

**Before the Zoning Hearing Board
Of the City of Bethlehem, Pennsylvania**

Northampton County

**Appeal & Application of
Susan H. Cumings,
Applicant**

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Date: May 5, 2017

Re: 2329 Santee Mill Road

DECISION

I. Preliminary Matters

A public hearing was held on March 22, 2017 at 6:00 PM before the Zoning Hearing Board of the City of Bethlehem ("Board") regarding Applicant's appeal to the Board.

A. Parties

1. Applicant: Susan H. Cumings appeared and had standing as the owner of the subject property.

2. Zoning Hearing Board: The Board comprised Gus Loupos (Chairman), William Fitzpatrick, Michael Santanasto, Linda Shay Gardner, and James H. Schantz. The Zoning Officer was Suzanne Borzak. Erich J. Schock of Fitzpatrick Lentz & Bubba, P.C., represented the Board as its Solicitor.

3. Protestant(s) / Interested Parties: No protestants appeared at the public hearing. Elizabeth Culpepper appeared in support of Applicant's request.

B. Notice

Notice of the hearing was given by public advertisement, posting of the Property and regular mail to neighboring property owners pursuant to the applicable provisions of the

Pennsylvania Municipalities Planning Code,¹ the Zoning Ordinance of the City of Bethlehem² and the rules of the Board.³

C. Property

The subject property is known as 2329 Santee Mill Road, Bethlehem, Northampton County, Pennsylvania (the "Property").

II. Applicable Law

The Board considered the case under the following statutory authority, as well as under applicable reported decisions of the appellate courts in Pennsylvania:

1. *The Codified Zoning Ordinance of the City of Bethlehem*, Ordinance No. 2210, effective September 25, 1970, as amended (hereinafter, the "Zoning Ordinance").

2. *The Pennsylvania Municipalities Planning Code*, 53 P.S. § 10101, *et seq.*, as reenacted 1988, Dec 21. P.L. 1329, No 170, § 2 (hereinafter, the "MPC").

¹ MPC § 10908(1) provides that "[p]ublic notice shall be given and written notice shall be given to the applicant, the zoning officer, such other persons as the governing body shall designate by ordinance and to any person who has made timely request for same. Written notices shall be given at such time and in such manner as shall be prescribed by ordinance or, in the absence of ordinance provisions, by rules of the board. In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing."

² Article 1325.04(a) provides for notice to be given as follows: (a) Upon filing with the Board for an application for a special exception, variance or other appeal under this Ordinance, the Board shall determine a place and a reasonable time, and the City shall give notice as follows: (1) The City shall publish a public notice describing the location of the building or lot and the general nature of the matter involved in a newspaper of general circulation in the City in conformance with the Municipalities Planning Code. (2) The City shall give written notice to the applicant and persons who have made a timely request for notice of such hearing. In addition, notice shall be provided to those persons whose properties adjoin the property in question, and to the City Planning Commission. Such notice should be sent at least 7 days prior to the hearing. (3) The City shall provide written notice to the last known address of the primary owner of lots within 300 feet of the subject lot, unless the application only involves a dimensional variance on an owner occupied single family dwelling unit or its accessory structure. Failure of a person(s) to receive such notice shall not be grounds for an appeal, provided that a good faith effort was made to provide such notice.

³ The custom and practice in the City of Bethlehem is for the Zoning Officer to place the notice in the newspaper and to send written notice to interested parties by regular mail. The Applicant is given a fluorescent sign by the Zoning Officer at the time the Application is filed and the fee paid, and the Applicant is instructed to conspicuously post the property with the sign giving notice of the particulars of the hearing at least seven (7) days prior to the hearing.

III. Nature of Relief Sought

Applicant sought a use variance from §1304.01.b(2) to use the property for a bed and breakfast and a dimensional variance from §1322.03(g) of the Zoning Ordinance to have seven (7) room bed and breakfast located in a residential zoning district where five (5) rooms are permitted.

IV. Evidence Received by the Board

In addition to testimonial evidence received by the Board from Applicant, the Board admitted the following exhibits:

Applicant's Exhibits:

- Exhibit A-1: Application for Appeal
- Exhibit A-2: Topographic Map
- Exhibit A-3: Site plan
- Exhibit A-4: Photograph of gatehouse
- Exhibit A-5: Photograph of main house
- Exhibit A-6: Photograph of farmhouse
- Exhibit A-7: Photograph of stable and machine shop
- Exhibit A-8: Close up of parking scheme
- Exhibit A-9: Architect's design for parking scheme
- Exhibit A-10: Photograph of parking
- Exhibit A-11: 1st floor interior
- Exhibit A-12: 2nd floor interior

V. Findings of Fact

1. The Property which is the subject of this appeal is located at **2329 Santee Mill Road** in the Northampton County portion of the City of Bethlehem.
2. Applicant is the fee simple owner of the Property.
3. The Property is located in the RR Residential Zoning District.
4. The Property consists of two adjoining parcels containing a total of 61.8 acres. The northern parcel is unimproved, while the southern parcel is improved with three private residences, a barn and other structures used for agricultural purposes.

