

BEFORE THE TOWN OF DENTON BOARD OF APPEALS

**IN RE: OSITA IBE
APPLICATION FOR
SPECIAL EXCEPTION**

Case No. BOA-22-004

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MINUTES, FINDINGS OF FACT, CONCLUSIONS AND DECISION

The Board of Appeals held a Public Hearing on Monday, December 12, 2022, at 6:30 p.m., at the Denton Town Office to consider an application for a Special Exception for Osita Ibe, (hereinafter, the “Applicant”).

Board Members present were Chairperson Troy Livingstone, Vice Chairperson Florence Doherty, Board Member Lori Schmidt (Attended Virtually), Alternate Board Member Gary Smith. Also present were Counsel for the Board, Chris Drummond, Town Administrator, Scott Getchell., Chief of Police, George Bacorn, Jr., and Acting Director of Planning and Codes, Donna Todd. The Applicant, Osita Ibe, Applicant’s Attorney, Chris Jennings, and Applicant’s mother, Glory Majekodunmi were present.

Other interested persons present included Jean Good, Brenda Fortner, David Fortner, and Christine Fortner.

PROCEDURAL HISTORY

On November 1, 2022, the Applicant filed an application with the Board of Appeals seeking Special Exception approval for an Intermediate-Care Home (reclassified as disabled or infirm home) to be located at 1334 Market Street, Denton, Maryland, Caroline County Tax Map 106, Parcel 869.

The application was advertised in the Times Record for two consecutive weeks on November 23rd and November 30th, a sign was posted on the property on November 22nd, and all property owners within 200 feet of the property received written notification of the Public Hearing. All public notice requirements have been satisfied.

SUMMARY OF PROCEEDINGS, TESTIMONY AND EVIDENCE

On December 12, 2022, Chairperson Livingstone opened the Public Hearing at 6:30 p.m., followed by the Pledge of Allegiance.

Vice Chairperson Doherty read the Public Notice advertised in the Times Record for BOA-22-004 into the record.

Chairperson Livingstone swore in Osita Ibe, Glory Majekodunmi, Jean Good, Brenda Fortner, David Fortner, and Christine Fortner.

Mrs. Todd provided comments from Teresa Manship inquiring about the public notice received and she had no objections to the proposed use. Mrs. Brenda Fortner, who was present, had also called about the application.

Vice Chairperson Doherty read the memo dated December 1, 2022, into the record confirming the property was posted, public notice was advertised, and notification was sent to all property owners. The Planning Commission recommended the Board of Appeals grant the Special Exception for the operation of an intermediate-care home (reclassified as a disabled or infirm home) at 1334 Market Street subject to any terms, conditions, and approvals required by any regulatory agency with jurisdiction over the operations of the facility and the application is revisited in one year after approval by the Board of Appeals.

The Town Attorney, Chris Drummond, advised the Board the classification of the use should be disabled or infirm home not an intermediate-care home. Both require approval by the Board.

The Applicant's Attorney, Chris Jennings, provided a brief summary on behalf of the Applicant and Chairperson of the Board for Shore Community Services, Inc., Glory Majekodunmi. The proposed use is for a group home for individuals who are developmentally disabled from birth. These individuals were born with defects that hindered their development, such as, Downs Syndrome, Advanced Autism, Cerebral Palsy, etc. This home is not for persons in trouble with the law. The use is highly regulated by the Developmental Disabilities Administration (DDA). The residential property has two structures, one four-bedroom unit and one three-bedroom unit.

Osita Ibe, Applicant and owner of 1334 Market Street, Denton, provided testimony. The Applicant purchased the property to operate the group home facility for developmentally

disabled adult persons. The Applicant is a registered nurse and a case manager with the DDA. Shore Community Services is a registered business with the State of Maryland to provide services for the DDA. The Applicant's mother is also a registered nurse and a case manager with the DDA. The Applicant and his mother are employed by Chester Wye in Grasonville providing these same services. The Applicant has received a license by the State of Maryland to operate the facility. The approval process takes two plus years to obtain a license. Applications are also reviewed by the Office of Health Care Quality. A final inspection and approval by the Office of Health Care Quality is required prior to receiving any patients from DDA. The DDA has three levels of care, basic, intermediate, and skilled care. Basic care is assistance with bathing, eating, clothing, and other daily living activities. There will be no more than seven patients. Staff members are required to have a CMT license, DDA Training, and continuing education for the program. The patient's physician provides the individualized home care plan to be implemented by the case managers and staff. There is sufficient parking on the site for staff and visitors. The participants will not have vehicles. Participants may reside in the home indefinitely. Reimbursements are from Medicaid waivers. The only exterior modification will be a handicap ramp. A privacy fence will be installed. Security cameras are planned to be installed inside and outside of the property.

The Applicant's Attorney provided additional evidence to the Board on studies for impact on property values with similar facilities in 1985 and 2003. The conclusion of the studies indicates there is no negative impact on the surrounding property values.

