
**IN THE MATTER OF:
HARRY H. FOX, JR.**

**APPLICATION FOR CONDITIONAL
USE RELIEF**

BOARD OF SUPERVISORS

**MONROE TOWNSHIP,
CUMBERLAND COUNTY,
PENNSYLVANIA**

WRITTEN DECISION

EXHIBITS

- B-1 Application for Conditional Use dated May 10, 2022
- B-2 Certificate of Service of Public Notice and Written Notice
- B-3 Minutes from June 1, 2022 Meeting of the Monroe Township Planning Commission.
- B-4 List of interested individuals who were present at the June 30, 2022 Public Meeting.
- T-1 Memorandum from Gregory R. Rogalski, P.E. to the Monroe Township Board of Supervisors dated May 27, 2022
- A-1 E-Mail from David H. Zawisa of the Pennsylvania Department of Transportation to Todd Lyons dated June 28, 2022

FINDINGS OF FACT

1. Harry H. Fox, Jr. (hereinafter "Applicant") owns property located at 1301 W. Trindle Road, Monroe Township, Cumberland County, Pennsylvania, identified as Tax Parcel No: 22-09-0537-015 (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 is requesting two flag lot residences within an eight lot subdivision 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 June 14, 2022 and June 21, 2022.
6. The Written Notice of the hearing was forwarded to the following individuals and entities on June 2, 2022: Applicant Harry H. Fox, Jr., Cumberland County Planning Commission, and 10 neighboring residents
7. The Municipal Building and the Township’s website were posted with the Notice of Hearing on June 1, 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 June 30, 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-4, Exhibit T-1, and Exhibit A-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 Harry H. Fox, Jr. submitted an application for Conditional Use relief on May 10, 2022. The subject of the application is property located at 1301 W. Trindle Road, Mechanicsburg, PA 17055. This property is located within the Agricultural Zoning District.

Applicant is proposing two flag lot residences in an eight-lot subdivision. Section 201.4.6 of the Zoning Ordinance permits flag lot residences by conditional use within the Agricultural Zone, subject to the requirements of Section 423.

The requirements of Section 423 are as follows.

1. 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. A subdivision with a proposed flag lot may not utilize the entire parent tract for other building lots which could be achieved by conventional lotting techniques.
2. For the purposes of this section, a flag-lot shall be described as containing two parts:
(1) The “flag” shall include that portion of the lot that is the location of the principal and accessory buildings. (2) The “pole” shall be considered that portion of the site that is used for vehicular access between the site and its adjoining road;
3. Requirements for the Flag:
 - a. The minimum lot area and lot width requirements of the Township Zoning Ordinance shall be measured exclusively upon the flag.
 - b. For purposes of determining required yards and setbacks, the following shall apply:
 1. Front yard - The area between the principal structure and that lot line of the flag which is most parallel to the street providing vehicular access to the site. Additionally, all areas of the pole shall be considered to be within the front yard;
 2. Rear yard - The area between the principal structure and that lot line of the flag that is directly opposite the front yard, as described above; and,
 3. Side yards - The area between the principal structure and that one (1) outermost lot line which forms the flag and pole, plus the area on the opposite side of the principal structure.

4. Requirements for the Pole:

- a. The pole shall maintain a minimum width of twenty-five feet (25').
- b. The pole shall not exceed six hundred feet (600') in length, unless additional length is needed to avoid the disturbance of productive farmlands or some other significant natural or cultural feature.
- c. No part of the pole shall be used for any portion of an on-lot sewage disposal system, nor any other improvement except a driveway and other permitted improvements, such as landscaping, fencing, utility connections to off-site facilities, mailboxes, and signs.
- d. The cartway contained on the pole shall be located at least six feet (6') from any adjoining property line, and twenty feet (20') from any existing structures on the site or any adjoining property.
- e. No pole shall be located within two hundred feet (200') of another on the same side of the street, unless an adjoining pole utilizes a joint-use driveway, regulated as follows:

5. The flag-lot shall contain adequate driveway dimension for vehicular backup so that ingress to, and egress from the lot is in the forward direction;

423.2. Joint-Use Driveways:

1. When one or more flag lots are proposed, such lots may rely upon a joint use driveway for vehicular access
2. A joint-use driveway must serve at least one flag-lot, but may also serve conventional lots, up to a maximum of four total lots.
3. All joint-use driveways shall have a minimum cartway width of sixteen feet (16').
4. Cross access easements shall be required to ensure common use of, access to, and maintenance of, joint-use driveways; such easements shall be recorded in language acceptable to the Township Solicitor and depicted on the subdivision plan.

