

Pocomoke City
Board of Appeals Meeting
January 09, 2019

A hearing was held before the Pocomoke City Board of Zoning Appeals on January 09, 2019 in the Council Chambers at City Hall. The hearing was called to order at 5:00 P.M.

Present Members: Chairman Douglas Matthews
Rob Clarke, JP Chamberlain
Planning Director: Dan Brandewie
Attorney for Board of Appeals: James Porter
City Clerk: Michelle Beckett-El Soloh
Jeremy Mason: Asst. Code Enforcement officer

Hearing called to order by Chairman Douglas Matthews at 5:00 PM

Chairman Matthews stated the purpose for the hearing was that applicants, Ms. Barbara J. Bush and Mr. Daniel Brandewie have applied for a conditional use permit to operate a Bed and Breakfast in the R-2 zoned district at 17 Clarke Ave.

Attorney Porter stated that the way the hearing will be run is that Mr. Mason, on behalf of Applicants, Ms. Bush and Mr. Brandewie, will provide a case report and supporting documents into the record of the Board. Then the applicants will come forward to state their case; then any opponents would come forward and testify. All questions, concerns and comments will be addressed directly to the Board. After opponents have spoken then the applicant has a right to rebuttal. Then a formal decision will be made by the Board. If anyone is not in agreement with the decision of the Board, they have the right to file an appeal at the Circuit Court in Worcester County. Everyone speaking must speak loudly and clearly so that a transcript can be made. This hearing is being recorded.

Mr. Jeremy Mason, employee of Pocomoke City with Planning and Zoning Department, is here to present the case report for conditional use of the property at 17 Clarke Avenue as filed by Barbara Bush and Daniel Brandewie.

Attorney Porter swears in Mr. Jeremy Mason.

Mr. Mason; The packet contains the full application, the permit fee that was paid back in November 2018. Background property info is a bungalow, 1 story, 1,240 sq. ft. Two bedrooms, 1 bath, fenced in yard. The property is in very good condition and well maintained. The request of this conditional use is to allow short term rentals in the form of Air B&B. Typical stays are long weekends or 2 to 3-night stays. Rental will occur approximately 2 to 3 times per month. House is in R-2 zone but next to a B-2 business zone. Pictures are included to show suitability of residence. Documentation of legally required postings are included. Attorney Porter asks that all documents in the packet are entered as Exhibit 1-packet of 10 double-sided pages.

Attorney swears in Dan Brandewie.

Dan Brandewie stated his name, Daniel Brandewie, 26 Bramblewood Drive, Ocean Pines, MD. He is owner of 17 Clarke Ave, Barbara is his fiancée/partner and permit applicant of the property, Dan will be presenting the case. This is a conditional use application for a bed and breakfast. Property was purchased in October 2018; deed was filed in November 2018. Property came completely furnished down to the knives, forks and spoons.

Because it is a second-residence they thought it might be an appropriate place to use as a short-term rental. As he began to look at the regulations for short term rentals, he and Ms. Bush decided to apply voluntarily so there would be no question or doubt that applicants are in compliance with the City zoning requirements. It has been rented regularly as short-term rental since November 2018. Normally, a Bed & Breakfast definition is someone who resides at the building and provides a breakfast. In this case, there will be no meals provided. We will not reside in the building at the same time. It is just for short-term stay. MD State definition of short-stay is a period less than 4 weeks. Room and bed tax to the County must be paid for the rental period. They are asking for a Conditional Use permit be considered under the case as presented. In the package, building criteria for Board to consider for approval under Charter Code 230-108 D. The applicant stated he can discuss each Code requirement, if desired by the Board.

Chairman Matthews asked for elaboration of the City Charter Codes 230-108 D.

Dan Brandewie stated this conditional use Bed & Breakfasts are recognized under both R-1/R-2 and B-1 zoning districts. In the R-2 zoning district Section 230-41 Item J reads as follows; bed and breakfast type-business for overnight lodging and breakfasts requires adequate parking. The number of rentable rooms are to be determined by the Board following the Public Hearing. There are no other reference standards associated with Bed & Breakfasts in the zoning code. Parking Requirements are made reference to in the R-2 zoning district in Section 230-45 Parking Regulations: Two off-street parking spaces are required per each family. At this location there is a one car garage and shared driveway. Because this is shared driveway we request and require that our renters would use the on-street parking. In addition, if the Board of Appeals would consider additional criteria after Sections 230-107 and 230-108, guidelines for those decisions are as follows; (1) That there be no hazardous or congested traffic conditions, odors, smoke, dust, gas, noise or similar instances created by the use or (2) Change of use will not adversely affect public health, safety, security, morals or general welfare and dangerous traffic conditions; will not create or affect property lines. Section 230-108 proceeds to list more conditions.

