

Susan R. Rubright
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September 16, 2021

VIA OVERNIGHT DELIVERY

Beth Foley, Secretary
Mendham Township Zoning Board of Adjustment
2 West Main Street
Post Office Box 520
Brookside, New Jersey 07926

Re: Interpretation Application per N.J.S.A. 40:55D-70b and
Mendham Township Ordinance, Chapter XV, Section 15-8,
Regarding Block 109, Lot 23 -- 32 Ironia Road, Mendham Township

Dear Ms. Foley:

This office represents Bernadette Koenig, George Koenig, Kimberly Hines Hart and Eric Hart (the "Applicants") who are interested parties in connection with the BF Partners, LLC application currently pending before the Mendham Township Planning Board. We are filing the within application, as interested parties, seeking an interpretation under N.J.S.A. 40:55D-70b and Mendham Township Ordinance, Chapter XV, Section 15-8b to determine whether Mendham Township Ordinances at Chapter XXI, Zoning Regulations, and in particular, Section 21-4.1, permit the use of a portion of the property that is the subject of the BF Partners, LLC application, known as Block 109, Lot 23 on the Mendham Township Tax maps and located at 32 Ironia Road (the "Property"), as a brewery. The Applicants are also asking that the Zoning Board of Adjustment review whether the other uses currently existing, or recently staged or proposed, at the Property comply with Mendham Township's Land Use Ordinance, and if not, that use variances are required.

In connection with the Interpretation Application please find an original and 11 copies of the following:

- Application form with Rider detailing relief sought.
- Checklist
- Certification of taxes paid on the subject Property

5 Penn Plaza, 23rd Floor
New York, New York 10001
212.896.3974

101 Eisenhower Parkway
Roseland, New Jersey 07068
973.228.5700

777 South Flagler Drive
Suite 800, West Tower
West Palm Beach, Florida 33401
561.899.0177

www.bracheichler.com

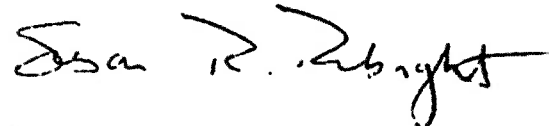
Beth Foley
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- Letter requesting 200' property owner list
- Exhibits in support of the Application as referenced in the Application Rider

The application fee, escrow fee and W-9 form will be submitted to your office directly by the Applicants.

Please advise of any questions or comments. Please advise when this matter will be scheduled for a hearing. Thank you for your courtesies.

Sincerely,

A handwritten signature in black ink that reads "Susan R. Rubright". The signature is written in a cursive style with a large, stylized "S" and "R".

Susan R. Rubright

SRR:nas

Cc: Nicole Voigt, Esq.

Form 1

Township of Mendham
Application for Development

FOR OFFICIAL USE ONLY:

Application No.: _____	Escrow Account Number: _____
Date Filed: _____	Date Deemed Complete: _____
Amount Application Fee Paid: _____	Expiration Date: _____
Amount Technical Review Fee Paid: _____	Expiration Date Extension On: _____ To: _____

CHECK ALL THAT APPLY:

- | | |
|--|---|
| <input type="checkbox"/> Concept Plan | <input type="checkbox"/> Appeal of Ruling (40:55D-70a) |
| <input type="checkbox"/> Minor Subdivision | <input checked="" type="checkbox"/> Interpretation (40:55D-70b) |
| <input type="checkbox"/> Minor Site Plan | <input type="checkbox"/> Bulk Variance (40:55D-70c) |
| <input type="checkbox"/> Major Subdivision - Preliminary | <input type="checkbox"/> Use Variance (40:55D-70d) |
| <input type="checkbox"/> Major Subdivision - Final | <input type="checkbox"/> Extension of Time |
| <input type="checkbox"/> Major Site Plan - Preliminary | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Major Site Plan - Final | <input type="checkbox"/> Other _____ |

1. Applicant's Name Bernadette Koenig & George Koenig Phone _____ Fax _____
 Address 13 N. Gate Road, Mendham, New Jersey

Is Applicant a Corporation Partnership Individual?

If Applicant is a corporation or partnership, set forth the names and addresses of all stockholders or partners having a 10% or more interest.

Name Kimberly Hart & Eric Hart Address 17 N. Gate Road, Mendham, NJ
 Name _____ Address _____

Attach sheet if necessary.

2. Owner's Name BF Partners, LLC Phone _____ Fax _____
 Address _____

3. Attorney's Name Susan R. Rubright Phone 973-403-3157 Fax 973-618-5557
 Firm and Address Brach Eichler LLC, 101 Eisenhower Parkway, Roseland, NJ 07068

Note: Corporation must be represented by a N.J. attorney.

4. Name(s) and address(es) of person(s) preparing plans
 Name _____ Profession _____ N.J. Lic. No. _____
 Address _____ Phone _____ Fax _____

Name _____ Profession _____ N.J. Lic. No. _____
 Address _____ Phone _____ Fax _____

Attach sheet if necessary.

5. Location of Property: Tax Map Block 109 Lot Nos. 23 Total Tract Area 37.4
 Street Address 32 Ironia Road Zone District R-10
 Are the premises fronting on a Twp. Street County Road _____ State Highway _____

6. Name of subdivision or development (if any) N/A
For subdivisions, number of proposed lots _____ For site plans, floor area of building(s) in sq. ft. _____

7. Existing use(s) now located on premises _____

8. Proposed use(s) of premises _____

9. If this application is for zoning variance relief, has a decision been rendered or an order issued by the Construction Official? Yes _____ No _____ Date of Decision or Order N/A

10. List any variances and/or waivers sought. If none, state "none." If any are required, attach hereto as a separate rider the factual basis and legal theory for the relief sought. none

11.(a) Deed Restrictions that exist. (If no restrictions, state "none", if "yes" attach copy.) Oct 4, 2004 Deed of Easement under Agriculture & Development Act, recorded in Morris County clerks at Bk 5180, Pg 138

(b) Proposed Deed Restrictions _____

12. Briefly describe any prior or currently pending proceedings before this Approving Authority or any other federal, state, or local board or agency involving the property which is the subject of this application.

Planning Board application pending seeking site plan approval on part of property for brewery.

Attach sheet if necessary.

13. List any other material accompanying this application, i.e. plans, EIS, drainage calculations, etc. See Rider attached setting forth basis for request for interpretation of ordinance.

Attach sheet if necessary.

The undersigned applicant does hereby certify that all of the statements contained in this application are true.

George Koehnig
Date

9-15-21
Date

Kimberly Heft
Date

9/15/21
Date

Bernadette Koenig
Applicant's Signature Bernadette Koenig

9/15/21
Date

Eric Hart
Date

15 sep 21
Date

CONSENT OF OWNER

I, the undersigned, being the owner of the lot or tract described in the foregoing application, hereby consent to the making of this application and the approval of the plans submitted herewith. Further, I hereby give permission to the members of the Approving Authority and its authorized representatives and experts to enter onto and inspect the premises identified herein above for the purpose of evaluation of the application for development presently pending before the Approving Authority. (If owned by a corporation, attach copy of resolution authorizing application and officer signatures.)

Owner's Signature _____

Date _____

Sworn and Subscribed to before me this _____ day of _____, 201__

Notary Public of New Jersey

RIDER

Application for Interpretation of Zoning Ordinance

Introduction

BF Partners, LLC¹ (“BF”) has filed an application with the Mendham Township Planning Board (the “Planning Board”) to use a portion of the property known as Block 109, Lot 23 on the Mendham Township Tax maps and located at 32 Ironia Road (the “Property”) for a brewery (the “BF Application”). The Property is located in an R-10 residential zone. The Mendham Township Master Plan describes Mendham Township as “a low-density residential community with significant sensitive land, rural and historic characteristics and a limited infrastructure.” (see Exhibit 1, portion of Master Plan, at page 4). The Master Plan highlights that “the only area of primarily nonresidential land use is the small area in Brookside center on Main Street, Cherry Land and Woodland Road...this area is regulated by the B zone, which permits commercial uses as well as residential uses at the same density as the R zone.” (see Exhibit 1, portion of Master Plan, at page 6). As discussed in more detail below, Mendham Township’s zoning ordinance permits agricultural and horticultural uses in residential zones under specific standards and as those terms are defined in the ordinance.

The BF Property, until the past few years, conducted “traditional farm operations” consistent with Mendham Township’s zoning ordinance’s definitions and standards for agricultural uses in residential zones. During the past few years, other uses not associated with traditional farm uses, such as tourism and entertainment event hosting, have supplanted the traditional farm operations. These uses may or may not comply with the zoning ordinances and may or may not have obtained any required approvals or permits. BF has indicated that it intends for these uses to remain if the brewery application is approved.

As to the brewery operation, BF intends to create a 78-seat “tasting room” with extended hours, music, electronic visual displays and other amenities for patrons to enjoy on a portion of the Property. BF indicates it will obtain crops to support the brewery operation using various farms located off-site throughout the Township. BF further intends to hold concerts and other events on the Property, leading it to become a commercial venue as demonstrated by their recent music event on September 11, 2021, where three bands played outdoors from 1 to 7 pm. Patrons paid \$20/person (children were free) and were invited to bring their own chairs and coolers. Food and non-alcoholic beverages were sold.

BF commenced the hearings on its application on July 1, 2021 and several members of the Backer family provided sworn testimony. Unfortunately, the “Zoom” meeting technology did not record the hearing and the hearing is scheduled to be recommenced.

¹ BF Partners, LLC comprises the following members: Frederick T. Backer, Jr., Barbara Backer, Steven Backer, Leslie Roberts, Elizabeth Amission, Stuart Backer, Lee Ann Backer and Janice Backer.

The Applicants herein are asking the Board of Adjustment (“BOA”) to review and determine whether the current BF Application complies with Mendham Township zoning ordinances, and further that if it does not, that a use variance is required. The Applicants herein are also asking that the BOA review and determine whether the myriad of uses recently being conducted currently and those proposed in connection with the brewery on the Property comply with the Mendham Township zoning ordinances, and that if they do not, that use variances are required. Notably, we raised our concerns regarding whether the Planning Board or BOA has jurisdiction at the July 1, 2021 Planning Board hearing and again in a letter to the Board dated July 29, 2021 (Exhibit 2).

Authority for Interpretation Request

This interpretation application is submitted by neighboring property owners who are interested parties. The Municipal Land Use Law (“MLUL”) N.J.S.A. 40:55D-1 et seq. at N.J.S.A. 40:55D-4 defines an “interested party” as “... (b) in the case of a civil proceeding in any court or in an administrative proceeding before a municipal agency, any person, whether residing within or without the municipality, whose right to use, acquire or enjoy property is or may be affected by any action taken under P.L. 1975, c. 291 (C. 40:55D-1 et seq.)...”. The courts in DePetro v. Twp. of Wayne Planning Board, 367 N.J. Super. 166, 169 (App. Div. 2004), certif. den. 181 NJ 544 (2004) and Colts Run Civic Assn. v. Colts Neck Tp. Zoning Bd. of Adjustment, 315 N.J. Super. 240, 245–46 (Law Div. 1998) confirm that neighbors are “interested parties” in connection with planning and zoning applications.