A zoning ordinance classifies uses in a 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)(2) pertains to conditional uses. 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.

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.

Additionally, Article 7 Section 704.2 of the Monroe Township Zoning Ordinance requires that each Applicant demonstrate compliance with the following General Criteria:

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.

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. *EQT Prod. Co. v. Borough of Jefferson Hills*, 208 A.3d 1010, 1017 (Pa. 2019), citing *In re Drumore Crossings, L.P.*, 984 A.2d 589, 595 (Pa. Cmwlth. 2009).

The Board of Supervisors has determined that the Applicant has satisfactorily met all the criteria necessary to entitle him to Conditional Use relief. One item of particular importance to the Township is the location of the property along a state-owned roadway. During the June 1, 2022 meeting of the Monroe Township Planning Commission, Township Engineer Gregory Rogalski requested that the Applicant contact a representative of PennDOT regarding this proposal prior to the Board of Supervisor's June 30, 2022 public hearing. Applicant's Engineer, Todd Lyons, indicated during the June 30, 2020 public hearing that contact was made with David H. Zawisa, Transportation Construction Inspector Supervisor for PennDOT District 8-0. By email dated June 28, 2022, Mr. Zawisa provided to Applicant's Engineer all the requirements necessary to apply for a minimum use residential driveway along a state-owned roadway. A copy of this communication has been entered into the record and is identified at Exhibit A-1.

Additionally, the Applicant has satisfactorily indicated to the Board of Supervisors that the two proposed flag lots meet all necessary size requirements, particularly as outlined in Section 423.1.3 governing the size of the pole. Applicant has indicated that the poles have a minimum width of at least twenty-five feet (25'), they do not exceed six hundred feet (600'), the cartway in the pole will be located at least six feet (6') from any adjoining property line and twenty feet (20') from any existing structures.

The Board of Supervisors finds that the configuration as set forth in the plan providing for two flag lots preserves greater acreage than if the parcels would be divided into equal lots without any flag lots. 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 five conditions outlined by the Township Engineer, to which the Applicant consents. The Conditions are as follows:

1. Applicant shall illustrate the required joint-use driveway on the plan which meets the minimum requirements of Sections 423.1.5 and 423.2.3.
2. The joint-use driveway may serve at least one flag-lot, and may serve conventional lots, with a maximum use of four (4) total lots.
3. The Applicant shall provide facilities for safe vehicular access onto West Trindle Road and Old Stone House Road.
4. It is recommended to the applicant that the structure in the northwest lot be constructed against the southern building setback line to accommodate the required clear site triangle and the Monroe Township Floodplain Ordinance.
5. The Applicant shall be required to install stormwater management facilities to mitigate any increase in post-development run-off to the satisfaction of the Township Engineer and in accordance with the Monroe Township Stormwater Management Ordinance.

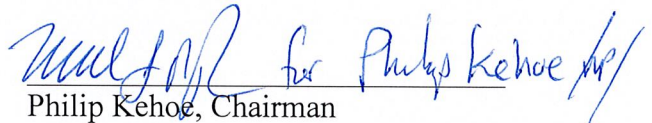
Decision to follow on next page

DECISION:

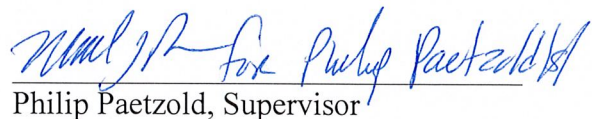
And now, this 3rd day of August, 2022, in consideration of Applicant's request and after a public hearing, the Applicant's request for Conditional Use for two flag-lots, consistent with the plan submitted as part of Exhibit B-1, is GRANTED, subject to the following conditions:

1. Applicant shall illustrate the required joint-use driveway on the plan which meets the minimum requirements of Sections 423.1.5 and 423.2.3.
2. The joint-use driveway may serve at least one flag-lot, and may serve conventional lots, with a maximum use of four (4) total lots.
3. The Applicant shall provide facilities for safe vehicular access onto West Trindle Road and Old Stone House Road.
4. It is recommended to the applicant that the structure in the northwest lot be constructed against the southern building setback line to accommodate the required clear site triangle and the Monroe Township Floodplain Ordinance.
5. The Applicant shall be required to install stormwater management facilities to mitigate any increase in post-development run-off to the satisfaction of the Township Engineer and in accordance with the Monroe Township Stormwater Management Ordinance.

Monroe Township Board of Supervisors


Philip Kehoe, Chairman


A.W. Castle, III, Supervisor


Philip Paetzold, Supervisor

(Written Decision of Findings issued this 3rd day of August, 2022)