

COLERAIN TOWNSHIP ZONING HEARING BOARD MINUTES  
Kenneth & Judy L. Beiler Case 2022-12  
December 7, 2022 at 7:00 P.M.

Members present were: Bob Stanley, Chairman, Doug Eaby, Vice-Chairman, Tammy Rineer, Member, Josele Cleary, Zoning Hearing Board Solicitor was present as well as Allen Blank Court Reporter. Allen can be reached at 717-687-8942. A listing of others in attendance will be kept on file.

This Case immediately followed the Paul & Twila Ranck Case.

Bob Stanley shared the application CASE NO. 2022-12 Application of E. Kenneth and Judy L. Beiler concerning property located at 65 Lakeview Road, Kirkwood, within the Agricultural District. Applicants request a variance or a special exception to enable the conversion of a dwelling unit located on the second story of attached garage into a second principal use under Sections 4.05.02 and 6.17 of the Zoning Ordinance. The second dwelling unit was originally authorized as an elder cottage.

Ms. Cleary explained a zoning hearing. The Zoning Hearing Board will consider this hearing in accordance with the requirements of the Municipalities Planning Code. The first item of business is to determine the parties to the hearing. The applicants are parties to the hearing. The township, by law, is a party to every hearing before the Zoning Hearing Board whether or not the township appears and actively participates. Other persons can request to be recognized as parties. You do not have to be recognized as a party if all you would like to do is ask a question or make a statement. If you wish to preserve your right to file an appeal with the Lancaster County Court of Common Pleas if you disagree with whatever the decision of the Zoning Hearing Board is, you should ask to be recognized as a party because only parties have the right to file an appeal. In order to be recognized as a party, you must have an interest in the application that is different from all residents in seeing that all residents comply with the zoning ordinance. Generally if you live in the immediate vicinity of the subject property or own land in the immediate vicinity you would have the right to be recognized as a party. After all of the parties to the hearing are determined the applicant will have the opportunity to present evidence in support of the application. The applicants tonight are represented by their attorney who will call witnesses and ask questions. Each witness will have to be sworn or affirmed. The members of the Board or Ms. Cleary may ask questions for clarification. Other parties will be given the opportunity to ask questions, and then other people in the audience who are not parties will be given the opportunity to ask questions. After the applicants have presented all of their testimony, then any person recognized as a party will have the opportunity to present testimony. Any party who wishes to testify will have to be sworn or affirmed. The applicants' counsel has the right to cross examine such persons, and members of the Board or Ms. Cleary may also ask questions for clarification. After all the parties have testified, then persons not recognized as a party who wishes to make a statement will be given the opportunity. They will also have to be sworn and affirmed and can be questioned in the same manner as any other witness. After the Board has heard all of the evidence, the record will be closed. Under state law, the Board has 45 days after the close of testimony to render a decision. The Board can deliberate tonight, go into executive session, or take the matter under advisement and render a decision within the 45-day period. If the Board takes this case under advisement tonight, it would render a decision at its regularly scheduled January 4<sup>th</sup> meeting. There is a court reporter here because state law requires that the Board keep a stenographic record of the proceedings. In order that the court reporter can do

his job, only one person can speak at a time. Wait until recognized to speak, give your name and spell your name. The record will show that there were no questions concerning the procedures that the Board will follow for this hearing.

Ms. Cleary asked if there was anyone wishing to be recognized as a party to these proceedings. James Murtha, 73 Lakeview Rd., Kirkwood was recognized as a party. In relation to the subject property, Mr. Murtha shares a property line. Counsel for the applicant did not have any objections to Mr. Murtha being recognized as a party. There being no other audience members at this time wishing to be recognized as a party, Ms. Cleary recommended that the Board adopt a motion recognizing Mr. Murtha as a party. Doug Eaby made the motion to recognize Mr. Murtha as a party, seconded by Tammy Rineer. The motion passed unanimously.

