

IN THE MATTER OF:

SCOTT & JULIA DEPUTY

**APPLICATION FOR CONDITIONAL USE
RELIEF**

BOARD OF SUPERVISORS

MONROE TOWNSHIP

**CUMBERLAND COUNTY,
PENNSYLVANIA**

WRITTEN DECISION

EXHIBITS

- B-1 Application for Conditional Use for Scott & Julia Deputy with typewritten narrative, an aerial photograph and plan dated 9/12/22.
- B-2 Certificate of Service of Public Notice and Written Notice.
- B-3 Letter of Transmittal of Application to Monroe Township Planning Commission dated 9/22/22.
- B-4 Letter of Transmittal of Application to Cumberland County Planning Commission dated 9/22/22.
- B-5 Minutes from the October 5, 2022 regular meeting of the Monroe Township Planning Commission.
- T-1 Township Engineer Comments.

FINDINGS OF FACT

1. Scott & Julia Deputy (collectively “Applicant”) own property located at 415 Dunkleberger Road, Monroe Township, Cumberland County, Pennsylvania, identified as Tax Parcel No: 22-11-0282-078 (hereinafter the “property”).
2. Applicant requests relief in the form of Conditional Use of the Monroe Township Zoning Ordinance of September 17, 1998, last amended, May 14, 2015 (hereinafter “zoning ordinance”).
3. Applicant’s request is to have an AirBnB/short term rental located on the property.
4. The property is located in the Agricultural zoning district of Monroe Township, Cumberland County, Pennsylvania.

5. Public Notice of the hearing in this matter was published in the Carlisle Sentinel, a newspaper of general circulation in Monroe Township on October 19, 2022 and October 26, 2022.
6. The Written Notice of the hearing was forwarded to the following individuals and entities on October 5, 2022: Applicants, Monroe Township Planning Commission, Director of the Cumberland County Planning Commission, and 2 neighboring residents.
7. The Municipal Building and the Township's website were posted with the Notice of Hearing on October 6, 2022. The property was posted on October 6, 2022.
8. No objections as to the method and timing of Notice and advertising were raised.
9. No objections as to any of the exhibits were raised.
10. On November 3, 2022 at approximately 6:00 p.m., a hearing was conducted on the matter.

CONCLUSIONS OF LAW

1. The Monroe Township Board of Supervisors has jurisdiction to hear the above-captioned appeal and application pursuant to Article 7 Section 704.1 of the Monroe Township Zoning Ordinance and Section 603(c)(2) of the Municipalities Planning Code.
2. Proper Notice of the hearing was given to the public and to all interested parties.
3. Exhibits B-1 through B-5 and T-1 were properly admitted into evidence.
4. Applicant has met their burden in establishing the requirements for an approval of Conditional Use in accordance with the conditions as set forth in the attached decision and order.

DISCUSSION

Applicant, Scott & Julia Deputy, submitted an application for Conditional Use relief on September 12, 2022. The subject of the application is property located at 415 Dunkleberger Road, Mechanicsburg, PA 17055. The property is located on Dunkelberger Road between York Road and Old Stonehouse Road S. within Monroe Township, Cumberland County, Pennsylvania.

Applicant requests Conditional Use approval to have an AirBnB/short term rental on the property.

The proposed short term rental is not defined within the Monroe Township Zoning Ordinance. Applicant is pursuing a Conditional Use approval as a "Use Not Provided For." Conditional Use approval as a "Use Not Provided For" is governed by Section 107 of the Zoning Ordinance.

Section 107 of the Zoning Ordinance states as follows:

Whenever, under this Ordinance, a use is neither specifically permitted nor denied, and an application is made by an applicant to the Zoning Officer for such use, the Zoning Officer shall refer the application to the Board of Supervisors to hear and decide such request as a conditional use. The Board of Supervisors shall have the authority to permit the use or deny the use in accordance with the standards governing conditional use applications. The use may be permitted if it is similar to and compatible with the permitted uses in the zone in which the subject property is located, is not permitted in any other zone under the terms of this Ordinance, and in no way is in conflict with the general purposes and intent of this Ordinance. The burden of proof shall be upon the applicant to demonstrate that the proposed use meets the foregoing criteria and would not be detrimental to the public health, safety and welfare of the neighborhood. For the purposes of this section, a specifically denied use shall be considered a use that is not a permitted use in the zone in question, but is a permitted use in another zoning district.

A zoning ordinance classifies uses in a given zoning district as “permitted uses as of right” or “prohibited uses.” At its discretion, the municipality may classify certain uses as permitted by special exception, or as conditional uses. 53 P.S. §10603(c)(1) [pertaining to special exception] and 53 P.S. §10603(c)(2) [pertaining to conditional use]. In classifying a use as a special exception or conditional use, the municipal governing board makes a legislative decision that the use is permissible and legitimate use of property within a given zoning district and not adverse to the public interest per se. Bailey v. Upper Southampton Twp., 690 A.2d 1324 (Pa. Cmwlth. 1997); Perkasie v. Moulton Builders, Inc., 850 A.2d 778 (Pa. Cmwlth. 2004).

A zoning ordinance classifying uses as conditional uses properly must set forth in the zoning ordinance the standards for such cases. These standards may be objective or subjective in character. An applicant for a conditional use is required to demonstrate compliance with the objective criteria of the zoning ordinance. Bray v. Zoning Bd. Of Adjustment, 410 A.2d 909 (Pa. Cmwlth. 1980).

