

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

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| SEAN HARTRANFT and MELONY HARTRANFT, | : | |
| husband and wife, | : | |
| Appellants, | : | |
| | : | |
| vs. | : | NO. CV-21-0332 |
| | : | |
| BOARD OF SUPERVISORS OF UPPER FAIRFIELD | : | |
| TOWNSHIP, | : | |
| Appellee | : | CIVIL ACTION-LAW |

OPINION

This matter is before the Court on a Land Use Appeal filed April 9, 2021 by Sean and Melony Hartranft [hereinafter “Appellants”], following the Board of Supervisors of Upper Fairfield Township’s [hereinafter “Appellee”] imposition of sixteen (16) conditions on a Conditional Use granted to Appellants.

I. Factual Background

Appellants submitted their Zoning Permit Application on November 30, 2020 and, in a letter dated December 7, 2020, indicated that they “have an existing 30’x80’ Barn on our property . . . that we would like to utilize for hosting private events. The Barn will be accessed from an existing permitted driveway off Mountain Road. There will be no food prepared at the location or overnight lodging.” *See December 7, 2020 letter from Appellants.*

On December 10, 2020, Jami Nolan, the Upper Fairfield Township Zoning Officer, sent a letter to Appellants denying their application and stating that “[t]his is a conditional use permit and is referred to the township supervisors for further review.” *See December 10, 2020 letter from Jami Nolan.* Notices setting the hearing on this matter for January 28, 2021 were published in the Williamsport

Sun-Gazette on January 14, 2021 and January 21, 2021. Prior to the hearing, Appellee received several letters and emails from residents expressing both concern and support for Appellants' proposed venue.

At the time of the January 28, 2021 hearing both Appellants appeared and Sean Hartranft offered the following testimony regarding the scope of Appellants' proposed use of the barn:¹

1. There will be no cooking on the property and no commercial kitchen.
All food will be prepared offsite. *See January 28, 2021 Hearing Transcript at Page 20, Lines 6-8.*
2. The venue will be used a maximum of three days per week. *See January 28, 2021 Hearing Transcript at Page 20, Lines 17-19.*
3. All events will conclude between 10:00 p.m. and 11:00 p.m. *See January 28, 2021 Hearing Transcript at Page 23, Lines 24-25.*
4. Applicants will not obtain a Pennsylvania Liquor Control Board liquor license and the venue will be B.Y.O.B. *See January 28, 2021 Hearing Transcript at Page 21, Lines 3-4.*
5. Appellants have no plans to expand the size of the barn as it stands, which is thirty (30) feet by eighty (80) feet. *See January 28, 2021 Hearing Transcript at Page 22, Lines 2-10 and December 7, 2020 letter.*

¹ Appellants initially asserted that their proposed use fell within the definition of a "private social facility" and was therefore a permitted use. However, Appellee, upon denying the Application initially, determined that the proposed use was not provided for in the ordinance and would instead be considered pursuant to Section 501 (Use Not Provided For) and Section 1201 (Conditional Use). Appellants subsequently conceded in their Brief that Appellee correctly denied the use as a "private social facility."

6. All music will be inside the barn. *See January 28, 2021 Hearing Transcript at Page 23, Lines 23-24.*
7. Appellants make no mention of allowing outdoor activities or events at the property.

Several residents sent letters prior to the meeting and also testified regarding their concerns at the time of the meeting. Specifically, the concerns raised included the increased amount of traffic and people driving too fast; the noise from the venue including music and yelling traveling and echoing off the hills; increased litter following events; and drunk driving.

The Board deliberated on Appellants' application on February 2, 2021 and, at the February 10, 2021 Board meeting, Appellee approved the application, subject to conditions. On March 10, 2021, Appellee issued an Opinion and Order wherein it granted Appellants' application to use their existing barn as an event venue for weddings and private events subject to sixteen (16) conditions.

II. Procedural Background

Appellants filed their Land Use Appeal on April 9, 2021 and a Certification of the Record [hereinafter "Record"] was filed April 30, 2021. The Record consists of the following Exhibits, which were marked at the time of the January 28, 2021:

1. Legal Notices of Hearing dated January 14, 2021 and January 21, 2021;
2. Appellants' Application;
3. Appellants' December 7, 2020 letter;
4. Zoning Officer denial letter of December 10, 2021;

5. Excerpts from Section 405 of Appellee's Zoning Ordinance;
6. Definitions of "Private Social Function," provided by Appellants;
7. Subdivision Map; and
8. Letters in support and in opposition to Appellants' Application.

The sign-in sheet, Agenda, and transcript from the January 28, 2021 hearing as well as Appellee's March 10, 2021 Opinion and Order were also provided as part of the Record.

