

IN THE MATTER OF:

**FIVE WAY PARTNERS, L.P. and HOME
FARM, LLC
APPLICATION FOR CONDITIONAL USE
RELIEF**

BOARD OF SUPERVISORS

**MONROE TOWNSHIP
CUMBERLAND COUNTY,
PENNSYLVANIA**

WRITTEN DECISION

EXHIBITS

- B-1 Letter from James M. Strong, Esquire dated March 1, 2021 addressed to Monroe Township Board of Supervisors enclosing Application for Conditional Use.
- B-2 Application for Conditional use dated March 1, 2021.
- B-3 Conditional Use Application Narrative dated March 1, 2021.
- B-4 Conditional Use Plan prepared by RETEW Associates.
- B-5 Certificate of Service of Public Notice and Written Notice
- B-6 Township Engineer Comments
- B-7 Planning Commission Recommendations
- A-1 Conditional Use Plan

FINDINGS OF FACT

1. Five Way Partners, L.P. and Home Farm, LLC, (collectively “Applicant”) own the following adjacent properties: 995 Boiling Springs Road (Tax Parcel ID No. 22-10-0642-025), 1024 Boiling Springs Road (Tax Parcel ID No. 22-10-0642-029) and 144 South Locust Point Road (Tax Parcel ID No. 22-10-0642-012A), all located within Monroe Township, Cumberland County, Pennsylvania. (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 the “ordinance”).
3. Applicant’s request is for the purpose of subdividing the three properties and create a new flag lot for a proposed private family cemetery.

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 March 23, 2021 and March 30, 2021.
6. The Written Notice of the hearing was forwarded to the following individuals and entities on March 23, 2021; Monroe Township Planning Commission; Applicant; Director of Planning, Cumberland County. On March 23, 2021, written notice was given by first class mail to the 13 neighboring property owners as set forth in Exhibit B-1.
7. The Municipal Building and the Township's website were posted with the Notice of Hearing on March 22, 2021. The property was posted on March 23, 2021.
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 April 8, 2021 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.
2. Proper Notice of the hearing was given to the public and to all interested parties.
3. Exhibits A-1 and B-1 through B-7 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, Five Way Partners, L.P. and Home Farm, LLC, submitted an application for Conditional Use relief on March 1, 2021. The subject of the application are three adjoining properties, as follows:

Tax Parcel No. 22-10-0642-029 (identified as the "Home Farm" with an address of 1024 Boiling Springs Road)

Tax Parcel No. 22-10-0642-012A (identified as the “Duffy Farm” with an address of 144 South Locust Point Road)

Tax Parcel No. 22-10-0642-025 (identified as the “Sollenberger Farm” with an address of 995 Boiling Springs Road)

All of the above-mentioned properties are located within Monroe Township, Cumberland County, Pennsylvania. Applicant requests relief in order for the three properties to be subdivided to create a new flag lot for a proposed private family cemetery.

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.

The proposed private family cemetery will be a low impact, low traffic generating use. The number of visitors will be limited. Ingress and egress to the proposed cemetery will mostly occur by walking from the property identified as the “Home Farm.” All three of the properties are enrolled in

the Clean and Green preferential tax assessment program. The new lot created from the approval of this request will be conveyed to a non-profit corporation to comply with Clean and Green regulations. Applicant has also indicated to the Board of Supervisors that creation of this Flag Lot will not result in disturbance of productive farmlands.

Since the property is located in the Agricultural Zone (“A” Zone), Section 201.4.6 of the Zoning Ordinance provides that flag lot residences may be permitted by conditional use, pursuant to the requirements in Section 423. A flag lot is defined in Section 112 as: “A lot whose frontage does not satisfy the minimum width requirements for the respective zone but that does have sufficient lot width away from the lot’s frontage.”

Section 423 of the Zoning Ordinance states: “Flag lots shall only be permitted when they will enable the preservation of some important natural or cultural feature (including productive farmland), which would otherwise be disturbed by conventional lotting techniques.”

Section 423.1.4.B in particular requires the “pole” to not exceed 600 feet unless additional length is needed to avoid the disturbance of productive farmland or some other significant natural or cultural features. Presently, the proposed “pole” is 906 feet, however, Applicant has sufficiently established to the Board of Supervisors that the location of the proposed flag lot is such to avoid disruption of productive farmlands.

The Board of Supervisors believe the Applicant’s plan preserves important natural features of the farm including preserving productive farmland.

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 be detracted 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.

Because Applicant desires to create a cemetery on the flag lot, Applicant must also adhere to Section 412.1.4 of the Zoning Ordinance, governing specific requirements for cemeteries, as follows:

Section 412.1.4.A All burial plots or structures shall be located at least twenty feet (20') from any property line or street line.

Section 412.1.4.B Assurances must be provided that the water supplies of surrounding properties will not be contaminated by burial activity within the proposed cemetery.

Section 412.1.4.C No burial plots or facilities are permitted in flood plain or flood fringe areas.

Applicant has demonstrated compliance with all three of the above-mentioned requirements of Section 412.1.4 pertaining to cemeteries. Applicant has also satisfied the criteria set forth in Article 7 Section 704.02.

The Board of Supervisors believes that the use of the property keeps its agricultural nature consistent with the intent of the zoning ordinance. 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 and will not substantially impair the integrity of the Township's Comprehensive Plan.

DECISION:

And Now, this 11th day of May, 2021, in consideration of Applicant's request and after a public hearing, the Applicant's request for Conditional Use is granted in accordance with Applicant's application and plan.

Monroe Township Board of Supervisors

1s/Philip Kehoe by Michael [Signature]
Philip Kehoe, Chairman

1s/A.W. Castle III By Michael [Signature]
A.W. Castle, III, Supervisor

1s/Carl Kuhl by Michael [Signature]
Carl Kuhl, Supervisor

(Written Decision of Findings issued this 11th day of May, 2021)