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May 24, 2022

Via Email & Regular Mail

Katherine Coyle, Director
Morris County Agriculture Development Board
P.O. Box 900
Morristown, New Jersey 07963-0900

**Re: Application of the Backer Farm for SSAMP for the
Operation of a Brewery on a Preserved Farm**

Dear Ms. Coyle:

This office serves as special counsel to the Township of Mendham. In that capacity, we have monitored the Backer Farm's application before the Morris County Agriculture Development Board. By letter dated March 2, 2022, the Board formally requested the Township's input with respect to the application. In response to the Board's request, attached please find a memorandum prepared by this office setting forth the Township's position on the list of requested waivers from municipal regulations, hours of operation, noise, and public health and safety issues implicated by the application.

The Township recognizes that farms in Mendham and across New Jersey face mounting pressure to compete and survive. The Township also understands that the law has evolved to allow farmers to conduct activities far beyond those customarily found on a traditional farm. The Backers have been and continue to be valued members of the community, and the Township acknowledges the challenges attending their efforts to continue farming their property. However, the Backers' interest must be weighed against the Township's interest in enforcing its ordinances, especially those designed to protect the health, safety and welfare of the Township and its residents.

The Legislature enacted the Right to Farm Act, N.J.S.A. 4:1C-1 to -55, to protect farmers engaged in traditional farm practices facing pressure from surrounding development. Twp. of Franklin v. den Hollander, 172 N.J. 147 (2002) remains the seminal case governing the interplay between the Right to Farm Act and municipalities' right to enforce their zoning ordinances. As the Board is aware, pursuant to the holding in den Hollander, it must weigh the Township's interest in enforcing its ordinances against the farmer's legitimate, farm-based reason for requesting relief.

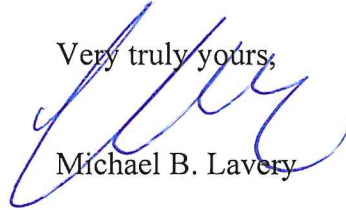
“There will be those cases where the local zoning ordinance simply does not affect farming. There will be other disputes where, although the ordinance has a peripheral effect on farming, it implicates a policy that does not directly conflict with farming practices. In such cases greater deference should be afforded to local zoning regulations and ordinances. Even when the CAB or SADC determines that the activity in question is a generally accepted agricultural operation or practice according to N.J.S.A. 4:1c-10(c), the resolution of that issue in favor of farming interests does not vest the board with a wide-ranging commission to arrogate to itself prerogatives beyond those set forth in the Act. The boards must act in a manner consistent with their mandate, giving appropriate consideration not only to the agricultural practice at issue, but also to local ordinances and regulations, including land use regulations, that may affect the agricultural practice.” *Id.* At 390-391, 769 A. 2d 427.

Concerns about the Backer Farm application differ from those involving traditional farm practices. The Right to Farm Act and its corresponding sections of the New Jersey Administrative Code have evolved to embrace certain activities that function as accepted agriculture management practices (“AMPs”). Many such AMPs differ from traditional agriculture practices entirely. Thus, someone who purchased property in close proximity to a farm knew generally the types of sights, smells, sounds and activities that would be conducted. Now, with the advent of direct marketing AMPs, residents are subject to sights, sounds, smells, and activities they never could have anticipated.

If a commercial farm believes a municipality's standards for the construction and operation of on-farm direct marketing facilities are unduly restrictive, the farm may request a site-specific AMP. See N.J.A.C. 2:76-2A.13(r)(2). The attached memorandum reviews each portion of the Township Code and Land Use Ordinances that the Backer Farm application considers unduly restrictive, as well as the corresponding Right to Farm Act regulations with which the Backer Farm intends to comply. In accordance with Den Hollander and its progeny, the recommendations contained herein comprise the Township's attempt to balance the concerns of the project's potential impact on the community's health, safety, and welfare, with the Backers' right to engage in direct marketing AMPs on the property.

If you have any questions regarding the within memorandum or any of the Township's recommendations, please do not hesitate to contact this office.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Michael B. Lavery", is written over the typed name.

