

BEFORE THE ZONING HEARING BOARD OF EAST BRADFORD TOWNSHIP

**IN RE: APPLICATION OF
JOHN MARSHALL & DARA GANS-MARSHALL
415 BIRMINGHAM ROAD, EAST BRADFORD TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA
TAX PARCEL NO. 51-7-113.1**

DECISION AND ORDER

John Marshall and Dara Gans-Marshall (the "Applicants") filed an Application with the East Bradford Township Zoning Hearing Board ("Board") requesting a variance from the Code of the Township of East Bradford ("Code"), specifically Section 115.48.2 of Chapter 115 ("Zoning Ordinance"), related to Applicants' use of the subject property as a Bed and Breakfast Estate at 415 Birmingham Road, East Bradford Township ("Township"), Chester County, Pennsylvania, Tax Parcel No. 51-7-113.1.

The Board conducted a public hearing at which testimony was taken on Monday, January 29, 2018, at 7:00 p.m., prevailing time, at the Township's Municipal Building, 666 Copeland School Road, West Chester, Pennsylvania 19380 pursuant to public notice published on January 17, 2018 and January 22, 2018 in the *Daily Local News*, a newspaper of general circulation in the Township. In addition, the Property was posted and written notice was given to adjacent property owners as required by the Code which was confirmed by the Applicants. The Board was represented by Kimberly P. Venzie, Esquire. The members of the Board before whom the application was heard were Alfred A. Gollatz, Esquire as Chairman, Kamil Ali-Jackson, Esquire as Vice Chair, and P. Andrew Schaum, Esquire as Member.

At the hearing, the following exhibits were introduced into the record:

Board Exhibits

- B – 1 Application to the Zoning Hearing Board with supporting documents and Plan dated December 18, 2017
- B – 2 Letter of Melissa Needles, Codes Enforcement Officer/Zoning Officer of East Bradford Township, to Zoning Hearing Board Solicitor, Joseph E. Brion, Esquire, dated December 20, 2017.
- B – 3 Proof of Publication in the Daily Local News on January 17, 2018 and January 22, 2018.
- B – 4 Correspondence dated January 15, 2018 from Zoning Hearing Board Solicitor, Joseph E. Brion, Esquire to Applicants, via certified mail, return receipt requested acknowledging Application and providing hearing date and notice for posting.

Applicant Exhibits

- A – 1 Documentation of Neighbor Notification and Property Posting
- A – 2 Plan with colored rendering of Tenant House location.

From the testimony given and exhibits presented, the Board makes the following:

FINDINGS OF FACT

1. John Marshall and Dara Gans-Marshall, the Applicants, are the owners of a property located at 415 Birmingham Road, East Bradford Township, being Tax Parcel No. 51-7-113.1 (the "Property").
2. The Property consists of 10.96 acres, is located in the R-2 Residential Zoning District and includes a Historic Class I Residence with seven (7) auxiliary buildings.

3. The Applicants intend to utilize the Property as a Bed and Breakfast Estate which is a use provided for by Conditional Use pursuant to Section 115-48.2 of the Zoning Ordinance.

4. The Conditional Use process will be handled by the Board of Supervisors; however, the Applicants are requesting variance relief with respect to one of the ordinance requirements set forth in Section 115-48.2.

5. Section 115-48.2.A requires that the only buildings eligible for a bed-and-breakfast use shall be owner-occupied Class I historic resources.

6. While the Applicants will reside upon the Property in the main dwelling, the Applicants would like to utilize the tenant dwelling upon the Property for the guest rooms. The Applicants (the owners) will not reside in the tenant dwelling.

7. Credible evidence and testimony was presented regarding the main dwelling upon the Property not being large enough to house the Applicants' family and also accommodate the additional needed guest rooms.

8. Credible evidence and testimony was presented regarding the suitability of the Property for the intended use, and that the tenant dwelling is not visible from the roadways.

9. Testimony was presented that the Property is unusual as to the various dwellings and structures on the Property, and that the Applicants would like to make use of those dwellings in order to make reasonable use of the Property, and continue to maintain the historic structures upon the Property.

10. Discussion was also held regarding the need for possible adjustments of other conditions related to the Property (as part of the Conditional Use process) in order for the Applicant to make a reasonable use of the Property for events.

CONCLUSIONS OF LAW

1. The Applicants are the owners of the Property and have standing to bring this Application.
2. The Property is located in the R-2 Residential Zoning District.
3. The Applicants have provided sufficient evidence and testimony to support the grant of the requested variance to allow the use of the tenant house for guest rooms.