Under the MLUL at N.J.S.A. 40:55D-70d, only a Zoning Board of Adjustment has jurisdiction to hear and decide use variances and under N.J.S.A. 40:55D-70b to interpret zoning ordinances. Mendham Township’s ordinance incorporates these standards in Chapter XV, Section 15-8. Where the question of jurisdiction is purely legal (such as an application to a planning board seeking a “d” use variance), the planning board may (and should) decline to hear the matter. See, TWC Realty v. Zoning Bd. of Adjust., 315 N.J. Super. 205, 217 n.10 (Law Div. 1998). The DePetro v. Twp. of Wayne Planning Board and the Colts Run Civic Assn. v. Colts Neck Tp. Zoning Bd. of Adjustment cases cited above, likewise, confirm that only a zoning board of adjustment has jurisdiction to interpret a zoning ordinance. If the Mendham Township Planning Board were to act on the BF Application, any review would be *ultra vires* and any decision would be null and void if it were later determined that the Planning Board did not have jurisdiction to act. See, Trinity Baptist v. Louis Scott Hold, 219 N.J. Super. 490, 496-498 (App. Div. 1987); Grancagnola v. Planning Bd. 221 N.J. Super. 71 (App. Div. 1987); Tanenbaum v. Wall Bd. Of Adjustment, 407 N.J. Super 446, 460-461 (Law Div. 2006), *aff’d o.b.* 407 N.J. Super. 371 (App. Div. 2009).

BF Application Must Comply with Municipal Zoning Ordinances

The BF Application is subject to municipal regulations including the Land Use Ordinance of the Township of Mendham and more particularly the Zoning Ordinances. In support of its application before the Planning Board, BF relies on Resolution 2020-02 issued by the Morris County Agriculture Development Board (“CADB”) (Exhibit 3). That Resolution is a ruling only

as to whether the proposed Brewery application violates the 2004 Deed of Easement on the Property. While the CADB's determination that the proposed Brewery use is in compliance with the Deed of Easement, the Resolution specifically states that it does not pre-empt local jurisdiction from determining whether a proposed use is permitted. The Resolution states on page 3 that "the operation must comply with the Limited Brewery License and Craft Distillery License laws **and any other applicable federal, state and local laws** and regulations." (bold emphasis added).

In fact, Policy #12 of the CADB, relied on by the CADB in Resolution 2020-02, speaks directly to the issue of pre-emption in paragraph 3.c where it states that: "**Morris CADB approval does not preempt the jurisdiction and control of the Municipality and its Boards and Agencies**, Morris County and its Boards and Agencies, and the State of New Jersey and its Boards and Agencies" (bold emphasis added) (Exhibit 4). Thus, the CADB defers to local municipalities to review and make a determination of the use under the municipality's own land use and other ordinances.

Ordinances to Be Interpreted

The Applicants herein are asking the BOA to act under N.J.S.A. 40:55D-70b and Mendham Township Ordinance Chapter XV, Section 15-8b. to determine whether Mendham Township Ordinances at Chapter XXI, Zoning Regulations, and in particular, Section 21-4.1, permit the use of a portion of the Property as a brewery. The Applicants are also asking that the BOA review as well whether the other uses currently existing, or recently staged or proposed, comply with Mendham Township's Land Use Ordinance, and if not, that use variances are required by BF before proceeding with the BF Application.

Section 21-4.1 provides in relevant part:

21-4.1 Uses. In the residence districts R, R-1, R-2, R-3, R-5, **R-10** and R-C the following uses are permitted: ...

b. **Horticulture or agriculture as a livelihood**, subject to Subsection 21-4.5² and **provided that commodities offered for sale upon the premises are grown on the premises.** ...

e. **Agricultural uses, meaning the right to engage in agriculture as defined herein**, shall be permitted in every residential zone, and it shall be presumed that such uses, activities and structures in connection therewith shall not constitute a public or private nuisance, provided that such agricultural uses are conducted in conformance with Acceptable Agricultural Management Practices as defined herein.

² Subsection 21-4.5.c. Supplementary Regulations referenced in Section 21-4.1.b.: c. Keeping of Animals or Poultry, Cattle, horse, sheep, goats, not more than six pigs, six months older or over, or other farm livestock or poultry may be kept provided any housing or runs therefore are subject to the yard requirements for principal buildings as set forth in Schedule of Requirements accompanying this Chapter

1. All uses and structures **customarily incidental to agriculture shall be permitted accessory uses in all residential zones**, including, but not limited to:

- a. The storage, processing and sale of farm products where produced;
- b. The use of irrigation pumps and equipment;
- c. The application of manure, chemical fertilizers, insecticides, pesticides and herbicides;
- d. On site disposal of organic agricultural waste;
- e. Installation of soil and water conservation practices in accordance with a Conservation Plan approved by the Morris County Soil Conservation District;
- f. Transportation of slow moving equipment over roads within the municipality;
- g. Utilization of tractors and other necessary equipment;
- h. The employment of farm laborers;
- i. The creation of noise, dust, odors and fumes inherently associated with such uses;
- j. The conduction of farm practices at any and all times when necessary;
- k. Recreational use (snowmobiling, off-highway vehicle use, hunting, etc.) as permitted by the farm owner, with the provision that any recreational use of farm land that changes the underlying agricultural nature of the land shall be subject to the usual site plan review, variance application and all permits where otherwise required.
- l. Provisions for the wholesale and retail marketing of the agricultural output of the `farm which include the building of temporary and permanent structures and parking areas for said purpose which all must conform with municipal land development standards; and
- m. The raising and keeping of farm animals including pets, pastoral farm animals (dairy and beef cattle, sheep and goats), swine, fowl, horses, ponies and mules, provided that proper sanitation standards, minimum acreage limits and boundary sizes between fencing or enclosures and joining properties are established.

“Agriculture” is defined in the Mendham Township Zoning Ordinance in Chapter XII as:

The production principally for the sale to others of 'plants, animals or their products, including, but not limited to, forage and sod crops, grain and feed crops, dairy animals and dairy products; livestock including dairy and beef cattle, poultry, sheep, swine, horses, ponies, mules and goats; including grapes, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products and other commodities as described in the Standard industrial Classification for agriculture, forestry, fishing and trapping. Agriculture shall not include intensive poultry or swine production or extensive animal feedlot operations.

Thus, under Ordinance 21-4.1.b, agricultural and horticultural uses are permitted in residential zones **for the sale of commodities only if grown “on the premises.”** This limitation prohibits the farm management unit (“FMU”) concept from being used to support the proposed Brewery here as the crops from off-site farms are, by definition, not grown on the Backer Farm premises. This provision also precludes the brewery use from being “customary and incidental” to agriculture as the brewery use does not fall within any of the categories in section 21-4.1.e.1, and as there is no primary use on the Property to which it could be “customary and incidental.”

The Applicant is also seeking an interpretation as to whether all or some of the uses now existing or recently staged on the Property are permitted under the Mendham Township Land Use Ordinance. Members of the Backer family testified and stated in the BF Application that the Backer Farm started as a dairy operation, was then an equine operation and is currently used to grow produce, pork and eggs. It also operates a CSA Program [Community Supported Agriculture Program], conducts farm-to-table events and agri-tourism related activities. There are also unrelated commercial vehicles being parked on the Property. It is not clear whether any of these uses received or required planning or zoning approval by the municipality. At a minimum, the more recent activities such as goat yoga, movie nights, food truck nights and 6-hour concerts should be reviewed to see if they constitute permitted uses and whether they require site plan review, variance application and/or permits under Mendham Township Ordinance Section 21-4.1. The ZBA should determine if these are permitted principal or accessory uses under Mendham Township ordinances.

Notably, the Township’s own planner in reviewing the BF Application raised the issue of jurisdiction in his report as to whether the brewery is a permitted use, as follows: “Section 21-4.1 regulates the permitted uses in the R-10 zone of which horticulture and agricultural uses are permitted **provided that the commodities for sale are grown on the premise**” (Exhibit 5, H2M Report, page 3 of 7, para. 3) (bold emphasis added). The planner in his report then recommends that the Planning Board “**consider if the [proposed Brewery] use is really customary and incidental.**”

The planner’s report contains further evidence that the BF Application belongs before the BOA when the planner writes:

It should be noted that Section 21-4.1.e.1.I. requires that retail marketing of the agricultural output requires that all permanent structures and parking areas must conform to municipal land development standards. We do not believe that the applicant is proposing to comply with the 16-10.3c. Design Standards for Site Plans for Off -street parking.... The question before the [Planning] Board is if the applicant is not proposing to comply with the ordinance standards as it relates to parking standards then is it a permitted as an accessory use? **The applicant may need a d variance however we defer to the Board Attorney on this issue.**

(Exhibit 5, page 4 of 7, para. 4) (bold emphasis added)

Summary of Request for Interpretation.

The Applicants are requesting that the BOA decide whether a brewery with a 78-seat “tasting room” proposed to be located on a portion of a lot in an R-10 residential zone is a permitted use under Mendham Township ordinances, whether other related variances and exceptions are required and whether a full site plan application and supporting details on all existing and proposed uses and other related variances and exceptions on the Property must be submitted to the BOA. Additional information will be submitted in advance of the public hearing on the requested interpretation, and expert testimony will be offered at the public hearing, in support of the Applicants’ contention that the uses proposed in the current BF Application are not permitted in the R-10 Zone, so that the BOA can provide an interpretation of whether the brewery use and the uses currently being conducted on the Property are compliant with and permitted under Mendham Township zoning ordinances, and whether any variances are required. In making its determination, we will urge that the BOA heed the recent Township’s Response to the Morris County Farmland Preservation Plan questionnaire as stated in Administrator Robert Casey’s letter to Morris County Planning Director, Joseph Barilla dated July 6, 2021 (Exhibit 6):

1. Preserving traditional farm operations is important. The Township notes with great dismay the proliferation of destination farms, amusement park farms, echo tourism farms, and venue farms. **These latter operations are something which Mendham Township believes should be regulated to preserve the overall low-density development of the municipality.** (original underline and bold emphasis)

6. Agritourism operations, to the extent limited to “pick your own”, farm stands and limited hayrides/pumpkin picking are fine. **The Township draws the line when the farm seeks to become a destination venue** such as an amusement destination (e.g. petting zoo, amusement rides / facilities), a distillery, a gathering site or other large scale commercial attraction which is other than farming. (In this regard we invite your attention to the Alstede operation in Chester.) (bold emphasis added)

ITEM No.	SUBMISSION REQUIREMENTS											ITEM DESCRIPTION	APPLICANT MARK	STATUS	TOWNSHIP MARK	NOTES / LAND USE ORDINANCE REFERENCE			
	PLANNING BOARD OR BOARD OF ADJUSTMENT						BOARD OF ADJUSTMENT												
	MINOR		MAJOR				VARIANCE												
	PRELIM	FINAL	PRELIM	FINAL	PRELIM	FINAL	(a)	(b)	(c)	(d)									
1																Twenty (20) copies of completed application forms for PB Sixteen (16) copies for BOA	X	COMPLIES	
2																20 copies to Planning Board, 16 copies to Board of Adjustment of requisite plats prepared, signed and sealed by N.J. licensed professional in compliance with N.J. A.C. 18:40-7.1 et sec. folded with title block exposed to view. Plat sheets shall be no larger than 24"x36"		COMPLIES	
3																20 copies to Planning Board, 11 copies to Board of Adjustment of documents other than plats necessary to accompany the application.	X	COMPLIES	
4																Completed Filing Fees Calculation Sheet and payment of required filing fees inclusive of application fees and escrow deposits. See Appendix 1.	X	COMPLIES	
5																Certification issued by the Tax Collector that no taxes or assessments for local improvements are due or delinquent on the subject property.	X	COMPLIES	
6																Certification of submittal to the Morris County Planning Board and the Morris County Soil Conservation District as applicable.		COMPLIES	16-8.8
7																Title block placed in the lower right corner of each sheet containing all information drawn in a format shown in Appendix 2.		COMPLIES	16-8.5g; 16-8.1a, 1a,b,c,d
8																Name(s) and address(es) of the owner(s) and applicant(s) of the subject tract.		COMPLIES	16-8.5g; 16-8.1a, 1e,f
9																North arrow and graphic scale appearing on all plat sheets as applicable.		COMPLIES	16-8.1.a.2
10																Key Map showing the subject tract and its relation to the surrounding area at a scale of not less than 1"=500'.		COMPLIES	16-8.1.a.9
11																Area Map based on Tax Map information at scale of 1"=200' with the following information: 1. Adjoining property owners Lot and Block No. 2. Block limits, Zoning districts and municipal boundary lines.		COMPLIES	16-8.1.a.10
12																A list of the full names and addresses, with Block and Lot numbers, of owners of all land within 200' of the subject tract, as furnished by the Mendham Township Tax Assessor and keyed to the Area Map.	X	COMPLIES	16-8.1.a.8
13																Plat Signature Box as applicable and illustrated by Appendix 3.		COMPLIES	16-8.1.a.1.g
14																Plat Signature Boxes as applicable and illustrated by Appendix 4.		COMPLIES	16-8.5a