Michael B. Lavery

MBL/dmw

cc: Staci Santucci, Esq. (via email: ssantucci@co.morris.nj.us)
Nicole Voight, Esq. (via email: nicole@legalcounselnj.com)
Susan Rubright, Esq. (via email: srubright@bracheichler.com)
Mayor and Township Committee (via email)
Jason Gabloff, Township Administrator (via email)

TOWNSHIP OF MENDHAM

**MEMORANDUM TO MORRIS COUNTY AGRICULTURAL DEVELOPMENT BOARD
REGARDING BACKER FARM'S APPLICATION FOR
SITE-SPECIFIC AGRICULTURE MANAGEMENT PRACTICES**

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Counsel for the Township of Mendham

Submitted by:
Michael B. Lavery, Esq.

On the Brief:
Kyle S. Clauss, Esq.

I. PARKING AREAS & ACCESS DRIVES

Applicable Township Land Use Ordinance(s):

§ 16-10.3(c)(1): “Off-street parking areas and access drives shall be improved with either (a) Base course of four (4) inches of soil aggregate, New Jersey Department of Transportation Type 5, Class A (quarry process) plus three (3) inches of bituminous stabilized base course, New Jersey Department of Transportation Mix I-2, plus one and one-half (1-1/2) inches of bituminous surface course, New Jersey Department of Transportation Mix I-5 (FABC), all thoroughly rolled and compacted; or (b) Four (4) inches of bituminous stabilized base course, New Jersey Department of Transportation Mix I-2, plus one and one-half (1-1/2) inches of bituminous surface course, New Jersey Department of Transportation Mix I-5 (FABC), all thoroughly rolled and compacted.

All of the foregoing pavement thickness shall be compacted thickness. The sub-base shall be approved by the township engineer as suitable for the foregoing specifications. Parking areas shall be graded and drained so as to dispose of surface water as recommended by the township engineer.”

§ 20-(E)(18): “Projects that do not meet the threshold for ‘major development’ under the Township storm water ordinance shall be designed as follows: (a) If the project creates 1,000 sq. ft. or more of proposed impervious surface, the project must collect and store in drywells or other infiltration systems, approved by the Township Engineer, the equivalent of 3” of runoff from each sq. ft. of proposed impervious surface. For the purposes of this section any existing impervious surface that was install without approvals is considered ‘proposed.’ (b) If the project creates 3,500 sq. ft. or more of land disturbance, soil erosion and sediment control measures in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey shall be shown on the plan and implemented.”

Proposed Deviation:

“Backer Farm proposes to continue parking on gravel, a former sand horse arena which is natural transitioning to a field, and occasionally on an adjacent field.”

Right to Farm Act Regulation(s):

N.J.A.C. 2:76-2A-13(h): In the absence of municipal standards for the construction of parking areas applicable to on-farm direct marketing facilities, the standards in this subsection shall apply to facilities' parking areas.

1. A commercial farm's parking areas for on-farm direct marketing facilities, activities, and events may include areas permanently devoted to parking, areas temporarily devoted to parking, or a combination of such areas. Areas permanently devoted to parking means areas utilized by the facility on a daily basis when the facility is open. Areas temporarily

devoted to parking means areas utilized by the facility when additional parking capacity is needed on a short-term, temporary basis, such as in conjunction with seasonal on-farm direct marketing sales, activities, or events.

2. The following standards shall apply to all parking areas:
 - i. Safe, off-road parking shall be provided. Parking shall not be located in a road right of way, and the number of spaces provided shall be sufficient to accommodate the normal or anticipated traffic volume for the commercial farm's on-farm direct marketing facilities, activities, and events;
 - ii. Ingress and egress points, driveway areas, and parking areas shall be arranged, so as to provide for safe traffic circulation. This arrangement shall allow customers to safely pull off of and onto adjacent roadways, and to safely maneuver to and from parking areas and into and out of parking spaces. On-farm direct marketing facilities need adequate driveway access to enable customers to reach the facility from the adjacent roadway; and
 - iii. Where applicable, on farms that allow buses, parking areas shall accommodate bus traffic and allow for the safe unloading and loading of bus passengers.
3. The types of surfaces and any physical improvements associated with areas permanently devoted to parking, such as curbing or landscaping, need not involve greater than the minimum level of improvements necessary to protect public health and safety.
4. The following standards shall apply to areas temporarily devoted to parking:
 - i. Areas temporarily devoted to parking shall require few or no improvements, so that they can easily be converted back to productive agricultural use once a farm's need for short-term additional parking ceases;
 - ii. Areas temporarily devoted to parking may include, but are not limited to, hay fields, grass fields, pastures, and other crop fields, provided they have vegetative or organic mulch cover, such that bare ground is not parked on;
 - iii. The slope of the land shall be considered to address issues related to drainage, puddles and pockets of standing water, and safety;
 - iv. During dry conditions, areas temporarily devoted to parking shall be mowed, so as to minimize fire hazards related to vegetation coming in contact with the underside of customer vehicles;

- v. During wet conditions, areas temporarily devoted to parking shall be managed to provide vehicles and pedestrians with safe and sufficient traction; and
- vi. A commercial farm shall mark, sign, or indicate through staff direction or other means where vehicles should be parked.”