By agreement of the parties, this case is being decided on the Record and Briefs, without any additional evidence or testimony. Argument was held October 14, 2021.

III. Discussion

Appellee found that Section 501 of the Ordinance was satisfied and that Appellants' "proposed use should be allowed in the C Conservation District subject to review under [Section] 1201(E) of the Ordinance." *See March 10, 2021 Opinion and Order at Page 12, Paragraph 10.* In so reviewing each subparagraph in Section 1201(E), Appellee found it necessary to impose sixteen (16) conditions of approval. *See March 10, 2021 Opinion and Order at Pages 14-17, Paragraph 23(1)-(16).* The only issues to be decided by the Court is whether the challenged conditions are reasonable.

a. Relevant Ordinances

Section 501 of Appellee's Ordinance states as follows:

"Any use not otherwise expressly permitted in any district shall be prohibited, if an individual desires to undertake an activity not expressly

permitted, he may request the Township Board of Supervisors to consider amending the Ordinance to permit such a use.”

Additionally, Section 501 provides that “Whenever, under this Ordinance, a use is neither specifically permitted nor denied, and an application is made to the Zoning Officer for such a use, the Zoning Officer shall refer the application to the Board of Supervisors to hear and decide such a request as a conditional use. Subject to the requirements of this Section, the Board of Supervisors shall have the authority to permit the proposed use or deny the use in accordance with the standards governing conditional use applications set forth in Section 1201 of this Ordinance. Applicant’s proposed use may only be permitted by the Board of Supervisors if:

- A. It is not allowed as a permitted use, a conditional use, or a special exception use in any zoning district under the terms of this Ordinance;
- B. It is similar to and compatible with the other uses permitted in the zoning district where applicant’s proposed use is located; and
- C. It is in no way in conflict with the general purposes of this Ordinance.

Section 1201(E), which governs conditional uses, provides that the Supervisors shall consider the following general criteria when making a decision on an application for a Conditional Use:

1. the purpose of the zone in which a requested condition use is located² and that the compatibility of the requested conditional use with existing and potential land use on adjacent tracts of land;
2. whether the specific site is an appropriate location for the use, structure or condition;
3. whether the use developed will adversely affect the neighborhood;
4. whether the use developed will create undue nuisance or serious hazard to vehicles or pedestrians;
5. whether adequate and appropriate facilities will be provided to ensure proper operation of the proposed use;
6. the economic, noise, glare or odor effects of the conditional use will adversely affect adjoining properties and properties generally in the district; and
7. whether satisfactory provisions and arrangements have been made concerning the following:

² The Barn is located in the C Conservation District, the purpose of which is as follows as stated in Section 301 of the Ordinance:

It is the intent of this district to encourage the conservation of land where the economics of building and supplying public facilities and services is not in the best interest of the public, such as steep slopes, floodplains, wetlands, or other environmentally sensitive areas. The value of conserving land as a natural resource is recognized, as well as the problems which can be created by over utilization or development of such areas. Problems arise involving soil erosion, stream and drainage sedimentation, water supply contamination and loss of aesthetic values, The regulations governing this district therefore encourage uses which will enhance these environmental protection objections.

- a. ingress and egress to the property and structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow, control and access in case of fire or other emergency;
- b. off-street parking and loading;
- c. waste collection, storage and disposal;
- d. utilities, with reference to locations, availability and compatibility;
- e. screening and buffering with reference to type, dimensions and character;
- f. signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district; and
- g. required yards and open spaces.

As stated above, it is undisputed that the Zoning Officer properly determined that the proposed use was not expressly permitted and referred the matter to Appellee. In its March 10, 2021 Opinion and Order, Appellee addressed each of the subsections in Section 1201 and ultimately granted the conditional use, subject to the sixteen (16) conditions.

b. Relevant Laws on Conditions Imposed on the Use of Land

When reviewing a Zoning Appeal without receiving additional testimony or evidence, a trial court's review is limited to determining whether the Zoning Board abused its discretion or committed error of law. *Rushford v. Zoning Board of Adjustment of Pittsburgh*, 473 A.2d 719, 722 (Pa.Cmwlth. 1984).

It is undisputed that, in granting a conditional use, a Zoning Board may “attach such reasonable conditions and safeguards, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of this act in the zoning ordinance.” 53 P.S. § 10913.2(a). Such conditions may be imposed “to mitigate any potential adverse impacts from the proposed use” *In re Appeal of Maibach, LLC*, 26 A.3d 1213, 1216 (Pa.Cmwlt. 2011). Any conditions imposed must be reasonable, meaning that they must “(1) relate to a standard in the applicable zoning ordinance or in the [MPC] and (2) be supported by evidence in the record before the zoning hearing board.” *HHI Trucking and Supply, Inc. v. Borough Council of the Borough of Oakmont*, 990 A.2d 152, 160-61 (Pa.Cmwlt. 2010). See, i.e., *MarkWest Liberty Midstream and Resources, LLC v. Cecil Twp. Zoning Hearing Bd.*, 184 A.3d 1048, 1064 (Pa.Cmwlt. 2018) (holding that a condition requiring water testing and sampling was unreasonable because there was “no record evidence that MarkWest’s operations will cause water contamination” and because the Ordinance or MPC does not contain such a requirement).

However, this is not to say that a Zoning Board is required to support the imposition of conditions. *Leckey v. Lower Southampton Twp. Zoning Hearing Bd.*, 864 A.2d 593, 596 (Pa.Cmwlt. 2004). Rather, the applicant property owner bears the burden of proving that the condition is an abuse of the Board’s discretion. *Id.*

Case law is clear that when a condition is imposed based upon an applicant’s own testimony, abuse of discretion is not committed. *MarkWest*, 184 A.3d at 1071. Specifically, the Court in *MarkWest* held that imposed conditions

consistent with specific, unsolicited representations made by MarkWest representatives that it would take certain measures are reasonable when they are imposed to safeguard the public's health, safety, and welfare. *Id.* at 1072.

In the *Good* case, the Commonwealth Court found that the applicants had not met their burden that the Board abused their discretion when the conditions imposed were based on testimony that they provided. *Good v. Zoning Hearing Bd. of Heidelberg Twp.*, 967 A.2d 421, 431 (Pa.Cmwlt. 2009). The applicants in *Good* argued that the Board failed to explain how the conditions imposed served a valid zoning purpose and that the evidence of record did not support the conditions. *Id.* at 429-30.

The Commonwealth Court affirmed the trial court's ruling to affirm 26 conditions imposed by the Board, noting several times that the applicants actually proposed in their testimony the very same conditions set by the Board. *Id.* at 422 and 423. For example, the applicants testified that they would build a 14 by 38 foot kennel, with interior pens measuring 4 feet by 4 feet, which is consistent with the conditions that were imposed. *Id.* at 426. Additionally, one condition required the dogs to be fed by hand, and the applicants had offered testimony that they would "hand feed" the dogs "every day." *Id.* at 427.

c. Arguments

Appellants make a blanket argument that all conditions imposed are unreasonable because they are not supported by any provision in the Ordinance or any evidence of record and are considered intermeddling the Appellants' use of their property. Appellants primarily rely on the *HHI Trucking* case, which affirmed the trial court's ruling to set aside fourteen (14) of thirty-three (33)

conditions when they were not supported by evidence of record. 990 A.2d at 155 and 160 (holding that “a municipality [cannot] devise conditions out of thin air and without any reference to the record evidence” and “abuses its discretion when it imposes a condition without supporting evidence in the record.”). The *HHI Trucking* Court held that the record was devoid of any evidence that, for example, longer hours of operation would cause some harm and, on the contrary, the testimony was that HHI Trucking would be essentially unable to compete under the condition imposed by the Council relating to hours of operation. *Id.* at 162.

Appellee argues, essentially, that it was unable to cite to standards in the Ordinance for the simple fact that there are no standards in the Ordinance governing event venues in the C Conservation District. Essentially, this is a “first impression” for Appellee, as Appellants’ proposed use has not yet been contemplated, but rather than deny the request altogether, it “reasonably balanced the competing factors at play in this case.” *See Appellee’s Brief at Page 10.* Additionally, Appellee relies on the fact that several of the conditions imposed were taken directly from the parameters as testified to by Mr. Hartranft.

d. Analysis

In their appeal, Appellants specifically challenge conditions 1, 4-5, 10-11, and 13-16.

As an initial matter, the Court agrees with Appellee that any condition that would limit the use of the land to the parameters as proposed by Appellants would be reasonable. Appellee could only evaluate the use and accompanying concerns based upon what was proposed by the Appellants. It would be

impossible for Appellee to evaluate every potential variation of the proposed use in reaching a determination as to whether or not the proposed use met the conditional use standard. Otherwise, Appellee may have denied the conditional use altogether because of a potential harm instead of one that exists to the use as proposed. Further, to prohibit conditions that simply limit an applicant to the scope they propose would encourage applicants to game the process by proposing the smallest scope possible and then claiming a right to conduct the use on any scale desired without any review of its impact. However, to the extent that a proposed condition goes beyond the scope of the proposed use, the condition must be evaluated individually for its reasonableness, meaning that it must address a specific issue and have support in the Ordinance and the record.

i. Condition 1

“The approval is for use of the existing 30’ x 80’ barn (“Existing Barn”) only and any proposed expansion of the Existing Barn shall be subject to a future conditional use approval process.”

Appellants testified that they intend on staying within the current footprint of the building and did not present anything more than that for Appellee to consider or contemplate. This condition simply limits the use to the scope proposed by the Applicant and therefore, the condition is reasonable.

ii. Condition 4

“No PLCB license will be sought or obtained for the event venue per the testimony of Applicants Hartranft and any alcohol served at events held at the Existing Barn shall be bring your own (B.Y.O.B.) only subject to applicable

guidelines and requirements for trained servers and insurance coverage for events at which B.Y.O.B. alcohol will be served.”

Appellants testified that they would not be seeking to obtain a PLCB license, and that any alcohol served or sold at events held at the venue would be B.Y.O.B. and be served by RAMP certified bartenders. Based on their own testimony, this condition reflects the scope of Appellants’ proposed use and is reasonable.³

iii. Condition 5

“No kitchen or cooking facilities will be installed at the event venue per the testimony of Applicants Hartranft and any food served at the event venue shall be prepared off site and brought to the event venue.”

Appellants’ specifically stated that there would be no cooking facilities located in the barn and that all food would be prepared off site. Based on their own testimony, Condition 5 reflects the scope of Appellants’ proposed use and is reasonable.⁴

iv. Condition 8

“Any event held at the Existing Barn shall conclude by 9:00 p.m. and the venue cleaned up and closed by 10 p.m. on the evening of the event. No litter or

³ While the Court finds that Condition 4 is reasonable based solely on Appellants’ testimony, the Court fails to see how prohibiting Appellants from ever obtaining a PLCB license is detrimental to the public. The amount of alcohol being served will not differ, whether RAMP certified bartenders are serving alcohol provided via BYOB or by Appellants under a PLCB license. Appellee fails to explain its rationale for this condition, and it is unclear to the Court how prohibiting Appellants from obtaining a PLCB license would address any concerns raised by other landowners.

⁴ Similar Condition 4, the Court fails to see, and Appellee fails to explain why prohibiting an onsite kitchen and cooking facilities addresses concerns raised at the hearing, all of which had nothing to do with the preparation of food. Additionally, the Court fails to understand how having food delivered for events versus preparing food onsite serves to correct concerns raised by surrounding landowners.

trash shall be permitted to remain on or about the Hartranft property following the conclusion of any event held at the Existing Barn.”

This condition is reasonable to the extent that all events must end by 10:00 p.m. because Appellants stated that events would end between 10:00 p.m. and 11:00 p.m. Appellee, in taking Appellants’ testimony at face value, was required to weigh what Appellants proposed in comparison to the concerns raised by other landowners regarding noise late at night.

However, the remainder of the condition is unreasonable, as it places greater duties on Appellants to clean up any litter/trash within a certain period beyond what is generally required by the Zoning Ordinance. While there were some concerns raised regarding increased litter, the public is at no greater risk if Appellants fail to clean up trash immediately following the conclusion of an event. This is not to say, though, that Appellants are not subject to the same litter/garbage standards set forth in the Ordinance to which any other resident would be subject.

v. Condition 10

“No amplified music will be permitted outside of the Existing Barn and for events were [sic] amplified music will be played, the doors of the Existing Barn shall be closed.”

Appellants testified that all music will remain inside the barn. However, they did not state that the barn doors would remain closed when the music is playing. Condition 10 is reasonable to the extent that all music must be played inside the barn, especially considering the concerns regarding noise raised at the hearing. However, it is unreasonable to require Appellants to follow a higher

standard than other landowners would regarding this issue. Appellants are not required to keep the barn doors closed at all times, but they are subject to any and all noise requirements of Appellee's Zoning Ordinance or any other ordinances.

vi. Condition 11

"No event tents or other outdoor venues will be installed or maintained at the site and all events shall be scheduled as indoor events to be conducted within the Existing Barn."

Condition 11 is reasonable because Appellants' proposed use did not include outdoor events. Additionally, several fellow landowners expressed concerns regarding the additional noise that will be created when events are held at the venue. Prohibiting events to be held outside, where the sound cannot be contained, is necessary to safeguard the other residents' welfare.

