

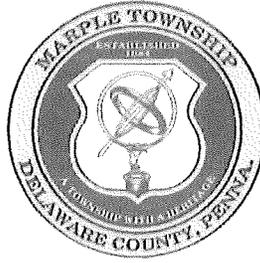
Board of Commissioners

Joseph A. Rufo, President
Daniel D. Leefson, Vice President
Robert Knapp
Robert Fortebuono
John J. Lucas
John R. Longacre, II
Michael K. Molinaro

Lawrence J. Gentile
Township Manager

Sharon L. Angelaccio
Township Secretary

J. Adam Matlawski,
Esq. Township Solicitor



227 South Sproul Road
Broomall, PA 19008-2397
www.marpletwp.com

Therese Staquet
Treasurer

Kathleen M. Yanoshak
Controller

Edward E. O'Lone, CPA
Director of Finance

Joseph C. Romano
Director of Code Enforcement

William Creighton
Director of Public Works

Joseph A. Mastronardo,
P.E. Township Engineer

Brandon Graeff
Superintendent of Police

VIA e-mail only

Vincent M. Pompo, Esquire
Lamb McErlane
24 E. Market Street
PO Box 565
West Chester, PA 19380

Re: Request for Preliminary Opinion Greenbank Farms, Lot 3

Dear Mr. Pompo:

By your letter dated February 20, 2020 (the "Request"), which was received by the Township on February 21, 2020, you requested that the Township issue a preliminary opinion pursuant to Section 916.2 of the Pennsylvania Municipalities Planning Code ("MPC") regarding the uses proposed by your client L. Stephen Sudhop at his property located at 991 Palmers Mill Road, Marple Township, Delaware County, Pennsylvania (Lot 3 Greenbank Farms) (the "Property"). Specifically, you requested confirmation of approval of the uses of the Property for (1) the growing, processing, and storage of grapes and wine; (2) the uses permitted under a "limited winery license", as issued by the Pennsylvania Liquor Control Board; (3) an additional accessory use farm stand; (4) the raising of chickens; and (5) two (2) staff-occupied residential dwelling units. Additionally, your client proposes certain improvements to the Property including a "Reconstructed Agricultural Building" and gravel parking area as shown on the Site Plan-Lucky Duck Way Winery Renewal and Rebuilding of Greenbank Farm Complex for L. Stephen & Dolores Sudhop" issued by Herbert E. MacCombie, Jr., P.E. dated November 19, 2019 (the "Plan"), a copy of which was provided with your request for preliminary opinion.

The Property is an approximately four (4) acre lot, which was originally part of the larger "Greenbank Farm" tract of approximately thirty-four (34) acres (the "Greenbank Farm Tract"). Following hearing held before the Marple Township Board of Commissioners

on January 8, 2001, the Commissioners adopted Resolution 2205 approving the application of the National Lands Trust to use the Greenbank Farm Tract pursuant to the Conservation Overlay District. The Board of Commissioners immediately thereafter adopted resolution 2206 approving the subdivision of the Greenbank Farms Tract into five (5) lots. Lots 1, 4 and 5 were transferred to the ownership of Marple Township, Lot 2 was transferred to the ownership of William Brainerd and Lot 3 (the Property) was transferred to the ownership of the Delaware County Historical Society. The transferee owners of each such Lot entered into and recorded the Declaration of Rights, Restriction and Covenants dated as January 31, 2001 (the "Declaration") agreeing the properties may be used only as delineated therein to the extent otherwise permitted in the Conservation Overlay District, and providing that such restrictions would run with the land and bind successors and assigns. In accordance with the Conditional Use Approval, the Property was used by Delaware County Historical Society for its non-profit operation. Mr. and Mrs Sudhop acquired the Property in 2016.

The Conservation Overlay District was created by Ordinance No. 2000-18 adopted October 2, 2000. The provisions of the Conservation Overlay District are found at §300-35.1 of the Marple Township Zoning Ordinance. As indicated above, the Property is located in the Conservation Overlay District.