Counsel representing the applicants is Mr. Melvin Newcomer of the firm Kluxen, Newcomer and Dreisbach. Mr. Newcomer outlined the position of the applicants in respect to this matter; he then will be calling Mr. Kenneth Beiler. Section 6.17 of the Zoning Ordinance of Colerain Township, allows by right, 2 principal uses on a property, provided that area and setback requirements are met as if each were on an individual lot. Section 4.05.02 addresses the function of the Board to consider these matters when talking about similar uses. In the current situation the proposed use as a single family, non-agricultural dwelling is a use permitted by right in the agriculture zoning district in which this property is located. The area of the property is approximately 3.4 acres and is sufficient to accommodate 2 single family dwellings. Mr. Newcomer asked the Board to take administrative notice that this Board made a decision in 2007 to allow the detached garage/dwelling unit that was then requested for use as an elder cottage, to be located 20 feet from the front property line. This property is a flag lot, so is a little unusual and not your typical lot. It has a long flagpole about 460 feet long by 50 feet and a 2.8 acre area in the rear. This is a use that is permitted as a matter of right based on the ordinance. Mr. Newcomer clarified that the original plot plan was incorrect. Exhibit #2 shared tonight is a slightly revised plot plan. The narrative was correct, however, on the original plot plan it was shown as 50 feet, which was incorrect. Mr. Newcomer shared 5 exhibits with the Board, the original was given to Ms. Cleary a copy was given to each Board member and Mr. Murtha.

At this time, Mr. Newcomer called Kenneth Beiler of 65 Lakeview Road, Kirkwood to testify. Mr. Beiler was sworn and affirmed. Mr. Beiler owns and resides on this property with his wife Judy. Mr. Beiler testified and confirmed that the size of the property is approximately 3.43 acres and is a flag lot with a 50 foot flagpole leading from Lakeview Road to the main portion of the property. The width of the flag pole is 50 feet and the length is approximately 464 feet.

Mr. Newcomer asked Mr. Beiler to identify Exhibit #1 which was the deed from Jeff and Linda Stoltzfus to E. Kenneth Beiler and Judy L. Beiler, dated 12/16/1986. This shows the area of the property as being 3.434 acres. Mr. Beiler confirmed this information was correct.

Mr. Newcomer asked Mr. Beiler to identify Exhibit #2 as the plot plan for the property which depicts the flagpole going back to the property. It shows a single family dwelling located on the property. It also shows a detached garage which is 34'X30' and is 2 stories. The Beilers have resided on this property since it was acquired approximately 35 years ago. In 2007 they came to the Zoning Hearing Board to build a garage in its current location and to receive approval for an elder cottage for Mrs. Beiler's parents to reside in above the garage. Mr. Beiler confirmed this information was correct.

Mr. Newcomer shared Exhibit #3 which is a transmittal letter from Mr. Thomas Goodman (who was the solicitor for the Zoning Hearing Board) dated 12/13/2007. Attached to that letter was a zoning

decision for this property, which Mr. Beiler recognized. Mr. Newcomer asked the Board to take administrative notice of the decision, the transmittal letter from Mr. Goodman to the Beilers including the decision which is undated, but was sometime in November or December 2007, that shows that approval was granted. Tammy Rineer made the motion that the Board takes this administrative notice, seconded by Doug Eaby. The motion was unanimous.

Page 2, #9 shows the Finding of Fact and identifies that the applicants requested a variance in compliance with section 5.01.06D with the intent to construct the elder cottage within 20 feet of the front portion of the flag. This variance was granted pursuant to this decision and the structure was permissibly located in compliance with that variance. That building is approximately 21 feet from the line. Mr. Newcomer asked Mr. Beiler to describe this building. Mr. Beiler shared that the garage is built into a bank. It is a 2 car garage (what they call the basement), second floor approximately 34'X30' with stairs. There is a kitchen, living room, 2 bedrooms, a full bath and 2 porches. This was the area that was used as the elder cottage for Mrs. Beiler's parents. The area that was approved as an elder cottage has been vacant since March 2021. There is a separate septic system as required by the township when constructed in 2008. The well is shared with the main dwelling.