The Applicant's mother, Glory Majekodunmi, provided testimony. She is a DDA Case Manager, registered nurse, and the supervisor. The privacy fence will be 6 feet on the sides and rear of the property and 3 feet in the front with no fence along the driveway since this is a flag lot. A sign will be posted for identification. The case load and level of care determine the number of staff members required to care for participants. Level I care requires minimal assistance and less staff members. The participant's doctor prescribes an individualized plan that includes physical activity, and the care workers are responsible for executing the doctor's order. Participants will not be walking on Market Street and are supervised by their care worker. Participants are evaluated every 90 days by case managers, social workers, and doctors for their level of care.

The Applicant confirmed this is a 24-hour facility and visitors are allowed at any time. The State initiates unscheduled visits to comply with COMAR laws. After hours is 5 p.m., and increased traffic occurs during the day time hours. The participants are Maryland residents, and most participants are from the Eastern Shore.

The Fire Marshal is required to inspect and approve the property as part of the final approval process.

There was a concern for the ingress and egress of fire trucks and approval by the Denton Fire Department.

The Town Attorney advised the Board the Special Exception Application is approval for the use of the property. If the proposed use meets the technical requirements of the Code and does not create adverse unique impacts on neighboring properties, it should be approved. A building permit would be an approval by the Department of Planning and Codes that the residences meet applicable building and safety codes. The State of Maryland requires an approval from the Fire Marshal to validate that the homes are safe for occupancy and emergency service access.

Mr. Drummond noted that vehicular traffic entering and exiting may create adverse unique impacts on neighboring properties that are different than if the property was located elsewhere in the Suburban Residential District which is the standard. Such a finding may be made by the Board based upon the evidence received during the hearing.

Special Exception conditional use law in Maryland, is focused on the uniqueness of impacts to nearby properties. The adverse impact, if there is one, must be unique to the property. This is determined by placing the proposed use anywhere else in the Suburban Residential (SR) District and assessing whether the use would have the same impact. The use may only be denied if the use is creating a unique adverse impact on nearby property.

The driveway width is approximately 20 feet wide and accommodates one vehicle or two smaller vehicles.

Jean Good, 1336 Market Street, provided testimony. The driveway is very long, and she resides adjacent to the property. The concern is the parking of vehicles, traffic, and stormwater drainage on the property. A sign is necessary to identify the property. The six-foot privacy fence will be on two sides and rear of the property. The residential value of her property will decline

next to this use. The property will not accommodate emergency vehicles. The concern is for the safety of the participants.

The property is required to connect to Town water and sewer after the property transfers title for annexed properties if the property is within 300 feet of the Town sewer connection. The Applicant has connected to the Town water system and will connect to Town sewer when it becomes available.

Christine Fortner, 1320 Market Street, provided testimony. She resides on adjacent property. Her concern is the unknown of the participants that will reside next to her property. The zoning approval should be completed prior to renovations, permits should have been acquired prior to renovations, and there should have been a survey prior to installing a new lane because it encroaches on their property. Property values will decrease due to this use. Traffic, parking, emergency vehicles, and trash pick-up are concerns. Ms. Fortner expressed worry that vehicles will drive on the adjacent hay field. The culvert pipe needs to be maintained to control the stormwater. Plowing snow into the hay field is a concern. Ms. Fortner argued that the driveway creates a unique adverse impact. The driveway is not wide enough for two vehicles. Her property has a pond in the rear yard, and she is concerned participants may wonder in her yard. The existing wire fence on the property is on the property line.

David Fortner, 1320 Market Street, provided testimony. The driveway is 906 feet long. The original deed shows the driveway width of 18 feet and the owner stated it was 20 feet based on the recent survey. A Town water line was installed but Town sewer is not available to this site. The concrete culvert is not visible and may have been compromised with the installation of the new driveway and will cause flooding in the hay field. Mr. Fortner installed poles 18 inches off the property line of the driveway, so he was able to maintain his property. The Applicant's contractor installed recycled blacktop over the poles onto his property.

The Town Attorney stated the drainage issue is a matter for Public Works and the property owner but does not affect the proposed use of the property under discussion. Other agencies evaluate the sewer system, emergency services, etc., and will determine if this location is acceptable to support the proposed use of the property.

The Applicant's Attorney addressed the traffic and parking on the property. There are two single family dwellings consisting of a three-bedroom house and four-bedroom house. The

participants will not have vehicles. With normal residential use of two families, the proposed use will not generate more traffic and parking needs. An average of five employees per day entering and exiting the property will not increase traffic or parking than two single family dwellings may require. Occasional visitation of family members will not generate an increase in traffic or parking. The proposed use will not generate more traffic or parking than any other residential use in this district.

Brenda Fortner, 1316 Market Street, provided testimony. The hay field next to the driveway is her property. Over half of the yard floods in the winter time. It would be very difficult for a fire truck or trash truck to turn around in the driveway. Three surveys of the property were conducted due to the encroachment on the hay field. Another concern is the ratio of staff to safely care for the participants.

