

**BEFORE THE
ZONING HEARING BOARD OF
FAIRVIEW TOWNSHIP, ERIE COUNTY, PENNSYLVANIA**

IN THE MATTER OF	:	
	:	Premises at 715 Dutch Road,
	:	735 Dutch, 55 Dutch, 625 Dutch, 701 Dutch
Property owner:	:	Fairview Township, PA
Ann Elizabeth Baldwin	:	
1711 Kuntz Road	:	Index No. (21) 27-017.01-19.00, 19.01,
Erie, PA 16509	:	20.00, 20.01, 20.02

FINDINGS OF FACT

1. The Applicant is Ann Elizabeth Baldwin, 1711 Kuntz Road, Erie, Pennsylvania, 16509.
2. Applicant is the owner of Subject Properties located at 715 Dutch, 735 Dutch, 55 Dutch, 625 Dutch, and 701 Dutch Road, Fairview, Pennsylvania, 16415.
3. The Subject Properties are located in Fairview Township, Pennsylvania, and are identified by Erie County Index Nos. (21) 27-017.01-19.00, 19.01, 20.00, 20.01, 20.02 . The parcels are currently zoned R-2.
4. Applicant has been renting out a residential structure located on a portion of the Subject Properties for overnight accommodations through a company called Airbnb. On May 16, 2018, Applicant was issued a Notice of Violation by Fairview Township. The Notice asserted that Applicant was violating Fairview Township’s Zoning Ordinance by operating a bed and breakfast and/or transient living from the Subject Properties. Applicant did not file an appeal of the Notice of Violation.
5. On June 12, 2018, in response to the Notice of Violation, Applicant filed a request for a Special Exception in order to operate a Bed and Breakfast Inn from the Subject Premises.
6. On July 3, 2018, the Fairview Township Zoning Hearing Board convened a public hearing regarding Applicant’s request for a Special Exception. At the hearing, the Board took extensive testimony from Applicant as well as several people who reside in the vicinity of Subject Properties. The Board also accepted documentary evidence as well as written correspondence offered by Applicant in support of her application.
7. Fairview Township Ordinance Section 701B(8) allows Bed and Breakfast Inns as a Special Exception in the R-2 District provided that:

- a. The minimum lot size shall be (2) two acres.
- b. The principle structure must maintain a minimum of one-hundred (100) foot setback to the nearest parcel boundary.
- c. Must meet the definition of the term set forth in Section 401, Article 4.
- d. Must meet all the requirements of the Pennsylvania Construction Code.
- e. Minimum one parking space per guest room, plus two spaces for the single family dwelling and one space for each employee.
- f. Permanent signs shall not be permitted.
- g. The parcel must have a safe and adequate vehicular entrance and exit.
- h. Must obtain an annual occupancy permit.
- i. A breakfast meal only shall be provided to inn guests and residents.

8. Fairview Township Zoning Ordinance Section 401 defines Bed and Breakfast Inn as: An owner-occupied single-family dwelling that contains not more than five guest bedrooms in which short-term lodging not exceeding seven consecutive days or nights is provided. A breakfast meal for Inn guests and residents may be provided. Bed and breakfast inns shall be considered an accessory use to a single family dwelling in the R-2 Suburban Single and A-1 Rural districts. Bed and breakfast inns shall be considered an accessory use to a single family dwelling and an agricultural operation in an A-2 Agrarian district. Bed and breakfast inns shall be considered a principle/permitted use in the B-1 Neighborhood Business and the B-2 Highway Commercial districts. This use shall not include group residence facilities.

9. During the July 3, 2018 hearing, Applicant presented two arguments:

(1) The May 16, 2018 Notice of Violation was in error because Applicant's business operation is properly categorized as a "no-impact home-based business", a permitted accessory use in the R-2 District; and

(2) In the alternative, Applicant meets the criteria for a Special Exception Bed and Breakfast Inn.

10. Pursuant to Section 701B(8), there are nine enumerated requirements for a Special Exception to operate a Bed and Breakfast Inn ((a)-(i)), Applicant asserted that she met and/or would comply with the requirements of Section 701B(8)(c), (d), (e), (f), (g) and (h).

11. With regard to lot size (701B(8)(a)), Applicant testified that it was her position that the individual Erie County Index numbered parcels were not two acres in size, that collectively the Subject Properties comprised more than two acres.

12. With regard to setback (701B(8)(b)), Applicant asserted that she met the setback to the north, and that she should be deemed to meet the setback to the west and to the south because she was the owner of the Erie County Index numbered parcels to the west and to the south of the residential structure. Applicant conceded that the residential structure was less than

100 feet from the eastern property boundary of the Subject Properties and that she did not own the Erie County Index numbered parcel to the east of the residential structure.

13. With regard to breakfast meals (701B(8)(i)), Applicant testified that she had not historically provided a breakfast meal to guests.

BOARD ANALYSIS

This Board can only hear issues that have been raised by applicants in accordance with Pennsylvania law and Fairview Township procedures. The sole issue before this Board is whether Applicant meets the 701(B)(8) criteria to entitle Applicant to a Special Exception to operate a Bed and Breakfast Inn. While Applicant has raised legal issues challenging the Notice of Violation and asserting that her business operation is better classified as a “no-impact home-based business” than a “Bed and Breakfast Inn”, those issues are not properly before this Board.¹

There are nine enumerated criteria which Applicant must establish in order for her to be entitled to operate a Bed and Breakfast Inn as a Special Exception. Even accepting Applicant’s arguments on every issue, Applicant admittedly does not meet the 100 foot setback requirement set forth in 701B(8)(b). Accordingly, Applicant cannot be granted the requested Special Exception.

CONCLUSION OF LAW

Applicant has not met the requirements for a Special Exception to operate a Bed and Breakfast Inn on the Subject Properties.

DECISION

AND NOW, this ____ day of _____, 2018, it is ordered that Applicant’s request for a Special Exception is DENIED.

¹In anticipation of a legal appeal and in an effort to create a complete record, the Board accepted all testimony and evidence from all parties of interest on all legal issues.

These Findings of Fact, Conclusions of Law, and Decision are signed this _____ day of _____, 2018.

George Wilkosz, Chairperson

Keith Farnham

Judy Miller

Barbara Parchey

Brian McGrain