

WRITTEN DECISION

EXHIBITS

- T-1 Letter of September 5, 2018 of Gregory Rogalski to Monroe Township Board of Supervisors
- B-1 Application of Edward Guido dated July 23, 2018 for 1216 Brandt Road
- B-2 Site Plan of 1216 Brandt Road
- B-3 Minutes of September 5, 2018 Planning Commission Meeting
- B-4 Certificate of Service of Public Notice and Written Notice
- B-5 Sign-In Sheet for September 12, 2018 Conditional Use Public Hearing
- A-1 Typed description of project by applicant

FINDINGS OF FACT

1. Applicant, Edward Guido and his wife Sandy Guido, are the owners of the property located at 1216 Brandt Road, Mechanicsburg, Monroe Township, Cumberland County, Pennsylvania, tax parcel number 22-11-0280-105. (hereinafter the "property" or the "premises").
2. Applicant requested relief in the form of a Conditional Use Approval from Article II Section 202 Subsection 5 Page 41 of the Monroe Township Zoning Ordinance of September 17, 1998, last amended May 14, 2015 (hereinafter the "Monroe Township Zoning Ordinance").
3. Applicant is requesting conditional use relief in order to subdivide the property resulting in a flag lot.
4. The property is located in the Agricultural (A) zoning district of Monroe Township, Cumberland County and is composed of 17 acres.
5. Public Notice of the hearing in this matter was published in the Carlisle Sentinel, a newspaper of general circulation in Monroe Township, on August 22, 2018 and August 31, 2018.

6. Written notice of the time and place of the hearing and the particular nature of the matter to be considered at the hearing was given by first class mail, postage prepaid at Camp Hill, Pennsylvania on August 17, 2018, to the following: Mark Swartz, Monroe Township Planning Commission Member; Sheldon Brymnesser, Monroe Township Planning Commission Member; Sharon Nelson, Monroe Township Planning Commission Member; Dave DeNicholas, Monroe Township Planning Commission Member; Carl Kuhl, Monroe Township Planning Commission Member; Kirk Stoner, Director of Planning, Cumberland County; Greg Rogalski, PE, Monroe Township Engineer; and Edward E. Guido, Applicant. Also on August 17, 2018, written notice was given by first class mail, postage prepaid at Camp Hill, Pennsylvania, to the following neighboring property owners: Judy Guido; Gregory and Kathy Stump; John and Diane Stamy; James and Patricia Snyder; Lester and Rhoda Rohrer; Daniel and Karen Gierhart; and Stephen and Kathy Catalano.
7. Further, written notice of the time and place of the hearing and the particular nature of the matter to be considered at the hearing was given by electronic mail, on August 17, 2018, to Karen Lowery, Monroe Township Administrative Assistant.
8. Written notice of the time and place of the hearing and the particular nature of the matter to be considered at the hearing was posted at the Monroe Township Municipal Building and on Monroe Township's website on August 17, 2018.

Further, written notice of the time and place of the hearing and the particular nature of the matter to be considered at the hearing was posted upon the property in question on August 17, 2018.
9. No objections as to the method and timing of Notice and advertising were raised.
10. No objections as to any of the Board's or Applicant's exhibits were raised.
11. On September 12, 2018 at approximately 7:00 p.m., a hearing was conducted on the matter. The meeting concerning this matter was held at the Monroe Township Municipal Building.

CONCLUSIONS OF LAW

1. The Monroe Township Board of Supervisors has jurisdiction to hear the above-captioned Application for Conditional Use pursuant to Section 704.1 of the Monroe Township Zoning Ordinance.
2. Proper Notice of the hearing was given to the public and to all interested parties.

3. Exhibits T-1, Exhibits B-1 through B-5 and Exhibit A-1 were properly admitted into evidence
4. Applicant met his burden in establishing the requirements of a conditional use for the creation of a flag lot in accordance with the application and plans.

DISCUSSION

Applicant Edward Guido applied for conditional use for the purpose of allowing flag lots which will result from a soon to be submitted subdivision plan.

The property in question is a 17-acre lot located at 1216 Brandt Road, Mechanicsburg, Monroe Township, Pennsylvania. This property is located in the Agricultural Zoning District of Monroe Township.

Section 201.4.6 of the Monroe Township Zoning Ordinance provides that in the Agricultural Zoning District, flag lots are provided for as a conditional use.

The Monroe Township Zoning Ordinance sets forth the following criteria for a conditional use:

Section 704 Conditional Uses

704.1. Filing of Conditional Use - For any use permitted by conditional use, a conditional use must be obtained from the Board of Supervisors. In addition to the information required on the zoning permit application, the conditional use application must show: **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; and, **4.** A written description of the proposed use in sufficient detail to demonstrate compliance with all applicable provisions of this Ordinance;

704.2. General Criteria - Each applicant must demonstrate compliance with the following:

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;
7. The proposed use will not substantially impair the integrity of the Township's Comprehensive Plan.

704.3. Conditions - The Board of Supervisors in approving conditional use applications, may attach conditions considered necessary to protect the public welfare and the purposes listed above, including conditions which are more restrictive than those established for other uses in the same zone. These conditions shall be enforceable by the Zoning Officer and failure to comply with such conditions shall constitute a violation of this Ordinance and be subject to the penalties described in this Article;

Section 423 Flag Lot Residences. Within the (C) and (A) Zones, flag lots are permitted by conditional use, subject to the criteria set forth therein:

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) [special exception], (2) [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 a 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 uses. 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: (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, e.g. *Marquise Inv., Inc. v. City of Pittsburgh*, 11 A.3d 607 (Pa. Cmwlth. 2010); *Brickstone*, 789 A.2d at 333, 341-342.

Applicant presented testimony with respect to the overall plan and reason for the subdivision which will lead to the creation of the flag lot.

Based upon the testimony and exhibits, the Board of Supervisors finds that Applicant has met the requirements as set forth in Section 704.1 (filing requirements) of the Zoning Ordinance.

With respect to Section 423 (criteria specific to flag lots) of the Zoning Ordinance, the Board finds that applicant has met the specific criteria for a creation of a flag lot.

In accordance with the above, the Monroe Township Board of Supervisors issues the attached decision:

DECISION:

And Now, this 12th day of October 2018, in consideration of Applicant's request, after a public hearing, and in reliance of Applicant's representations, the testimony and the exhibits presented, the Applicant's request for conditional use relief relative to the creation of flag lots in accordance with his plan is hereby granted with the following conditions:

1. Joint use driveways shall have a minimum cartway width of 16'. Previous Land Development Plan approval allowed a 12' paved driveway with 3' stone shoulder on each side.
2. A cross access easement shall be required to insure common use of, access to, and maintenance of joint use driveways. Provide joint use easement agreement language for Solicitor review and record with the approved subdivision plan. (§423.2.4).

Monroe Township Board of Supervisors


William Castle, Chairman


Philip Kehoe, Vice Chairman


Carl Kuhl, Supervisor

(Written Decision of Findings issued this 12th day of October 2018)