Objective criteria include the following: (1) the kind of use (i.e. the threshold definition of what is authorized as a conditional use); (2) specific requirements or standards applicable to a particular conditional use (e.g., special setbacks); and (3) specific requirements generally applicable to such a use (e.g., parking requirements). Bray, 410 A.2d at 911.

Once the applicant has provided such information, and the information demonstrates compliance with the objective requirements of the zoning ordinance, the applicant is entitled to approval because the use is presumed to be consistent with the public health, safety, and welfare. Perkasie v. Moulton Builders, Inc., 850 A.2d 778 (Pa. Cmwlth. 2004); Bailey v. Upper Southampton Twp., 690 A.2d 1324 (Pa. Cmwlth. 1997).

The governing body may disapprove the application only if parties that object to the proposal demonstrate with sufficiently particularized evidence. Speculative or generalized evidence is not sufficient to deny an application (i) that it does not meet the subjective criteria of the zoning ordinance or (ii) that there is a high degree of probability that the use would have effects greater than those normally generated by that type of use and those effects will pose a substantial threat to the health and

safety of the community. See *Marquise Inv., Inc. v. City of Pittsburgh*, 11 A.3d 607 (Pa. Cmwlth. 2010); *Brickstone*, 789 A.2d at 333, 341-342.

Article 7 Section 704.1 of the Monroe Township Zoning Ordinance requires that a conditional use application must show the following:

1. Ground floor plans and elevations of proposed structures. This requirement shall not apply for proposed single family dwellings.
2. Names and addresses of adjoining property owners including properties directly across a public right-of-way.
3. A scaled drawing (site plan) of the site with sufficient detail and accuracy to demonstrate compliance with all applicable provisions of this Ordinance.
4. A written description of the proposed use in sufficient detail to demonstrate compliance with all applicable provisions of this Ordinance.

Further, Article 7 Section 704.2 of the Monroe Township Zoning Ordinance sets forth the General Criteria that each Applicant for a Conditional Use Relief must demonstrate compliance:

1. The proposed use shall be consistent with the purpose and intent of the Zoning Ordinance;
2. The proposed use shall not detract from the use and enjoyment of adjoining or nearby properties;
3. The proposed use will not affect a change in the character of the subject property's neighborhood;
4. Adequate public facilities are available to serve the proposed use (e.g. schools, fire, police and ambulance protection, sewer, water, and other utilities, vehicular access, etc.);
5. The proposed use complies with the Monroe Township Floodplain Ordinance;
6. The proposed use shall comply with those criteria specifically listed in Article 4 of this Ordinance. In addition, the proposed use must comply with all other applicable regulations of this Ordinance; and,
7. The proposed use will not substantially impair the integrity of the Township's Comprehensive Plan.

Applicant proposes an AirBnB/short term rental for the lower level of a bank barn located on their property at 415 Dunkleberger Road, Monroe Township, Mechanicsburg, PA 17055. The space has been renovated, converting two small offices by furnishing them with a queen bed in one and two twin beds in the other. There is a bathroom and no plans of providing a full kitchen to the unit. The barn has been equipped with a geothermal system that services the barn's heating and cooling needs.

There is ample parking for 10-plus vehicles and the intention is that the unit will be occupied by one guest/party with maximum occupancy of six and that there could be as many as 10 bookings per month.

Applicant indicates that he and his wife and daughter will be available as AirBnB hosts to respond to all requests and needs of the short term tenants.

The Board of Supervisors believes that the proposed use will be consistent with the character of the neighborhood and will not detract from the use and enjoyment of adjoining or nearby properties. In addition, the Board of Supervisors believes that the Applicant's proposed use will not be detrimental to the public health, safety, and welfare of the Township's residents and will not substantially impair the integrity of the Township's Comprehensive Plan.

The Board of Supervisors grants the Applicant's requested relief subject to seven conditions outlined by the Township Engineer, to which the Applicant consents. The Conditions are as follows:

1. Applicant shall paint off-street parking spaces noted in the application in accordance with off-street parking requirements.
2. The property owner shall reside on the subject property so that a local responsible party is always on site during evening hours.
3. Proposed change of use will require a Zoning Permit and Uniform Construction Code Permit for a change in use as short term rental.
4. Any requirements established by the Sewage Enforcement Office for the proposed use shall be addressed.
5. A full kitchen with a range shall be prohibited in the short term rental unit.
6. Applicant shall provide proof of insurance for the proposed use.
7. Maximum occupancy shall be six people.

DECISION:

And now, this 2nd day of December, 2022, in consideration of Applicant's request and after a public hearing, the Applicant's request for Conditional Use is granted, subject to the following conditions:

1. Applicant shall paint off-street parking spaces noted in the application in accordance with off-street parking requirements.
2. The property owner shall reside on the subject property so that a local responsible party is always on site during evening hours.
3. Proposed change of use will require a Zoning Permit and Uniform Construction Code Permit for a change in use as short term rental.

4. Any requirements established by the Sewage Enforcement Office for the proposed use shall be addressed.
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Monroe Township Board of Supervisors

18 Philip Kehoe by Muel J. R.
Philip Kehoe, Chairman

(S)AW castle III by Muel J. R.
A.W. Castle, III, Supervisor

Dr Philip Paetzold by Muel J. R.
Philip Paetzold, Supervisor

(Written Decision of Findings issued this 2nd day of December, 2022)