

BEFORE THE ZONING HEARING BOARD  
OF THE TOWNSHIP OF COLERAIN

IN RE:

Case No. 2023-02

APPLICATION OF RUTH K. STOLTZFUS

**DECISION**

**I. FINDINGS OF FACT.**

1. Applicant is Ruth K. Stoltzfus, 32 Lakeview Road, Kirkwood, Pennsylvania 17536 ("Applicant").

2. The property which is the subject of this application is 32 Lakeview Road, Kirkwood, Colerain Township, Lancaster County, Pennsylvania (the "Property").

3. Applicant is the daughter of Jeff B. Stoltzfus and Linda B. Stoltzfus, record owners of the Property ("Landowners"), who also reside on 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 February 1, 2023.

7. Applicant appeared personally at the hearing and was represented by her attorney James H. Thomas, Esquire.

8. The Property contains approximately 134 acres located on the east and west sides of Lakeview Road. Exhibit A-6.

9. The Property presently houses a dairy operation and hay farming as well as a dual family farmhouse.

10. A tenant operates the dairy and crop operation.

11. The Property is a farm preserved by Lancaster Farmland Trust ("LFT"). Exhibit A-8.

12. Applicant commenced operation of Lakeview Gift Shop (the "Business") in approximately 2012 in the dwelling.

13. The Business employs special needs adults, now all members of the Amish community,

to assemble small gifts such as beaded keychains.

14. The Business has gotten larger and has moved from a portion of the dwelling into a shed on the Property.

15. Applicant did not realize a special exception was required for the Business until she submitted an application to construct a building to house the Business and to serve as storage for the occupants of the dwelling.

16. Applicant's proposed Building will be located as shown on Exhibit A-6 and will contain approximately 4,200 square feet as shown on Exhibit A-7.

17. The upper level of the proposed building will be used by the Business, and the lower level of the Building will be used for accessory residential or farm storage.

18. The Business is wholesale only.

19. The Business sells items through shows and mail order and has a catalog.

20. The Business ships goods via UPS or the United States Postal Service.

21. Goods to be shipped are generally taken to the UPS Store or the Post Office by the driver who brings employees to and from the Property.

22. The Business receives deliveries from the standard UPS or Fed Ex vehicle two to three times per week.

23. The Business may receive deliveries from larger vehicles two to three times per month.

24. The Business has 13 employees now, all of whom are disabled in some manner.

25. Currently the Business operates Mondays, Tuesdays, Thursdays, and Fridays from 7:30 a.m. to 3:30 p.m.

26. The 13 employees do not all work on all four days.

27. The current maximum number of employees per day on the Property is eight.

28. A driver brings employees to the Property and takes employees home.

29. All of the employees have completed the age for graduation in Amish schooling and are fourteen years or older.

30. LFT has indicated that the Business complies with its preservation easement if conditions set forth in Exhibit A-8 are met.

31. The Property is preferentially assessed, and the Property may continue its preferential assessment if the Business is conducted as set forth in Exhibit A-11.

32. Applicant has obtained a sewage permit for the proposed Building, and the Township Sewage Enforcement Officer has provided a letter stating that the system has been designed to accommodate sewage flows from the existing double family dwelling and the Business. Exhibit A-9.

33. No person appeared in opposition to the application.

## **II. CONCLUSIONS OF LAW**

1. Cottage industries are authorized by special exception within the Agricultural District subject to the criteria set forth in Zoning Ordinance Section 5.01.05.A(4).

2. Commonwealth Court has repeatedly held that “the law is well settled that a special exception is neither special nor an exception, but a use expressly contemplated that evidences a legislative decision that the particular type of use is consistent with the zoning plan and presumptively consistent with the health, safety and welfare of the community.” *MarkWest Liberty Midstream and Resources, LLC v. Cecil Township Zoning Hearing Board*, 184 A.3d 1048, 1059 (Pa. Cmwlth. 2018) (citations omitted).

3. “A special exception is a use that is expressly permitted in a zoning district so long as the conditions detailed in the ordinance are met. In that regard, the landowner bears the burden of presenting evidence and persuading the zoning hearing board that the proposed use satisfies the objective requirements in the zoning ordinance for a special exception.” *Czachowski v. Zoning Board of Adjustment of the City of Pittsburgh*, 271 A.3d 973, 979 (Pa. Cmwlth. 2022) (citations omitted).

4. Applicant has presented evidence sufficient to demonstrate compliance with the objective criteria of Section 5.01.05.A(4) of the Zoning Ordinance and with the general conditions in Section 1503.01 of the Zoning Ordinance.

5. Conditions must be attached to the granting of this special exception 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 Ruth K. Stoltzfus for a special exception pursuant to Section 5.01.05.A(4) of the Zoning Ordinance to establish a cottage industry as described in the testimony on the property at 32 Lakeview Road, Kirkwood, Pennsylvania. This special exception is 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. Applicant shall comply with all conditions imposed by Lancaster Farmland Trust set forth in Exhibit A-8.

2. Applicant shall limit hours of operation of the Business to Mondays through Fridays from 7:30 a.m. to 3:30 p.m.

3. Applicant shall not install a sign for the Business.

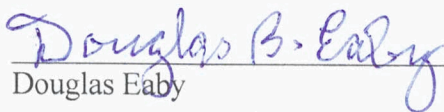


4. Applicant shall not have any retail sales on the Property.
5. Applicant shall not have more than ten employees of the Business on the Property at any time.
6. All employees of the Business shall be at least fourteen years of age.
7. No employee of the Business shall drive to the Property.
8. All employees of the Business shall be brought to the Property by a driver and be dropped off and picked up.
9. 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 February 1, 2023, including, but not limited to, the matters outlined in the Findings of Fact.
10. 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.
11. The foregoing conditions shall be binding upon the Applicant, the Landowners, and their respective personal representatives, heirs, successors and assigns.
12. Applicant shall obtain any other necessary permits and approvals required by Township Ordinances.

ZONING HEARING BOARD OF THE  
TOWNSHIP OF COLERAIN



Tammy Rineer, Vice Chairman



Douglas Eaby



Adrienne Bonser, Alternate

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

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