Adopted: _____

ITEM NO.	SUBMISSION REQUIREMENTS										ITEM DESCRIPTION	APPLICANT MARK	STATUS	TOWNSHIP MARK	NOTES / LAND USE ORDINANCE REFERENCE							
	PLANNING BOARD OR BOARD OF ADJUSTMENT					BOARD OF ADJUSTMENT																
	MINOR		MAJOR			VARIANCE 40:580-70																
	SUBMISSION	SITE PLAN	SUBMISSION	PRELIM.	FINAL	SUBMISSION	SITE PLAN	SUBMISSION	SITE PLAN	(a)						(b)	(c)					
15	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	Lot lines, Tax Map Block and Lot numbers of each adjoining property, including properties across a street or a municipal boundary line.	COMPLIES	N.A.	WAIVER	
16	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	The area, Lot and Block number as assigned by the Township Engineer, of each existing and/or proposed lot within the subject tract.	COMPLIES	N.A.	WAIVER	
17	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	The bearing, length, or arc description of each course of the tract boundary.	COMPLIES	N.A.	WAIVER	
18	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	The dimensions of each course of all lots, easements and rights-of-way comprising the subject tract.	COMPLIES	N.A.	WAIVER	
19	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	The bearing, length or arc description of each course of all lots, easements and rights-of-way comprising the subject tract.	COMPLIES	N.A.	WAIVER	
20	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	Any protective covenants and/or deed restrictions applying to the subject tract.	COMPLIES	N.A.	WAIVER	
21	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	Required front, side and rear setback lines shown for each lot.	COMPLIES	N.A.	WAIVER	
22	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	Tabular zoning schedule of required bulk conditions and identification of any non-conforming conditions in a format illustrated by Appendix 5.	COMPLIES	N.A.	WAIVER	
23	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	Tabulation of the original area of the subject tract and any component parcel and each individual lot and parcel of land proposed including open space and rights-of-way areas.	COMPLIES	N.A.	WAIVER	
24	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	The footprint and uses of all existing structures and facilities within 200' of the subject tract including access ways, parking areas, walks, fences and walls, drawn to scale.	COMPLIES	N.A.	WAIVER	
25	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	The footprint, setbacks, dimensions and uses of all existing and proposed structures and facilities on the subject tract including access ways, parking and/or loading areas, walks, fences and walls, drawn to scale.	COMPLIES	N.A.	WAIVER	
26	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	Wooded areas indicating predominant species and sizes, and any areas to be cleared in and within 200' of subject tract.	COMPLIES	N.A.	WAIVER	
27	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	The location and identification of utility easements, other easements or rights-of-way on and within 200' of the subject tract.	COMPLIES	N.A.	WAIVER	
28	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	Wetlands and wetland transition areas delineated by qualified professional on tract and within 150' thereof and described by metes and bounds, (unless an absence of wetlands determination by N.J.D.E.P.E is furnished).	COMPLIES	N.A.	WAIVER	

ITEM No.	SUBMISSION REQUIREMENTS										ITEM DESCRIPTION	APPLICANT MARK	STATUS	TOWNSHIP MARK	NOTES / LAND USE ORDINANCE REFERENCE
	PLANNING BOARD OR BOARD OF ADJUSTMENT					BOARD OF ADJUSTMENT									
	MINOR		MAJOR			VARIANT F 40:560-70									
	SUBDIVISION	SITE PLAN	SUBDIVISION	SITE PLAN	SUBDIVISION	SITE PLAN	(a) & (d)	(e)	(f)	(g)					
29											Bodies of water, streams and wetlands and wetland transition areas as verified by L.O.I. (or absence of wetlands determination by N.J.D.E.P.E.) and waterways within the subject tract.	COMPLIES			
												N.A.			
												WAIVER			16-8.1.b.7; 16-8.9
30											Bodies of water, streams, wetlands, wetland transition areas, State open waters, water ways, swales, ditches, bridges, culverts, storm drainage piping and other structures on and within 200' of the subject tract.	COMPLIES			
												N.A.			
												WAIVER			16-8.1.b.7; 16-8.9
31											Soil types based on Soil Survey of Morris County as prepared by the Soil Conservation Service.	COMPLIES			
												N.A.			
												WAIVER			16-8.1.d.1
32											Location of all soil permeability test pits with respective soil log and permeability data to include date of test, depths and identification of horizons, depth to ground water and bedrock.	COMPLIES			
												N.A.			
												WAIVER			16-8.1.d.1
33											Location of all existing and proposed water supply wells on the subject tract and those existing within 100 feet thereof.	COMPLIES			
												N.A.			
												WAIVER			16-8.1.d.2
34											Location of all existing and proposed sewerage disposal systems on the subject tract and those existing within 100 feet thereof.	COMPLIES			
												N.A.			
												WAIVER			16-8.1.d.2
35											Environmental Impact Study as required by Chapter XVII. of the Land Use Ordinance.	COMPLIES			
												N.A.			
												WAIVER			16-8.1.a.1; 16-8.4.g
36											Environmental Constraints Map with all details required by 17-3.1(f) shown for the subject tract and within 200' thereof.	COMPLIES			
												N.A.			
												WAIVER			17-3.1(f);
37											Soil Erosion and Sediment Control Plan as required by Chapter XIX. of the Land Use Ordinance.	COMPLIES			
												N.A.			
												WAIVER			16-8.1.a.2; 16-8.4.j
38											Site Grading Plan as required by section 16-8.4 (f) of the Land Use Ordinance.	COMPLIES			
												N.A.			
												WAIVER			16-8.1.a.3; 16-8.4.i
39											Development Permit or application therefore as required by Chapter XVII. for the Subject tract, if any portion thereof lies within an area of special flood hazard.	COMPLIES			
												N.A.			
												WAIVER			Chapter XVII.
40											Proof of approval by or proof of submission for approval, to the Mendham Township Board of Health and/or other agency of jurisdiction for individual or central sewerage disposal system(s)	COMPLIES			
												N.A.			
												WAIVER			
41											Proof of approval by or proof of submission for approval, to the Mendham Township Board of Health and/or other agency of jurisdiction for individual or central potable water supply system(s).	COMPLIES			
												N.A.			
												WAIVER			
42											Plats and plans drawn at a scale not less than 1"=50' (A scale of 1"=100' may be used in instances when the standard 24"x36" sheet size will not properly accommodate the tract.)	COMPLIES			
												N.A.			
												WAIVER			16-8.2; 16-8.4

ITEM No.	SUBMISSION REQUIREMENTS							ITEM DESCRIPTION	APPLICANT MARK	STATUS	TOWNSHIP MARK	NOTES / LAND USE ORDINANCE REFERENCE		
	PLANNING BOARD OR BOARD OF ADJUSTMENT				BOARD OF ADJUSTMENT									
	MINOR		MAJOR		VARIANCE 40:65D-70									
	SUBDIVISION	SITE PLAN	PRELIM.	FINAL	(a) 2(b)	(c)	(d)							
43		•	•	•	•	•	•	•	•		Lot line and/or lot development layout plan. Proposed development features shall be represented graphically by solid lines, existing features to be removed shall be represented by dashed lines, "joining symbols" shall be used to indicate lot consolidation or common ownership where appropriate.	COMPLIES		
												N.A.		
												WAIVER		16-B.1.a.4
44	•	•	•	•	•						Engineering details of any proposed improvements at an appropriate scale and, where mandated, in compliance with Mendham Township "Standard Construction Details."	COMPLIES		
												N.A.		
												WAIVER		16-B.4.k
45	•	•	•	•	•						Topographic Map of the subject tract and lands within 200' thereof at a contour interval of 2 feet with elevation data referenced to sea level. (A contour interval of 5 feet may be used for areas sloped 15% or more.)	COMPLIES		
												N.A.		
												WAIVER		16-B.4.b
46			•	•	•						Cross sections of all existing and proposed streets at 50' station intervals within and adjoining the subject tract at a 1"=5' horizontal and vertical scale.	COMPLIES		
												N.A.		
												WAIVER		16-B.4.c
47			•	•	•						Street Plans and Profiles for all existing and proposed streets within and adjoining subject tract, with R.O.W. and pavement widths, sanitary and storm sewer facilities with sizes, grades and invert elevations, drawn in a "plan over profile" format at a scale of 1"=30' horizontal and 1"=5' vertical.	COMPLIES		
												N.A.		
												WAIVER		16-B.4.c
48			•	•	•						Existing and proposed storm drainage information including: streams, water courses, swales, bridges, culverts, drainage pipes, inlets, man holes, detention facilities and any other structures.	COMPLIES		
												N.A.		
												WAIVER		16-B.4.a.2
49	•	•	•	•	•	•	•	•	•		Location and description of existing and proposed utility facilities including: water mains, fire hydrants, gas mains, electric, telephone and C.A.T.V. service lines.	COMPLIES		
												N.A.		
												WAIVER		16-B.4.l
50			•	•							Surface and storm water drainage calculations and data with information relating to storm water management as required by Section 16-B.4(a) and Section 16-10.9.	COMPLIES		
												N.A.		
												WAIVER		16-B.4.e; 16-10.9
51	•	•	•	•							Slope Analysis Map and tabulation as required by Section 16-10.8 in a format illustrated by Appendix 6.	COMPLIES		
												N.A.		
												WAIVER		16-10.8
52			•	•	•						Landscaping plan showing existing and proposed vegetation and screening, including plant material schedule identifying species, number, spacing and sizes.	COMPLIES		
												N.A.		
												WAIVER		16-B.6a.4; 8.6b.6
53			•	•	•						Location of existing and proposed area lighting, including type of fixture(s), and luminaire(s), number, lumen power, time of use, mounting and illumination details with direction and isolux diagram.	COMPLIES		
												N.A.		
												WAIVER		16-B.6a.5; 8.6b.4
54		•		•	•						Location, dimension and setbacks of all existing and proposed signs, including details of materials, finishes, mounting, illumination, lettering and message.	COMPLIES		
												N.A.		
												WAIVER		16-B.6b.3
55		•		•	•	•	•	•	•		Architectural drawings, including dimensioned building floor plans, showing layout of interior uses and functions and calculation of floor areas, and elevations showing building heights, finishes, materials and colors drawn to a scale of not less than 1/8"=1'	COMPLIES		
												N.A.		
												WAIVER		16-B.6b.8
56		•		•	•						Statement of facts in support of a conditional use pursuant to Section 21-4.6.	COMPLIES		
												N.A.		
												WAIVER		21-4.6

ITEM NO.	SUBMISSION REQUIREMENTS										ITEM DESCRIPTION	APPLICANT MARK	STATUS	TOWNSHIP MARK	NOTES / LAND USE ORDINANCE REFERENCE			
	PLANNING BOARD OR BOARD OF ADJUSTMENT					BOARD OF ADJUSTMENT												
	MINOR		MAJOR			VARIANCE 48-553-70			(a)	(b)						(c)		
	SUBDIVISION	SITE PLAN	SUBDIVISION	SITE PLAN	SUBDIVISION	SITE PLAN	SUBDIVISION	SITE PLAN										
57															Existing and proposed streets within and adjoining the subject tract, including names, R.O.W. and pavement widths and any R.O.W. dedication.	COMPLIES		
58															The location and identification of all existing and proposed monuments.	COMPLIES		
59															Construction drawings entitled "Improvement and Utility Plans" pursuant to Section 10-4.2.	COMPLIES		16-8.5c
60															Verification of denial by the Zoning Officer or Construction Official of the Intended use, occupancy and/or construction.	COMPLIES		16-8.5f
61												X			Information and data to indicate compliance with required fire protection systems pursuant to Section 16-10.2 (w) including location, sizes and rating of any hydrants and/or water storage tanks and distances thereof to all proposed buildings.	COMPLIES		
62															Design and identification of any proposed private streets, labeled "Not Dedicated for Public Use" in compliance with Section 16-10.4, including proximity to nearest existing private street and special requirements applicable to backend development.	COMPLIES		16-8.4e
63															Landscape Plan and Plant Material Schedule in accordance with Chapter XXIII of the Land Use Ordinance.	COMPLIES		16-8.1.a.12; 16-8.5e
64															RESERVED	COMPLIES		16-8.1.(b)8;
65															RESERVED	COMPLIES		
66															RESERVED.	COMPLIES		

Name of Applicant.....Bernadette Koenig

Name of Owner

Project Name Interpretation
Type of Application.....