Exhibit #4 was a series of 3 photographs depicting the general interior of the property. These photos show that other than general clean-up, it is in the same condition as when Mrs. Beiler's mother last resided in this location. Mr. Beiler confirmed he reviewed the ordinance and is aware that this property is located in the ag district. Mr. Newcomer confirmed that this lot is significantly larger than the required square footage required in the ag district for a non-agricultural dwelling. Mr. Newcomer asked if the single family dwellings are located more than 50 feet from the front property line. Mr. Beiler responded yes. Mr. Newcomer asked if they were located more than 20 feet from the rear and side property lines. Mr. Beiler responded yes. Mr. Newcomer asked if the detached garage with the dwelling unit is located more than 20 feet from the rear and side property lines. Mr. Beiler responded that was correct. Mr. Newcomer asked if it was located in conformity with the variance that was previously granted by this Board in 2007. Mr. Beiler responded that was correct. Mr. Newcomer asked Mr. Beiler that, to the best of Mr. Beiler's knowledge, this request complies with all requirements of the zoning ordinance. Mr. Beiler responded yes. Mr. Newcomer stated that this evening Mr. Beiler is requesting approval to use this structure as a single family detached dwelling. Mr. Beiler responded that this was correct. Mr. Newcomer asked Mr. Beiler if he was planning to rent this dwelling, to which Mr. Beiler responded that was correct. Mr. Newcomer asked Mr. Beiler if the maximum number of adults that would occupy this dwelling would be 2, Mr. Beiler responded that was correct. Mr. Newcomer asked if up to 1 child would be allowed to be there as well, to which Mr. Beiler responded that was correct. Mr. Newcomer noted that because this structure has 2 bedrooms, Mr. Beiler would not rent to families with children, Mr. Beiler responded that was correct. But, in the event that a young couple were to rent the unit and have a child after moving in, they would not be made to leave, Mr. Beiler responded that was correct. Mr. Beiler will continue to reside on the property and will monitor and supervise this property and will be responsible for all the maintenance on the property. This property currently has electric to this garage/dwelling and is connected to a water source and septic system. There is no change in the proposed use of this structure in terms of the prior use as an elder cottage, except for the possible difference in ages of the occupants. There have been no problems with the property in terms of the impact on the neighborhood. Mrs. Beiler is retired from a position with the PA State Police, so it's fair to say that some individuals with the PA State Police have expressed an interest in this property to assist with trooper relocation as a potential rental. The property will not be limited to troopers, but they may be a source of potential occupants.

Exhibit #5 is pictures that show the view from the front of the rental property towards the Murtha property. Mr. Newcomer asked Mr. Beiler how close the nearest dwelling unit is, other than the one located on the site where the Beilers live. Mr. Beiler responded approximately 300+ feet. The pictures show a heavily wooded area between the neighbor's property and the Beiler's. The pictures were taken in late fall, but when leaves are on the trees, the property is much more hidden from view. The properties surrounding the Beiler's are single family dwellings, farm land and a campground. There is no expected impact on neighbors with the use of this second single family dwelling on the Beiler's property. After review of the zoning ordinance, Mr. Beiler is aware that a non-agriculture single family dwelling is a permitted use in the ag district. Mr. Newcomer reviewed the general standards relating to special exceptions that are set forth in section 15.03.01 of the Zoning Ordinance. The specific site is appropriate for the proposed use. The use, as developed, will not adversely affect the district. No nuisance or hazard to vehicles or pedestrians. In this case the unit itself would be about 500 feet or greater from Lakeview Road. There will be adequate and appropriate use of the facilities for the proposed use, such as electric, water and sewer attached to the unit. The unit has electric heat. All lot requirements, yard requirements and height limitations are satisfied, and approval was received when it was constructed in 2008. They received a variance to allow this building when this unit was constructed. Street parking for this unit is satisfied, there is a 2 car garage on the bottom of this unit which will be for the use of the tenant. Utilities are available at the site and are already installed. Property is not in violation of the zoning ordinance or any other applicable regulations at this time. The proposal presented complies with all applicable regulations. In Mr. Beiler's opinion this would not have any adverse impact on any neighboring properties or detract or injure any neighboring properties. Other than the potential age of the occupants, the use of this unit will not be any different than when it was occupied by Mrs. Beiler's parents for the approximate prior 13 years. Other than general clean-up, there will not be any substantial work needed for the property.

The Beiler's legal counsel closed his questioning. The Board, nor Mr. Murtha had any questions for Mr. Beiler.

The meeting was open for audience questions. Geraldine Parker asked if the rental was going to be a short-term lease, like a week at a time, or a long-term rental? Mr. Beiler responded it would not be used short-term. Ms. Parker clarified that it will not be used as a vacation rental. Mr. Beiler responded, no. With clarification from Mr. Newcomer, Mr. Beiler agreed this will be either a month-to-month or annual rental lease.