Chairman Matthews asked the applicant if he has spoken with the Fire Marshall as to what would be required regarding fire escapes, etc. The applicant stated he has spoken with Deputy Fire Marshall. Bed and Breakfasts have been inspected to verify that fire alarms and extinguishers are present. As of right now, he is not aware of any other fire code requirements. Chairman Matthews verified that renters would be using street parking. The applicant answered that if street parking is full, his renters can overflow park into the adjacent City Hall parking lot.

The Attorney verified that the maximum occupancy that the rental unit can support is 4 people. The applicant stated that it could be a combination of adults and kids. They are also pet-friendly.

Board Member Chamberlain asked if usual definition of Bed & Breakfast is a room with breakfast provided but since you will not be providing meals, why apply for a Bed & Breakfast? Daniel Brandewie answered the rental property is listed on Air B&B website. There are different types of rentals. This falls under their definition as a short-term stay rental. This property clearly fits into their description. Commissioner Matthews wanted to know what the difference between a regular Bed & Breakfast and an Air Bed & Breakfast? Daniel Brandewie stated that Air Bed & Breakfast is simply a reference to the website. The website offers pre-approval, registration services, renters have to provide driver's license, background information. The site advertises the rental property and handles payments.

Attorney Porter asked if the applicants would be willing to set a maximum occupancy limit and what would be a reasonable number of people per stay? Daniel Brandewie answered, yes, he was willing to set a limit and he felt eight (8), combined adults and children was a reasonable number.

Board members deliberated regarding City off-street parking requirements. Attorney Porter asked Daniel Brandewie asked if it would be possible to put in two (2) parking spaces at the edge of the backyard? Daniel Brandewie stated at some point maybe, taking the shared garage and driveway out and putting in their own garage and driveway is an option. Daniel Brandewie stated that as long as renters only have 1 or 2 cars there is no issue with parking and except for the occasional funeral the City Hall parking lot is public and always available.

Attorney Porter asked if any other Applicants wish to testify at this time?

Applicant Barbara J. Bush was sworn in by the attorney. Applicant stated her full name and address as Barbara Jane Bush, 26 Bramblewood Drive, Berlin, MD.

Barbara J. Bush stated that first of all she has a correction. She is the applicant that advertises on the website. Daniel Brandewie maybe wasn't quite aware that they have a 4-guest limit on the website. The rental contains 2 queen size beds so there could be no more than four (4) adults. She stated that she believes that there is confusion about parking. When applicants are at the residence sometimes, they sometimes have two (2) cars but it's mostly one car. When Air B&B renters come, applicants will take both cars and not leave a car there. Number of parking spaces needed will not change. Renters are using the allotted spaces for the house, no extra. Attorney Porter explained according to City Code; a house is required to have one space per house. As a B&B, the Code requires 2 spaces but street parking is public parking and not guaranteed per house. Does the Board have any questions for the Applicants at this time? The Board answered, no questions at this time

Attorney asked if any opponents wish to testify at this time?