Proposed Uses

(1) The growing, processing, and storage of grapes and wine is permitted in the Conservation Overlay District as an agricultural use. Applicants propose viniculture/viticulture use. §300-35.1.C(3) of the Zoning ordinance provides that a tract may be used or occupied and a building may be erected, altered or used for "Agricultural uses". Neither "Agricultural uses" nor "Agriculture" is defined in the Zoning Ordinance; however, the Pennsylvania Right to Farm Act, 3 P.S. §§ 951-957, at §952, defines "Agricultural commodity" to include "(1) Agricultural, aquacultural, horticultural, floricultural, viticultural or dairy products." (emphasis added). Viticulture is commonly understood to mean the cultivation or culture of grapes especially for wine making and is a branch of the science of horticulture. Additionally, the Declaration provides that Lot 3 may be used for agricultural purposes. It is noteworthy that "Agricultural uses" are indicated as permitted uses in no other zoning district other than the Conservation Overlay District.

As the Property is less than ten contiguous acres, the provisions and protections of the Pennsylvania Right to Farm Act apply to the Property only if the Property has an anticipated yearly gross income of at least \$10,000, which will need to be demonstrated. Also, §953(b) of the Pennsylvania Right to Farm Act requires that direct commercial sales at the Property are permitted provided that not less than 50% of the commodities are produced by the owner and operator of the Property. This must also be demonstrated

Vincent Pompo, Esquire
March 31, 2020
page 3

It is also noted that viticultural use would be new to the Property and that the enforcement of noise and other health, safety and welfare ordinance violations at the Property would not be precluded by the Pennsylvania Right to Farm Act.

(2) The uses permitted under a "limited winery license", as issued by the Pennsylvania Liquor Control Board, in connection with the proposed viticultural/agricultural use at the Property are also permitted in the Conservation Overlay District. Pennsylvania's Right to Farm Act, 3 P.S. § 952 defines "normal agricultural operations" as:

The activities, practices, equipment and procedures that farmers adopt, use or engage ... in the production, harvesting and preparation for market or use of agricultural ... commodities...The term includes new activities, practices, equipment and procedures consistent with technological development within the agricultural industry. Use of equipment shall include machinery designed and used for agricultural operations, including, but not limited to, crop dryers, feed grinders, saw mills, hammer mills, refrigeration equipment, bins and related equipment used to store or prepare crops for marketing.

Applicant must obtain and maintain a "limited winery license" from the Pennsylvania Liquor Control Board and must comply with all requirements, rules, regulations and restrictions applicable to such license, including but not limited to those applicable to processing, production and sale of wine, in order to maintain such use at the Property.

(3) An additional accessory use farm stand is permitted at the Property provided that not less than 50% of the commodities sold are produced by the owner and operator of the Property. Conservation Overlay District §300-35.1.C(5) and §300-116 of the Zoning Ordinance both appear to permit accessory farm stands only by special exception; however, §953(b) of the Pennsylvania Right to Farm Act provides that "Direct commercial sales of agricultural commodities upon property owned and operated by a landowner who produces not less than 50% of the commodities sold shall be authorized, notwithstanding municipal ordinance ... or zoning prohibitions" (emphasis added).. Consequently, the Township may not apply special exception requirements to such accessory use.

(4) The raising of chickens is permitted in the Conservation Overlay District as an agricultural use. Section 952 of the Pennsylvania Right to Farm Act defines "Agricultural commodity" to include "(4) The products of poultry" and defines "Normal agricultural operations" as "The activities, practices, equipment and procedures that farmers adopt, use or engage in the production and preparation for market of poultry...".