Vice Chairperson Doherty addressed the concern of the staff ratio for participants as referenced in the State application Exhibit referring to a list of the staff members and schedules to safely care for the participants.

The Town Attorney suggested that the Fortners install signs to protect the hay field. This may be reflector markers.

The Applicant's trash for this use would be no different than trash for any other residential use in this district. The trash cans will be placed at the end of the driveway similar to any other trash pick-up for residential uses. The contractor that installed the new driveway recommended the driveway materials and the cost was \$25,000. The Applicant will install reflector markers along the driveway.

The Town Attorney noted that the Federal Fair Housing Act protects housing on the basis of status of the residents. Zoning regulations that restrict use of housing by protected classes of residents are contrary to the purposes of the Fair Housing Act.

Good neighbor relationships should be encouraged to diminish the driveway issues.

Vice Chairperson Doherty stated the Board makes a decision based on the evidence and testimony presented at the meeting.

The Applicant's testimony included a brief description of the disabled or infirm home.

The proposed use is in accordance with the Town's Comprehensive Plan, suitable for the property, will not impact street traffic or parking, and will not adversely affect the property values or health, safety, and general welfare of residents of the area.

DELIBERATIONS

During and following the receipt of all testimony and evidence, the Board deliberated in Open Session.

Vice Chairperson Doherty is in favor of granting the special exception for the disabled or infirm home based on the testimony and evidence submitted by Osita Ibe for property located at 1334 Market Street, Denton, Maryland. Ms. Doherty was of the view that "Stay on the Driveway" signage and reflecting poles along each side of the driveway will be effective to keep staff and visitors from driving onto Ms. Fortner's field. Ms. Doherty also called for 911 numbers identifying the property at the end of the driveway, snow removal contracts that require snow to remain and be maintained on the Applicant's property without encroaching the neighboring properties. Repairing the french drain should be addressed to diminish drainage issues on neighboring properties.

Alternate Member Smith recommends the three-foot fence be extended down the driveway.

Vice Chairperson Doherty stated the fence along both sides of the driveway may be destroyed by the Fire Department.

Chairperson Livingstone confirmed the State Fire Marshal's approval is required by the DDA.

Vice Chairperson Doherty confirmed there is a need for housing for these individuals and there is no change in zoning.

FINDINGS AND DECISIONS

Special Exception Request – Board Member Doherty made a motion that the Special Exception application filed by Osita Ibe, BOA-22-004, for a disabled and infirm home be approved with the conditions that the Applicant provide signage, "Stay on the Driveway", 911

numbers identifying the property including the name as permitted at the end of the driveway, add reflectors down the driveway on the existing wooden posts to clearly mark the driveway, maintain the driveway, snow removal remain and be maintained on the Applicant's property without encroaching the neighboring properties, and the broken french drain be addressed to diminish drainage issues on neighboring properties. The motion incorporated the proposed Findings of Fact on the four conditions of the Special Exception Criteria as follows:

- (a) In accord with the Town's Comprehensive Plan and consistent with the spirit, purposes, and intent of this chapter.

In accordance with the Town's Comprehensive Plan due to the fact it is permitted as a Special Exception use in the Suburban Residential (SR) District.

- (b) Suitable for the property in question and designed to be in harmony with and appropriate in appearance with the existing or intended character of the general vicinity.

The buildings are existing structures, and there will be no exterior changes to the buildings because the use is indoors and will be able to maintain the harmony of the area with proper maintenance.

- (c) Suitable in terms of effects on street traffic and safety with adequate access arrangements to protect streets from undue congestion and hazard.

There will be no impact on parking and installation of the signage will safely direct the traffic and identify the site.

- (d) Not detrimental to the property values of adjacent development, do not adversely affect the health, safety, and general welfare of residents of the area, and will not adversely affect the area and surrounding property with adverse environmental effects such as undue smoke, odor, noise, improper drainage, or inadequate access.

This use will not impact the property values and will not adversely affect the health, safety, and general welfare of residents of the area or the surrounding area. This use does not cause any environmental effects such

as undue smoke, odor, and noise. Improper drainage and inadequate access will be addressed by maintaining the driveway and parking.

Chairperson Livingstone seconded the motion. The motion passed 3:0.

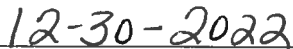
Staff Item – None.

The meeting on December 12, 2022, adjourned at 8:41 p.m.

ATTEST:



Donna R. Todd



Date

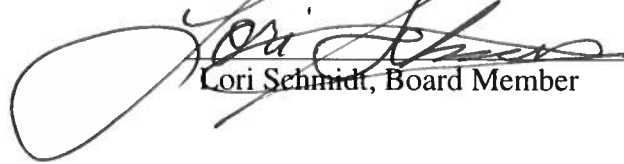
DENTON BOARD OF APPEALS:



Troy Livingstone, Chairperson



Florence Doherty, Board Member



Lori Schmidt, Board Member