

**BEFORE THE MILLERSVILLE BOROUGH ZONING HEARING BOARD OF
LANCASTER COUNTY, PENNSYLVANIA**

IN RE:	:	
APPLICATION OF	:	CASE # 17-01
DAVID HANSON AND	:	
TAMMY HANSON	:	

DECISION OF THE ZONING HEARING BOARD

A. FINDINGS OF FACT

1. Applicants are David Hanson and Tammy Hanson, 2017 Millersville Pike Lancaster, Pennsylvania, 17603.
2. The property which is the subject of this Application is located at 2017 Millersville Pike in the Borough of Millersville, Lancaster County, Pennsylvania.
3. Applicants are the record owners of the property.
4. On March 22, 2017, Applicants filed a request for a special exception to operate a bed and breakfast on the property.
5. The Application was advertised, the property was posted, and the adjoining property owners were notified.
6. A hearing was held April 27, 2017, at which time Marilyn Berger, the listing real estate broker for the Applicants, appeared as agent of the Applicants and offered testimony in support of the Application.
7. The hearing was preceded by an executive session, which was duly announced by the Solicitor, and a reorganizational meeting.
8. The hearing was stenographically recorded.

9. Ms. Berger testified that the Property is for sale and that the present owners believe that marketing the property with the ability to operate a bed and breakfast would increase the marketability of the property. However, the present owners themselves would not be running the bed and breakfast.

10. Although Ms. Berger testified that a party had expressed interest in operating a bed and breakfast, no agreement of sale was signed and she could not state that the particular party who expressed interest would in fact be operating the bed and breakfast.

11. Ms. Berger testified that the subject Property is approximately five and one-half acres in size and is improved with a house of six bedrooms and four and one-half baths, built in 1932. A brochure containing numerous color photographs of both the interior and the exterior of the Property was submitted with the Application and reviewed at the time of the hearing.

12. Also at the time of the hearing, Mr. Tuscan, the Zoning Officer, produced a plot plan showing the location of the house on the property, which was marked and received into evidence as Board Exhibit Number 1. The purpose of Board Exhibit Number 1 was to support Ms. Berger's testimony that the house was located approximately in the center of the five-acre lot, relative to side lots, and that there were between 100 and 150 feet between each end of the house and the side lot lines.

13. Also identified at the hearing was a letter from Mr. Hanson, written April 10, 2017, to the Board, explaining that he could not appear at the hearing because of scheduling conflicts and stating his reasons why he felt the Application should be approved. That letter was marked as Applicants' Exhibit 1 and received into evidence.

14. The Property is served by public water and sewer.

15. The photographs indicated a large driveway area in front of the garage. Ms. Berger testified that the bed and breakfast would provide parking in the large paved area in front of the garage. Ms. Berger agreed, as a condition of approval, that parking spaces for the use of the bed and breakfast guests would be striped.

16. Ms. Berger stated, in response to questions by Vice Chairman Sanchez, that the use would comply with all eight specific requirements related to the operation of bed and breakfasts including, but not limited to, the fact that a maximum of five rental units would be allowed and that the property would be managed by a permanent resident.

17. No testimony was offered in objection to the Application.

18. Following the close of testimony the Board voted unanimously to approve the special exception with the condition that Applicants provide striping for the parking spaces to be used by the bed and breakfast.

B. CONCLUSIONS OF LAW

1. The Property is located in the R-1 Residential District.

2. Bed and breakfasts are allowed in the Residential District subject to the requirements of Section 380.34A (8) as a special exception.

C. DISCUSSION

In an application involving a special exception, the initial inquiry of the Board is whether the applicant has proven that its proposed use would comply with all performance criteria for the special exception use. If the Board finds that the application meets the specific performance criteria, the next question is whether the Board finds clear evidence of a strong likelihood that the use would be more injurious to the

community health, safety, and welfare, than such special exception uses generally are. This is a very high burden of proof, and there was no suggestion, in the present case, that this use created any increased risk of harm to the community.

If the Board finds that the specific performance criteria have been met, and finds no evidence of an unusual risk of harm, then the Board must grant a special exception. The only discretion the Board has is whether or not to impose conditions.

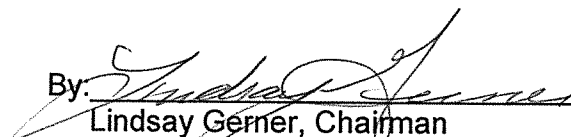
In the present case, the testimony showed that Applicants would comply with the specific requirements, in particular that there would be no more than five rental units; that there would be no signs, except for the allowed sign; that the basic residential character of the unit would not change; that the bed and breakfast would be operated by a permanent resident of the lot; that there would be no separate cooking facilities; and that no guests would stay more than 14 days in any month. Testimony was also offered that the building was built prior to January 1, 1940, which is the cut-off date for a bed and breakfast. Although the Board had some concern about the parking, Applicants' willingness to agree, as a condition, that the parking spaces would be striped, satisfied that concern.

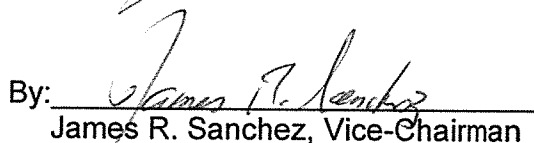
The unusual aspect of this Application is the fact that, because the Applicants themselves would not be operating the bed and breakfast, the Board was deprived of an opportunity to ask questions of the persons who would actually be operating it. However, this is not a requirement of the Zoning Ordinance and the Board is required to evaluate the Application according to the same standards it would use if the persons testifying before it were the potential operators of the bed and breakfast.

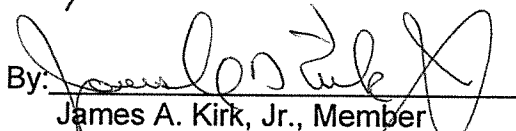
D. DECISION

And now this 27th day of April, 2017, Applicants' request for a special exception to operate a bed and breakfast is granted, subject to the condition that Applicants stripe parking spaces utilized in the bed and breakfast, and further that the Applicants comply with all of the other specific performance criteria enumerated in the special exception Ordinance related to bed and breakfasts.

**THE MILLERSVILLE BOROUGH
ZONING HEARING BOARD**

By: 
Lindsay Gerner, Chairman

By: 
James R. Sanchez, Vice-Chairman

By: 
James A. Kirk, Jr., Member

By: 
Karen Eckert, Member

By: 
Vickie Usciak, Member

Although David Fisher, Alternate, participated in the hearing, his vote was not necessary because a full board was present.