

IN THE MATTER OF
DENNIS AND ELIZABETH AGBOH - APPLICANTS
6411 LIBERTY ROAD
BALTIMORE, MD 21222
2nd Election District, 2nd Councilmanic District

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BEFORE THE
BOARD OF APPEALS
OF
BALTIMORE COUNTY
Case No.: 10-314 SPHXA

RE: SPECIAL EXCEPTION, REQUEST FOR
VARIANCE AND SPECIAL HEARING FOR
CLASS B CHILD CARE CENTER

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OPINION

This case comes to the Board on appeal of the final decision of the Deputy Zoning Commissioner of Baltimore County denying a Petition for Special Exception and Special Hearing request and dismissing as moot the Variance requests filed by Dennis and Elizabeth Agboh, the legal owners of 6411 Liberty Road, Baltimore, MD 21222 and the lessee of the property, Kim Walters d/b/a Enigma Learning. Petitioners seek the following relief:

1. A Special Exception pursuant to Section 1B01.1.C.6 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve a Class B, Group Child Care Center for up to thirty-eight (38) children.

2. Special Hearing relief pursuant to Section 500.7 of the B.C.Z.R. to:

A. Find that Section 1B01.1.B.1.g(11) of the B.C.Z.R. is applicable and has been complied with;

and

B. Find that in the event a Special Exception is not granted for a “Principal Use Group Child Care Center, Class B” then an “Accessory Use Group Child Care for more than 12 children but less than 40” is permitted in this existing facility in keeping with the continuation of the current use and without designating the name of a specific individual(s) and further, that a lessee is permitted to be the occupant.

3. Eight (8) different requests for Variance relief as set forth in the Application.

A public hearing was held on May 24, 2011. One of the Petitioners, Kim Walters, the lessee, was present at the hearing *pro se*. People’s Counsel for Baltimore County, represented by Peter Max

Zimmerman opposed the requests and participated in the hearing. There were no Protestants who appeared. After the hearing, the Board publically deliberated the case.

Decision

The subject property is located in a Residential Transition Area (“RTA”) and is zoned D.R. 5.5. It is approximately 10, 510 square feet or 0.241 acres in gross area. It is located at the southwest intersection of Liberty Road and Forest Hill Avenue in the Lochern area of Baltimore County to the east of Interstate 695. The property is improved with a 2 ½ story frame dwelling which was converted for use as a day care center.

This property and the request for a Class B license, special exception and variances are not new to this Board as the same requests were previously made and denied by the Board in the past. On March 1, 1995 the Zoning Commissioner granted the Agboh's petition for special exception and variance for a Class B Group Child Care Center for up to 39 children in case number 95-248-XA. However, that decision was appealed to the Board by the Office of People's Counsel. The Agboh's subsequently withdrew the petition and the Board issued an Order of Dismissal in case number 95-248-XA on January 21, 1997.

After reviewing all of the testimony and evidence presented, the Board has determined that the Petitioners' Petition for Special Exception, Special Hearing request and Variances should be denied.

Ms. Walters's case consisted of her testimony that when she entered into a lease of the property to operate the day care, she was told by Dennis and Elizabeth Agboh that they already were approved for a Class B license permitting more than 12 but less than 40 children at the daycare center. Ms. Walters explained that, prior to the hearing, she met with People's Counsel and learned that there was no Class B license approved for the property. Ms. Walters testified that she needed the Class B license because she was not making enough money having only 12 children at the center. Although she did not present a copy of her lease, she stated that the lease does not end for 3 years

and she is obligated to pay \$2,500.00 per month in rent. She desires to have 22 kids at the center which will translate into more income. Ms. Walters also explained that she is now living at the property because she understands the requirement that to have a day care license, the operator needs to reside at the property.

On cross examination, People's Counsel entered into evidence 12 exhibits including the prior cases before this Board regarding the same request for a Class B Day Care license. These requests were denied by this Board because the bulk standards required by the Residential Transition Area ("RTA") for Class B license such as lot size, setbacks and impervious surface requirements went far beyond the dimensions of the property. The Board in Case No. 94-271-XA also denied the variance requests because the evidence did not show that the property was unique under *Cromwell v. Ward*, 102 Md. App. 671 (1995).

This Board is also aware of its most recent decision dated May 19, 2011 in Case No.: 10-004 SPH filed by Petitioners Dennis and Elizabeth Agboh to request 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 so long as "Francis E. Feagin" the former owner/operator, is a resident at the center. In that case Mr. Agboh testified that when he purchased the property he was not aware of restriction #1 from the 1986 case. This Board granted the request to remove restriction #1 subject to the condition that the owner/operator of the day care center also reside there. Section BCZR Section 424.4A states:

"A. Group child-care centers, Class A, are permitted as an accessory use within single-family detached dwellings in all residential zones except R.C.4, in all industrial zones and in R-O and O.T. Zones if the Zoning Commissioner grants a use permit under the following procedure:..."

In the instant case, People's Counsel offered the testimony of David Green from Office of Planning but the Board found it unnecessary to hear from Mr. Green based on the limited evidence presented by the Petitioners. People's Counsel argued that the property is only a ¼ acre, with converted dwelling and can not meet the bulk standard requirements in the RTA. It is

the position of People’s Counsel that the property is substantially undersized to have more than 12 children attend the center. The numerous requests for variances in this case only highlight that this was not the property size envisioned by the County Council when it enacted Bill 200-90 in October of 1990 (PC. Ex. 5) for Class B centers.

In this case, there was no evidence presented by Ms. Walters to meet the burden of proof for either a Special Exception under B.C.Z.R. §502.1 or a Variance B.C.Z.R. §307. The property has not changed since the prior requests were made and denied by this Board. There was no evidence presented as to the criteria required in B.C.Z.R. §502.1 or the ‘uniqueness’ of the property under B.C.Z.R. §307 and *Cromwell, supra*. Accordingly, the Board must deny the request for Special Exception, Special Hearing and for Variances.

ORDER

THEREFORE, IT IS THIS 29th day of June, 2011, by the
County Board of Appeals of Baltimore County

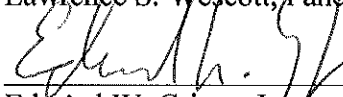
ORDERED that the Petition for Special Exception, Special Hearing and for Variances, be, and the same are hereby **DENIED**.

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*.

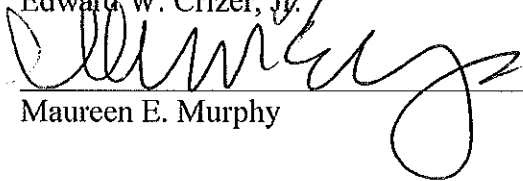
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Lawrence S. Wescott, Panel Chairman



Edward W. Crizer, Jr.



Maureen E. Murphy