

BEFORE THE ZONING HEARING BOARD  
OF THE TOWNSHIP OF COLERAIN

IN RE: :  
 :  
APPLICATION OF PAUL RANCK AND : Case No. 2022-11  
TWILA RANCK :  
 :

DECISION

**I. FINDINGS OF FACT.**

1. Applicants are Paul Ranck and Twila Ranck, 5001 West Lincoln Highway, Parkesburg, Pennsylvania 19365 (“Applicants”).

2. The property which is the subject of this application is 365 Sproul Road, Kirkwood, Colerain Township, Lancaster County, Pennsylvania (the “Property”).

3. Applicants are record owners of the Property.

4. The Property is located in the Residential 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 Twila Ranck appeared personally at the hearing, and Applicants were represented by their attorney Melvin E. Newcomer, Esquire.

8. The following persons appeared and were recognized as parties to the hearing:

- A. Daryl Brackin and Theresa Brackin, 363 Sproul Road, Kirkwood, Pennsylvania.
- B. Tom Bulthaupt and Karen Bulthaupt, 30 Ambler Lane, Kirkwood, Pennsylvania,
- C. Richard Clark and Babsi Clark, 368 Sproul Road, Kirkwood, Pennsylvania.
- D. Richard Foulk and Sylvia Foulk, 423 Sproul Road, Kirkwood, Pennsylvania.
- E. Jeromie Hanna, 343 Cooper Drive, Kirkwood, Pennsylvania.
- F. Rick Jilek and Charlene Jilek, 389 Sproul Road, Kirkwood, Pennsylvania.
- G. Steve Mobley and Dawn Mobley, 367 Sproul Road, Kirkwood, Pennsylvania.
- H. Kevin Sams and Dolores Sams, 357 Sproul Road, Kirkwood, Pennsylvania.
- I. Dale Smith and Linda Smith, 35 Ambler Lane, Kirkwood, Pennsylvania.

9. The Property is a lot containing approximately two acres which has been developed with a single family detached dwelling (the "Dwelling").

10. Applicants purchased the Property as an undeveloped building lot by a deed dated August 16, 2021. Exhibit A-1.

11. The application indicates that there is a "temporary dwelling" on the Property, but the Dwelling is the permanent dwelling which has been issued a temporary occupancy certificate because the final seeding is not completed.

12. Applicants have made an application to establish a home occupation of Applicant Twila Ranck's tutoring services (the "Proposed Occupation").

13. Applicants' application stated that the Proposed Occupation was "counseling services", which was the designation written by the Zoning Officer.

14. The Proposed Occupation would consist of academic tutoring, principally in reading and mathematics.

15. The Proposed Occupation would typically serve children referred by teachers or by word of mouth.

16. Applicant Twila Ranck presently operates a tutoring operation in Parkesburg and intends to continue the Parkesburg location for the foreseeable future.

17. Although the Proposed Occupation will be initially only one day per week, Applicants desire the flexibility to conduct the Proposed Occupation throughout the week.

18. Approximately 85 percent of the persons being tutored are school-age children of the Amish community.

19. The Proposed Occupation will provide tutoring services generally between 9:00 a.m. and 8:00 p.m.

20. All tutoring appointments are scheduled and last between one and two hours.

21. The Proposed Occupation will tutor only one student at a time.

22. When the person being tutored is a minor, the parents may attend the tutoring session.

23. The Proposed Occupation will be conducted by Applicant Twila Ranck without any employees, although her husband, Applicant Paul Ranck, may provide assistance.

24. The Proposed Occupation will not provide counseling or psychological diagnoses for treatment.

25. The persons served by the Proposed Occupation will not be persons referred by court order or through the justice system.

26. The Proposed Occupation will be conducted in an area of the room shown in the

photographs presented as Exhibit A-2 which will contain 385 square feet.

27. The Dwelling has a ground floor area of 960 square feet.

28. There are five off-street parking spaces on the Property.

29. Persons recognized as parties opposed the application generally raising concerns regarding the listing of the Proposed Occupation as “counseling” and the types of persons who would come to the Property; the traffic to be generated by persons coming to the Property; and their characterization of the area as a quiet residential neighborhood which would be disrupted by the Proposed Occupation.

## **II. DISCUSSION.**

The Board is a governmental body created under the MPC and the Zoning Ordinance with very limited jurisdiction as set forth in Section 909.1(a) of the MPC. The Board is granted the power to hear applications for special exceptions and for variances, and the Board must follow the requirements of the Zoning Ordinance, the MPC, and decisions of the courts in considering such applications.