Location: Block # 109 Lot # 23 Street Address 32 Ironia Road

Signature of Applicant *[Signature]* Date *9/16/2021*

Township of Mendham

INCORPORATED MARCH 29, 1749

P.O. BOX 520

BROOKSIDE, NEW JERSEY 07926

(973) 543-4555 / FAX (973) 543-6630

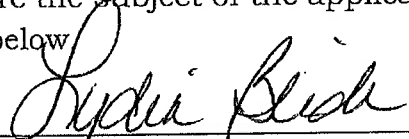
FORM # 2 CERTIFICATION OF TAXES PAID

BLOCK(S) 109 LOT(S) 23 + 23 Q Farm

OWNER OF PROPERTY BF Partners, LLC

STREET ADDRESS 32 Ironia Road

This is to certify that all taxes and assessments for local improvements have been paid, and that no taxes or assessments for local improvements are due or delinquent as to the premises which are the subject of the application for development as of the date indicated below


Tax Collector or Authorized Signature

9-10-2021
Date of Certification

11-10-2021
Certification Expiration Date

*Please note that the above information is not a formal tax search or improvement search pursuant to NJSA 54:1 et seq. The information supplied is preliminary in nature, designed to assist the processing of applications before the Planning and Zoning Boards. In the event that the applicant desires to reply upon the information, a formal tax search and municipal improvement search shall be applied for and the fees posted for said search in accordance with the prevailing statutes.

BRACH | EICHLER LLC

Susan R. Rubright
Direct Dial: 973-403-3157
Direct Fax: 973-618-5557
E-mail: srubright@bracheichler.com

September 13, 2021

VIA E-MAIL AND REGULAR MAIL
lblade@mendhamtownship.org

Lydia Blide, Tax Collector
Township of Mendham
2 West Main Street
P.O. Box 520
Brookside, NJ 07926

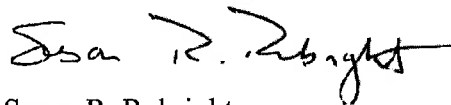
Re: Request for 200' Property Owners List
Block 109, Lot 23 & 23Q Farm
32 Ironia Road, Mendham, NJ

Dear Ms. Blide:

Please accept this letter as a formal request for a Certified List of Property Owners within two hundred feet (200') of the above-referenced property. Enclosed is a check in the amount of Ten (\$10.00) Dollars to cover the cost of same. Your prompt attention to this request would be greatly appreciated.

Thank you for your cooperation in this matter.

Sincerely,



Susan R. Rubright

SRR:nas
Enclosures

5 Penn Plaza, 23rd Floor
New York, New York 10001
212.896.3974

101 Eisenhower Parkway
Roseland, New Jersey 07068
973.228.5700

777 South Flagler Drive
Suite 800, West Tower
West Palm Beach, Florida 33401
561.899.0177

588872

Valley National Bank
Livingston, NJ

Brach Eichler LLC
101 Eisenhower Parkway
Roseland, NJ 07068
Operating Account

Date: September 9, 2021

Pay: TEN AND 00/100***** \$ ****10.00***

LTVA20

Pay To The Order Of: Township of Mendham



Security features. Details on back

⑈000588872⑈ 1:021201383:000041355156⑈

Payee: Township of Mendham
Vendor ID: 7067

Check #: 588872
Check Date: Sep 09/21

<u>Invoice Num</u>	<u>Invoice Date</u>	<u>Invoice Amount</u>	<u>Amount Paid</u>	<u>Discount Taken</u>	<u>Payment Amt</u>
090921	Sep 09/21	\$10.00	\$10.00	\$0.00	\$10.00
Invoice Totals:		\$10.00	\$10.00	\$0.00	\$10.00

INDEX OF EXHIBITS

<u>Document</u>	<u>Exhibit</u>
Mendham Township Master Plan (Draft) Portions	1
July 29, 2021 Letter to Mendham Township Planning Board from Brach Eichler	2
Morris County Agriculture Development Board, Resolution 2020-02	3
Morris County Agriculture Development Board, Policy P-12	4
June 29, 2021 H2M Associates, Inc. Report On BF Partners, LLC Application	5
July 6, 2021 Letter from Robert Casey, Mendham Township Administrator, to Morris County Planning Board	6

1

MENDHAM TOWNSHIP MASTER PLAN

Adopted by Mendham Township Planning Board on April XX, 2021

Prepared by: H2M architects + engineers

ACKNOWLEDGMENTS

Mayor
Sarah Neibart

Township Committee
Sarah Neibart, Mayor
Nick Monaghan, Deputy Mayor
Tom Baio, Committee Member
Amalia Duarte, Committee Member
Jordan Orlins, Committee Member

Master Plan Subcommittee
Sam Tolley
Patricia Zimmerman
Janet DeMeo
Tom Baio
John Henri Mayer
Brian Hays
Trishna Goswami

Planning Board
Kevin Giordano, Chair
Deputy Mayor Nick Monaghan
Tom Baio
Ross Johnson
Sante D'Emidio
Janet DeMeo
Carl Perri
John Henri Mayer
Ted Maglione
Beth Foley, Planning Board Secretary
Edward Buzak, Planning Board Attorney
Denis Keenan, Planning Board Engineer

Township Employees
Bob Casey, Township Administrator

H2M associates, Inc.
Ryan Conklin, PP, AICP, GISP
Paul Cancilla

Prepared by



architects - engineers
architectural approach

The original of this report was signed and sealed in accordance with N.J.S.A. 45:14A-12

Ryan Conklin, ACIP, PP, GISP
#33LI00605400

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LAND USE PLAN (Adopted XX/XX/2021)

The Municipal Land Use Law (MLUL) requires a Land Use Plan element, of which it shall provide the rational basis and justification for municipal regulations. As N.J.S.A. 40:55D-62 of the MLUL states, the zoning ordinance or any amendment or revision of the ordinance shall be substantially consistent with the Land Use Plan Element of the Master Plan. Therefore, the recommendations found within this Land Use Element serve as the basis for future Zoning Ordinance amendments and revisions.

As it pertains to Mendham Township, N.J.S.A. 40:55D-28 of the MLUL requires that the Land Use Plan shall:

- (a) take into account and state its relationship to [Chapter II of this plan], and other master plan elements ... and natural conditions, including, but not necessarily limited to, topography, soil conditions, water supply, drainage, flood plain areas, marshes, and woodlands;*
- (b) show the existing and proposed location, extent and intensity of development of land to be used in the future for varying types of residential, commercial, industrial, agricultural, recreational, open space, educational and other public and private purposes or combination of purposes including any provisions for cluster development; and stating the relationship thereof to the existing and any proposed zone plan and zoning ordinance;*
- (d) include a statement of the standards of population density and development intensity recommended for the municipality;*
- (f) include, for any land use element adopted after the effective date of P.L.2017, c.275, a statement of strategy concerning:
 - i. smart growth which, in part, shall consider potential locations for the installation of electric vehicle charging stations,*
 - ii. storm resiliency with respect to energy supply, flood-prone areas, and environmental infrastructure, and*
 - iii. environmental sustainability; and**
- (g) show the existing and proposed location of public electric vehicle charging infrastructure.*

OVERVIEW / EXECUTIVE SUMMARY

Mendham Township is a low-density residential community with significant sensitive land, rural and historic characteristics and a limited infrastructure base. Its future land use policies should be designed to protect and continue these characteristics, especially regionally important water resources including aquifers and the headwaters of the North Branch of the Raritan River, the Whippany River and Passaic River. Overall future land use planning should be limited to very low-density residential uses consistent with the established rural/historic land use pattern and in balance with a limited infrastructure base and environmentally sensitive land characteristics.

Of particular importance, the findings of a study of Township groundwater resources¹, prepared by the Township's environmental consultants, should form the foundation of the Township's future land use planning. The Land Use Plan in the previous Township Master Plan (adopted 2000, amended 2002) is based on the findings and recommendations of 1994 and 1996 environmental studies. With changes in the target nitrate concentration standard and other methodological and technical advances since that time, the new environmental study more accurately reflects the conditions and needs of Mendham

¹ Nitrate Dilution and Current Planning Capacity Model, Princeton Hydro, LLC & UHL & Associates, Inc., March 2020.

Township today. As a result, changes in minimum lot size requirements are recommended to bring the amount of future development potential to balance with the Study’s findings. The aim of the Land Use Plan is to explore opportunities for changes to current zoning regulations that would provide for development at sustainable densities while maintaining the existing community character.

LAND USE OBJECTIVES

Land use planning in Mendham Township should be generally guided by the goals and objectives outlined in Chapter III STATEMENT OF OBJECTIVES, PRINCIPLES, ASSUMPTIONS AND POLICIES UNDERLYING THE MASTER PLAN of the 2002 Master Plan. In addition, following are key objectives that should guide Township public policies and zoning decisions affecting land development.

1. Mendham Township has a limited infrastructure base only suitable for very low density of overall development. Major improvements to that base would be prohibitively expensive, contrary to environmental planning goals and inconsistent with the policies of the New Jersey State Development and Redevelopment Plan. The future densities and intensities of development in Mendham Township should not exceed the capacities of the existing infrastructure to support it.
2. The Township should recognize and continue to address its constitutional responsibility to provide for its fair share of affordable housing for its region based on the limitations of its infrastructure and nitrate study as discussed throughout this document.
3. Over-development adversely affects the quality of groundwater resources. The Township has an obligation to limit the total amount of development to that which can be supported by the Township’s groundwater resources to protect the public health of those that depend on those resources. Groundwater quality should not be allowed to degrade below standards established by the United States Environmental Protection Agency and the New Jersey Department of Environmental Protection, as established in the “2020 Nitrate Dilution and Current Planning Capacity Model” report.
4. The Township’s land use regulations should be designed to protect the high-quality headwaters of public surface water supplies located within its boundaries and to minimize downstream flooding.
5. The Township’s land use policies should promote the preservation of its traditional rural/historic character.

ZONING ORDINANCE AMENDMENTS RELATED TO LAND USE

A list of adopted amendments to the Township’s Zoning Ordinance following the adoption of the 2002 Master Plan.

Zoning Ordinance Amendments		
	Ordinance # and Adoption Date	Purpose
1	# 6-2015 Adopted July 28, 2015	Rezoned Pitney Property from R-2 to R
2	# 1-2017 Adopted February 28, 2017	Amendment to the affordable housing regulations
3	# 2-2018 Adopted May 22, 2018	Established the Historic Preservation Committee
4	# 14-2018 Adopted October 9, 2018	Rezoned Pitney Property from R-2 to R

5	# 15-2018 Adopted October 9, 2018	Rezoned 9 Shores Road from R-3 to R-1
6	# 23-2018 Adopted December 10, 2018	Established income limits for affordable housing
7	# 2-2019 Adopted February 26, 2019	Extended the initial 30-year deed restriction on 14 low- and moderate-income units at The Corners to January 1, 2050

EXISTING LAND USE CONDITIONS

Residential

The developed land in Mendham Township is overwhelmingly used as low-density single family residential. According to 2018 American Community Survey (ACS) US Census data, 91.9% of housing units in Mendham Township are single-family detached housing.