Jenny L. Challis, 15 Clarke Ave, stated she lives on the same street as the applicant's property and is speaking on behalf of the other residents on the same street who signed a petition in opposition. The Attorney asked to see the petition to see if it meets the criteria to be entered as an exhibit. Ms. Challis stated she is not aware of any criteria. She asked Daniel Brandewie what his position is? Attorney Porter stated all questions, as stated previously, must be directed to the Board and not the individual applicants. Ms. Challis asked the Board, what is Mr. Brandewie's position with the City? The Attorney answered; Mr. Brandewie is employed with the City Zoning Dept. as the Planning Director. Ms. Challis asked if the Attorney was for Mr. Brandewie or the City? Attorney Porter answered that he is the Attorney for the City Board of Zoning Appeals only. The Attorney is trying to see if the petition meets the legal requirements to be entered for the case as an Exhibits. Ms. Challis stated no one was informed of any legal duties or requirements that need to be met. The Attorney said as with any case, the burden of proof lies with each party and he/she must be prepared for the case. The Attorney reviewed the petition and determined that it can be entered as Exhibit 2 but lacks being notarized to verify signatures. Ms. Challis stated that parking is very limited. Renters are not part of the everyday schedule and won't care and won't fit into the neighborhood schedule. The residents on the street also don't want a constant flow of unknown people coming into the neighborhood. Ms. Challis stated that no one on the street was familiar with who Barbara Bush was. She called Dan Brandewie's office and no one was forthcoming with that information. The residents have just seen license plates from DC, Pennsylvania and different plates from Maryland in the last several weeks. She stated permanent renters are another story. Full time renters are a part of the community and contribute and care about the community. There are families with kids that live on that street and transient people are not a good mix for the street. Ms. Challis said that she and the residents already feel that Mr. Brandewie has the upper hand because of his position in the City. He has already given citations to people on that street. One person refused to sign the petition because he/she was afraid of retaliation. Chairman Matthews asked if she would be satisfied if the Board made a recommendation that the parking space for the Bed & Breakfast has to be in public parking area? She answered no, that does not satisfy the situation because how can you enforce that on someone who is only here for a few days?

Attorney asks for other testimony in opposition.

Timothy W. Miller, Sr, 9 Clarke Ave, stated he has lived at that address for nine (9) years. He said that by applying for this permit, Federal and State Code would require him to update and install a sprinkler system because the property would be considered as a hotel status. He has friends in Worcester County that have rentals and they were required to install high-pressure sprinkler systems. Also, if the permit is granted and commercial business is allowed then tax brackets would also be raised for residential properties.

Applicants rebuttal opportunity.

Applicant Daniel Brandewie asked to examine the petition that was presented. He also stated that it is refreshing to see people attend the Public Hearing and voice concern for their neighborhood. If he owned a neighboring property, he would also have similar concerns. Regarding the petition, he disagrees with the statement that there are only 2 houses that have their own driveways. Secondly, there will be no change in land-use. It is currently a single-family owner-occupied home and under the permit it would be renter occupied single-family. The same parking issues exist whether owner or renter single-family occupied dwellings. That is just the nature of the street. Ms. Challis raised questions about strangers in the neighborhood. Mr. Brandewie stated that the renters are screened through the Air B&B website. They are not obligated to rent to anyone that they do not feel comfortable with. Applicants are in agreement with the maximum occupancy limit of 4 adults. Regarding the question about his position in the City, his title is Planning Director and, in that capacity, he is also Chief Code Enforcement Officer. For the record, he has issued two (2) property maintenance violations for two (2) property owners on this street. Those citations were issued well before the property was purchased in October 2018. Those property owners have been in violation for several years. In speaking with Chris Viera, Fire Marshall, he did not mention that it is necessary to install sprinkler system. It is necessary in a newly constructed building but not in a building that has been in existence for several years. That can be followed up on to be sure. Appropriate fire alarms, CO detectors, fire extinguishers have been installed He can provide a fire inspection report to the Board. The house is one of the nicest on the street and it will continue to be maintained in the same manner.

Attorney Porter asked if the Board has any questions for Mr. Brandewie. Chairman Matthews stated no further questions.

Motion to adjourn Public Hearing portion of meeting (Matthews, Price passed) at 5:54 PM

Acclamation: Chamberlain-aye, Clarke-aye, Matthews-aye, Price-aye; none opposed.

Board of Appeals entered into deliberation.

Outcome: Decision to be based on if conditional use will be allowed, then is it subject to other criteria requirements of local, State, Fire Code laws or Ordinances? Will conditional use be granted with a variance for parking or denied due to lack of sufficient parking data provided?

Motion to deny conditional use permit for 17 Clarke Avenue based on parking issues at this time (Clarke, Chamberlain passed) at 6:10 PM

Acclamation: Chamberlain-aye, Clarke-aye, Matthews-aye, Price-aye; none opposed.

Motion to approve Minutes as read from December 05, 2018 (Chamberlain, Clarke passed) 6:12 PM

Acclamation: Chamberlain-aye, Clarke-aye, Matthews-aye, Price-aye; none opposed.

Motion to adjourn meeting (Matthews, Chamberlain passed) 6:13 PM.

Acclamation: Chamberlain-aye, Clarke-aye, Matthews-aye, Price-aye; none opposed.

Approved: K. Michelle Beckett-El Soloh
City Clerk