

BRUCE HAINES (ET AL.)

VS.

BETHLEHEM CITY OF ZONING HEARING BOARD OF

IN THE COURT OF COMMON PLEAS
OF NORTHAMPTON COUNTY, PA
CIVIL DIVISION
3RD JUDICIAL DISTRICT

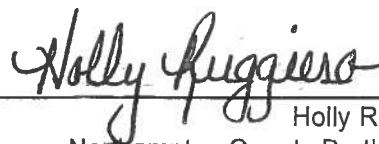
CASE NUMBER
C-48-CV-2018-04104

NOTICE OF ORDER

ERICH J SCHOCK, ESQ
PO BOX 219
CENTER VALLEY, PA 180340219

Enclosed is the order from the Court of Common Pleas of Northampton County, Pennsylvania

Entered on: December 12, 2018



Holly Ruggiero
Northampton County Prothonotary

Deputy

IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY,
PENNSYLVANIA

CIVIL DIVISION

BRUCE HAINES and FRANK BOYER, :
Appellants, :
v. : C-0048-CV-2018-4104
: :
CITY OF BETHLEHEM :
ZONING HEARING BOARD :
Appellee. :

ORDER OF COURT

AND NOW, this 12th day of December, 2018, upon consideration of Appellants' Motion for Leave to Take Additional Evidence and for a De Novo Trial Pursuant to 53 P.S. § 110055-A, it is hereby **ORDERED** that this matter is **REMANDED** to the City of Bethlehem Zoning Hearing Board for further consideration of this matter, including the consideration of additional evidence pertaining to the issues raised by Objectors in this appeal, as well as evidence on any other issue germane to Applicant's request for a special exception.

STATEMENT OF REASONS

Procedural Background

The instant matter stems from an Application for a special exception for a bed and breakfast at the property located at 251 E. Church Street, Bethlehem, Pennsylvania ("Subject Property"), pursuant to City of Bethlehem Zoning Ordinance Sections 1302.12, 1322.03(g), and 1325.07. The Applicant, Valerie Peters (the "Applicant"), a tenant¹ at the Subject Property, advertises and rents the rear portion of the Subject Property on the website AirBnB to transient

¹ See Appellee's Index of Record, Exhibit 1, "Correspondence Between Madeline and Valerie Peters and City of Bethlehem Zoning Hearing Board." Applicant, Valerie Peters, is a tenant who resides at the Subject Property in trust for her mother, Madeline Peters, the record owner, until such time that she inherits it from her mother. Applicant does not pay rent and manages the property and its rentals.

guests for short-term stays. A public hearing was held on February 28, 2018 regarding the application for a special exception.

Appellants Bruce Haines and Frank Boyer appeared at the hearing to oppose the special exception, voicing concerns that the Subject Property did not meet the requirements of the City's Zoning Ordinance necessary for operation of a bed and breakfast. Appellee, City of Bethlehem Zoning Hearing Board (the "Board"), took testimony, received evidence, deliberated, and ultimately approved Applicant's special exception. A written decision² was issued on April 13, 2018. On May 11, 2018, Appellants filed the instant appeal, alleging that the Board's decision was not supported by substantial evidence of Applicant's compliance with the requirements of the Zoning Ordinance. Appellants filed the instant Motion for Leave to Take Additional Evidence and for a De Novo Trial Pursuant to 53 P.S. § 11005-A on June 28, 2018. Briefs were received and oral argument was heard on November 6, 2018. This matter is now ready for disposition.

Standard of Law

Section 1005-A of the Pennsylvania Municipalities Planning Code (MPC) governs the instant motion, and provides that:

"If, upon motion, it is shown that proper consideration of the land use appeal requires the presentation of additional evidence, a judge of the court may hold a hearing to receive additional evidence, may remand the case to the body, agency or officer whose decision or order has been brought up for review, or may refer the case to a referee to receive additional evidence ... If the record below includes findings of fact made by the governing body, board or agency whose decision or action is brought up for review and the court does not take additional evidence or appoint a referee to take additional evidence, the findings of the governing body, board or agency shall not be disturbed by the court if supported by substantial evidence."

² Appeal from Petition for Review of Decision of Zoning Hearing Board of the City of Bethlehem, filed May 11, 2018, Exhibit 1, Written Decision on Appeal & Application of Valerie Peters, dated April 13, 2018.

53 P.S. § 11005-A. It is within the trial court's discretion to decide whether to take additional evidence. Wilson v. Plumstead Twp. Zoning Hearing Bd., 894 A.2d 845, 849-850 (Pa. Commw. 2006) *aff'd* 936 A.2d 1061 n.2 (Pa. 2007).

