

IN THE MATTER OF:

BOARD OF SUPERVISORS

MICHAEL R. ROSENBERRY

MONROE TOWNSHIP

**APPLICATION FOR CONDITIONAL USE
RELIEF**

**CUMBERLAND COUNTY,
PENNSYLVANIA**

WRITTEN DECISION

EXHIBITS

- B-1 Application of Michael R. Rosenberry dated January 25, 2022
- B-2 Certificate of Service of Public Notice and Written Notice
- B-3 Minutes from the regular meeting of the Monroe Township Planning Commission of March 2, 2022
- B-4 Certificate of Liability Insurance
- B-5 Sign In Sheet
- T-1 Memorandum of Gregory Rogalski dated March 2, 2022

FINDINGS OF FACT

1. Michael Rosenberry (“Applicant”) owns property located in Monroe Township, Cumberland County, Pennsylvania, identified as 1600 Boiling Springs Road, Boiling Springs, PA 17002 (hereinafter the “property”).
2. Applicant requests relief in the form of a Conditional Use from the Monroe Township Zoning Ordinance of September 17, 1998, last amended, May 14, 2015 (hereinafter “zoning ordinance”).
3. Applicant’s request is to temporarily house canines, via an eight (8)-run kennel, to be located on the property. Additionally, the kennel may be used periodically to house canines when the police handler is on vacation and the canines cannot be housed elsewhere.
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 February 22, 2022, and March 3, 2022.

6. The Written Notice of the hearing was given by first class mail, postage prepaid at Camp Hill, PA on February 14, 2022, and forwarded to the following individuals and entities, Applicant, Michael R. Rosenberry, Monroe Township Planning Commission, Director of the Cumberland County Planning Commission, and 3 neighboring residents.
7. The Municipal Building, the property and the Township's website were posted with the Notice of Hearing on February 14, 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 March 17, 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 his 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, Michael Rosenberry submitted an application for Conditional Use relief on January 25, 2022. The subject of the application is property located at 1600 Boiling Springs Road, Boiling Springs PA, 17002. The property is located within the Agricultural Zoning District of Monroe Township, Cumberland County, Pennsylvania.

Applicant is the owner of Iron Rose K9, Inc., a business which specializes in the training and procurement of European canines for use by law enforcement agencies. When a canine is imported, the Applicant will transport the dog to the property where it will be housed in the proposed kennels for evaluation and will receive requisite training prior to being released to a law enforcement agency. Applicant anticipates that this process will occur up to three times per year for the foreseeable future.

Applicant requests Conditional Use approval to have an eight (8)-run kennel to temporarily house and train canines before they are turned over to a police agency. Additionally, the kennel may be used periodically to house canines when the police handler is

on vacation or cannot be housed elsewhere. The dogs will be trained on the property and at other locations that provide the dogs with experience with settings that they will be tasked to operate.

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.

The Board finds that the Applicant has satisfied the requirements of Article 7 Section 704.1. The information provided by Applicant's application, including photographs and drawing, is sufficiently specific so as to meet these criteria.

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

Additionally, Applicant must satisfy the specific requirements of a kennel as set forth in Article 4 Section 434 of the Zoning Ordinance.

Section 434 Kennels

434.1 Within the (HC) and (A) Zones, kennels are permitted by conditional use, subject to the following criteria:

1. Minimum Lot Area – Each site shall contain at least five (5) acres;
2. All animal boarding buildings that are not completely enclosed, and any outdoor animal pens, stall or runways shall be located within the rear yard and screened from adjoining properties, and shall be a minimum of two hundred feet (200') from all property lines. Where all boarding activities are housed in a completely enclosed structure,

the required setback shall be reduced to a minimum of one hundred feet (100') from all property lines;

3. All outdoor recreation areas shall be enclosed to prevent the escape of animals; and such enclosures shall be set back a minimum of ten feet (10') from all property lines;
4. The applicant shall furnish evidence of effective means of animal and veterinary waste collection and disposal which shall be continuously implemented; and

434.2 The applicant must demonstrate compliance with all State requirements.

Testimony from the Applicant established that he will never house more than 8 dogs at one time. Training of the dogs will only occasionally take place on the property.

Applicant sufficiently addressed waste collection and disposal. Applicant also established that the property is a 9.96-acre tract.

Applicant further produced evidence of insurance to cover this type of operation.

Therefore, the Board is satisfied that the requirements of Article 4 Section 434 have been satisfied.


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.

DECISION:

And now, this 14th day of April, 2022, in consideration of Applicant's request and after a public hearing, the Applicant's request for Conditional Use is granted consistent with representations set forth in Applicant's application and testimony, subject to the following condition:

Applicant must provide the Township with approved K1 and B1 licenses from the Department of Agriculture as part of the Zoning Permit Application.

Monroe Township Board of Supervisors



Philip Kehoe, Chairman



Philip Paetzold, Supervisor

(Written Decision of Findings issued this 5th day of April, 2022)