis E. Feagin is the resident operator of the center. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner's Exhibit 1.

A hearing before the Board was held and completed on February 17, 2011. No Memoranda in lieu of closing arguments were submitted to this Board. A public deliberation was held on March 8, 2011.

Petitioners, Dennis and Elizabeth Agboh, the property owners, were represented by Francis X. Borgerding, Jr., Esquire. Peter Max Zimmerman appeared on behalf of People's Counsel of Baltimore County. No other protestants or other interested persons were in attendance.

FACTS

Testimony was offered by Dennis Agboh that the subject property is an irregular-shaped property consisting of approximately 10,510 square feet or 0.241 acre, more or less, zoned D.R.5.5. The property is located at the southwest corner of Liberty Road and Forest Hill Road, approximately 1-1/2 to 2 miles east of the Interstate 695 Beltway, in the Lochern area of Baltimore County. A copy of the zoning map showing the location of the property was marked and accepted into evidence as Petitioner's Exhibit 2. The property is improved with an existing 2-1/2 story framed dwelling that is used as a daycare center.

Petitioner Elizabeth Agboh, has been in the daycare business since 1991. She attended college at Southern University in Baton Rouge, LA and received a degree in accounting in 1982. The Agbohs moved to Maryland when her husband was hired as a professor at Morgan State University in 1988. By 1991, Petitioner had several small children of her own and decided to open a childcare center. She enrolled in classes at the Community College of Baltimore County in order to qualify for the designation of "Director" of a childcare center. Since then, she has been operating the "Randallstown Child Daycare Center" located at 9019 Liberty Road in Randallstown as a Class B Group Childcare Center. Because of the expansion of her business, Petitioner began looking for other locations for a childcare center.

Mr. Agboh further testified that in 1994 he became aware that the subject property was for sale and thought the property would be an ideal location for an additional childcare center. Mr. Agboh indicated that when he purchased the property in 1994, he was not aware the property had a prior zoning hearing in 1986, in which a Special Hearing to approve a Class A Childcare Center was granted in Case No. 86-493-SPH. A copy of that prior zoning case was marked and accepted into evidence as Petitioner's Exhibit 5. The property owners at that time were Charles

and Frances Feagin. In granting the requested Special Hearing, then-Deputy Zoning Commissioner Jean M. H. Jung imposed restriction #1 which stated that “[a] Group Child Care Center, Class “A” may be operated on the site only so long as Frances Feagin is the resident operator of the center.” It is this restriction that is the subject of the instant request for Special Hearing.

Unaware of the prior zoning hearing or the restriction imposed on the property – the Agbohs requested, in 1994, a Use Permit for a Class A Childcare Center on the subject property. In an Order dated August 2, 1994, in Case No. CACC-94-2, a copy of which was marked and accepted into evidence as Petitioner’s Exhibit 3, then-Zoning Commissioner Lawrence E. Schmidt granted the Use Permit. Thereafter in 1995, Mr. and Mrs. Agboh filed a Petition for Special Exception in order to permit the use of the subject property as a Class B Group Childcare Center for up to 39 children in a D.R.5.5 Zone. Several related Variances were also requested.

In his Order dated March 1, 1995 in Case No. 95-248-XA, then-Zoning Commissioner Lawrence E. Schmidt thoroughly described the use of the property at that time, the nature and scope of Petitioner’s daycare operation, and the significant efforts and expenditures made to renovate and upgrade the interior and exterior building; he also considered the applicable Special Exception criteria set forth in Section 502.1 of the B.C.Z.R., as well as the applicable standard for Variances, and granted Petitioners’ relief. A copy of the Order was marked and accepted into evidence as Petitioner’s Exhibit 5.

CONCLUSION

It is apparent from reviewing the 1994 Order for the Use Permit and the 1995 Order for the Special Exception and Variance, that the prior 1986 Order and restriction #1 was not known to Petitioners nor the Zoning Commissioner. Those Orders make no mention of the 1986 case or

restriction #1.

Having become aware of the 1986 Order and the restriction that was imposed in that case, Petitioner now desires to “clean up” the discrepancy and legitimize the existing use of the property. Hence, Petitioner requests Special Hearing relief to have restriction #1 removed, so as to continue her use of the property for a Group Childcare Center.

DECISION

Based on the testimony and evidence, the Board is persuaded to grant the Special Hearing relief and approve the removal of restriction #1 in Case No. 86-493-SPH. Petitioner purchased the subject property in 1994 and testified that she was not aware of the prior 1986 case or restriction #1 that limited the daycare operation on that property so long as Frances Feagin was the resident operator. The Board finds that the current use of the property has had no past or present detrimental impacts on the health, safety or general welfare of the community; on the contrary, it appears that Petitioner’s operation has served to fill a significant need in the local community for close and reliable daycare.

People’s Counsel raised the issue throughout the hearing that it appears that the individual who is currently operating the daycare, on the property at issue, is not residing at the daycare location. It is People Counsel’s assertion, with which the Board concurs, that the original order allowing the daycare at this location included the restriction that “Francis E. Feagin” be a resident at the location, in order to prevent the dwelling from being a solely commercial enterprise, due to its proximity to a residential area. Consequently, the Board agrees that the “operator” of the daycare at the subject location, must also be an “actual” resident at that address.

ORDER

THEREFORE, IT IS THIS 19th day of May, 2011 by the Board of Appeals of Baltimore County

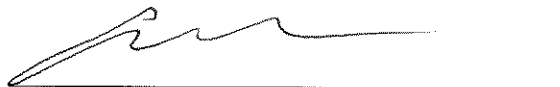
ORDERED that, for the reasons as stated in the foregoing Opinion, Petitioner's Request for Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) in Case No. 10-004-SPH, for the removal of the restriction #1 in Case No. 86-493-SPH, that states that a Class A Group Childcare Center may only be operated on the site as long as Francis E. Feagin is the resident operator of the center, be and is hereby **GRANTED**, subject to the following condition:


1. That the operator of the Childcare Center on the subject property, known as 6411 Liberty Road, must also reside at the subject property. The term "reside" being intended to constitute the operator permanent mailing address, legal domicile and physical occupancy of the property residential purposes.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Lawrence S. Wescott, Chairman


Andrew M. Belt


Edward W. Crizer