Discussion

Appellants advance two main arguments in support of the instant motion and their appeal of the Board's decision. First, Appellants argue that the Subject Property is not currently, and has not previously been treated as a "single family detached dwelling," which Appellants urge is a foundational requirement for a bed and breakfast special exception use.³ Appellants contend that the evidence adduced at the February 28, 2018 was misleading and erroneous⁴, and did not adequately demonstrate that the Subject Property met the requisite conditions for the special exception. Second, Appellants argue that the Board erred in overlooking evidence presented at the February 28, 2018 hearing indicating that various inspections had not been conducted at the Subject Property for several years, which Appellants argue violates Article 1322.03(g) of the City's Zoning Ordinance.

Preliminarily, the Court notes that the City's Zoning Ordinance offers competing definitions of the term "Bed and Breakfast." Article 1302.12 of the Zoning Ordinance defines a "Bed and Breakfast home" as "a detached dwelling which may provide overnight lodging and serve breakfast to transient guests, and which includes the owner or primary operator residing on the premises." The Zoning Ordinance also defines "dwelling," "single family detached dwelling," and other terms describing residential buildings⁵. "Single family detached dwelling"

³ See City of Bethlehem Zoning Ordinance, Article 1735.01.

⁴ Appellants primarily take issue with the representations made by the City of Bethlehem's Zoning Officer, Suzanne Borzak, discussed in more detail below.

⁵ See City of Bethlehem Zoning Ordinance, Article 1302.29 (Dwelling) ("A building used as a residence."); Article 1302.40 (Dwelling unit) ("A single habitable living unit occupied by only one "family" (see definition). To be considered a dwelling unit, each dwelling unit shall have a) its own toilet, bath or shower, sink, sleeping or cooking facilities and b) separate access to the outside or to a common hallway or balcony that connects to outside access at

is defined as “a building occupied by only one dwelling unit, and having no party wall in common with an adjacent building.” Based on the use of the term “detached dwelling,” rather than “single family detached dwelling,” it would appear that Article 1302.12 does not preclude a Bed and Breakfast from being a dwelling other than a single family detached dwelling. However, Article 1735.01, which imposes the licensing, inspection, and structural requirements of Bed and Breakfasts, defines “Bed and Breakfast” as “a single family detached residence, owner-occupied, which may provide overnight lodging and serve breakfast to transient guests.” Providing some clarity, Appellee indicates that a “Bed and Breakfast” must be operated in a “single-family detached dwelling.” See Answer to Appellants’ Motion for Leave to Take Additional Evidence and for a De Novo Trial Pursuant to 53 P.S. § 11005-A, at ¶14. Appellee ultimately decided that the Subject Property met the “single-family detached dwelling” definition of Bed and Breakfast found in Article 1735.01.

At the hearing, Appellants produced evidence suggesting that the Subject Property was not a “single family detached dwelling,” and that it in fact contained two separate “dwelling units,” which the Ordinance prohibits in single family detached dwellings.⁶ Appellants elicited testimony from the Applicant that indicated that the rear unit of the Subject Property had its own bathroom, kitchen⁷, living room, and separate private entry via an outdoor stairwell. N.T., 2/28/2018, at 17-19. Appellants also submitting listings for the Subject Property from the website AirBnB, which advertised the rear unit as a separate apartment, along with reviews from

ground level. A dwelling unit shall not include two or more separate living areas that are completely separated by interior walls so as to prevent interior access from one living area to another. A second kitchen shall not be newly installed in a dwelling unit unless it is for the purpose of accommodating a relative who needs special care and supervision because of age or disability.”)

⁶See City of Bethlehem Zoning Ordinance, Article 1302.39(a).

⁷ Although Applicant indicated that the “kitchen” in the rear unit is better characterized as a “kitchenette” due to the smaller size of the appliances, she did not contest that the rear unit had all of the elements of a kitchen, in addition to a bathroom, living space, and separate access, and therefore constituted its own “dwelling unit.” See N.T., 2/28/2018, at 17-19.

guests who had stayed there. See Index of Record, Exhibit 2, “Ad for bed and breakfast (Boyer-1)”. They argued that based on this, and the definition of “Bed and Breakfast” in Article 1735.01, the Subject Property was not eligible for a special exception for a Bed and Breakfast. N.T., 2/28/2018, at 18, 22, 36.

After Applicant acknowledged that the rear unit of the Subject Property had been previously used as for long term apartment rental, the Zoning Officer, Suzanne Borzak, testified that although the Subject Property had previously been operated as a two-unit dwelling in the past, the Applicant had converted it back into a single. N.T., 2/28/2018, at 32. Citing the “detached dwelling” language in Article 1302.12, the Zoning Officer then took the position that the Subject Property didn’t strictly need to be a single family detached dwelling in order to get a special exception to operate a bed and breakfast. *Id.* She added that ensuring compliance with structural, rental, and other inspections was the responsibility of the City’s code enforcement officials, and that it was not incumbent upon the Board to ensure compliance *before* a special exception was granted. *Id.* Appellants urge that it is partially based on these alleged misrepresentations that the Board rendered its decision.