(5) Two (2) staff-occupied residential dwelling units as part of the barn complex are

Vincent Pompo, Esquire
March 31, 2020
page 4

permitted. §300-35.1.C(4) permits "residential use for occupancy ... by the owner's employees". Additionally, the Declaration provides with respect to Lot 3 (the Property), "in the event of...agricultural ... use, two single family residence spaces may be permitted for employees of the owner if such space meets Township building regulations." (emphasis added). Provided that such dwelling units are occupied by the owner's employees and meet applicable Township codes, such units are permitted.

Zoning Related-issues

You also asked that the Township identify any "zoning-related issues". A preliminary review of the Plan indicates that there may be items of non-compliance with Township zoning regulations that would require relief in order to be permitted. Conditional Use approval was originally granted to apply the Conservation Overlay District to the overall Greenbank Farm Tract. Compliance with various zoning requirements such as required tract size, open space, impervious coverage, building coverage, setbacks, etc. were determined based on the overall Greenbank Farm Tract, which at the time of conditional use approval was a single parcel in single ownership. The subsequent subdivision created, specifically with respect to the Property, a lot which is non-conforming as to a number of these Conservation Overlay District zoning criteria.

The Property is a legal lot and that the uses discussed above may be conducted within structures (existing or proposed) maintaining existing setbacks, coverages, etc. However, for example, the Plans call for a "Reconstructed Agricultural Building" proposed to be re-sized and relocated. To the extent that any of the proposed construction or other improvement would create any new non-conformity or increase any existing non-conformity, variance would be required.

§300-35.1.B(4) - requires at least 75% of the gross area of the tract be reserved for open space. Accepting that the entire Greenbank Farm Tract (and all lots therein) can be considered for this requirement, the plan does provide sufficient information to determine if the redevelopment of the Property for agricultural purposes negatively affects this requirement.

§300-35.1.D(1)-(3) - maximum density for building coverage (3%), total building square footage (5%) and impervious coverage (10%) are all calculated with respect to lot area. §300-14 defines "Lot Area" as "The area of land contained within the property lines of a lot...." "Lot" is defined as "a duly recorded plot or parcel of land...." The Plan seeks to show compliance with building coverage and impervious coverage by indicating such figures for the overall Greenbank Farm Tract. However, the Zoning Ordinance is clear that coverages are to be measured against the area of the Lot on which the improvements are being made - i.e, the Property, a separately deeded and recorded parcel. The Plan indicates that the existing building coverage and impervious coverage for the lot

Vincent Pompo, Esquire
March 31, 2020
page 5

constituting the Property are non-conforming, but are assumed to have existed at the time the Lot was created and may remain. To the extent that the post construction/improvement coverages for the Property exceed the existing coverages for the Property, the increased non-conformity either must be eliminated or variance obtained.

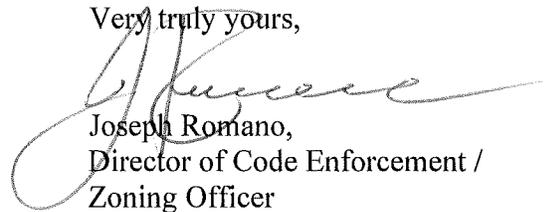
§300-35.1.E(2)&(3). The Plan does not indicate the setback of the post construction buildings from the road right-of-way or from the tract perimeter. If the existing setbacks are non-conforming, to the extent that post-construction setbacks increase the non-conformity, the increased coverages either must be eliminated or variance obtained.

§300-35.1.E(4). The parking area is proposed to be located within the required building setback and this is not permitted by this Section.

This opinion is limited to the specific facts represented in the Request. Any deviation from the facts presented in the Request could result in applicability of this Opinion.

In order to perfect any rights you may have in this preliminary opinion, you will need to publish this opinion pursuant to Section 916.2(2) of the MPC and provide proof thereof to the Township.

Very truly yours,



Joseph Romano,
Director of Code Enforcement /
Zoning Officer

cc: J. Adam Matlawski, Marple Township Solicitor
Larry Gentile, Marple Township Manager, via e-mail
Joseph Mastronardo, Township Engineer, via e-mail