5. The Property abuts the northern border of the City.
6. The northern parcel is forested and has a prominent natural feature known as "Camel's Hump".
7. Applicant is proposing a bed and breakfast, which is not a permitted use in the RR Zoning District.
8. The hours of operation for the bed and breakfast will be 3:00 p.m. to 11:00 a.m, seven days per week.
9. Areas for a sufficient number of parking spaces to satisfy the requirements of the Zoning Ordinance already exist on the Property.
10. The Zoning Ordinance sets forth specific standards in §1322.03(g) to be met by a bed and breakfast.
11. The footprint of the existing structures will not be altered.
12. The bed and breakfast buildings will remain residential in character.
13. An operator will reside at the Property.
14. The bed and breakfast will serve breakfast only for lodgers and be open at least 6 months per year.
15. No guest will stay more than 14 days.
16. The bed and breakfast will be operated in two of the existing residences on the Property. There will be five (5) rooms for rent in the main residence and two (2) rooms for rent in the gatehouse.
17. The maximum number of rooms in a bed and breakfast cannot exceed 5. Applicant is requesting a variance to allow seven (7) rooms on the Property.

18. The bed and breakfast will meet all other Zoning Ordinances and City requirements for health, building and fire safety.

19. The Property is unique for its historic character and natural features.

20. Applicant inherited the Property in 2015 and desires to retain its character as best possible.

21. Elizabeth Culpepper of 2525 Santee Mill Road appeared as an interested person on behalf of the Applicant. Ms. Culpepper is "thrilled with the idea".

VI. Discussion

Applicant requests variances from §1304.01.b(2) and §1322.03(g) of the Zoning Ordinance. The grant of a variance is pursuant to § 1325.06 of the Zoning Ordinance.

1302.96 Variance

A modification of the regulations of this Ordinance, granted on grounds of exceptional difficulties or unnecessary hardship, not self-imposed, pursuant to the provisions of Article 1325 of this Zoning Ordinance, and the laws of the State of Pennsylvania.

The Zoning Ordinance provides specific criteria that the Zoning Hearing Board must address in relation to the approval or denial of a variance request:

1325.06 Powers and Duties – Variances

(a) Upon a written appeal from a determination by the Zoning Officer, the Zoning Hearing Board shall have the power to approve a Variance to one or more specific provisions of this Ordinance for a specific property.

(b) The power to authorize a variance from the terms of this Ordinance shall only be used where authorized under the Pennsylvania Municipalities Planning Code or in diminimus situations. As of the adoption date of this Ordinance, the Municipalities Planning Code provided that all of the following findings must be made, where relevant:

(1) There are unique physical circumstances or conditions (including irregularity, narrowness, or shallowness of lot size or shape, or exceptional

topographical or other physical conditions peculiar to the particular property) and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of this Ordinance in the neighborhood or district in which the property is located;

(2) Because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance and a Variance is therefore necessary to enable the reasonable use of the property;

(3) Such unnecessary hardship has not been created by the appellant;

(4) The Variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and

(5) The Variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

There is a multitude of decisions of the various courts in the Commonwealth dealing with the grant of variance. A variance applicant must show that unnecessary hardship will result if the variance is denied and that the proposed use is not contrary to the public interest. *Allegheny West Civic Counsel, Inc. v. Zoning Bd. of Adjustment of the City of Pittsburgh*, 689 A.2d 225 (Pa. 1997).

Applicant demonstrated to the Board that the land is subject to unique physical circumstances that are peculiar to the Property, and Applicant did not create the hardship herself. The Property contains a substantial undeveloped tract of land and remains in private ownership. The Property has historic structures that create a character for the Property unlike any other land in the City. The Property is forested and sloped, and Applicant believes it best serves the community if it remains primarily undeveloped. The Property cannot remain in its current condition unless a viable way to defray the expense for maintenance is found.

Due to the large expanse of the Property, operating a bed and breakfast will have no impact on the community. In fact, the only neighbor to appear at the hearing expressed complete support of the project and its ability to sustain the Property in its current state. Subdividing the Property to create three lots for the residential structures would undermine that goal. Subdividing the Property for residential development would even diminish further the historic character and natural features. According to Applicant, the Property is much the way it has existed for hundreds of years taking into account repairs and improvements that have been made (and will need to be made) to keep the structures safe.