The Board does not have the power to, and cannot, consider whether a use should or should not be allowed in a zoning district. The MPC grants to the governing body – the Board of Supervisors – the power to enact and amend the Zoning Ordinance. The Board of Supervisors made the determination of the uses to allow in the Residential District and the regulations for such uses when it enacted the Zoning Ordinance.

Commonwealth Court has explicitly stated that “zoning hearing boards are not legislative bodies and that the function of a zoning hearing board is to enforce a zoning ordinance rather than impose a preferred version of how the zoning hearing board desires the zoning ordinance to be written.” *Riverfront Development Group, LLC v. City of Harrisburg Zoning Hearing Board*, 109 A.3d 358, 365 (Pa. Cmwlth. 2015). See also *Balady Farms, LLC v. Paradise Township Zoning Hearing Board*, 148 A.3d 496 (Pa. Cmwlth. 2016). Commonwealth Court has long held that a zoning hearing board which bases a decision upon the social desirability of a project or the “wholesome nature of the [developer’s] project to fill an undoubted need for housing for the elderly” is in error. *Lipari v. Zoning Hearing Board of the City of Easton*, 516 A.2d 110, 114 (Pa. Cmwlth. 1986). More recently Commonwealth Court agreed that a zoning hearing board properly denied an application for a use variance to develop apartments for veterans on land owned by the Diocese of Scranton because even though the use was a desirable one the applicant did not meet the standards for the granting of a variance. *Catholic Social Services Housing Corporation v. Zoning Hearing*



*Board of Edwardsville Borough*, 18 A.3d 404 (Pa. Cmwlth. 2011).

Commonwealth Court reaffirmed its position concerning the power of zoning hearing boards when it reversed a decision granting variances stating:

While the Board states that the façades of the Existing Buildings are part of the area's history and character and that the Existing Buildings should be preserved, (F.F. No. 6, C.L. 8), and while [the Urban Redevelopment Authority's] goal to preserve these buildings may be laudable, this is not the type of decision the Board is empowered to make.

*Demko v. City of Pittsburgh Zoning Board of Adjustment*, 155 A.3d 1163, 1171 (Pa. Cmwlth. 2017).

The Board has considered this application in accordance with these holdings. Its consideration of the application and its decision are based on land use law, not on the identity of the Applicants or whether the Proposed Occupation is desirable to the Applicants or not desired by the community at large.

### **III. CONCLUSIONS OF LAW**

1. Customary home occupations are authorized by special exception within the Residential District subject to the requirements of Zoning Ordinance Section 6.14. Zoning Ordinance §5.03.03.E.

2. The Zoning Ordinance defines the term “home occupation” as “any activity conducted entirely within a dwelling or accessory structure which is subordinate to the residential use of the dwelling.” Zoning Ordinance §3.02.

3. A home occupation must be incidental to the residential use and can be carried on by the residents and not more than two persons who are not residents. Zoning Ordinance §6.14.02.

4. A home occupation is limited to 30 percent of the area of the ground floor of the principal dwelling or 1,000 square feet, whichever is less. Zoning Ordinance Zoning Ordinance §6.14.03.

5. At least three off-street parking spaces shall be provided for a home occupation in addition to those required for the dwelling. Zoning Ordinance §6.14.05.

6. A home occupation shall be conducted in a manner that does not cause injury, annoyance, or disturbance to the surrounding properties and their occupants. Zoning Ordinance §6.14.04.

7. 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.

the last tutoring subject leaving the Property no later than 8:15 p.m.

5. Applicant shall not perform any tutoring services on Sundays.

6. Any change in the services provided by the Proposed Occupation shall require further approval from the Board.

7. The Proposed Occupation shall be limited to one room, and the area shall not exceed 285 square feet.

8. Applicants shall at all times maintain five off-street parking spaces on the Property.

9. Applicants shall at all times comply with and adhere to the representations contained in their application and the evidence presented to the Board at the hearing on January 4, 2023.

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 Applicants, their personal representatives, heirs, successors and assigns.

12. Applicants shall obtain any other necessary permits and approvals required by Township Ordinances.

ZONING HEARING BOARD OF THE  
TOWNSHIP OF COLERAIN

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

\_\_\_\_\_  
Tammy Rincer, Vice Chairman

\_\_\_\_\_  
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. Todd