

BEFORE THE ZONING HEARING BOARD  
OF THE TOWNSHIP OF COLERAIN

IN RE: :  
 :  
 : Case No. 2023-01  
 :  
 APPLICATION OF BERTHA TURNBULL :  
 :

**DECISION**

**I. FINDINGS OF FACT.**

1. Applicant is Bertha Turnbull, 239 Mount Eden Road, Kirkwood, Pennsylvania 17536 (“Applicant”).
2. The property which is the subject of this application is 239 Mount Eden Road, Colerain Township, Lancaster County, Pennsylvania (the “Property”).
3. Applicant is the record owner of the Property.
4. The Property is located in the Agricultural District as shown on the Official Zoning Map of the Township of Colerain.
5. Notice of the hearing scheduled on the within application was duly advertised and posted in accordance with the provisions of the Pennsylvania Municipalities Planning Code (“MPC”) and the Zoning Ordinance of Colerain Township, 2011, as amended (the “Zoning Ordinance”).
6. A public hearing was held before the Zoning Hearing Board of the Township of Colerain (the “Board”) on the application on January 4, 2023.
7. Applicant appeared personally at the hearing.
8. The Board recognized Daniel Collins and Andrea Collins, 242 Mount Eden Road, Kirkwood, Pennsylvania, as parties to the hearing.
9. The Property is a lot containing approximately five acres.
10. The Property is developed with a single family detached dwelling and a second detached structure located approximately 194 feet from Mount Eden Road (the “Structure”).
11. When Applicant purchased the Property, the second story of the Structure was finished and the first floor was roughed out.
12. Applicant installed a bathroom in the first floor of the Structure without obtaining a permit from the Township.

13. Applicant has worked with the Township and the Sewage Enforcement Officer (“SEO”) to address the violation of the Township’s ordinances relating to sewage.

14. The SEO has perked three sites on the Property, an initial and replacement for the Structure and a replacement for the dwelling.

15. Applicant desires to complete renovations on the Structure so that it will be a second dwelling unit including living area and a full bathroom on the first floor and sleeping area on the second floor.

16. The first floor of the Structure presently has a kitchen area with a sink and refrigerator and Applicant may include a stove in the future.

17. Applicant desires to use the Structure for family and guests and does not intend to rent the Structure either as a dwelling unit or as a short-term rental.

18. Applicant has retained an engineer and will proceed to obtain all other necessary approvals if the Board grants the application.

## **II. CONCLUSIONS OF LAW**

1. An agricultural single family dwelling is permitted as of right within the Agricultural District. Zoning Ordinance §5.01.04.A(2).

2. Uses similar to those permitted as of right are authorized by special exception in the Agricultural District. Zoning Ordinance §5.01.05.B(10)

3. Multiple principal uses may be located on a lot provided that all lot and yard requirements, standards, and other requirements of the Zoning Ordinance are met as if each principal structure were located on a separate lot. Zoning Ordinance §4.05.02.

4. An applicant for a special exception has the burden of persuasion as to the specific and objective criteria and standards of the zoning ordinance. *Vineyard Oil and Gas Company. v. North East Township Zoning Hearing Board*, 215 A.3d 77 (Pa. Cmwlth. 2019); *Bray v. Zoning Board of Adjustment of the City of Philadelphia*, 48 Pa. Commonwealth Ct. 523, 410 A.2d 909 (1980).

5. Conditions must be attached to the granting of this special in order to preserve and protect the surrounding neighborhood and implement the purposes of the MPC and the Zoning Ordinance.

## **III. ADJUDICATION**

Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of Colerain hereby grants the application of Bertha Turnbull for special exceptions pursuant to Zoning Ordinance Sections 4.05.02 and 5.01.05.B(10) to establish a single family detached

dwelling for use by family and friends of the landowners on the property identified as 239 Mount Eden Road, Kirkwood. These special exceptions are subject to the following conditions which the Board deems necessary to protect the surrounding neighborhood and promote the purposes of the Zoning Ordinance and the MPC.

- 1. Occupancy of the Structure shall be limited to family and friends of the occupants of the principal dwelling.
- 2. The Structure cannot be used as a short-term rental, Airbnb, or vacation home.
- 3. Applicant shall, if desired by the Township, record an agreement setting forth the limitations on the occupancy of the Structure.
- 4. Applicant shall obtain all other permits and approvals for the conversion of the Structure to a dwelling.
- 5. Applicant shall at all times comply with and adhere to the representations contained in her application and the evidence presented to the Board at the hearing on January 4, 2023.
- 6. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies in the MPC.
- 7. The foregoing conditions shall be binding upon the Applicant, her personal representatives, heirs and assigns.

ZONING HEARING BOARD OF THE  
TOWNSHIP OF COLERAIN

\_\_\_\_\_  
Bob Stanley, Chairman

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Tammy Rineer, Vice Chairman

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Douglas Eaby

Dated and filed February 1, 2023, after hearing held on January 4, 2023.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to February 2, 2023.

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Cheryl L. Lento