

Backer Farm, LLC, d/b/a Backer Farm  
32 Ironia Road, Mendham, New Jersey  
Block 109, Lots 23 and 23 QFARM, Mendham Township, Morris County  
Commercial Farm Certification and Request for SSAMP Application

## Exhibit Y

June 29, 2021, Application review letter from  
Ryan Conklin, PP, AICP, GISP, H2M Associates,  
Inc., to Beth Foley, Planning Board, Township  
of Mendham



H2M Associates, Inc.

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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**

<b>Ordinance Requirement</b>	<b>Regulation</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Status</b>
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	<b><i>Requires Variance</i></b>
Signage	21-4.5b.G.	2 sqft	?	84 sq ft	<b><i>Requires Variance</i></b>
Maximum Accessory Structure Height	21-64b.	30 feet	30.1 feet	31.3 feet	<b><i>Requires Variance</i></b>
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	<b><i>Requires Variance</i></b>

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	<b>Requires waiver</b>
Parking Standards	Design	§16-10.3(c)4	Access drives to be maximum of 22' wide	?	24' wide access drive proposed	<b>Requires waiver</b>
Parking Standards	Design	§16-10.3(c)13	Parking spaces required to be 9'x20'	?	Parking spaces proposed to be 9'18'	<b>Requires waiver</b>

**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)  
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