Township Recommendation to MCADB:

The Applicant has shown adequate parking for the proposed brewery’s 78-person capacity. The Applicant should explain how the parking will be handled when they hold special events unrelated to the brewery, such as pumpkin picking. The Township requests that if the Board approves the instant application, it should require accommodations for **all** parking on-site. In the interest of safety, parking should be prohibited on the road, which is narrow and lacks paved shoulders. The applicant should also pave the apron of the driveway leading to the street. Finally, the Township opposes any improvements that would trigger stormwater management.

II. LIGHTING

Applicable Township Land Use Ordinance(s):

§ 16-10.3(c)(3): “Adequate provisions shall be made for off-street parking in accordance with requirements set forth below, and adequate traffic circulation and protection to adjoining property shall be provided. Off-street parking areas that are designed to serve other than a single-family detached residential dwelling unit shall meet the following requirements. . . . Lighting for off-street parking areas shall be so arranged and shielded as to reflect the light downward and prevent any light from shining directly on adjoining streets, buildings, or across property lines.”

Proposed Deviation:

“Backer Farm proposes to replace pre-existing flood lights with new fixtures in their existing locations that will be directed outward and angled downward to focus only on the parking area.”

Right to Farm Act Regulation(s):

N.J.A.C. 2:76-2A-13(d): “The standards for lighting of on-farm direct marketing facilities, activities, and events on commercial farms shall be as follows:

1. When an on-farm direct marketing facility, activity, or event is open or offered after dark, a commercial farm shall provide, unless specified otherwise in this section, lighting for areas used by customers, such as: walkways, parking areas, sales areas, activity areas, and event areas. This lighting shall provide, at a minimum, the amount of light necessary for customer safety.
2. **All lighting shall be provided with lights focused either downward or with an orientation designed to minimize light spilling off the site and to minimize impacts on adjacent off-farm residential buildings and streets.** Lights shall not be focused directly onto public roads.
3. Any temporary lighting shall be removed within 30 days after the activity or event has ended.
4. Lighting for on-farm direct marketing purposes shall be turned off within half an hour of the close of business.
5. In addition to lighting referenced in (d)1 through 4 above for on-farm direct marketing purposes, a commercial farm may use lighting for other farm management purposes, for example, for security. Security lighting may be used to help protect a farm's products or other physical or natural resources and to discourage trespassing and vandalism and is subject to the provisions in (d)2 above.”

Township Recommendation to MCADB:

The lighting plan submitted by the Applicant is acceptable, provided that (1) the lights shall be turned off within thirty minutes following the close of business, and (2) the lights shall project downward. The maximum height for the lights should be 20 feet. The Township requests that the final lighting plan shall be approved by the Township Engineer.

III. DRIVEWAY WIDTH

Applicable Township Land Use Ordinance(s):

§ 16-10.3(c)(4): “Entrance or exit driveways connecting the parking area and street shall not exceed twenty-two (22) feet in depth, and no entrance or exit drive shall be closer than sixty (6) feet to another entrance or exit at the street right-of-way line, nor closer than fifty (5) feet to the property line of an abutting property not included in the development.”

§ 16-10.7(d): “All driveways shall meet the abutting roadway at a horizontal angle of not less than sixty (60) degrees. All driveways shall have a minimum sight distance of oncoming traffic in each direction of two hundred fifty (250) feet when observed at a point ten (10) feet back from the existing pavement at a height of four (4) feet above the ground. Where the posted speed limit along the roadway is greater than twenty-five (25) miles per hour, the minimum sight distance shall be ten (10) feet for each mile per hour.”