While most of the structures in Mendham Township are single-family residential, they are with varying levels of density. Nine of the Township's twelve zoning districts regulate single-family residential development. The highest density zone (R Zone) requires a minimum lot size of 20,000 square feet (approximately half an acre) to the lowest density residential zone (R-10 Zone) which requires a minimum lot size of 10 acres. Most single-family homes are on relatively large lots in excess of one acre and many are on very large lots of three acre or more. According to property tax records, approximately 77.1% of residential lots are at least one (1) acre in size and 44.0% of residential lots are at least three (3) acres. Much of the of the Township to the east is zoned for higher density single-family residential compared to the west, which has much lower density development. The Township has two Combination Residential zoning districts, CR-1 and CR-2, that are zoned for single dwelling residential development in combination with low-income housing. The CR-1 Zone (developed as *Brookrace*) has an average minimum lot area of 40,000 square feet and allows 0.214 dwelling units per acre. The CR-2 Zone allows for slightly greater density allowing for 1.30 dwelling units per acre and is developed as *Drakewick and Mountain View*.

Non-Residential

The only area of primarily nonresidential land use is the small area in Brookside centered on Main street, Cherry Lane and Woodland Road. This area is made up of public uses (mainly municipal) and two commercial lots. This area is regulated by the B zone, which permits commercial uses and well as residential uses at the same density as the R Zone.

The commercial and service needs of Township residents are provided for in Mendham Borough and Morristown (traditional town and regional centers). This regional interrelationship is mutually beneficial and is consistent with the intent of the New Jersey State Development and Redevelopment Plan.

The G Zone is used to regulate the Mendham Golf and Tennis Club. The REB Zone is an overlay district that is used to incentivize the reuse of the Sisters of St. John the Baptist property. The property contains multiple buildings that total approximately 125,000 square feet of floor area. The overlay district allow for low intensity uses such as senior housing, townhomes, religious uses and schools.

Open Space

There exists a large amount of undeveloped land that is either public or quasi-public open space. One of the largest continuous amounts of open space in the Township is Lewis Morris Park, which is owned and maintained by Morris County. The park occupies about 650 acres along the Township's eastern border with Harding Township and Morris Township.

Much of the Township's open space is also a part of the Schiff Preserve, which is owned and maintained by the Schiff Natural Lands Trust Incorporated. The Preserve occupies about 380 acres in the southwestern part of the Township.

Smaller, private areas of open space include the Mendham Golf and Tennis Club, the Brookside Community Club and land owned by the Girl Scouts of Morris County. These forms of open space make up an additional 217 acres in Mendham Township.

Combining all these types of open space including municipally owned open space garners a total area of 3,848 acres of open space, translating into approximately 35.2% of all land are in the Township being classified as open space.

Agriculture

In addition to undeveloped open space, Mendham Township contains several farms, including some preserved farmland. There are one hundred and forty-one (141) farmland properties including active farms and farmland assessed properties, as well as eight (8) properties participating in the State's Farmland Preservation Program². In total, about 1,733 acres, representing about 15.5% of all land in the Township is used as farmland. The majority of the farmland is located to the south western portion of town and just north of Roxiticus Road as well as the south western portion of town along Pleasant Valley Road, Union School House Road and the border of Peapack Gladstone Borough.

Conclusions

Despite Mendham Township having a very low population density (328 people/sq. mile) compared to both County (1,074 people/sq. mile) and State (1,211 people/sq. mile) levels,³ there are relatively few areas of the Township that can be developed with large-scale subdivision plats without zoning changes, due in part to the amount of preserved open space and existing low-density residential development.

² <https://www.nj.gov/agriculture/sadc/farmpreserve/progress/stats/preservedfarmslist.pdf>

³ Based on 2018 American Community Survey 2014-2018 5-Year estimates.

2

Susan R. Rubright
Direct Dial: 973-403-3157
Direct Fax: 973-618-5557
E-mail: srubright@bracheichler.com

July 29, 2021

VIA EMAIL and OVERNIGHT MAIL

Chairman Kevin Giordano and
Members of the Mendham Twp. Planning Board
c/o Beth Foley, Planning Board Secretary
2 West Main Street
Post Office Box 520
Brookside, New Jersey 07926

Re: Backer Farms - BF Partners, LLC Brewery Application (the "Application")

Dear Chairman Giordano and Members of the Mendham Twp. Planning Board:

As you aware, this office represents several homeowners in connection with the Application for a brewery at the Backer Farm located at 32 Ironia Road and known as Block 109, Lot 23 on the Mendham Township tax records. I entered my appearance on the record at the hearing on the application before the Planning Board on July 1, 2021. Moving forward, please copy me as counsel for interested parties on any submissions, notices, correspondence and the like regarding this Application.

On behalf of my clients, we hope that the Board will consider several issues regarding the hearings on this Application.

First, given the significant interest in this Application (the Chair stated that there were, we recall, over one hundred (100) connections to the virtual hearing on July 1, 2021), it would seem prudent to have a court reporter at the hearings. In addition, transcripts should be made available to my clients and posted online for the public at least fourteen (14) days before the next hearing. The costs thereof should be at the Applicant's expense.

Second, under the Municipal Land Use Law ("MLUL") at N.J.S.A. 40:55D-10f, a recording or a stenographic transcript of a hearing is required to be made at the time of the hearing. It is our understanding that the July 1, 2021 hearing may not have been successfully recorded, further supporting the need to have a court reporter present at each hearing. If the recording was corrupted or would otherwise not be available for review or to be transcribed, a certification from the appropriate person to that effect should be submitted for the record. Importantly, if the July 1,

5 Penn Plaza, 23rd Floor
New York, New York 10001
212.896.3974

101 Eisenhower Parkway
Roseland, New Jersey 07068
973.228.5700

777 South Flagler Drive
Suite 800, West Tower
West Palm Beach, Florida 33401
561.899.0177

www.bracheichler.com

Chairman Kevin Giordano and Members of the Mendham Planning Board
July 29, 2021
Page 2

2021 hearing was not recorded properly, and therefore, there is no record of what occurred at the hearing, the hearing must be redone with the testimony repeated as closely as possible. Any review of the application by a court is “on the record”. *See, Carbone v. Weehawken Tp. Planning Bd.*, 175 N.J. Super. 584 (Law Div. 1980) and *Pagano v. Zoning Bd. Of Adjustment*, 257 N.J. Super. 382 (Law Div. 1992). If there is no record, there can be no review, and in an appeal of a board’s decision this requires a remand to the board to redo the proceedings. *Carbone, supra*. Accordingly, in the matter at hand, please confirm that the testimony will be redone on the next hearing date or at some other date to be determined.

Third, we request that the Township engage a traffic consultant to review this Application. This request is based on a number of considerations: the Backer Farm is located on a narrow, country road in a residential setting; the proposal intends to create a seventy-eight (78) seat brewery that will have televisions, music and other entertainment that will be in operation till 11:00 p.m., effectively creating a local hangout and bar, and the traffic analysis should reflect that use category; other farms located throughout the Township are proposed to be used in connection with the proposed brewery as part of the “Farm Management Unit” and use of these other farms will generate their own traffic impacts; the nature, number and scope of other activities that will be taking place on the Backer Farm that are not in or on the licensed area have not been clearly identified, and these other uses could be extensive based on the testimony from the Backers.

The Applicant’s traffic report accounts only for the use of the actual Brewery building and immediate Brewery area, not the entire Backer Farm. That analysis is clearly deficient based on even the vague and general testimony on the proposed operations to be conducted on the totality of the Backer Farm that was presented by the Backers on July 1. Moreover, the Board’s own planner, H2M Associates, said the Application “has the potential for **significant site circulation issues**. As such the applicant should address the vehicular and pedestrian circulation... **with regard the public safety**.” (H2M Report, June 29, 2021, page 4 of 7) (bold emphasis added). Since the proposed Brewery may have significant traffic and safety issues that would affect not just neighbors in the area but the public at large, the Township should have a neutral traffic report that considers all of the uses, existing and proposed.

Finally, and importantly, as we raised prior to the commencement of the hearing on July 1, 2021, there are substantial jurisdictional questions as to whether this Application should even be proceeding before the Planning Board or if this proposal requires a use variance under Mendham Township ordinances and needs to be heard by the Board of Adjustment. Under the MLUL at N.J.S.A. 40:55D-70d only a Zoning Board of Adjustment has jurisdiction to hear and decide use variances and to interpret zoning ordinances. N.J.S.A. 40:55D-70b. Where the question of jurisdiction is purely legal (such as an application to a planning board seeking a “d” use variance), the planning board may (and should) decline to hear the matter. *See, TWC Realty v. Zoning Bd. of Adjust.*, 315 N.J. Super. 205, 217 n.10 (Law Div. 1998). If the Planning Board were to act on the Backer Farm Application, any review *is ultra vires* and any decision would be null and void if it were later determined that the Planning Board did not have jurisdiction to act. *See, Trinity Baptist v. Louis Scott Hold*, 219 N.J. Super. 490, 496-498 (App. Div. 1987); Grancagnola v.

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Planning Bd. 221 N.J. Super. 71 (App. Div. 1987); Tanenbaum v. Wall Bd. Of Adjustment, 407 N.J. Super 446, 460-461 (Law Div. 2006), *aff'd o.b.* 407 N.J. Super. 371 (App. Div. 2009). The Planning Board must decline jurisdiction here and allow the Zoning Board of Adjustment to determine jurisdiction.

The Morris County Agriculture Development Board (“CADB”) Resolution 2020-02, which the Applicant seems to rely upon heavily, was a narrow ruling only as to whether the proposed Brewery application violates their Deed of Easement from 2004. While the CADB’s determination that the proposed Brewery use was in compliance with the Deed of Easement, that ruling did not pre-empt local jurisdiction from determining whether a proposed use is permitted. See page 3 of the CADB’s Resolution in which the CADB which states: “The operation must comply with the Limited Brewery License and Craft Distillery License laws **and any other applicable** federal, state and **local laws and regulations**) (bold emphasis added). In fact, Policy #12 of the CADB speaks directly to the issue of pre-emption and states in paragraph 3.bc that: “Morris CADB approval does not preempt the jurisdiction and control of the Municipality and its Boards and Agencies, Morris County and its Boards and Agencies, and the State of New Jersey and its Boards and Agencies.” Thus, the CADB does and should defer to local municipalities to review and make a determination of the use under the municipality’s own land use and other ordinances.

In support of our assertion that the Mendham Township Board of Adjustment should be hearing the Application, we provide the following brief analysis. Whether the proposed Brewery, which is located in an R-10 residential zone, requires a use variance or is permitted under the Township’s ordinance as an “agricultural use” requires a review of Mendham Township’s ordinances at Chapter XXI, Zoning Regulations, which states:

21-4.1 Uses. In the residence districts R, R-1, R-2, R-3, R-5, R-10 and R-C the following uses are permitted [relevant sections cited below]:

b. Horticulture or agriculture as a livelihood, subject to Subsection 21-4.5 and **provided that commodities offered for sale upon the premises are grown on the premises.**

e. **Agricultural uses, meaning the right to engage in agriculture as defined herein, shall be permitted in every residential zone, and it shall be presumed that such uses, activities and structures in connection therewith shall not constitute a public or private nuisance, provided that such agricultural uses are conducted in conformance with Acceptable Agricultural Management Practices as defined herein.**

1. All uses and structures customarily incidental to agricultural shall be permitted accessory uses in all residential zones, including, but not limited to [only relevant section cited below]:

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- k. Recreational use (snowmobiling, off-highway vehicle use, hunting, etc.) as permitted by the farm owner, **with the provision that any recreational use of farmland that changes the underlying agricultural nature of the land shall be subject to the usual site plan review, variance application and all permits where otherwise required.**
- l. **Provisions for the wholesale and retail marketing of the agricultural output of the farm which include the building of temporary and permanent structures and parking areas for said purpose which all must conform with municipal land development standards;** and... (bold emphasis added).

