

IN THE MATTER OF:

JACLYN COOK and PAUL COOK

**APPLICATION FOR CONDITIONAL USE
RELIEF**

BOARD OF SUPERVISORS

MONROE TOWNSHIP

**CUMBERLAND COUNTY,
PENNSYLVANIA**

WRITTEN DECISION

EXHIBITS

- B-1 Letter from Judd W. Dayton, P.E. of Snyder, Secary & Associates, LLC dated April 28, 2021 addressed to Monroe Township Engineer Greg Rogalski enclosing Application for Conditional Use.
- B-2 Application for Conditional use dated April 28, 2021.
- B-3 Conditional Use Application Narrative dated April 14, 2021.
- B-4 Aerial photo of the property.
- B-5 Certificate of Service of Public Notice and Written Notice.
- B-6 Minutes from the June 2, 2021 regular meeting of the Monroe Township Planning Commission.
- B-7 Township Engineer Comments.

FINDINGS OF FACT

1. Jaclyn and Paul Cook (collectively “Applicant”) own property located at 151 Simmons Road, Monroe Township, Cumberland County, Pennsylvania, identified as Tax Parcel No: 22-10-0642 (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 a special events venue located on the property, including having an existing barn renovated into a facility for weddings and other like events.

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 May 24, 2021 and June 1, 2021.
6. The Written Notice of the hearing was forwarded to the following individuals and entities on May 17, 2021: Applicants, Jaclyn and Paul Cook, Applicants' Engineer and Architect, Monroe Township Planning Commission, Director of the Cumberland County Planning Commission, and 4 neighboring residents.
7. The Municipal Building and the Township's website were posted with the Notice of Hearing on May 14, 2021. The property was posted on May 17, 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 June 10, 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 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-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, Jaclyn Cook and Paul Cook, submitted an application for Conditional Use relief on April 28, 2021. The subject of the application is property located at 151 Simmons Road, Mechanicsburg, PA 17055. The property is located north of the intersection of West Lisburn Road and Simmons Road within Monroe Township, Cumberland County, Pennsylvania.

Applicant requests Conditional Use approval to have a special events venue on the property. Applicant's proposed project includes construction of a 1,286 square foot addition to an already existing barn to support the change from an agricultural barn to a venue for special events.

The proposed special events venue 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 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.

Upgrades to the property include the relocation of an access drive from Simmons Road, more suitable parking areas to accommodate an event venue, and a building expansion off of the eastern end of the barn for restrooms, office space, and storage space. (Notes of Transcript. – June 10, 2021 – Pg. 13-14).

Testimony from the Applicant and the Applicant's Engineer further established that the venue will accommodate a maximum of 120 guests and the hours of operation will be limited. Hours of operation will be as follows:

Monday through Thursday:	10 A.M. to 10 P.M.
Friday:	8 A.M. to 10 P.M.
Saturday:	8 A.M. to 11 P.M.
Sunday:	12 P.M. to 10 P.M.

Applicant's Engineer further testified that events held on the property will primarily consist of weddings and birthday parties. Most events are to be held inside of the barn. (N.T. – June 10, 2021 – Pg. 14). No additional structures will be added for purposes of outdoor events. Bands and disc jockeys performing at the property will perform inside of the barn. Occasional outside music will be limited to a small speaker playing instrumental type music. (N.T. – June 10, 2021 – Pg. 22).

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 eight conditions outlined by the Township Engineer, to which the Applicant consents. The Conditions are as follows:

- 1.) The venue be limited to a capacity of 120 guests or less at any given time.
- 2.) The hours of operation be limited to 10 A.M. to 10 P.M. on Monday through Thursday, 8 A.M. to 10 P.M. on Friday, 8 A.M. to 11 P.M. on Saturday, and 12 P.M. to 10 P.M. on Sunday.

- 3.) The Applicant obtain a valid On-Lot Sewerage Disposal or Holding Tank Permit from the Sewage Enforcement Officer, including the completion of Sewerage Planning Module as required through the Pennsylvania Department of Environmental Protection.
- 4.) The Applicant obtain a Building Permit in compliance with the Uniform Construction Code, including permit drawings signed and sealed by a design professional.
- 5.) The Applicant obtain a Stormwater Management Permit in accordance with Ordinance No. 2011-03 for any new impervious or semi-impervious areas created.
- 6.) The Applicant obtain a Commercial Zoning Permit for the proposed use, including satisfying all elements of Section 701.3, including but not limited to a detailed description of operations consistent with the conditional use applicant and any other requirements listed therein.
- 7.) The Township shall reserve the right to require the Applicant to submit a traffic impact study prepared by a professional traffic operations engineer in the event it is determined the facility is having an adverse effect on traffic on Simmons Road, or an unsafe situation exists at the main access due to traffic generated by the facility. If the Township deems it necessary for a traffic study to be performed, the Applicant is obligated to implement the recommendations thereof for purposes of continuing operations.
- 8.) The Applicant is only permitted to have one event per weekday and one event per weekend, not to exceed 40 events in a year.
- 9.) All bands and disc jockeys performing on the property will perform on the inside of the barn. From time to time, Applicant is permitted to play instrumental type music outside of the barn on a small speaker.
- 10.) Applicant is required to abide by all federal, state, and local laws, rules, regulations, and ordinances.

DECISION:

And now, this 8th day of July, 2021, 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.) The venue be limited to a capacity of 120 guests or less at any given time.
- 2.) The hours of operation be limited to 10 A.M. to 10 P.M. on Monday through Thursday, 8 A.M. to 10 P.M. on Friday, 8 A.M. to 11 P.M. on Saturday, and 12 P.M. to 10 P.M. on Sunday.
- 3.) The Applicant obtain a valid On-Lot Sewerage Disposal or Holding Tank Permit from the Sewage Enforcement Officer, including the completion of Sewerage Planning Module as required through the Pennsylvania Department of Environmental Protection.
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- 10.) Applicant is required to abide by all federal, state, and local laws, rules, regulations, and ordinances.

Monroe Township Board of Supervisors



Philip Kehoe, Chairman



A.W. Castle, III, Supervisor



Carl Kuhl, Supervisor

(Written Decision of Findings issued this 9th day of July, 2021)