Proposed Deviation:

“Backer Farm has obtained a driveway permit and has applied for a lot grading permit for the driveway. . . . Backer Farm’s engineer determined that the 24 foot wide driveway is more protective of public health and safety than a 22 foot wide driveway. . . . The proposed driveway meets the abutting roadway at a horizontal angle of approximately 90 degrees (not less than sixty degrees). The proposed driveway has a sight distance that exceeds the minimum requirement of 300 feet for a posted speed limit of 30 MPH as demonstrated on the attached exhibit entitled ‘Sight Distance Plan & Profile’ and confirmed by field observations.”

Township Recommendation to MCADB:

The Township does not object to the Applicant’s request to expand the driveway width from 22 feet to 24 feet.

IV. SCREENING

Applicable Township Land Use Ordinance(s):

§ 16-10.3(c)(7): “Parking areas shall be effectively screened on any side which abuts or faces any premises situated in any residential zone by a fence, wall or hedge up to six (6) feet in height, maintained in good condition; provided, however, that natural features of the land such as rock outcroppings or wooded areas may be substituted for fence, wall or hedge, and that such features shall be a part of the plan.”

Proposed Deviation:

“Backer Farm does not propose additional screening because the parking areas are pre-existing and are located a significant distance from surrounding residential properties and are largely screened by existing agricultural buildings. Some of the parking areas will be seasonally screened by hop vines. Requiring screening beyond a natural product that can be used in the agricultural output of the farm will also reduce the area available for agricultural production.”

Right to Farm Act Regulation(s):

N.J.A.C. 2:76-2A-13(i): “(i) The standards for buffers for on-farm direct marketing facilities, activities, and events on commercial farms shall be as follows:

1. The general standards are as follows:
 - i. A commercial farm may utilize buffers as an effective tool to mitigate the impacts that on-farm direct marketing facilities, activities, or events may pose on adjacent properties, such as noise, dust, and light spillage.
 - ii. **Buffers need not involve greater than the minimum setbacks and/or screening necessary to protect public health and safety and to mitigate unreasonably adverse impacts on adjacent properties.**
 - iii. When making determinations regarding the necessity or extent of buffers, consideration shall be given to the following:
 - (1) The nature of the existing adjacent property uses;
 - (2) The nature and scale of the commercial farm's on-farm direct marketing facilities, activities, and events;
 - (3) The frequency of the commercial farm's activities and events;
 - (4) The physical features and constraints of the commercial farm property;
 - (5) The presence or absence of existing on- or off-farm buffers; and
 - (6) The economic feasibility of using buffers.

2. The setback requirements are as follows:
 - i. The standards in this paragraph shall apply to the location of building and parking areas for on-farm direct marketing facilities.
 - ii. The following standards shall apply to new or expanded facilities' permanent structures:
 - (1) A 50-foot front-yard setback from the paved portion of the road right of way;
 - (2) A 50-foot side-yard setback from the property line; and
 - (3) A 50-foot rear-yard setback from the property line;
 - iii. The following standards shall apply to new or expanded activities and events:
 - (1) A 25-foot front-yard setback from the paved portion of the road right of way;
 - (2) A 50-foot side-yard setback from the property line;
 - (3) A 50-foot rear-yard setback from the property line; and
 - (4) A 100-foot setback from an existing, occupied residence not located on the farm.
 - iv. The following standards shall apply to new or expanded areas permanently devoted to parking:
 - (1) A 25-foot front-yard setback from the paved portion of the road right of way;
 - (2) A 50-foot side-yard setback from the property line; and
 - (3) A 50-foot rear-yard setback from the property line.
 - v. Setbacks of a lesser distance than those specified in (i)2ii through iv above may be permissible provided the following is met:
 - (1) Screening is considered and, if appropriate, installed;
 - (2) The combined setback distance and screening arrangement receives approval as a site-specific agricultural management practice pursuant to N.J.A.C. 2:76-2.3 and 2.4;
 - (3) The site-specific agricultural management practice determination takes, at a minimum, the following into consideration:
 - (A) Adjacent property uses and buffers;
 - (B) The scale of the facility and intensity of its use;
 - (C) The nature, scale, and frequency of the activities and events;
 - (D) The physical features and constraints of the commercial farm property; and
 - (E) The economic feasibility of using buffers; and
 - (4) For a board or the Committee to make a site-specific agricultural management practice determination departing from the provisions in (i)2ii through iv above, a commercial farm must provide a legitimate farm-based reason for the departure and address the considerations listed in this subparagraph.