Under the above Township ordinance, the farm management unit (“FMU”) concept cannot be used to support the proposed Brewery. Under Ordinance 21-4.1.b, permitted uses in residential zones include the sale of commodities that are grown “on the premises.” The Board’s own planner referenced that same ordinance in his report and raised the issue of whether it is a permitted use. Under “Use,” the H2M report states: “Section 21-4.1 regulates the permitted uses in the R-10 zone of which horticulture and agricultural uses are permitted **provided that the commodities for sale are grown on the premise**” (H2M Report, page 3 of 7) (bold emphasis added). The H2M report then recommends that the Board “consider if the [proposed Brewery] use is **really** customary and incidental.” (Emphasis added). Accordingly, Backer Farm may not use FMUs to raise and truck in crops or ingredients that are then used to produce the “commodity” (i.e., the beer) *without a variance or approval from the Board of Adjustment.*¹

It is also important to note that the Backer Farm Application does not include a site plan or application for the other uses or structures on the Property. The CADB Resolution recites the history of Backer Farm on page 1: “[it] was originally a dairy operation and then an equine operation. It is currently used to grow produce, pork and eggs. The Applicant operates a CSA, conducts farm-to-table events and agri-tourism related activities.” The Resolution does not state that these *new* uses over time ever received planning or zoning approval by the municipality. Nor were we able to find any evidence of site plan or variance approvals for the new uses that evolved from a horse farm to a farm that now engages in regular agri-tourism activities. At a minimum, the more recent activities such as goat yoga, movie nights and food truck nights, are “recreational uses” require a site plan review, variance application and/or permits under Mendham Township Ordinance Section 21-4.1.e.1.k above. The Board of Adjustment should determine if these are permitted uses under Mendham Township ordinances. Certainly, whether the proposed Brewery with a 78-seat “tasting room” in a residential zone is a permitted use is a question for the Board of Adjustment. Therefore, a detailed, full site plan application and supporting details on all uses -

¹ A much smaller operation may be possible as intended by this regulation to fit into the predominantly residential nature of the Township. Backer Farm can only sell on the farm what it produces on the farm.

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 July 29, 2021
 Page 5

existing and proposed - on the Property must be submitted to the Board of Adjustment for a determination of what is and is not compliant with and permitted under Mendham Township zoning ordinances.

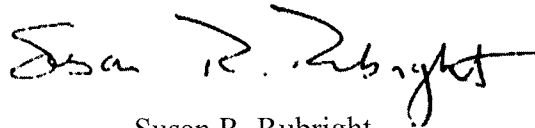
The H2M report contains further evidence that the Application belongs before the Board of Adjustment. Noting Section 21-4.1.e.1.1 (cited above) and the need for compliance with the standards in the R-10 zone, the planner states: "We do not believe that the applicant is proposing to comply with the 16-10.3c Design Standards for Site Plans for Off-Street parking" (H2M Report, page 4 of 7). It further states that "[t]he question before the Board is if the applicant is not proposing to comply with the ordinance standards as it relates to parking standards then is it permitted as an accessory use? **The applicant may need a d variance...**" (bold emphasis added). Whether a d variance is needed is a jurisdictional issue to be determined by the Board of Adjustment.

If the Planning Board is not inclined to dismiss the Brewery Application at this time (and allow the Applicant to refile before the Board of Adjustment), then we respectfully request that the Application be delayed until the Applicant and my clients have an opportunity to fully brief the jurisdictional issues. These issues must be decided before there are any further hearings before the Planning Board because if, as discussed above, the Planning Board were to act on the Application - which involves a significant change in use from its current farming operation with lasting impacts on its neighbors - any decision would be null and void if it were later determined that the Planning Board did not have jurisdiction to act. We further suggest that both parties submit briefs simultaneously on a mutually agreed upon date and time with the Planning Board Chair.

We have not discussed here our position that the proposed Brewery use does not qualify for protections under the Right to Farm Act or the AMP put forth by the Applicant as such discussion falls outside the scope of our queries here and at the time. We reserve the right to raise these at a later time.

We appreciate your attention and consideration in addressing these important issues, and look forward to the Board's response.

Sincerely,



Susan R. Rubright

SRR:nas

Cc: Edward Buzak, Esquire (ejbuzak@buzaklawgroup.com)
 Nicole Voight, Esquire (nicole@legalcounselnj.com)
 Stephen Herbes, Chair Board of Adjustment
 Clients

3

**MORRIS COUNTY AGRICULTURE DEVELOPMENT BOARD
RESOLUTION 2020-02
PROPOSED NEW USE ON PRESERVED FARMLAND
(KNOWN AS BF PARTNERS, LLC FARM)
AT BLOCK 109, LOT 23
MENDHAM TOWNSHIP, MORRIS COUNTY, NEW JERSEY**

WHEREAS, the Morris County Agriculture Development Board (“Morris CADB”) is charged with administering the farmland preservation program on behalf of the Board of Chosen Freeholders of the County of Morris; and

WHEREAS, BF Partners, LLC (the “Applicant”) is the owner of the Premises located at Block 109, Lot 23 (“the Premises”) in the Township of Mendham, County of Morris; and

WHEREAS, on October 4, 2004, the development easement was conveyed to the Morris CADB, pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:11 et seq., P.L. 1983, c. 32, as a Deed of Easement, recorded in Book 6180, Page 138 (“Deed of Easement”) (B-1); and

WHEREAS, pursuant to Morris CADB Policy: P-12 (B-2), “Proposed New Uses on Preserved Farmland, Interpretation of Deed of Easement”, an owner or contract purchaser of permanently deed-restricted farmland wishing to commence new activities may request that the Morris CADB review the proposed new activities to determine whether they are in compliance with the Deed of Easement; and

WHEREAS, on February 27, 2020, the Morris CADB received a proposal from Shanahan & Voigt, LLC, attorneys for the Applicant, for the establishment of a farm-based brewery and distillery (A-1). The application contained a report prepared by the Applicant’s consultant, Pinto Consulting, LLC; and

BF Partners, LLC Proposal

WHEREAS, according to A-1, the Backer Farm, comprised of 37.4 acres, was originally a dairy operation and then an equine operation. It is currently used to grow produce, pork and eggs. The Applicant operates a CSA, conducts farm-to-table events and agri-tourism related activities; and

WHEREAS, the Applicant wishes to establish a farm-based brewery and distillery on the preserved farm premises. The new businesses will be jointly owned by the Backer Family, Mr. Aaron Buch and Mr. Bob Dillon. The farm will continue to operate the CSA and a farm market to sell their products; and

WHEREAS, the Applicant intends to grow a minimum of 51% of products used by the brewery and distillery operations on the farm management unit. Ingredients and production records for each batch will be maintained electronically, which will enable the annual reporting of the ingredients and their weight; and

WHEREAS, the new uses will utilize the existing dairy barn, which is currently used for general storage. The interior of the barn will be renovated to establish two separate production areas and two separate tasting rooms. Parking will be provided in the existing graveled areas of the farm. The brewery will

obtain and utilize a Limited Brewery License, while the distillery will obtain and utilize a Craft Distillery License; and

WHEREAS, the Applicant requests that the CADB permit the operation even if a crop is not successful in the first year. Given the uncertainties with barley growing and the quality being acceptable for malting, the Applicant requests that the CADB’s approval permit the operation to open and use imported grains if the operation proves to be unsuccessful in its first year’s grain harvest. The Applicant states that testing from Hartwick College can be provided to prove the quality of the grains at harvest; and

WHEREAS, on March 5, 2020, Ms. Katherine Coyle drafted a Staff Report regarding the application (B-3); and

WHEREAS, during the May 7, 2020 meeting, the Morris CADB reviewed exhibits A-1, B-1, B-2 and B-3, and heard testimony from the Applicant, as well as Frank Pinto (Pinto Consulting, LLC), and Nicole Voigt, Esq.; and

INDEX OF EXHIBITS

Exhibits from the Applicant:

February 27, 2020 Proposal submitted by Shanahan & Voigt, LLC, including a report prepared by Pinto Consulting, LLCA-1

Exhibits from the Morris CADB:

October 4, 2004 Deed of EasementB-1

Morris CADB Policy: P-12B-2

March 5, 2020 Staff ReportB-3

NOW THEREFORE BE IT RESOLVED, that the Morris CADB makes the following findings:

Paragraph 2 of the Deed of Easement states that: “The Premises shall be retained for agricultural use and production in compliance with N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, and all other rules promulgated by the State Agriculture Development Committee, (hereinafter Committee). Agricultural use shall mean the use of the Premises for common farmsite activities including, but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management and grazing.”

The SADC has interpreted the Deed of Easement to mean the following with respect to operations such as wineries, breweries and distilleries:

- Processing, packaging, storage and sales are permitted on the preserved farm if the majority of the ingredients are produced on the farm. The SADC interprets that to mean that at least 51% of the products are grown on the farm management unit. The SADC would permit imported ingredients in case of crop failure.
- At least 51% of the annual gross sales of the retail farm market shall be generated from the sales of agricultural output of the farm management unit. The remaining annual gross sales of the retail farm market may be achieved through the sale of related commodities.
- The primary purpose of any function held on a preserved farm shall be related to the sale of the agricultural output. Events where the primary intent is to market and sell the farm's output are permitted on preserved farmland, but other social gatherings (parties, weddings, life celebrations, catered events, corporate events, etc.) are not permitted.

BE IT FURTHER RESOLVED, that the Morris CADB determines that the Applicant's proposal is in compliance with the Deed of Easement and approves the proposal subject to the following conditions:

- At least 51% of ingredients (exclusive of water) used by the brewery and distillery shall be grown on the farm management unit.
- The primary purpose of any function held at the brewery and distillery shall be related to the sale of the agricultural product. Functions such as parties, weddings, life celebrations, catered events, corporate events, etc. are not permitted.
- The hours of operation listed in the proposal are not part of this approval.
- For the first five (5) years, the Applicant shall provide (1) production records, including a complete copy of documents submitted to the state under the Limited Brewery License and the Craft Distillery License, (2) FA-1 forms, and (3) annual grain yields.
- The operation must comply with the Limited Brewery License and Craft Distillery License laws and any other applicable federal, state and local laws and regulations.

BE IT FURTHER RESOLVED, that certified copies of this resolution be forwarded to:

BF Partners, LLC
 Shanahan & Voigt, LLC
 Pinto Consulting, LLC
 Mendham Township
 State Agriculture Development Committee
 Morris County Board of Chosen Freeholders

Dale Davis III
Dale Davis III, Chairman, Morris CADB

6/4/2020
Date

	Yes	No	Abstain	Absent
Ms. Ashley Myers				
Mr. Davis				
Mr. Desiderio				
Mr. Galfo				
Mr. Keller				
Mr. Ort				
Mr. Thomson				

I hereby certify the above to be a true copy of a resolution adopted by the Morris County Agriculture Development Board at a meeting held on June 4, 2020.

Katherine Cagle

4



PROPOSED NEW USES ON PRESERVED FARMLAND Interpretation of Deed of Easement

Purpose:

It is the intent of the Morris County Agriculture Development Board (CADB) to provide the necessary guidelines for reviewing proposed new uses on preserved farmland.

