

## BOARD OF SUPERVISORS OF WEST VINCENT TOWNSHIP

<b>APPLICATION OF :</b>	:	<b>HEARING DATES:</b>	August 19, 2024
Ruthairat Pascal and	:		
Francis Pascal	:		October 7, 2024
	:		February 28, 2025
	:		
	:	<b>DECISION DATE:</b>	April 7, 2025
	:		
<b>PROPERTY:</b> 1406 Hollow Road	:		
Parcel No. 25-4-80	:		
Birchrunville, PA	:		
West Vincent Township	:		
	:		

**OPINION AND ORDER**  
**OF THE BOARD OF SUPERVISORS OF WEST VINCENT TOWNSHIP**

The Applicant, Ruthairat Pascal and Frances Pascal, (“Applicant”), filed a conditional use application under Section 390-219 of the West Vincent Township Zoning Code to expand the uses of a previously permitted Café use within the BV Birchrunville Village District to allow outside seating, occasional live music, expanded indoor seating, parking and baking on the premises. The Application was properly advertised, and public hearings were held before the West Vincent Township Board of Supervisors (“the Board”) on August 19, 2024, October 7, 2024 and February 28, 2025 (“hearings”). The Township Solicitor and the Township Manager were also present at the public hearings.

## FINDINGS OF FACT

1. The Applicant is Ruthairat Pascal and Frances Pascal, individuals who reside at 218 Nottingham Drive, Spring City, PA 19475.

2. Frances Pascal is the legal owner of the property located at 1406 Hollow Road, Birchrunville, West Vincent Township, Chester County Tax Parcel No. 25-4-80 located within the Township's BV Birchrunville Village District, ("subject property").

3. The Applicant is seeking to expand the uses on the subject property which were allowed by Opinion and Order of the Board of Supervisors of West Vincent Township dated June 6, 2016.

4. The Applicant seeks permission to allow outdoor seating, occasional live music, expanded indoor seating, parking, and baking on the premises.

5. The Applicant also owns and runs the Birchrunville Café located across the street from the subject property.

6. The Township introduced the following exhibits:

Exhibit B-1: Application for Condition Use with seating plans attached;

Exhibit B-2: Legal Notice for the August 19, 2024 Conditional Use Hearing;

Exhibit B-3: Affidavit of Posting of the property dated August 12, 2024;

Exhibit B-4: Proof of Letters mailed to surrounding residents for the August 19, 2024 hearing;

Exhibit B-5: Letter from Tracy Franey, Township Zoning Officer dated May 14, 2024;

Exhibit B-6: Letter from Norman A. Ulrich, III, P.E. of LTL Consultants Ltd. Dated June 17, 2024;

Exhibit B-7: Opinion and Order of the Board of Supervisors of West Vincent Township dated June 6, 2016;

Exhibit B-8: Proof of Publication for the October 7, 2024 hearing;

Exhibit B-9: Proof of Publication for the February 24, 2025 hearing;

Exhibit B-10: Amended Conditional Use Application;

Exhibit B-11: Emails to the Township Office in support of the Application;

Exhibit B-12: Letters to the Township Office in support of the Application.

7. The following Applicant exhibits were admitted into evidence:

Exhibit A-1: Petition with signatures of support;

Exhibit A-2: Undated Letter from Todd & Todd, LLP;

Exhibit A-3: Seating and Parking Calculation;

Exhibit A-4: Parking photo;

Exhibit A-5: Daily photos;

Exhibit A-6: Parking Ordinance;

Exhibit A-8: Parking Diagram;

Exhibit A-9: Oblong photos

Exhibit A- 10: Amended Conditional Use Application;

Exhibit A-11: Photos

8. Steven Sladek, who resides at, 1420 Hollow Road, Birchrunville, Pennsylvania and is adjacent to the property owned by the Applicants and occupied by the Butterscotch Café at 1406 Hollow Road, Birchrunville, West Vincent Township, Pennsylvania. Mr. Sladek was granted party status and is represented by Kimberly Venzie, Esquire.