However, this condition cannot be read so narrowly to hold that the applicant would be in violation of the condition if individuals would be outside the barn for limited periods of time during an event, i.e. to smoke a cigarette, coming and going to vehicles, etc.

vii. Condition 13

"No more than two (2) events at full capacity of the Existing Barn shall be scheduled, reserved and held per month and no more than three (3) total events shall be scheduled per week. An event that is not one of the two (2) full capacity events permitted per month shall not exceed fifty percent (50%) of the Existing Barn capacity in size. Any request to increase the frequency or size of the permitted events shall be subject to a future conditional use process. These size

and frequency restrictions are based upon the testimony presented at the hearing and to balance the impacts of the proposed events venue with the other uses within the neighborhood.”

Appellants testified that there would be no more than three (3) events per week, but did not limit themselves to a percentage of the capacity of the barn. This condition far exceeds the scope of use provided by Appellants. Additionally, if Appellants follow all other conditions imposed by Appellee, specifically conditions relating to noise, then there is no record justification for this condition and it is therefore unreasonable.

viii. Condition 14

“The approval of the event venue does not run with the land and is specific to Applicants Hartranft and may not be sold, transferred or otherwise assigned and the approval for the event venue shall expire upon the sale, transfer or assignment of the property by Applicants Hartranft to any third party. This restriction shall not apply to members of Applicants Hartranft’s immediate family (children). Furthermore, the event venue may not be leased to be run by any third party and the property may not be subdivided to separate the event venue from the residence on the property.”

Condition 14 is unreasonable. There is no rationale in the record or Ordinance to limit the use of the barn as an event venue to a specific individual. The use was approved based on its scope, not its operator. Discriminating based on the user would be unequal application of the Ordinance.

ix. Condition 15

“Any violation of these conditions of approval is subject to the enforcement provisions of the Zoning Ordinance and each violation and/or each day a violation continues shall be treated as a separate violation.”

To the extent that this condition is consistent with existing enforcement mechanisms contained in the Zoning Ordinance, it is reasonable. However, to the extent a violation on the part of these particular Applicants would be enforced in a manner different than otherwise provided in the Zoning Ordinance, it is unreasonable.

x. Condition 16

“As a condition of approval, Applicants Hartranft shall allow the Township and its duly authorized representatives [sic] have reasonable access to the venue on or over the private drive from Mountain Road in order to inspect the venue to include the Existing Barn for compliance with the conditions of approval or as otherwise necessary to ensure that all Township requirements for operation of the venue are being adhered to and followed to include access without advanced notice to respond to bona fide complaints of violations.”

Again, to the extent that this condition grants greater access for enforcement of the conditions than the existing provisions of the Zoning Ordinance, it is unreasonable. There is no evidence in the record of a safety hazard justifying heightened access to the property. For example, it would be conceivable that, if the proposed use on the property was a hazardous activity such as a natural gas compressor station, Appellee’s access to the property may be necessary. Such is not the case here.

IV. Conclusion

After considering the testimony provided by Appellants regarding the scope of their proposed use, the concerns raised by other landowners, and the relevant factors for consideration set forth in Section 1201 of the Ordinance, the Court finds that:

1. Conditions 1, 4, 5, and 11 are reasonable and are affirmed.
2. Condition 8 is reasonable, and affirmed, to the extent that all events must conclude by 10:00 p.m. The remainder of the condition is unreasonable and stricken.
3. Condition 10 is reasonable, and affirmed, to the extent that all music must remain inside the barn. The remainder of the condition is unreasonable and stricken.
4. Conditions 13 and 14 are unreasonable and are stricken.
5. Conditions 15 and 16 are unreasonable to the extent that they are inconsistent with the existing Zoning Ordinance or other Ordinances governing other Upper Fairfield Township residents.

ORDER

AND NOW, this 6th day of **December, 2021**, upon consideration of Appellants' Zoning Appeal, the Certified Record, and the Briefs submitted by each party, it is hereby **ORDERED** and **DIRECTED** as follows:

1. Conditions 1, 4, 5, and 11 are reasonable and are **AFFIRMED**.
2. Condition 8 is reasonable, and **AFFIRMED**, to the extent that all events must conclude by 10:00 p.m. The remainder of the condition is unreasonable and **STRICKEN**.
3. Condition 10 is reasonable, and **AFFIRMED**, to the extent that all music must remain inside the barn. The remainder of the condition is unreasonable and **STRICKEN**.
4. Conditions 13 and 14 are unreasonable and are **STRICKEN**.
5. Conditions 15 and 16 are unreasonable to the extent that they are inconsistent with the existing Zoning Ordinance or other Ordinance governing other Upper Fairfield Township residents, and are **STRICKEN**.

BY THE COURT,

Hon. Ryan M. Tira, Judge

RMT/ads

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