

relevant definitions in the Ordinance, including those for Bed & Breakfast Home, Short-Term Rental, and Boarding Home. He differentiated a Bed & Breakfast Home from the Short-Term Rental because the Bed & Breakfast Home is owner or proprietor occupied with no cooking facilities included in the rental whereas a Short-Term Rental is not necessarily owner occupied and includes cooking facilities.

The February 18, 2020 violation notice was issued because of the applicant's marketing of the property on websites, including AIRBNB. For example, an ad indicated that the guests would have the entire house to themselves, and they could make meals in the fully equipped kitchen. Indeed, on the day of the hearing, an ad indicated the entire house was for rent. Similarly, the AIRBNB reviews indicated that guests should bring a few pots and pans if they wanted to cook. Another review noted that no one was there to greet them upon their arrival. On the Home Away and Expedia websites, the ad listed a full kitchen to cook meals. The Expedia website also advised that the renters would have the entire house to share with their guests. Mr. Emerick argued that the applicant was operating the property as a Short Term Rental, which is not permitted in the Palmdale Mixed Use zoning district, as opposed to a Bed & Breakfast Home because of the applicant's rental of the kitchen.

The applicant testified that while none of the bedrooms have their own individual kitchen areas, the one full kitchen onsite was available for use by guests. The applicant reasoned that in a Bed & Breakfast Home that the guests have access to all common areas. For this property, the common areas include an arcade, movie theater, and kitchen. According to her research, Westwynd Farm offered guests a refrigerator, coffee pot, grill in the picnic area, and toaster oven

in the common areas. 1825 Inn Bed and Breakfast has snacks, microwave, hot chocolate; and grill available in the common area. She acknowledged that the other Bed & Breakfasts do not have a stove and oven available although some would try to accommodate guests. Since receipt of the notice violation, the applicant has removed the kitchen, stove, and oven from her ad. She testified that she does not use the other websites to generate bookings so she never finished her listings. She argued this was not a big violation as the June 19, 2020 decision referenced the guests' use of a grill, which she reasoned was a cooking facility.

The applicant testified that she does not rent just a single room but instead rents to families because there is a more personal feel. Plus, there are not personal bathrooms available. She lives at 938 Hillside Avenue, Elizabethtown, Pennsylvania with her son. She moved into the property following the renovations to the home, but she did not stay there unless there were guests. She moved out in November 2019. She never updated her driver's license to the property's address, but she did receive mail there until November 2019. However, after family circumstances changed, it was no longer feasible to continue to reside there. Instead, she has a manager who lives onsite when there are guests. She submitted the job description for the manager, which was accepted into the record.

Sandy Long, who resides at 1807 Lehman Street, testified that the property has never been owner-occupied or manager-occupied. She has had to tell guests to turn the music down because the applicant, and anyone on behalf of the applicant, was not present. During the quarantine, the property was rented to construction workers, and no one answered the door when she went to the property multiple times to complain about the noise. In addition, she has had to

advise guests to keep their dogs off Lingle Avenue. Mrs. Pearson disputed Mrs. Long's testimony that there were multiple reports made to her about the noise. She acknowledged that she is not always present at the property, but instead, is in and out. Mrs. Pearson testified that the construction workers stayed at the property approximately four days per week for several weeks and would leave each weekend. Therefore, the construction workers never stayed at the property for 14 consecutive days.

The Board finds that the determination of the Zoning Officer must be sustained and the appeal denied. "Words and phrases in this Chapter shall be used in their ordinary context unless such word or phrase is specifically defined in this article." Ordinance, §225-1101. The Ordinance defines a Bed & Breakfast Home as "an owner-occupied single-family detached dwelling in which a maximum of 10 rooms, all without cooking facilities, are rented to guests on a daily basis in which breakfast may be served to the guests by the proprietor of the facility." Ordinance, §225-1103. The Zoning Hearing Board must weigh the evidence before it. *Taliaferro v. Darby Township Zoning Hearing Board*, 873 A.2d 807, 811 (Pa. Cmwlth. 2005). "The board is the sole judge of the credibility of witnesses and the weight afforded their testimony." *Id.* The Zoning Hearing Board "is free to reject even uncontradicted testimony it finds lacking in credibility." *Id.* A Short-Term Rental is "any dwelling or portion of any dwelling containing a single cooking area used as a rental for a period of less than 30 consecutive days for up to 2 individuals per bedroom serving a maximum of 10 individuals. Children under the age of 3 are excluded from this count." Ordinance, §225-1103.

The Ordinance, §225-502.1, permits the granting of the special exception for a Bed and Breakfast Home within the Palmdale Mixed Use zoning district when the applicant can demonstrate compliance with all applicable criteria:

- A. All lots to contain a Bed and Breakfast Home shall be compliant with all applicable lot criteria of the Zoning District.
- B. To maintain consistency between established and proposed development, parking on the lot shall not be located between the front facade and front lot line.
- C. No more than 10 bedrooms may be available or used for such use in any building.
- D. Not more than 1 ground sign shall be permitted on the lot, and shall meet the dimensional requirements of this Chapter.
- E. Meal service shall be limited to breakfast only to overnight guests of the facility.
- F. All off-street parking spaces shall be provided on the lot. The number of off-street parking and loading spaces shall be provided as defined by this Chapter. All parking spaces and driveways shall be surfaced with bituminous, brick, concrete or stone block paving material.
- G. The owner and/or manager of the facility shall reside therein.
- H. An overnight guest shall not occupy the facility for more than 14 consecutive nights in a 30-day period.

See Ordinance, §225-502.1.

In this case, the Board finds that the applicant is not operating a Bed & Breakfast Home in accordance with the Ordinance or as approved previously by the Zoning Hearing Board. The

Board finds that the applicant has rented the entire house, including a full kitchen, to guests instead of limiting meal service to breakfast only. The record is replete with evidence indicating that the guests had access to the entire house. Additionally, the Board finds Mrs. Long's testimony about the noise and the lack of the applicant and manager onsite to be credible. As a result, the Board discounts the applicant's testimony about an owner or a manager residing at the property. Therefore, the determination of the Zoning Officer must be sustained and the appeal denied.

In the alternative, the applicant requested a special exception to permit a manager to reside at the property because she testified at the hearing in 2019 that she and her son would live at the property.

The Board finds that the applicant is not entitled to the requested relief. As discussed above, the Board finds that the applicant has not complied with the Ordinance or its prior decision because the entire house was rented, and the applicant or manager was not residing at the property. Because the Board finds that the applicant has not been credible, it discounts her testimony that she would not rent the entire house in the future or that she or a manager would reside at the property in compliance with the Ordinance.

Based on the Board's findings and conclusions, the Board adopts the following:

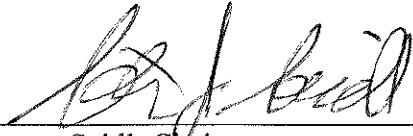
ORDER

AND NOW, this 15th day of July, 2020:

1. For all of the foregoing reasons, the determination of the Zoning Officer is SUSTAINED, and the appeal of the applicant is DENIED.

2. The applicant's request for a special exception from §225-502-1 is DENIED.

Adopted by 4 – 0 vote as indicated by the Chairman's signature as authorized by the Zoning Hearing Board.



Steven Seidl, Chairman