9. The following individuals were granted party status by agreement of the parties:

George Dulchinos 1415 Hollow Road	Suzanne Roth 1360 Schoolhouse Lane
Alan Vandergrift 1331 Hollow Road	Rachel Gaffey 2210 Flowing Springs Road
Trisha Conlin 2154 Miller Road	Michael Conlin 2154 Miller Road

Sue Krug 2144 Flowing Springs Road	Ethan Schofield 2210 Flowing Springs Road
Zoe Sakos 1381 Schoolhouse Lane	Meryl Goblin 2120 Flowing Springs Road
Whitney Yeager 2336 Flowing Springs Road	Karl Brachwitz 1286 Hollow Road

10. The following exhibits were introduced and admitted into evidence by party, George Dulchinos:

Exhibit D-1: Aerial photograph;

Exhibit D-2: Statement of George Dulchinos;

11. The following exhibits were introduced and admitted into evidence by party, Steven Sladik:

Exhibit S-1: Conditional Use and Opinion Order dated June 6, 2015;

Exhibit S-2: Email dated October 17, 2023;

Exhibit S-3: Email dated June 23, 2024;

Exhibit S-4: Correspondence dated March 27, 2024;

Exhibit S-5: Conditional Use Application dated April 24, 2024;

Exhibit S-6: Memorandum dated May 14, 2024;

Exhibit S-7: Correspondence dated June 17, 2024;

Exhibit S-8: Review Letter dated June 10, 2024;

Exhibit S-9: Correspondence dated July 17, 2024;

Exhibit S-10: Correspondence dated August 12, 2024;

Exhibit S-11: Township Conditional Use Application;

Exhibit S-12: Photographs;

Exhibit S-13: Summary of Continuing Violations;

Exhibit S-14: Pictures;

Exhibit S-15: Ordinance excerpts.

12. The Applicant is represented by George E. Martin, III, Esquire.

13. As the legal owner of the subject property Applicant has legal standing to proceed with the Conditional Use Application as amended.

14. Post-hearing, the Applicant withdrew its request for outdoor music and is limiting its request for outdoor seating to thirty (30) seats.

15. Francis Pascal, 218 Nottingham Drive, Spring City, Pennsylvania, testified that he is the owner of the Birchrunville Store Café and he has operated the Birchrunville Store Café for over twenty-five (25) years.

16. Mr. Pascal testified that the Birchrunville Store Café has thirty-eight (38) seats and it takes reservations for dinner between 6:00 p.m. and 8:30 p.m. Wednesday through Saturday.

17. Mr. Pascal testified that his wife runs the Butterscotch Café located across the street from the Birchrunville Store Café and is open to customers 9:00 a.m. to 2:00 p.m. Wednesday through Saturday and Sunday 9:00 a.m. to 3:00 p.m. Mr. Pascal testified that the Birchrunville Store Café and the Butterscotch Café are not open at the same time and therefore their patrons do not compete for parking spaces.

18. Mr. Pascal testified that there are a total of fifty-eight (58) outdoor seats utilized by the Butterscotch Café and currently fifty-six (56) seats inside the Butterscotch Café comprised of fourteen (14) seats in the front room and forty-two (42) seats in the backroom, for a total of One Hundred Fourteen (114) seats.

19. Post hearing, the Applicant reduced its request for outdoor seating to thirty (30) seats which would reduce the amount of seating proposed to eighty-six (86) seats.

20. Mr. Pascal testified that patrons currently park in the parking lot at the Butterscotch Café as well as at the Birchrunville Store Café and through an informal parking arrangement with Todd and Todd, park on the Todd and Todd property.

21. Mr. Pascal testified that there are twelve (12) parking spaces along the side of the Birchrunville Store Café, between twenty (20) and twenty-four (24) parking spots next to the Butterscotch Café, twenty-four (24) spots at the Todd & Todd parking lot, six (6) parking spots next to the barn along Flowing Springs Road and six (6) parking spots on the Butterscotch property adjacent to the Sladik property for a maximum total of seventy-four (74) parking spaces available.

22. Mr. Pascal testified that cooking for the Butterscotch Café is done at the Birchrunville Café and currently only baking occurs at the Butterscotch Cafe.

