

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
SW corner of Liberty Road and		
Forest Hill Road	*	DEPUTY ZONING
2 nd Election District		
2 nd Councilmanic District	*	COMMISSIONER
(6411 Liberty Road)		
	*	FOR BALTIMORE COUNTY
Dennis K. and Elizabeth J. Agboh		
<i>Petitioners</i>	*	CASE NO. 2010-0004-SPH

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner 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.

Appearing at the requisite public hearing in support of the requested special hearing relief was Petitioner Elizabeth Agboh. There were no Protestants or other interested person in attendance.

Testimony and evidence offered revealed 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 1½ to 2 miles east of the Interstate 695 Beltway, in the Lochearn 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

2½-story framed dwelling that is used as a daycare center, with a drop off/pick up area and handicapped parking space to the rear of the property, along with a one-story framed garage also to the rear of the property.

Petitioner Elizabeth Agboh has been in the daycare business sine 1991. She attended college at Southern University in Baton Rouge, LA and received a degree in accounting in 1982. From there, she moved with her husband to Alabama and then to Maryland when her husband was hired as a professor at Morgan State University in 1988. Petitioner worked as an accounting clerk and also worked for Katz Insurance. 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. She began with about 20 children, progressed to 40, and now has 63 children at the 9019 Liberty Road location.

Because of the expansion of her business, Petitioner began looking for other locations for a childcare center. She testified that in 1994, she became aware that the subject property was for sale and thought the property would be an ideal location for an additional childcare center. She also indicated that when she purchased the property at auction in 1994, she 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 3. 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.

By way of further background, according to Petitioner -- not being aware of the prior zoning hearing or the restriction imposed on the property -- she 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 4, 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.

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.¹

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. The comments generally indicate no opposition or other recommendations concerning the requested relief.

Based on the testimony and evidence, I am 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. It appears based on a review of the SDAT Real Property Data Search printout that the property has changed hands several times since 1986, culminating in Petitioner's purchase of the property in 1994. Since that time, Petitioner has taken a parallel path and operated a Class A Group Childcare Center on the property, has gone through the necessary step of obtaining a Use Permit, and even obtained permission to expand that use to a Class B Group Childcare Center in 1995. In my view, 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.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and after considering the testimony and evidence offered by Petitioner, I find that Petitioner's request for special hearing should be granted.

¹ Although Petitioner was granted a special exception in 1995 for a Class B Group Childcare Center for up to 39 children in a D.R.5.5 Zone, Petitioner indicated that the subject property has not at any time expanded beyond the 12 children permitted for a Class A Group Childcare Center. In order to expand that use to a Class B, due to the passage of time, it is likely that Petitioner would need to again file for a special exception, though that issue is not before the undersigned.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 22nd day of September, 2009, that Petitioner's request for Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) 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 so long as Francis E. Feagin is the resident operator of the center be and is hereby GRANTED, subject to the following conditions:

1. Petitioners may apply for permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz