

7. Applicant filed an Amended Application November 24, 2024, seeking a special exception to operate a short term rental, a declaration that the use was in conformity with the zoning ordinance or, in the alternative, a variance from the zoning ordinance.

8. The amended application was advertised, the property was posted, and adjoining property owners were notified.

9. A hearing was held December 26, 2023.

10. The Board consisted of Lynn Miller, chair; members Vickie Usciak, Karen Eckert, William Hess, and W. David Sykes.

11. The hearing was stenographically recorded.

12. Robert Moyer, the zoning and codes enforcement officer, was sworn and testified that the agenda had been posted on the Borough website and on the Borough municipal building at least 24 hours before the hearing and that copies of the agenda were available for the public.

13. Applicant's case was presented by Attorney Wertz, who also represented the applicants in the other case heard that evening involving the identical issues, Case 24-03, the application of Julie and Darryl Enk involving 345 Barbara Street, filed November 26, 2024. The evidence for both cases was heard together.

14. Mr. Graybill and his wife have owned 36 E. Cottage Avenue since 2007 and began renting it as a short term rental in 2023.

15. Mr. and Ms. Enck have owned 345 Barbara Street since 2015. They purchased it with the intent of operating a short term rental. The property has been used as a short term rental since it was purchased.

16. Both properties have current rental licenses with the Borough.

17. The Borough of Millersville passed Ordinance 2024-4, regulating short term rental units June 25, 2024, codified at Section 380-34. A 44. Prior to that date, the use was unregulated in terms of zoning, although a license was required. The most relevant section is 380-34. A. 44 (b) which requires that applicants install sprinklers pursuant to the Uniform Construction Code.

18. Although 380-34. A. 44 (b) also imposes accessibility requirements, the Borough agrees that neither property poses any accessibility issues and that the only issue is the sprinkler requirement.

19. In July of 2024 the Borough issued a Notice of Violation to the Encks.

20. In August of 2024 the Borough issued a Notice of Violation to Peony Acres.

21. On October 9, 2024, both parties filed appeals with the Central Lancaster County Uniform Construction Code Board of Appeals, requesting a determination that the sprinkler requirement of the short term rental ordinance did not apply.

22. A hearing was held before the UCC Board November 7, 2024. Attorney Wertz represented both parties before that board.

23. At the conclusion of the UCC hearing, the Board announced that although it was denying the request for a determination that the Uniform Construction Code did not apply, it granted variances to both applicants provided that they install a particular model of automatic fire alarm fire detection system that included an automatic transmission to a central location for alert to 911.

24. The UCC board issued a formal adjudication December 18, 2024. The adjudication was made an exhibit and placed into the record at the time of the zoning hearing.

25. On November 26, 2024, the Encks filed a zoning application seeking the identical relief requested by Peony Acres.

26. The Uniform Construction Code Board of Appeals is the body having jurisdiction to adjudicate disputes involving the application of the Uniform Construction Code.

27. The scope of the UCC Board's power is to determine whether the Uniform Construction Code applies; whether the intent of the Code has been correctly interpreted by the code officer whose decision is being appealed; and whether an equivalent form of construction may be substituted. Regarding substitution, the standard to be followed by the UCC Board is whether there is an available construction technique that is as good or better than the one specified.

28. Attorney Wertz reviewed the general and specific performance criteria related to the requested special exception and adduced credible testimony that all criteria had been satisfied. In particular, in response to questions from the Board, Mr. Graybill testified that the model of fire alarm required by the UCC Board contained a battery backup and in the event of a power failure, it would send an automatic message to the person identified as the primary contact for the short term rental, and if that person could not be reached, would automatically call 911.

29. No one in the audience asked any questions, offered any testimony, or requested party status.

30. At the conclusion of testimony the Board conducted an executive session with its solicitor.

31. When the Board resumed public session it voted unanimously to grant the special exception and variance, with conditions.

B. CONCLUSIONS OF LAW

1. The subject properties are both located in the R-1 Residential District.
2. Short term rental units are a use allowed by special exception.
3. Applicants meet all of the specific and general performance criteria respecting short term rentals.
4. No testimony was presented that the two subject properties would have substantially more adverse impact on the community than short term rentals generally produce.

C. DISCUSSION

Although these cases have a complicated procedural history, the legal issue before the Board can be simply stated. Section 380-34.A.44.b requires that the plans for a short term rental relating to the Uniform Commercial Code shall “specifically address requirements to install sprinklers.” The zoning ordinance does not literally impose a requirement for sprinklers—it states that the requirement for sprinklers shall be addressed under the Uniform Construction Code. Applicants appealed to the body in charge of interpreting the UCC, and that body responded with a ruling that a designated model automatic fire alarm satisfied the UCC sprinkler requirement. Therefore, the issue before this Board is whether we accept the findings of the Uniform Construction Code

Board of Appeals. We find no reason to disagree. We recognize the expertise of the UCC board in technical matters such as this, and we find the adjudication of December 18 to be persuasive.

Also, a matter of common sense, as Attorney Wertz pointed out in his closing remarks, sprinkler systems are most appropriate in large buildings that cannot be quickly evacuated in the event of a fire. The small size of a residence compared to a warehouse greatly lessens the danger of anyone being trapped and unable to find an exit. We defer to the technical expertise of the UCC Appeals Board that the specified automatic fire alarm system provides equivalent protection for occupants of a short term rental.

D. DECISION

AND NOW, this 26th day of December 2024, the decision of the Board is as follows:

Applicant's request for a special exception to operate a short term rental is granted.

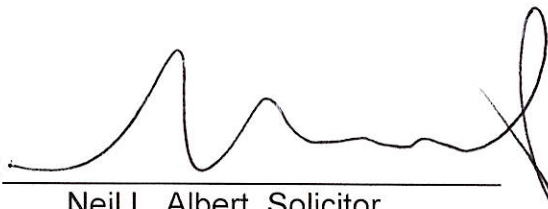
Applicant's request for a variance from Section 380-34.A.44 (b) from the sprinkler requirement is granted.

These approvals are subject to the condition that Applicant professionally install and maintain a monitored fire detection system throughout the dwelling which includes an automatic transmission to a central location for alert to 911; further, said system shall have a battery backup feature.

Applicant's request for a declaration that no variance relief is necessary is dismissed as moot.

THE MILLERSVILLE BOROUGH ZONING HEARING BOARD

January 2, 2025

by: 

Neil L. Albert, Solicitor