23. Mr. Pascal provided no testimony as to square footage of the first floor of the Butterscotch Cafe.

24. Mr. Pascal testified that overflow parking is needed, mostly on Saturdays and Sundays for the Butterscotch Café patrons.

25. Mr. Pascal testified that the Butterscotch patrons are welcome to use the Todd & Todd parking lot for overflow parking.

26. Mr. Pascal testified that any Butterscotch patrons parking at the Todd & Todd parking lot will need to walk along Flowing Springs Road to get to the Butterscotch Café, but there is no sidewalk along Flowing Springs Road.

27. Mr. Pascal testified that currently some patrons use grass parking areas adjacent to Birchrunville Café and along Hollow Road.

28. Mr. Pascal testified that the photos depicted in the Applicants A-11, show that when weather permits people are seated outside with rarely, if any, people seated inside. If it rains, no one sits outside, but people sit inside. Mr. Pascal testified that if he was required to pave the parking lot and provide lines to identify parking spaces, he would do so.

29. Mr. Pascal testified that if he would have outside music, he would agree to apply for a West Vincent Township Special Event permit.

30. Mr. Pascal testified that he was working with the Pennsylvania Department of Environmental Protection to obtain any necessary sanitary sewage approvals and to update his sewer facilities.

31. Mr. Pascal testified that the sewer treatment facilities that he provides are currently sufficient.

32. Mr. Pascal testified that a number of parking spots utilized by the patrons of the Butterscotch Café are both gravel, grass and dirt located both on the Butterscotch Café property and the Birchrunville Café property.

33. Ruthairat Pascal (Nui) testified on behalf of the Applicant. Nui testified that she is married to Frances Pascal and together they run both the Birchrunville Store Café and the Butterscotch Café.

34. Nui testified that she primarily runs the Butterscotch Café and the Butterscotch Café is open Wednesday to Sunday. Nui testified that the busiest days at the Butterscotch Café are Saturday and Sunday and the busiest times are during the midday.

35. Nui testified that the photos contained in Applicant's Exhibit A-11 depict where patrons are seated on the dates the photographs were taken.

36. Nui testified that on a nice day people sit outside and when its not so nice outside, the patrons sit inside.

37. Nui estimated that at any one time the maximum number of people seated both inside and outside is fifty (50) to sixty (60) people.

38. Nui testified that some of her customers wish to do takeout. Nui estimated that approximately forty (40%) percent of her customers take out food.

39. Ryan Todd testified on behalf of the Applicant. Mr. Todd testified that he is a certified public accountant, and his business is close to the Birchrunville Store Café.

40. Mr. Todd testified that he wrote a letter which has been identified as Applicant Exhibit A-2 offering parking at his business for Butterscotch patrons.

41. Mr. Todd testified that he offered Butterscotch Café and Birchrunville Café patrons parking whenever they wanted as he is trying to be a good neighbor to the other businesses in town.

42. Mr. Todd testified that he doesn't have marked spaces on the parking lot, but he estimated that the parking lot could hold twenty (20) cars. Mr. Todd testified that he is not counting the parking lot located on the adjacent Township Park as part of his parking count.

43. Mr. Todd testified that on Saturdays and Sundays, he is the only one working from his business and therefore he would only need one (1) parking spot for his purposes on Saturday and Sunday.

44. Mr. Todd testified that he is agreeable to a sign being posted at the Butterscotch Café notifying the Butterscotch Café patrons that overflow parking is available at the Todd & Todd lot.



45. Steven Sladek has resided at 1420 Hollow Road, Birchrunville, Pennsylvania with his wife since 2003 and owns the property adjacent to the Butterscotch Café. He testified that he had no issues with the Birchrunville Store Café or the Butterscotch Café until about the year 2020.

46. Mr. Sladek testified that in or around the year 2020, the owners of the Butterscotch Café began adding seats inside and outside and introduced live music. He complained that there was noise, litter and that the natural screening that was on the Butterscotch Café adjacent to his home had been removed. The live plantings also offered a buffer from the car lights at night. Mr. Sladek also complained that patrons of the Butterscotch Café would bring their dogs and horses and there was a dog and horse droppings on his property and all kinds of litter.

47. Mr. Sladek introduced Exhibit S-12, which contained photographs. The first photograph depicted about a dozen cars parked along the front of his property blocking his two (2) driveways. The first photograph was taken October 8, 2023.

48. Mr. Sladek testified that Butterscotch Café patrons were parking on both sides of the road, causing the road to be a one lane road, which caused him concern that there could be a head on collision. Mr. Sladek testified that photographs 2 through 4 in Exhibit S-12 depicted similar conditions, with cars parking on both sides of the road and some parked perpendicular into the grassy area on the Butterscotch property.

49. Mr. Sladek testified that he attempted to control the parking along his property line with no parking zone signs that were given to him by the Township Police Department.

50. Mr. Sladek testified that he believed that the character of the neighborhood had changed with the inclusion of outdoor seating and outdoor music. Mr. Sladek testified that he is concerned about traffic safety in the area in that at times there are dogs, horses, bicycles, cars, and trucks in the street on Hollow Road.

51. Mr. Sladek testified that in using Google Earth, he attempted to measure the size of the parking lot on the Butterscotch Café property and he estimated it can hold only seventeen (17) cars.

52. Mr. Sladek produced Exhibit S-13, (misidentified as A-13) to show his measurements. Mr. Sladek also testified that there were only ten (10) parking spots along Flowing Springs Road next to the Birchrunville Café and this is depicted on page 3 of Exhibit S-13.

53. Mr. Sladek testified that the six (6) new spots created along Hollow Road were spots where vehicles could park perpendicularly to the road and/or on the grass and mud. Mr. Sladek testified that photographs 11, 12, and 13 depict the area where trees and bushes were removed from the Butterscotch Café property adjacent to his lot.

54. Mr. Sladek testified that Exhibit S-14 (misidentified as A-14) is a photograph that depicts where the trees and bushes were removed and outdoor seating and parking is in its place.

55. Mr. Sladek testified that there is a need for three (3) parking spots for the Post Office to park on the Butterscotch Café property, one (1) for the Post Master and two (2) for customers.

56. Tracey Franey, a West Vincent Township Zoning Officer was called as a witness by counsel for Mr. Sladek.

57. Ms. Franey testified that she was aware that the pastry shop had expanded its seating indoors and outdoors beyond the original approval and that she was aware that Mr. Sladek had expressed concerns regarding traffic and noise in the vicinity of the Butterscotch Café.

58. Ms. Franey testified that prior to the hearing on August 19, 2024, she entered the Butterscotch Café to count the seating. At that time, indoors she counted sixty-one (61) seats and outside she believed there were eighty-four (84) seats.

59. Ms. Franey testified that she believed that the Butterscotch Café was in violation of the Conditional Use Order dated June 6, 2016, by having outdoor seating, live music, and more than fourteen (14) seats indoors.

60. Ms. Franey testified that to her knowledge the Applicant did not receive relief from the Zoning Hearing Board to have an unpaved parking lot.

61. Ms. Franey testified that the Applicant failed to comply with the requirements of the Conditional Use Procedure, failed to provide appropriate plans, failed to provide a narrative to show that the Conditional Use Standards have been met relating to water supply, sanitary sewer disposal and stormwater drainage.

62. Ms. Franey testified that the Applicant would need to provide one (1) off street parking space for each employee on the largest shift and one (1) space for every two (2) seats.

63. Ms. Franey testified that based on the seat count of one hundred forty-five (145) seats, the Applicant would need to provide seventy-three (73) parking spaces for its patrons and one (1) parking space for each employee.

64. Norm Ulrich was called as a witness by counsel for Mr. Sladek.

65. Mr. Ulrich testified that he issued a letter that was marked as Exhibit S-7.

66. Mr. Ulrich testified that given the number of seats being proposed, that he would expect the Applicant to go through the sanitary sewer planning process.

67. Mr. Ulrich testified that the Applicant should provide parking that is consistent with the Township Ordinance and suggested that an engineering plan be provided that depicts the number of parking spaces.

68. Mr. Ulrich also testified that he recommended that there be no street side parking inside of the Township right-of-way and recommended that the parking lot be paved.

69. Mr. Ulrich testified that if the parking lot was to be paved, the Applicant would need to provide stormwater management facilities to control the water runoff from the parking lot.

70. George Dulchinos, who resides at 1415 Hollow Road testified that the approximate length of the parking lot located along Flowing Springs Road is ninety (90) feet, which would leave room for ten (10) cars to be parked in nine (9) foot spaces.

71. Mr. Dulchinos offered Exhibit Dulchinos-1, an aerial photograph which measures the frontage of his property adjacent to the side of the Birchrunville Café.

72. Mr. Dulchinos read a statement into the record, which was marked as Dulchinos-2. His statement expresses concern regarding the scale of the business and the traffic in the area.

73. Mr. Dulchinos expressed concerns regarding parking, lighting, deliveries, service vehicles, hours of operation and outdoor music. Mr. Dulchinos suggested that commercial vehicles and trash trucks be limited to no earlier than 7:00 a.m.

74. Suzanne Roth, 1360 Schoolhouse Lane, testified about her concerns regarding the Butterscotch Café.

75. Ms. Roth expressed concern regarding a lack of parking, creating a safety hazard and is concerned that emergency vehicles will find it difficult to pass through Birchrunville Village when cars are parked along the street.

76. Ms. Roth also expressed concern with regard to Butterscotch Café visitors walking in the street when cars drive beyond the speed limit and do not come to a full stop at stop signs.

77. Karl Brachwich, 1286 Hollow Road and 1304 Hollow Road testified that he is concerned that there has been no Township enforcement of the Township Ordinances as they relate to the Butterscotch Café. He is concerned that the parking does not comply with the Ordinance

and unsafe conditions are created when deliveries are made, and the Postal truck stops at the Post Office.

78. Sue Krug, 2144 Flowing Springs Road, testified that she is concerned about the distance patrons would need to walk between the potential auxiliary parking lot and the restaurant or bakery.

79. A number of non-party witnesses spoke generally in support of the Applicant.

80. A number of non-party witnesses spoke generally against the Applicant.

81. Exhibits B-11 and B-12 contain emails and letters in support of the Application, some of which are from individuals in support that reside outside of the Township.

82. The Petition identified as Exhibit A-1 contains signatures from individuals in support of the Application, many of which are the individuals that reside outside of the Township.

### **DISCUSSION**

The Applicant filed a conditional use application under Section 390-219 of the West Vincent Township Zoning Ordinance, as amended, to permit a café use within the BV Birchrunville Village District. In a conditional use case, the applicant first bears the burden of establishing that the application falls within the conditional use provision of the particular township ordinance. *See, City of Hope v. Sadsbury Tp. Zoning Hearing Bd.*, 890 A.2d 1137 (Pa. Commw. Ct. 2006); *See also, Bailey v. Upper Southampton Tp.*, 690 A. 2d 1324 (Pa. Commw. Ct. 1997). Section 390-48B(2) of the West Vincent Township Zoning Ordinance requires that the use of a restaurant, tearoom and café is permitted by conditional use in the BV Birchrunville Village District provided that food be served at tables by the establishment, that it not be designed for drive-in or take-out business, and that the total ground floor area is two thousand (2,000) square feet or less. In addition to the other requirements within the particular zoning

district for the Subject Property, a conditional use application shall only be approved if the applicant proves that the following general Township conditional use standards set forth under Section 390-219C(1) of the West Vincent Township Zoning Ordinance will be met, as applicable:

1. The proposed use is consistent with the purposes of the Article wherein it is permitted and is consistent with the overall purpose of the zoning ordinance.
2. The proposed use shall meet all of the specific standards and regulations for eligibility which appear in the section of this Ordinance authorizing the proposed conditional use.
3. The proposed use and its location are consistent with the Comprehensive Plan, the Township Act 537 Sewage Facilities Plan, and the infrastructure required to service the area, including the logical extension of public services and utilities.
4. The use will not adversely affect the health, safety, or general welfare of the Township.
5. The proposed use is consistent with the general nature of surrounding uses and will not conflict with existing uses on neighboring properties and will be maintained in a manner which will protect the character and property values of the surrounding area.
6. The proposed use will provide for safe and adequate access to roads and public utilities and will not create excessive demands on existing streets, services, utilities, stormwater controls, or adversely affecting surrounding properties of the area in general.
7. Any construction will be accomplished using sound design and engineering principles and will not adversely affect existing uses in the area.
8. The proposed use will incorporate proper landscaping, screening, parking, signage, and buffering in accordance with the applicable provisions of this Ordinance.

9. The standards set forth in Section 390-228, for the review of special exception applications, shall be met.

When an applicant for a conditional use makes a prima facie case with respect to a provision of an ordinance, the application must be granted unless those opposing the application present sufficient evidence that the use would present a substantial threat to the community. *See Borough of Perkasi v. Moulton Builders, Inc.*, 850 A.2d 778 (Pa. Commw. Ct. 2004); *See also, Westinghouse Elec. Corp. v. Council of Tp. Of Hampton*, 686 A.2d 905 (Pa. Commw. Ct. 1996). The burden then shifts to the protestants to present evidence that the proposed use has a detrimental effect on health, safety and welfare, thus rebutting the legislative presumption, which exists in conditional use cases, that the use is consistent with the health, safety and welfare of the community. *See Glendon Energy Co. v. Borough of Glen.*, 656 A. 2d 150 (Pa. Commw. 1995).

The mere possibility of adverse impact is not enough; a conditional use application should be granted unless it is proven that the impact on the public is greater than that which might be expected in normal circumstances. *See, Northampton Area School Dist. V. East Allen Tp. Bd. Of Sup'rs*, 824 A.2d 372, (Pa. Commw. Ct. 2003). The degree of harm required to justify denial of the conditional use must be greater than that which normally flows from the proposed use. *See, In re Cutler Group, Inc.*, 880 A.2d 39 (Pa. Commw. Ct. 2005). An objector must prove, to a high degree of probability, that the proposed use will adversely affect the public welfare in a way not expected from the type of use. *See, Northampton Area School Dist. V. East Allen Twp. Bd. Of Sup'rs*, 824 A.2d 372, (Pa. Commw. Ct. 2003).

By Opinion and Order of the Board of Supervisors of West Vincent Township dated June 6, 2016, the Board found at that time that the Applicant satisfied the criteria outlined in the Zoning Ordinance before they granted the Conditional Use Approval. At that time, the Applicant was

proposing a maximum of 14 indoor seats with preparation of pastries to be done at the Birchrunville Café, shared parking with the Birchrunville Café, and no outdoor seating.

The Application being considered by the Board as amended requests expanding indoor seating, outside seating, occasional outdoor music up to six events per year, and take out service and baking on the premises. Following the hearing, applicant reduced the amount of outdoor seating to 30 seats and withdrew the request for outdoor music.

The Decision and Order dated June 6, 2016, granted conditional use approval upon the following conditions:

1. The Applicant must comply with the testimony and exhibits presented by the Applicant at the public hearing before the Board of Supervisors on May 2, 2016.
2. The Applicant must comply with all other conditions of the Township Zoning Ordinance, including, but not limited to, all conditions pertaining to the pavement of the associated parking lot, or obtain appropriate zoning relief from the Township Zoning Hearing Board.
3. As agreed to by the Applicant, the hours of operation for the proposed Café that is subject to such conditional use approval shall be limited to 8:00 a.m. to 3:00 p.m. on Monday through Friday, and 9:00 a.m. to 4:00 p.m. on Saturday and Sunday.

The issues presented by the application presently before the Board of Supervisors are as follows:

**EXPANDED SEATING:**

There is no testimony on the record as to the square footage of the ground floor of the Butterscotch Café. It is noted however, that the Supervisors found in its June 6, 2016 Decision that the Butterscotch Café was less than 2,000 square feet. At that time, the applicant limited its request to 14 indoor seats. The applicant is seeking an expansion for the total amount of seating



to 56 indoor seats and 30 outdoor seats for a total of 86 seats. The Ordinance does not limit the number of seats that can be utilized within a restaurant, tea room and café. The Ordinance controls the intensity of the use, not by the number of seats allowed, but by the maximum square footage allowed. Because of the inter-relationship between the number of seats and the required number of parking spaces, available parking provides a limit on the number of seats.

It is clear from the testimony presented by the Applicant and those protesting the Application that parking and traffic congestion in and around the Butterscotch Café is a serious concern. There was conflicting testimony regarding the number of parking spaces contained on the Butterscotch Café lot due to the fact that the lot is not stripped for parking. There was testimony from the Applicant that there were 20 parking spaces and from a protestant a maximum of 17 parking spaces. Whether 17 or 20, it appears that the number of parking spaces provided in the Butterscotch Café parking lot is insufficient to handle the patron demand during peak times. The testimony has revealed that the lack of adequate parking has caused customers to park in locations that are not permitted by Township Ordinance and which present a safety concern. The ideal solution would require a sufficient number of off-street parking spaces to meet the customer demand. The Birchrunville Village Zoning District Section 390-47 et seq. provides no specific guidance relative to parking for restaurants, tea rooms and cafes. Section 390-135 of the Township Zoning Ordinance requires a minimum of 1 space for each employee working on the larger shift, plus 1 additional parking space for every 2 seats. Per Section 390-135F (18), assuming 86 total seats, the Applicant would need to provide 43 parking spaces for patrons and an additional number of parking spaces for its employees.

Section 390-135H permits shared parking within the Birchrunville Village District provided the Applicant provides a shared parking study and plan compliant with the requirements

of that Section. There was testimony that the applicants customers utilized parking offsite on the Birchrunville Café lot and at the Todd & Todd parking lot. In order to utilize offsite parking for its patrons, the shared parking plan must be provided that includes an Easement Agreement required by Section 390-135H(3). Such plan must provide a safe pedestrian path from the parking to the Butterscotch Cafe. Section 390-135G allows the Board of Supervisors in granting conditional use approval, to attach specific parking requirements, which may be equivalent or greater than or less than the requirement set forth in Section 390-135. There was uncontradicted testimony from the applicant that the indoor seating is not fully utilized by customers when weather permits outdoor seating and vice versa. Section 390-135G would allow the Board to consider reduction of parking from that required should the applicant propose a plan to limit seating. Here, the Board could consider reduction of parking where seating is limited during inclement weather as per the testimony of the Applicant. If the Applicant is willing to restrict its number of seats both inside and outside and as a combination of both, the Board may grant relief accordingly.

**TAKE OUT SERVICE:**

With respect to the Applicant's request to permit take out, the Birchrunville Village zoning district at 390-48B(2) provides that restaurant, tea room and cafes, are permitted provided the customers are served at tables and the establishment is not designed for drive in or take out business. There was uncontradicted testimony from the applicants that the patrons are served primarily at tables. There is no testimony that premises were designed for take out business. There is no evidence of a take out window. The Applicant testified that the majority of its business is from sit down patrons. Section 390-48(B) does not specifically prohibit take out business, but instead provides only that an establishment not be designed for take out business. The Board finds that Butterscotch Café is not designed for take out business, and that serving take out customers

is a customarily incidental accessory use associated with a restaurant. Therefore, no relief is required from the Board of Supervisors in order for the Applicant to continue offering take out provided there is no take out window and the predominant number of customers served are seated.

#### **OUTDOOR SEATING:**

Section 390-50B of the Township Zoning Code provides that each permitted use, other than a parking lot, offstreet loading facility or public utility, shall be conducted within a completely enclosed building. The applicant's current request for outdoors seating is prohibited by the West Vincent Township Zoning Code and therefore relief cannot be provided by the Board of Supervisors, but rather the applicant must seek relief from the West Vincent Township Zoning Hearing Board.

#### **OUTDOOR MUSIC:**

The applicant withdrew its request to allow outdoor music and therefore outdoor music as a conditional use is not presently before the Board of Supervisors.