A bed and breakfast on a property of this area in this section of Bethlehem, which contains other large lots with woods, slopes and older homes, all of which to an extent, greater in these respects than other developments in the City, is a minimal departure from the Zoning Ordinance. While the Zoning Ordinance does not allow the bed and breakfast use in the RR Zoning District, the Property is absolutely unique and particularly suited for the use.

With regard to the number of rooms for let, the proposal exceeds the maximum for a bed and breakfast in a residential district by two. However, based upon the area of the Property and that the two rooms in the gatehouse and the two connected rooms in the main residence will often be utilized by one user, this departure reasonable.

With regard to Applicant demonstrating that the use will not be injurious to the neighborhood or a detriment to the public welfare, the Zoning Hearing Board analyzed all of the specific requirements set forth in §1322.03(g) of the Zoning Ordinance for a bed and breakfast.

This provision comprises eight (8) criteria that pertain only to a bed and breakfast.

(g) Bed and Breakfast Inn.

- (1) No More than 5 rooms may be offered for rent in a residential district.
- (2) The bed and breakfast must be in an existing structure and not a new structure or outbuilding.

- (3) In a residential district, the only meal to be served is breakfast and to lodgers of the bed and breakfast exclusively.
- (4) Signs shall conform to Section 1320.08(a)(2), in a residential district.
- (5) No exterior structural alteration of the building shall be made except as may be necessary for purposes of sanitation, handicapped accessibility, historic rehabilitation or safety.
- (6) The bed and breakfast must meet all City requirements for health, fire, and building safety.
- (7) The bed and breakfast must be in operation a minimum of 6 months per year.
- (8) The maximum uninterrupted length of stay shall be fourteen (14) days.

As noted in the Findings of Fact, Applicant meets criteria two through eight. As stated above, the Board will grant a variance from the first criterion.

In summary, the Board concluded that while the Property physically could continue as a residential use, practicality dictated that the use variance is a reasonable deviation. Further, Pennsylvania law allows the Board to reach the conclusion that the evidence met the variance standard without needing to reach the level of proving every permitted use to be absolutely impossible. Based on all of the above and the particular facts of this proposal, the Board believed Applicant met her burden of proof.

VII. Conclusions of Law

1. A bed and breakfast is not permitted on the Property, and a use variance is required.
2. The physical circumstances and uniqueness of the Property create a hardship to making a permitted use of the Property that retains its historic character and natural features.
3. Applicant presented sufficient evidence that she did not create the hardship.
4. Applicant presented sufficient evidence to demonstrate that use of the Property for a bed and breakfast is an acceptable accommodation under the Zoning Ordinance, and the minimum relief necessary to allow reasonable use of the Property.

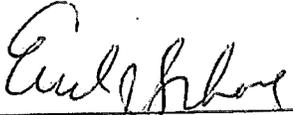
5. Applicant presented sufficient evidence to demonstrate that the use would not be injurious to the public and that the use would otherwise comply with all specific requirements in the Zoning Ordinance pertaining to a bed and breakfast.

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VIII. Decision of the Board

Based upon the foregoing, by a 5-0 vote the Zoning Hearing Board granted a variance from §1304.01(b)(2) of the Zoning Ordinance to use the Property for a bed and breakfast and a variance from 1322.03(g) to allow Applicant to maintain seven rooms for let, subject to the following conditions:

1. There will be no further development on the Property so long as the bed and breakfast is operating.
2. All other bed and breakfast requirements in the Zoning Ordinance shall be met, including but not limited to, the restrictions that the bed and breakfast be operated at least 6 months per year, serve only breakfast to lodgers (and to no one else) and not allow stays of more than fourteen (14) days.



ERICH J. SCHOCK
Solicitor

*/s/ Suzanne Borzak**

SUZANNE BORZAK,
Zoning Officer

THE BOARD:

*/s/ Constantine Loupos**

CONSTANTINE LOUPOS
Chairman

*/s/ William Fitzpatrick**

WILLIAM FITZPATRICK
Member

*/s/ Michael Santanasto, Esquire**

MICHAEL SANTANASTO
Member

*/s/ James H. Schantz**

JAMES H. SCHANTZ
Member

*/s/ Linda Shay Gardner**

LINDA SHAY GARDNER
Member

* The above individuals were unavailable at the date of mailing.

DATE(S) OF HEARING: March 22, 2017
DATE OF WRITTEN DECISION: May 5, 2017

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Certificate of Service

I, Erich J. Schock, Solicitor to the Board, do hereby certify that I sent a true and correct copy of the forgoing Decision to the Applicant listed below at the addresses set forth, by regular first class U.S. Mail on the date set forth below.

Susan H. Cumings



Date: May 5, 2017

FITZPATRICK LENTZ & BUBBA, P.C.

BY:


ERICH J. SCHOCK



Attorney for Zoning Hearing Board
Of the City of Bethlehem