DISCUSSION

The Applicants seek a variance from Section 115-48.2 of the Zoning Ordinance in order to utilize a tenant dwelling for guest rooms as part of a proposed Bed and Breakfast Estate use upon the subject Property. The ordinance requires that such buildings be owner-occupied; however, the Applicants would like to house their family in the main dwelling, and guests in the tenant dwelling. Thus, the Applicants seek a variance for the owner-occupied restriction.

Section 910.2 of the Pennsylvania Municipalities Planning Code ("PaMPC"), 53 P.S. §10910.2 and Section 115-85 of the Code provide the legislative basis for the granting of a variance. An applicant must show that: (1) an unnecessary hardship will result if the variance is denied due to the unique physical circumstances or conditions of the property; (2) because of such physical circumstances or conditions the property cannot be developed in strict conformity with the provisions of the Code and a variance

is necessary to enable the reasonable use of the property; (3) the hardship is not self-inflicted; (4) granting the variance will not alter the essential character of the neighborhood nor be detrimental to the public welfare; and (5) the variance sought is the minimum variance that will afford relief. Arter v. Philadelphia Zoning Board of Adjustment, 916 A.2d 1222 (Pa. Cmwlth. 2007).

The reasons for granting a variance must be substantial, serious and compelling, and the party seeking the variance bears the burden of proving unnecessary hardship and absence of injury to the public interest. Valley View Civic Association vs. Zoning Board of Adjustment, 501 Pa. 550, 462 A.2d 637 (1983). A variance should be granted only where it is not contrary to the public interest but also where the property involved has unique physical circumstances or conditions which cause an unnecessary hardship and make it difficult if not impossible to strictly comply with the zoning ordinance. Arter, supra.

However, this Board may also grant a variance "where the variation requested is minor and rigid compliance is not necessary to protect the public policy concerns of the ordinance." Lench v. Zoning Bd. of Adjustment of City of Pittsburgh, 13 A.3d 576 (Pa.Cmwlth. 2011). The grant of such a variance is within the sound discretion of this Board. Ibid.

The Board finds that Applicants should be granted the variance as requested. The request to utilize the tenant dwelling for the guest rooms, as opposed to the main dwelling, is a reasonable request and in keeping with the proposed Bed and Breakfast Estate use. The Applicants presented credible testimony and evidence in support of their variance request. The Applicants described in detail the intended use of the Property and their plans for the Property. The use of the tenant dwelling for guest rooms, while not owner-occupied, is certainly in keeping with the intent and spirit of the adaptive reuse of the

historic structures upon the Property. Additionally, it is a physical challenge to fit a family in the main dwelling and also accommodate guest rooms – there simply is not enough space based upon the testimony presented during the hearing.

Considering the testimony presented, the Board concludes that subject to submission of the requisite plans, compliance with applicable Township Codes, the approval of the proposed use by Conditional Use process, and compliance with this Decision and Order, the Applicants have met their burden to be entitled to the requested variance relief. Therefore, based upon the foregoing Findings of Fact, the law and the Township Zoning Ordinance, as cited, the Board has determined that Applicants have furnished the necessary proof to warrant the granting of the requested variance.

In conclusion, upon consideration of the testimony provided and the evidence presented, the Board makes the following:

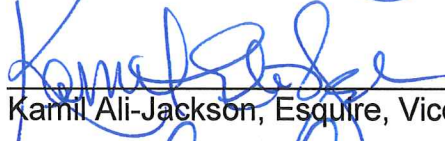
ORDER

AND NOW, this 16th day of March, 2018, the Application of John Marshall and Dara Gans-Marshall for a variance from Section 115-48.2 to allow for guest rooms within the tenant dwelling as part of the proposed Bed and Breakfast Estate use is GRANTED conditioned upon Applicants' payment of all proper fees, submission to the Township of the required plans and materials and approval by the Township Code Enforcement Officer, and Applicants' compliance with all other applicable ordinances and regulations, including the Conditional Use approval required for the proposed use as described in the foregoing Findings of Fact.

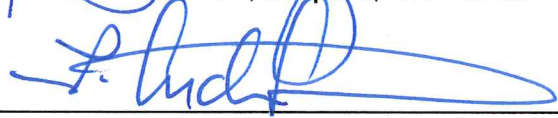
**EAST BRADFORD TOWNSHIP
ZONING HEARING BOARD**



Alfred A. Gollatz, Esquire, Chairman



Kamil Ali-Jackson, Esquire, Vice Chair



P. Andrew Schaum, Esquire, Member