#### **CONCLUSIONS OF LAW**

This Board finds that the criteria of the Zoning Ordinance for the granting of the conditional use for additional seating at the Butterscotch Café has been satisfied through the testimony and exhibits presented by the Applicant, provided the applicant satisfies the conditions of this approval. Providing adequate legal parking, controlling available seating and providing a landscape buffer will alleviate the concerns expressed by those opposed to the application. As the Applicant can satisfy all the specific criteria outlined in the West Vincent Township Zoning Code, the conditional use to allow for expanded indoor seating must be granted provided that the Applicant satisfies all of the conditions of the Order of the Board of Supervisors.

The applicants' request for outdoor music has been withdrawn.

The Board finds that the applicants request to allow take out service is a permitted use that does not require conditional use approval, provided that the majority of the applicants' customers are seated at tables and the applicant does not install a take out window.

**ORDER OF THE BOARD OF SUPERVISORS OF  
WEST VINCENT TOWNSHIP**

It is hereby ordered and decreed by Board of Supervisors of West Vincent Township as follows:

1. The Applicants request for outdoor seating is not properly before the Board. The Applicant is directed to the West Vincent Township Zoning Hearing Board for relief to allow outdoor seating up to 30 seats.

2. The Applicants request to expand its indoor seating to a maximum of 56 seats is granted, provided that the Applicant complies with the following:

a. the Applicant provides a parking plan to be approved by the Board of Supervisors, that demonstrates that the Applicant will comply with all requirements of Township Ordinances as it relates to the number, size and configuration of parking spaces or obtain appropriate zoning relief from the Township Zoning Hearing Board.

b. should the Applicant rely on shared offsite parking to meet the requirements of the Township Zoning Ordinance, the Applicant must provide a parking plan that would include the size and configuration of the parking and pedestrian off street access to the front door of the Butterscotch Café. All shared parking arrangements must include a recordable Parking Access Easement in a form acceptable to the Township Solicitor.

c. any plan to expand the parking lot on the Butterscotch Café property toward the property owned by Stephen Sladik shall include a planted landscape buffer consistent with the requirements of Section 315-46 of the West Vincent Township subdivision and land development code and Section 390-139 of the West Vincent Township Zoning Code as may be applicable.

d. parking on the Butterscotch lot either parallel or perpendicular to Hollow Road and Flowing Springs Road, other than on an approved parking lot, shall be prohibited.

e. Applicant shall not utilize the Birchrunville Café property for Butterscotch Café patron and employee parking, unless paragraph 2b is satisfied.

f. parking on the Butterscotch Café property other than on a parking lot approved by the Township is prohibited.

3. Per Section 390-135G of the West Vincent Township Zoning Code, the Board hereby grants approval to the Applicant to reduce the number of parking spaces required provided it submits a plan to be approved by the Board of Supervisors on how it will limit seating to a maximum of 56 seats as between indoor and outside seating, (provided the Zoning Hearing Board approves outdoor seating), as a result of customer demand that is seasonal and weather dependent.

4. The Applicant shall obtain and maintain all required sanitary sewer permits and approvals.

5. The Board's Decision of June 6, 2016 is hereby amended to allow cooking facilities within the Butterscotch Café for cooking and baking, provided the Applicant submits a building permit application for BCO inspection of any improvements made after the June 6, 2016 Order and the applicant shall obtain all required Township and other governmental approvals.

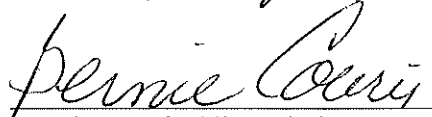
6. Per Section 390-135G of the West Vincent Township Zoning Code, the Board hereby grants approval for an unpaved parking lot. The Board decision of June 6, 2016 is hereby amended to remove the requirement that the parking lot be paved.

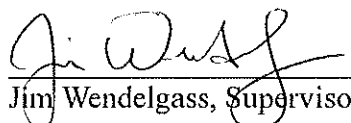
7. Deliveries and trash pick up shall be prohibited before 7:00 a.m.

**Decision Dated: April 7, 2025**

**WEST VINCENT TOWNSHIP  
BOARD OF SUPERVISORS**

  
Dana Alan, Chairman

  
Bernie Couris, Vice Chair

  
Jim Wendelgass, Supervisor