Lynn Swisher asked that in the original approval letter, were there any special exemptions for things that were granted that were not in that original letter dated 2007. Mr. Beiler responded not that he knows of.

James Murtha stated that there was a special exception. The Murthas had to agree that the Beilers could build 20 feet from their property line.

Bob Stanley wanted to clarify that the Beilers would be looking to rent to up to 2 adults and possibly 1 child. In the event that a second child occurred, how would that be handled? Mr. Beiler responded that the unit is very small. In the event of an additional child, he thinks at the time, the tenant would have to move.

Doug Eaby had a question for Ms. Cleary relating to Zoning Ordinance 6.16.08, which states that elder cottages shall be physically removed within 6 months when right of occupancy is terminated.

Based on the decision in 2007, there was no reference of this structure being required to be removed. He questioned which takes precedence? Ms. Cleary shared that she had not gone through the decision from 2007 at great length, but at that time this Board allowed the construction of a building. So that building is more than just an elder cottage, it is a separate detached structure. Doug was chairman of this Board in 2007, and there is no reference of this structure being removed, so this takes precedence over 6.16.08? Ms. Cleary noted that when he says "takes precedence", there is nothing that required this structure to be removed, but theoretically the rental unit could be removed from the building by removing the kitchen or plumbing facilities. Doug wanted to clarify that 6.16.08 doesn't have any bearing on the tonight's hearing. Ms. Cleary responded that the applicant is asking to recognize this structure, which was originally authorized as a garage with an elder cottage. They are asking to change that structure to be a single family detached dwelling. If the Board agrees to this change, which would be 2 principal uses, then the section in reference to an elder cottage becomes irrelevant. They are looking to change what was constructed and permitted as an accessory structure to a second principal structure, and that principal structure would be a single family dwelling with an attached garage on the lower level. Ms. Cleary noted that this Board tonight could say this structure can be repurposed from an elder cottage to become a second principal structure of a single family detached dwelling.

Mr. Newcomer shared that the elder cottage was discontinued as a use when Mrs. Beiler's mother no longer lived there, and so there has been no violation by virtue of continuing to use it for a purpose that was not approved. At least in Mr. Newcomer's interpretation of the zoning, his clients have the right to say they would like to put a use on this property that they believe is permitted, and that is what they are asking to do. It just so happens that the unit is already set up to be exactly what they are asking it be to. But even if it were not outfitted, he believes they could request to allow it to be so outfitted as a single family dwelling. Their position is that it is already there and complies with the requirements and that is why they are asking for the approval. Doug Eaby stated that he tends to agree with Mr. Newcomer, he just wanted to clarify. Mr. Newcomer thanked Mr. Eaby for his support.

The Board had no other questions for the applicant, and at this time, Mr. Newcomer had no other witnesses he wished to call upon.

James Murtha was sworn testify. Mr. Murtha introduced himself and his wife Karen, stating that they live at 73 Lakeview Road. They were mentioned in the minutes of the Zoning Hearing Board on November 14, 2007 as neighbors of the Beilers. They moved in to their house on October 31, 2007. Within 3 days of moving in, the Beilers came to them asking if they could build a garage with an apartment on top for Mrs. Beiler's parents closer to the Murtha's property line than the township's regulations permitted. The Beiler's explained to the Murtha's what they wanted to do for her parents and stated it would only be for Mrs. Beiler's parents and when they were gone, it would go back to being a garage with storage on the top. In an effort to be neighborly, the Murtha's agreed that they would not oppose their request. The Beiler's told the Murtha's they would need to attend the upcoming township meeting to agree. The Murthas attended the meeting in 2007 and agreed to the request to build 20 feet from their property line instead of the standard 50 foot requirement of the township at that time. At that meeting an arrangement was made between the township, the Beilers and the Murthas as spelled out in the minutes of that meeting. The Beilers promised that they would follow the plan. The township made clear the building would not become a rental when Mrs. Beiler's parents were gone, and the Beilers promised that would not happen. The Murthas trusted the Beilers and the township to hold true to that. The Murthas are here tonight because the Beilers want to break that promise and agreement from 2007 and rent out the apartment that is 20 feet from their

property line. The Murtha's oppose this. The Finding of Fact from the December 12, 2007 meeting states the unit will be occupied solely by the wife's parents. The occupants of the elder cottage will be at least 62 years old. The right of occupancy will terminate upon either the death of the persons occupying the elder cottage, the date of the sale of the premise, or the wife's parents move from the premises. In the event that the wife's parents no longer lived in the elder cottage, it would be converted to storage above the garage. It states the applicants must comply with the plans and promises as presented to the Zoning Hearing Board. Mr. Murtha believes this means that nobody else can live in this apartment, and feels this is very clear.