The Morris CADB finds it necessary to establish a policy, which outlines the procedure for reviewing proposed new uses on preserved farmland. This policy will allow the Morris CADB to provide owners or potential owners of preserved farmland timely decisions regarding whether their proposed new use(s) would be in compliance with the Deed of Easement.

Policy:

An owner or contract purchaser of permanently deed-restricted farmland wishing to commence new agricultural activities may request that the Morris CADB review the proposed new activities to determine whether they are in compliance with the Deed of Easement.

1. Application Process

The record owner(s) of the premises or legally authorized person(s) shall apply to the board.

a. Non-Binding Pre-application meeting

The owner(s) of the premises or legally authorized person(s) may request a non-binding pre-application review meeting with the board and/or staff.

b. Documents to be submitted for formal board review:

- Letter explaining in detail the proposed new use(s)
- Site plan per the attached Schedule A

2. Morris CADB Review

Upon receipt of the completed information contained in Section 1, the Morris CADB will undertake the following:

a. Ensure completeness of the application.

- b. Provide the owner(s) the opportunity to present their application before the Morris CADB and submit testimony or proofs.
- c. Render a decision.

3. Morris CADB Decision

The Morris CADB will notify the applicant in writing of its decision. If the request is denied, an explanation for the denial will be provided.

- a. The Morris CADB reserves the right to request any other information it deems necessary to arrive at its decision.
- b. To grant approval, the Morris CADB must find that the proposed new use(s) would be in compliance with the Deed of Easement.
- c. Morris CADB approval does not preempt the jurisdiction and control of the Municipality and its Boards and Agencies, Morris County and its Boards and Agencies, and the State of New Jersey and its Boards and Agencies.

4. Costs and Fees

All costs associated with the new use(s), including, but not limited to site plan, wetlands delineation, shall be borne by the applicant.

Adopted:	Effective:	Revision #:	Last Revised:
3-10-05	3-10-05		

SCHEDULE A

SUBMISSION GUIDELINES:

A Site Plan with the following details must be submitted for review by the Morris CADB:

Structures. The square footage and location of all existing and proposed structures on the farm shall be provided. Uses of all existing and proposed structures shall be described.

Driveways. The location of all existing and proposed driveways and parking areas shall be provided.

Landscaping. All existing and proposed non-agriculturally related landscaping shall be shown. Note: The proposed landscaping shall not interfere with the agricultural operation. Any driveway landscaping must not impede the passage of agricultural vehicles or livestock.

Wetlands and Wooded Areas. The location of existing wetlands, streams, water bodies and wooded areas shall be provided. If wetlands are present, the applicant shall also provide a Letter of Interpretation (LOI) from the New Jersey Department of Environmental Protection (DEP).

Agricultural Labor Housing. The landowner may construct any new buildings for housing of agricultural labor employed by the agricultural operation, but only with the approval of the Morris CADB, and the SADC (if SADC funding was used to purchase the development easement). Morris CADB Policy: P-1 establish procedures for the approval of agricultural labor housing on permanently preserved farmland.

Additional information may be requested as necessary.

5



H2M Associates, Inc.

119 Cherry Hill Road, Ste 110
Parsippany, NJ 07054 | Tel: 862.207.5900

June 29, 2021

Via Email

Ms. Beth Foley
Planning Board
Township of Mendham
2 West Main Street
Brookside, New Jersey 07926

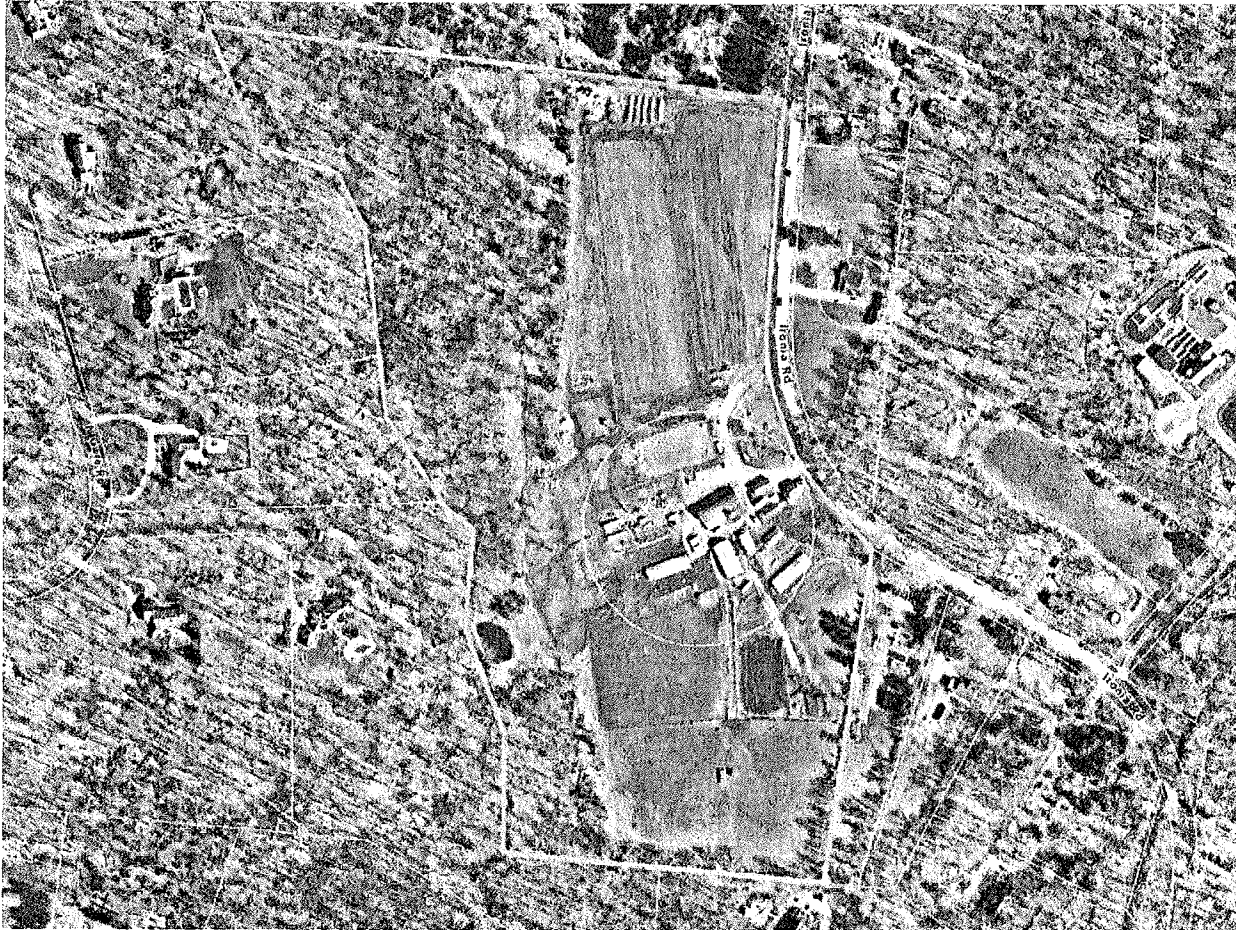
**Re: BF Partners, LLC
Preliminary and Final Major Site Plan
Block 109, Lot 23
32 Ironia Road
PB 21-03
H2M Project No.: MENT2103**

Dear Chairman and Board Members:

In preparation of this review letter, I have reviewed all application materials, reviewed the Township Land Use Ordinance and Master Plan and visited the site. H2M reserves the right to continue to review and provide additional technical comments as the application progresses through the process.

I am in receipt of the following items submitted in connection with this application:

- Cover letter for the application prepared by Shanahan & Voight dated March 10, 2021
- Application for Development dated March 9, 2021
- Application Checklist
- Addendum to application prepared by Shanahan & Voigt dated March 10, 2021
- Certified Property Owners List-Mendham Township
- Certified Property Owners List-Mendham Borough
- Preliminary and Final Site Plans prepared by Roth Engineering, 8 sheets dated March 8, 2021, revised May 3, 2021 and May 11, 2021
- Updated Boundary & Location Survey prepared by Suburban Consulting Engineers, 1 sheet dated Sept. 15, 2020
- Partial Topographic Survey prepared by Suburban Consulting Engineers, 1 sheet dated Feb. 19, 2021
- Architectural Plans prepared by Byrne Design Associates, LLC, 3 sheets dated March 8, 2021
- Property review and report prepared by Kenyon Planning, dated Sept. 15, 2020
- Wetlands/Transition Area Investigation prepared by Environmental Technology Inc. dated March 8, 2021
- Deed of Easement contained in Deedbook 6180/Pages138-153, dated Oct. 4, 2004
- Morris County Agriculture Board Resolution 2020-02, dated June 4, 2020
- 2015 Aerial Imagery of the site
- Township of Mendham Driveway Opening Permit Dated Jan. 15, 2021
- Morris County Planning Board application dated March 6, 2021
- Morris County Soil Conservation District application dated March 6, 2021
- Mendham Township Board of Health Application for a septic system dated March 1, 2021
- Stormwater Management Letter prepared by Michael J. Roth, P.E., P.P.
- Traffic & Parking Assessment Report prepared by Matthew J. Seckler, P.E., P.P., P.T.O.E., Stonefield Engineering and Design, LLC.



PROJECT OVERVIEW

The applicant, BF Partners LLC, has submitted a preliminary and final major site plan for the development of a brewery and associated site improvements including parking and lighting. The 37.47-acre farm (Backer Farm) is located in the Residential (R-10) zone district on the west side of Ironia Road, just to the south of the intersection with Mountainside Road. The site is generally located in western side of the Township near the border with Mendham Borough. The site is an operating farm with a small farm market, residence and a number of associated accessory structures including a large barn. The applicant has proposed to convert the existing 4,376, sqft barn into a 4,528 sqft brewery. The proposed brewery is 2 stories with a small tasting room, restrooms, a patio area, and production on the first floor and a large tasting room and roof deck on the second floor. The proposal includes 2 tasting bars (one on each floor) with total of 68 seats. The proposal includes several small additions (deck, patio, and vestibule). The application includes several site improvements including the creation of 65 space parking area with 3 handicap spots, site signage, and some front entranceway improvements including a new entrance drive and curbing. The applicant is proposing lighting in the parking lot and along the entrance drive.

PLANNING COMMENTS

1. Section 21-8 of the land use ordinance requires the following:
Whenever any structure is proposed to be erected, enlarged or altered on any property in any residence district or in the business district to be used for a permitted institutional, either conventional or limited income multi-unit residential, public utility, park, playground, private recreation club, agricultural, horticultural, municipal use or conditional use, a site plan shall be submitted to the

planning board which shall conduct a hearing thereon as provided by law, and no construction permit shall be issued prior to planning board approval of the site plan.

2. Section (p)1 of N.J.A.C. 2:76-2A.13 states the following:

A commercial farm seeking approval of site plan elements to establish a new, or expand an existing, on-farm direct marketing facility may apply to the municipality and/or the county agriculture development board for such approval.

In the event of the commercial farm applying to the municipality for site plan approval, the municipality may consider waiving or reducing review requirements based on relevant site-specific elements such as surrounding uses, scale or intensity of use, etc. However, the Board is not obligated to waive or reduce requirements. We defer to the Board attorney on this issue.

3. Use- Section 21-4.1 regulates the permitted uses in the R-10 zone of which horticulture and agricultural uses are permitted provided that the commodities for sale are grown on the premise. Since the application is on a preserved farm, they obtained an interpretation of use compliance with deed of easement from the MCADB. This confirmation seems to indicate that the applicant's use proposal complied with SADC standards for wineries, breweries, and distilleries. Please note the conditions in resolution restricted the use and does not permit functions like, parties, weddings, life celebrations, catered events and/or corporate events. The board may want to make a determination of compliance with the use standards. It would seem that based on the resolution from the CADB it is an agricultural use. The agricultural uses standards in Section 21-4.1.e. are as follows:

Agricultural uses, meaning the right to engage in agriculture as defined herein, shall be permitted in every residential zone, and it shall be presumed that such uses, activities and structures in connection therewith shall not constitute a public or private nuisance, provided that such agricultural uses are conducted in conformance with Acceptable Agricultural Management Practices as defined herein.