- vi. Existing on-farm direct marketing facilities, activities, or events, including existing areas permanently devoted to parking, are not subject in their current layout and configuration to the provisions of (i)2ii through iv above. If such facilities, activities, events, or parking areas are situated at lesser distances than the standards specified in (i)2ii through iv above, the use of screening for buffer purposes shall be considered.
 - vii. Existing on-farm direct marketing activities or events that are offered and located in different fields over time shall not be considered new activities or events under this paragraph.
3. The screening requirements for on-farm direct marketing facilities, activities, and events on commercial farms shall be as follows:
- i. Screening, when used for buffer purposes, shall consist of vegetation or structures, such as, but not limited to, trees, bushes, fences, or walls;
 - ii. If the screening is comprised of vegetation and if used in conjunction with a facility, the existing or newly planted materials shall be grown in such a manner that there is 75 percent screening of the facility within five years;
 - iii. If the screening is comprised of vegetation and if used in conjunction with an activity or event offered in two or more consecutive years, the existing or newly planted materials shall be grown in such a manner that there is 75 percent screening of the activity or event within five years;
 - iv. If the screening is comprised of a fence, wall, or another existing farm structure, then the fence, wall, or other existing farm structure shall be of sufficient height or construction to provide 75 percent screening of the facility, activity, or event; and
 - v. If the distance between a new or expanded facility and an existing, occupied residence not located on the farm is less than 100 feet, screening shall be installed.
4. For the purposes of this subsection, existing on-farm direct marketing facilities, activities, or events are those facilities, activities, or events that are in operation as of April 7, 2014, the effective date of the AMP.

Township Recommendation to MCADB:

Although there appears to be vegetative screening during warmer weather, in winter, much of the vegetation will be gone. The Applicant should be required to provide adequate screening for the parking area to shield the surrounding neighborhood from motor-vehicle headlights.

V. PARKING SPACE DEPTH

Applicable Township Land Use Ordinance(s):

§ 16-10.3(c)(13): “Each parking space for off-street parking shall be rectangular with an area of not less than one hundred eighty (180) square feet, shall be a minimum of nine (9) feet in width measured perpendicular to the axis of the length, and shall have a minimum depth of twenty (20) feet. Whenever a parking space abuts along its length an obstruction more than six (6) inches high the minimum width of the parking space shall be twelve (12) feet. All parking spaces shall be provided with adequate means of ingress and egress which shall be kept open and unobstructed at all times and which shall be designed to provide surface driveways or aisles to meet the following minimum standards:

| <u>Parking Plan</u> | <u>Aisle Width</u> |
|---|--------------------|
| . . . | |
| 60 degree angle parking (aisle one-way) | 18 feet |

Proposed Deviation:

“Backer Farm proposes parking spaces that will be nine feet wide by eighteen feet deep. . . . Utilizing a small depth for parking spaces enables the former outdoor riding arenas to adequately service the parking needs for the brewery operation. This ten enables no additional land area needing to be taken out of agricultural production to accommodate periodic parking needs.”

Right to Farm Act Regulation(s):

N.J.A.C. 2:76-2A-13(h): “In the absence of municipal standards for the construction of parking areas applicable to on-farm direct marketing facilities, the standards in this subsection shall apply to facilities' parking areas.

1. A commercial farm's parking areas for on-farm direct marketing facilities, activities, and events may include areas permanently devoted to parking, areas temporarily devoted to parking, or a combination of such areas. Areas permanently devoted to parking means areas utilized by the facility on a daily basis when the facility is open. Areas temporarily devoted to parking means areas utilized by the facility when additional parking capacity is needed on a short-term, temporary basis, such as in conjunction with seasonal on-farm direct marketing sales, activities, or events.
2. The following standards shall apply to all parking areas:
 - i. Safe, off-road parking shall be provided. Parking shall not be located in a road right of way, and the number of spaces provided shall be sufficient to accommodate the normal or anticipated traffic volume for the commercial farm's on-farm direct marketing facilities, activities, and events;