Mr. Murtha worries about being 20 feet from the property line and having a potential couple living there with kids. He worries about the wooded area and the thinning of the woods due to black ants, so they are going to eventually see more. They are already seeing more now than when it was originally constructed. He is concerned with the liability of kids living there and coming into his woods. It appears to him that his willingness to the first variance was a mistake. It says that the Beilers have to be able to prove a hardship. Mr. Murtha is not sure what this hardship is as the building can easily be made into nice storage with a 2 car garage. He feels also by the Murtha's agreeing to allow this structure to be built, they allowed the Beilers to significantly increase their property value because they now have 4 garage spaces and storage or an elder cottage above the garage making it a desirable property. He worries about a potential decline in his property value by having a rental unit so close to his property. Also the 400 feet mentioned by the attorney for the Beiler's driveway runs the depth of the Murtha's property. This would mean more traffic going back to the house. He feels disrespected for allowing this to happen in 2007 and was given a promise at that time. The term "elder cottage" is mentioned in the Finding of Fact 13 times. The word "rental" was mentioned one time and was preceded by "will not become a rental". Mr. Murtha feels this should not be a rental.

Mr. Newcomer asked Mr. Murtha if his opinion about the value of the properties is purely speculation. Mr. Murtha responded that was correct. Mr. Newcomer asked Mr. Murtha if he feels his property is worth more today than before the Beiler's garage was built. Mr. Murtha noted that the market has changed, so everybody's property value has increased. Mr. Newcomer reviewed the property lines and set-back and the agreed upon ordinance in 2007. He asked Mr. Murtha what was located on his back property line, to which Mr. Murtha responded he has a small barn that is used for firewood storage. Mr. Newcomer asked if Mr. Murtha was aware that the zoning ordinance allows for 2 principal uses on the property, to which Mr. Murtha responded he was made aware of that at this evening's meeting.

No members of the Board or audience members had any additional statements to make at this time.

Ms. Cleary shared that if the Board were to grant this request, the applicants would agree to the condition: the landowners would reside on this property, the property cannot be used for 2 rental units. Mr. Beiler agreed. Ms. Cleary noted that the Zoning Hearing Board Decision would record that only 1 rental unit would be allowed and this would be acceptable to the township solicitor. Mr. Newcomer responded that this would be acceptable. Ms. Cleary also noted the condition that the rental until occupancy would be limited to 2 adults and 1 child. Mr. Newcomer responded that this would be acceptable. Ms. Cleary noted that applicant would include the lower level of the premises so the tenants would have complete occupancy of the entire building, this condition is so that the landowner cannot take the parking away. Mr. Beiler responded yes. Ms. Cleary added that the dwelling unit would not be used as a short-term rental with the minimum rental being not less than 30 days. Mr. Beiler responded yes. Ms. Cleary shared that for the members of the Board, the reason

she set 30 days is because that is the period in the Uniform Construction Code which has been adopted by the township, where someone is non-transient. 30 days is also the break point for the hotel tax. Any violation of these conditions would be a violation of the zoning ordinance and is punishable as such, and everything is binding.

Mr. Murtha wanted to clarify that after 30 days a new tenant could move in? Ms. Cleary shared that is what the Uniform Construction Code considers as a non-transient occupancy. Mr. Murtha stated that if the township approves this, won't they be setting precedence that anybody that has a second building on their property, and the property is large enough, they would be able to turn that into a rental. Ms. Cleary noted that the Zoning Hearing Board is not the township, the Board of Supervisors is the township. The Board of Supervisors has enacted Zoning Ordinances, which allows 2 principal uses on a lot. If that provision is unacceptable to citizens, the citizens have the right to request the Supervisors to revise that ordinance. The Zoning Hearing Board is required by law to interpret the ordinance as it is written. They cannot change it, they can grant variances if certain criteria are met. PA Law is bizarre. To a layperson, they may think that a special exception is not a permitted use, but a special exception is a permitted use, but you have to come to the Zoning Hearing Board and meet the standards. Legally under the Municipalities Planning Code a special exception is a permitted use subject to going through a zoning hearing to prove that criteria are met, and that is what the applicant is requesting tonight.