The Board’s written decision indicates that although the Subject Property contains a small separate apartment in the rear and was previously classified as a two-unit dwelling, the Board was satisfied that the Subject Property presently meets the definition of a bed and breakfast as contained in the City’s Zoning Ordinance.⁸ Although the Board’s interpretation of its own zoning ordinance is entitled to great weight and deference, Smith v. Zoning Hearing Bd.,

⁸ See Appeal from Petition for Review of Decision of Zoning Hearing Board of the City of Bethlehem, Exhibit 1, Written Decision on Appeal & Application of Valerie Peters, April 13, 2018, at 3, 6. (“While the objectors elicited testimony and presented evidence questioning the bed and breakfast designation, none of the testimony or evidence demonstrated the use to be anything other than a bed and breakfast as defined in the Zoning Ordinance. While in other places one or more characteristics of Applicant’s use might preclude its being a bed and breakfast, in the City of Bethlehem, as the bed and breakfast use is currently defined, this use is a bed and breakfast.”) (emphasis in original).

734 A.2d 55, 57 (Pa. Commw. 1999), proper adjudication of the facts in this case require further consideration of the evidence in the record, in addition to any other relevant materials and facts.⁹ Based on the apparent ambiguity and inconsistency between the two definitions of “Bed and Breakfast” contained in the City’s Zoning Ordinance, the allegations of misleading or inaccurate testimony, and the numerous indications in the record that the Subject Property contains two separate dwelling units and is therefore ineligible for a bed and breakfast special exception, remand to the Board is proper in this instance.

The second major issue addressed by Appellants is the alleged lack of various City inspections at the Subject Property for several years and the resultant inability to certify whether the Subject Property was compliant with all applicable sections of the City’s Zoning Ordinance and other regulations. The Attestation of Michael Simonson, the Chief Building Inspector for the City of Bethlehem, cited by Appellants, indicates that “There were no fire, health and safety, rental unit and bed and breakfast or other inspections conducted in 2013, 2014, 2017 or 2018 for both Front and Rear units. There was no inspection in 2016 for the Rear unit. There was no inspection in 2015 for the Front unit.” See Appellants’ Motion for Leave to Take Additional Evidence and for a De Novo Trial Pursuant to 53 P.S. § 11005-A, Exhibit 5.

Article 1325.07 of the Zoning Ordinance provides that “The Board shall grant a special exception only if it finds adequate evidence that any proposed use submitted for a special exception will meet all of the following general requirements, as well as any specific

⁹ Subsequent to the February 28, 2018 hearing, Appellants submitted Right-to-Know requests to the City of Bethlehem, seeking various records pertaining to the Application for the Subject Property. Appellants were ultimately provided responsive materials including two attestations from City officials regarding the Subject Property. See Appellants’ Motion for Leave to Take Additional Evidence and for a De Novo Trial Pursuant to 53 P.S. § 11005-A, Exhibits 4 and 5. The Attestation of Zoning Officer Suzanne Borzak indicated that on March 29, 2018, the Applicant sought to change the Subject Property’s use “from two-unit residence to a single-unit residence with a bed and breakfast according to the February 28, 2018 Zoning Hearing.” The materials provided to Appellants also included Ms. Borzak’s handwritten notation on the inside cover of the property file which had been inadvertently omitted in previous responses to Appellant’s Right-to-Know requests.

requirements and standards listed for the proposed use. The Board shall, among other things, require that any proposed use and location be ... [i]n conformance with all applicable requirements of this Ordinance.” City of Bethlehem Zoning Ordinance, Article 1325.07(b)(4). Article 1322.03 sets forth the additional requirements for a “Bed and Breakfast Inn,” which include that “[t]he Bed and Breakfast must meet all city requirements for health, fire, and building safety.” City of Bethlehem Zoning Ordinance, Article 1322.03(g)(6). Appellants urge that the lack of inspections performed on the Subject Property precluded the Board from finding that the property complied with City requirements for health, fire, and building safety as required by Article 1322.03(g) in order to grant a special exception.

In light of the evidence indicating that no inspection of the entire dwelling had taken place since 2013, and that only two partial inspections of the Subject Property had occurred in the same time, the Court agrees with Appellants that the evidence in the record does not support the Board’s conclusion that the Applicant met her burden of demonstrating that the Subject Property met these and all other requirements. For these reasons, the Court **REMANDS** this matter to the Board for further consideration of the record and any additional relevant evidence.

BY THE COURT:


CRAIG A. DALLY, J.