1. All uses and structures customarily incidental to agricultural shall be permitted accessory uses in all residential zones, including, but not limited to:

- a. The storage, processing and sale of farm products where produced;*
- b. The use of irrigation pumps and equipment*
- c. The application of manure, chemical fertilizers, insecticides, pesticides and herbicides;*
- d. On site disposal of organic agricultural waste*
- e. Installation of soil and water conservation practices in accordance with a Conservation Plan approved by the Morris County Soil Conservation District.*
- f. Transportation of slow moving equipment over roads within the municipality.*
- g. Utilization of tractors and other necessary equipment;*
- h. The employment of farm laborers;*
- i. The creation of noise, dust, odors and fumes inherently associated with such uses;*
- j; The conduction of farm practices at any and all times when necessary;*
- k. Recreational use (snowmobiling, off-highway vehicle use, hunting, etc.) as permitted by the farm owner, with the provision that any recreational use of farm land that changes the underlying agricultural nature of the land shall be subject to the usual site. plan review, variance application and all permits where otherwise required.*
- l. Provisions for the wholesale and retail marketing of the agricultural output of the farm which include the building of temporary and permanent structures and parking areas for said purpose which all must conform with municipal land development standards; and*
- m. The raising and keeping of farm animals including pets, pastoral farm animal (dairy and beef cattle, sheep and goats), swine, fowl, horses, ponies and mules, provided that proper sanitation standards, minimum acreage limits and boundary sizes between fencing or enclosures and joining properties are established.*

The board should consider if the use is really customary and incidental.

4. It should be noted that Section 21-4.1.e.1.I. requires that retail marketing of the agricultural output requires that all permanent structures and parking areas must conform to municipal land development standards. We do not believe that the applicant is proposing to comply with the 16-10.3c. Design Standards for Site Plans for Off -street parking. For example, the ordinance requires directional arrows, screening etc. for which the applicant has not proposed. While we defer to the Board Engineer with regard to technical compliance with the standards, the applicant should be prepared to address this compliance issue as it relates to the 21-4.1.e.1.I which includes compliance with these standards as part of the overall use's compliance with the R-10 zone. The question before the Board is if the applicant is not proposing to comply with the ordinance standards as it relates to parking standards then is it a permitted as an accessory use? The applicant may need a d variance however we defer to the Board Attorney on this issue.
5. The applicant should provide detail on the proposed operation of the brewery.
 - A. What are the hours for daily operation?
 - B. How many days per week will the brewery be open?
 - C. Will food be served on site?
 - D. Will the operation be seasonal, or will the site be open year-round?
 - E. What is the anticipate capacity in terms of overall number customers?
 - F. How many events a year are anticipated?
 - G. Will the events have music entertainment, food?
 - H. Will the evens require additional parking beyond the 65 parking spaces proposed?
 - I. Will the events require police assistance?
 - J. How will the applicant stop customers from parking on Ironia Road?
 - K. Does the applicant anticipate picnicking areas outdoors on the premises outside of the internal seating and seating on the patio?
6. The proposed use has the potential for significant site circulation issues. As such the applicant should address the vehicular and pedestrian circulation in site how that complies with the standards set forth in 16-10.3 and in particular address 16-10.3e. with regard the public safety.

APPLICATION VARIANCES AND WAIVERS

Ordinance Requirement	Regulation	Required	Existing	Proposed	Status
Minimum Lot Area	Schedule	10 acres	37.49 acres	37.49 acres	<i>Compliant</i>
Minimum Net Building Envelope	Schedule	140,000 sqft	>140,000 sqft	>140,000 sqft	<i>Compliant</i>
Minimum Lot Frontage	Schedule	100 feet	1,247 feet	1,247 feet	<i>Compliant</i>
Minimum Diameter Lot Geometry Circle	Schedule	400 feet	>400 feet	>400 feet	<i>Compliant</i>
Minimum Diameter Building Envelope Circle	Schedule	240 feet	>240 feet	>240 feet	<i>Compliant</i>
Minimum Principal Building Front Yard Setback	Schedule	100 feet	14.7 feet (house)* 78.5 feet (store)* 158 feet (Brewery)	14.7 feet (house) 78.5 feet (store) 158 feet (Brewery)	<i>Compliant</i>
Minimum Side Yard Setback	Schedule	80 Feet	337.9 feet (house) 376 feet (store) 299.5 feet (brewery)	337.9 feet (house) 376 feet (store) 299.5 feet (brewery)	<i>Compliant</i>
Minimum Rear Yard Setback	Schedule	100 feet	492 feet	492 feet	<i>Compliant</i>
Supplementary Setback Standards	21-4.9(a)3.	Over 20 feet in height requires 3 foot setback increase per foot in height over 20 feet 63.9 feet increase in setback to the above aka 163.9 feet	158 feet*	Approximately 175 feet (vestibule closest new additions to front yard setback)	<i>Compliant</i>
Supplementary Setback Standards	21-4.9(b)	Accessory Structures with more than 1000 sqft require setback increase of 1.5 feet per 100 sqft of area over 100 sqft	Approximately 7-8,000 sqft	Approximately 7-8,000 sqft = up to 105 feet increase in setback requirements 175 ft to vestibule where 205 ft is required	Requires Variance
Signage	21-4.5b.G.	2 sqft	?	84 sq ft	Requires Variance
Maximum Accessory Structure Height	21-64b.	30 feet	30.1 feet	31.3 feet	Requires Variance
Accessory Structure Side Yard Setback Standards	21-6.4e.	Driveways and parking areas must be set back ½ the principal setback			
Minimum Parking Setback	21.69.a.	100 feet	?	95.4 feet	Requires Variance

Parking Standards	Design	§16-10.3(c)1	Parking areas and access drives to be paved	?	Gravel is proposed for parking areas and access drives	Requires waiver
Parking Standards	Design	§16-10.3(c)4	Access drives to be maximum of 22' wide	?	24' wide access drive proposed	Requires waiver
Parking Standards	Design	§16-10.3(c)13	Parking spaces required to be 9'x20'	?	Parking spaces proposed to be 9'18'	Requires waiver

VARIANCE COMMENTS

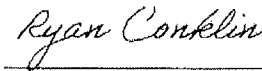
7. §21-4.6.g.3(b)(1)- Minimum Setback to Accessory Structure (175ft to vestibule where 205 feet is required)
8. While this office defers to the Board attorney in advising the Board on the application of relevant variance criteria; this report identifies the variance criteria for the purposes of establishing a framework for review. The applicant bears the burden of proof, which is divided into two parts, in the justification of the "c" variance.
9. Positive Criteria. The applicant bears the burden of proof (which is divided into two parts – positive criteria and negative criteria) in the justification of the "c" variance. To satisfy the positive criteria for a "c" variance, the applicant has two choices. First, known as "c(1)" variance relief, the applicant may demonstrate that strict application of the regulation would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship due to one of the following:
 - A. By reason of exceptional narrowness, shallowness or shape of a specific piece of property;
 - B. By reason of exceptional topographic conditions or physical features uniquely affecting the specific piece of property; or
 - C. By reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.

The applicant should provide testimony regarding any peculiar and exceptional practical difficulties or exceptional and undue hardship if seeking c(1) variance relief for the proposed variances.
10. Alternatively, and known as "c(2)" variance relief, the applicant may demonstrate the following positive criteria in support of the request for relief:
 - A. Where in an application or appeal relating to a specific piece of property the purposes of the Act (N.J.A.C. 40:55D-2) would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.
 - B. The applicant should provide testimony regarding any public benefits of the project if seeking c(2) variance relief for the impervious coverage and steep slope disturbance variances.
11. Negative Criteria. Should the applicant satisfy the positive criteria, it must also be demonstrated that the granting of the variance can be accomplished without resulting in substantial detriment to the public good and without substantial impairment of the intent and purpose of the zoning ordinance and zone plan.

- A. Negative Criteria: Impact to the public good. Impact to the public good, typically relates to any substantial detriment to the adjoining neighbors or within the surrounding neighborhood. The applicant should provide testimony regarding any potential negative impacts to the character of the neighborhood resulting from the proposed variance relief and any proposed mitigation measures to reduce potential negative impacts to the public good.
- B. Negative Criteria: Impact to the zone plan. In considering the potential negative impacts to the zoning ordinance and zone plan, the Board should consider potential impact of the variances on the zoning standards the R-10 zone
 - C. The Board should consider the extent to which the variances may result in any substantial impairment of the intent and purpose of the R-10 as described above, including any potential impacts and proposed mitigation measures related to structure height, parking areas and the proposed exacerbation of the existing no-conforming setback conditions.

H2M reserves the right to provide additional comments as we continue through the review of this application. If you have any further questions regarding the above letter, please contact the undersigned at (862) 207-5900 extension 2160.

Very truly yours,
H2M Associates, Inc.



Ryan Conklin PP, AICP, GISP
Senior Project Planner

cc: Dennis F. Keenan, P.E. (email only)
Jack Szczepanski (email only)
Edward Buzak, Esq. (email only)

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County of Morris
Office of Planning & Preservation
PO Box 900
Morristown, NJ 07963-0900

ATTN: Mr. Joseph Barilla, P.P., A.I.C.P.
Morris County Planning Director

Re: Responses to Morris County Farmland Preservation Plan questionnaire

Dear Mr. Barilla,

The questions posed in your query of June 15, 2021 were discussed by the Township Committee and the following summarizes the Mendham Township response:

1. Preserving traditional farm operations is important. The Township notes with great dismay the proliferation of destination farms, amusement park farms, echo tourism farms, and venue farms. **These latter operations are something which Mendham Township believes should be regulated to preserve the overall low-density development of the municipality.**
2. **The Township Master Plan has emphasized open space and farmland preservation for many years.** The master plan is undergoing review and amendment at the present time. Consideration will be given to a goal of protecting open space (of which Mendham Township has over 38%) and traditional farmland.
3. The Township does not have an Agricultural Advisory Committee or Board.
4. In the rural community of Mendham Township, the zoning is almost exclusively residential, in which farming is a permitted use. There are no separate zones for "farms" per se. Local farms are not facing developmental pressure other than residential in nature. The fact that the zoning ordinances require large lot sizes has a tempering effect on the residential developmental pressure.
5. Mendham Township has not made a study of the local market for which locally grown agriculture products are **marketed**; however, it is believed to be primarily from farm stand associated with the farm rather than normal separate retail operations.
6. Agritourism operations, to the extent limited to "pick your own", farm stands and limited hayrides/pumpkin picking are fine. The Township draws the line when the farm seeks to become a destination venue such as an amusement destination (e.g. petting zoo, amusement rides / facilities), a distillery, a gathering site or other large scale commercial attraction which is other than farming. (In this regard we invite your attention to the Alstede operation in Chester.)

7. Ground water conditions vary by location and the access to an aquifer with suitable capacity to provide the needed water. Some locations due to rock formations have limited or difficult access. Disposal of sewage, animal wastes, etc. are the subject of a recently completed nitrate dilution study which is currently being reviewed
8. There are no known soil health issues.
9. There are no known impacts on existing farmland or farmland assessed properties as a result of the Township's Fair Share Plan and Housing Element.
10. The Township of Mendham does have some ordinances regulating and supporting farming. Those ordinances are not as broad as the Right to Farm Act. See for example Ordinance 21-4.1 € Where agricultural uses are permitted in every residential zone provided they conform to the acceptable agricultural management practices. Equestrian farms are also permitted.

If you have any further questions or wish to discuss these responses, please feel free to contact the Township at your convenience.

Very truly yours,

Robert Casey, Administrator
July 6, 2021