- ii. Ingress and egress points, driveway areas, and parking areas shall be arranged, so as to provide for safe traffic circulation. This arrangement shall allow customers to safely pull off of and onto adjacent roadways, and to safely maneuver to and from parking areas and into and out of parking spaces. On-farm direct marketing facilities need adequate driveway access to enable customers to reach the facility from the adjacent roadway; and
 - iii. Where applicable, on farms that allow buses, parking areas shall accommodate bus traffic and allow for the safe unloading and loading of bus passengers.
3. The types of surfaces and any physical improvements associated with areas permanently devoted to parking, such as curbing or landscaping, need not involve greater than the minimum level of improvements necessary to protect public health and safety.
4. The following standards shall apply to areas temporarily devoted to parking:
 - i. Areas temporarily devoted to parking shall require few or no improvements, so that they can easily be converted back to productive agricultural use once a farm's need for short-term additional parking ceases;
 - ii. Areas temporarily devoted to parking may include, but are not limited to, hay fields, grass fields, pastures, and other crop fields, provided they have vegetative or organic mulch cover, such that bare ground is not parked on;
 - iii. The slope of the land shall be considered to address issues related to drainage, puddles and pockets of standing water, and safety;
 - iv. During dry conditions, areas temporarily devoted to parking shall be mowed, so as to minimize fire hazards related to vegetation coming in contact with the underside of customer vehicles;
 - v. During wet conditions, areas temporarily devoted to parking shall be managed to provide vehicles and pedestrians with safe and sufficient traction; and
 - vi. A commercial farm shall mark, sign, or indicate through staff direction or other means where vehicles should be parked.”

Township Recommendation to MCADB:

The Township does not object to the Applicant’s request to reduce parking space depth from 20 feet to 18 feet.

VI. OFF-STREET LOADING SPACE

Applicable Township Land Use Ordinance(s):

§ 16-10.3(c)(14): “In all zone district, for every building or premises or parts thereof the use of which involves the delivery or loading or unloading of materials, merchandise or goods or other use similarly requiring the receipt or distribution in vehicles of material or merchandise, there shall be provided and maintained on the same premises with such use one (1) off-street loading space which shall be at least twelve (12) feet wide, forty (40) feet long and have a fourteen (14) foot overhead clearance. A loading space shall only be permitted in a side or rear yard but not in a required yard. A loading space may be located in the required off-street parking area.”

Proposed Deviation:

“Given the variety of farm vehicles and equipment and variations in where loading and unloading occurs on a farm, one specific loading/unloading location does not make sense for a multi-purpose farm operation. Backer Farm currently utilizes the existing driveway areas behind the primary ‘dairy barn’ as the loading/unloading area and purposes to continue this practice. This is a common practice on farms and makes the most practical sense for Backer Farm. Loading for the brewery will take place during the brewery’s off-hours, within the parking lot, so a separate.”

Right to Farm Act Regulation(s):

N.J.A.C. 2:76-2A-13(h): “In the absence of municipal standards for the construction of parking areas applicable to on-farm direct marketing facilities, the standards in this subsection shall apply to facilities' parking areas.

1. A commercial farm's parking areas for on-farm direct marketing facilities, activities, and events may include areas permanently devoted to parking, areas temporarily devoted to parking, or a combination of such areas. Areas permanently devoted to parking means areas utilized by the facility on a daily basis when the facility is open. Areas temporarily devoted to parking means areas utilized by the facility when additional parking capacity is needed on a short-term, temporary basis, such as in conjunction with seasonal on-farm direct marketing sales, activities, or events.
2. The following standards shall apply to all parking areas:
 - i. Safe, off-road parking shall be provided. Parking shall not be located in a road right of way, and the number of spaces provided shall be sufficient to accommodate the normal or anticipated traffic volume for the commercial farm's on-farm direct marketing facilities, activities, and events;

- ii. Ingress and egress points, driveway areas, and parking areas shall be arranged, so as to provide for safe traffic circulation. This arrangement shall allow customers to safely pull off of and onto adjacent roadways, and to safely maneuver to and from parking areas and into and out of parking spaces. On-farm direct marketing facilities need adequate driveway access to enable customers to reach the facility from the adjacent roadway; and
 - iii. Where applicable, on farms that allow buses, parking areas shall accommodate bus traffic and allow for the safe unloading and loading of bus passengers.
3. The types of surfaces and any physical improvements associated with areas permanently devoted to parking, such as curbing or landscaping, need not involve greater than the minimum level of improvements necessary to protect public health and safety.
4. The following standards shall apply to areas temporarily devoted to parking:
 - i. Areas temporarily devoted to parking shall require few or no improvements, so that they can easily be converted back to productive agricultural use once a farm's need for short-term additional parking ceases;
 - ii. Areas temporarily devoted to parking may include, but are not limited to, hay fields, grass fields, pastures, and other crop fields, provided they have vegetative or organic mulch cover, such that bare ground is not parked on;
 - iii. The slope of the land shall be considered to address issues related to drainage, puddles and pockets of standing water, and safety;
 - iv. During dry conditions, areas temporarily devoted to parking shall be mowed, so as to minimize fire hazards related to vegetation coming in contact with the underside of customer vehicles;
 - v. During wet conditions, areas temporarily devoted to parking shall be managed to provide vehicles and pedestrians with safe and sufficient traction; and
 - vi. A commercial farm shall mark, sign, or indicate through staff direction or other means where vehicles should be parked.”