Lynn Swisher had the following question for consideration, if the Board in their deliberations, would they have a commitment to adhere that the junk ordinance be a requirement, and also limiting the renters having trailers for storage beings it is so close to the Murtha's property in an effort to keep things as orderly as possible if the Board chooses to go that route. Ms Cleary clarified that perhaps what Ms. Swisher is suggesting is that if the Board were to grant the application, there would be a condition that there would be no outdoor storage between the garage and the Murtha property line of any type. The tenants would not have more than 2 vehicles which would be garaged. The Board could grant or deny this as part of their conditions. Ms. Cleary asked if the applicant would agree to such a condition. Mr. Newcomer responded that the condition for outdoor storage was acceptable. He had concerns if a tenant left their car out of the garage and it was reported to the township, there is nothing in the ordinance that prohibits cars from being parked out overnight. The condition of making the garage available to the tenant is part of the lease agreement. He is concerned about someone complaining about a car being parked out overnight and this somehow violates the ordinance condition. Ms. Cleary stated that Board does not have to approve any of these condition or the application, but that a condition of no storage units could be an agreed upon condition, as well as overnight parking of a registered and properly licensed vehicle is permitted. Mr. Newcomer stated those would be acceptable conditions.

Peggy Borrelli is confused and needed some clarification. Based on the Findings of Fact from 2007, in the event that the wife's parents are no longer in the elder cottage, this space will be converted to storage above the garage. She believes there are other references to that general idea in other sections. Is this Board going to basically negate that decision by approving a rental unit where it was an elder cottage? She was not aware this could be done. Ms. Cleary stated that the Board has not made any decision. The Board will review the evidence including the prior decision. Ms. Cleary noted that a Zoning Hearing Board is set up so that there are witnesses and testimony, not a colloquy of the Zoning Hearing Board or the solicitor. The Zoning Hearing Board is a judge; the audience in a courtroom does not get to quiz the judge. The Board is comprised of residents and conducts hearings in a informal manner, but at this point we are getting off what a hearing is.

Scott Kulick noted the discussion was open around the ordinance and it ignores Mr. Murtha's decision in which he had an explicit contract with the applicant and with the township where his pro quo was allowing the building closer to the property line when he waived that requirement for a promise of perpetuity that when the elders pass away it would revert back to storage. So how does that contract dispute enter into this discussion? Ms. Cleary stressed again this is not a quiz for the Board. This would be a statement of position for the Board because Mr. Kulick was not sworn or affirmed, so he did not in affect testify. Mr. Kulick was sworn in at this time. Ms. Cleary asked that if everything Mr. Kulick previously stated was true and correct. Mr. Kulick responded it was as he sees it.

Owen Ryan was sworn in and shared his support of what Mr. Kulick said. He has a real concern with what Mr. Murtha has on paper from the township.

There was no further testimony for the Board.

A motion to close the record was made by Tammy Rineer. Doug Eaby questioned if the Board goes by the decision made in 2007. Ms. Cleary asked if he was asking for legal advice, in which case this would be discussed during an Executive Session of the Board. Mr. Eaby wanted to make the point of this decision saying nothing about what was promised. Ms. Cleary noted this was a subject for Executive Session. Mr. Eaby seconded the motion to close the record at this time. The motion was unanimous.

Bob Stanley made the motion to go into Executive Session at 8:05 p.m., seconded by Tammy Rineer. The motion was unanimous. Bob Stanley called the meeting back to order at 8:20 p.m.

Tammy Rineer made a motion that the Board take this matter under advisement and render a decision at the January 4, 2023 meeting, seconded by Doug Eaby. The motion was unanimous.

There being no further comments or items of business, Doug Eaby made the motion to adjourn, seconded by Tammy Rineer. The motion was unanimous.

Respectfully Submitted,

Cheryl L. Todd, Zoning Hearing Board Secretary