Township Recommendation to MCADB:

Although the Township understands that designating one area for loading and unloading all items delivered to or picked up from the farm may present significant difficulties, the Applicant must designate one such area for the brewery. The Township further requests that there shall be no deliveries before 8:00 a.m. and after 5:00 p.m. on Monday through Saturday and all-day Sunday.

VII. FRONT YARD SETBACK

Applicable Township Land Use Ordinance(s):

§ 21-4.9: “Supplementary Setback Regulations. The minimum set forth on the Schedule of Requirements, are applicable as minimum dimensions. Minimum setbacks shall be increased in the following circumstances:

- . . .
- (b) Accessory buildings with footprints over 1,000 square feet:

In all zones, the minimum front, side and rear yard setbacks for an accessory building of over 1,000 square feet of footprint shall be increased by 1.5 feet for each 100 square feet of footprint in excess of 1,000 square feet or portion thereof.”

Proposed Deviation:

“Backer Farm proposes construction of a small entryway addition (the ‘vestibule’) which will be 175 feet from the front lot line as an addition to the existing barn which is to be converted into a brewery. . . . The farm will comply with the Right to Farm Act regulations at N.J.A.C. 2:76-2A.13(i), which requires a 50-foot front yard setback for new or expanded permanent structures. . . . Comparatively, Backer Farm’s proposal is vestibule [sic] in excess of the recommended SADC 50-foot front yard setback and adequately protective of public health and safety. Further, one side of the existing barn is closer to the front yard lot line than the planned vestibule, such that the non-conformity is pre-existing with respect to the barn’s overall set-back. Multiple pre-existing structures are located closer to the road, which also block the view of the vestibule from many vantage points. The vestibule was architecturally designed to enhance and preserve the agricultural, dairy-barn character of the building, and it does not present any threat to public health and safety.”

Right to Farm Act Regulation(s):

N.J.A.C. 2:76-2A-13(i)(2): “The setback requirements are as follows:

- i. The standards in this paragraph shall apply to the location of building and parking areas for on-farm direct marketing facilities.
- ii. The following standards shall apply to new or expanded facilities' permanent structures:
 - (1) A 50-foot front-yard setback from the paved portion of the road right of way;
 - (2) A 50-foot side-yard setback from the property line; and
 - (3) A 50-foot rear-yard setback from the property line;
- iii. The following standards shall apply to new or expanded activities and events:
 - (1) A 25-foot front-yard setback from the paved portion of the road right of way;
 - (2) A 50-foot side-yard setback from the property line;

- (3) A 50-foot rear-yard setback from the property line; and
 - (4) A 100-foot setback from an existing, occupied residence not located on the farm.
- iv. The following standards shall apply to new or expanded areas permanently devoted to parking:
 - (1) A 25-foot front-yard setback from the paved portion of the road right of way;
 - (2) A 50-foot side-yard setback from the property line; and
 - (3) A 50-foot rear-yard setback from the property line.
- v. Setbacks of a lesser distance than those specified in (i)2ii through iv above may be permissible provided the following is met:
 - (1) Screening is considered and, if appropriate, installed;
 - (2) The combined setback distance and screening arrangement receives approval as a site-specific agricultural management practice pursuant to N.J.A.C. 2:76-2.3 and 2.4;
 - (3) The site-specific agricultural management practice determination takes, at a minimum, the following into consideration:
 - (A) Adjacent property uses and buffers;
 - (B) The scale of the facility and intensity of its use;
 - (C) The nature, scale, and frequency of the activities and events;
 - (D) The physical features and constraints of the commercial farm property; and
 - (E) The economic feasibility of using buffers; and
 - (4) For a board or the Committee to make a site-specific agricultural management practice determination departing from the provisions in (i)2ii through iv above, a commercial farm must provide a legitimate farm-based reason for the departure and address the considerations listed in this subparagraph.
- vi. Existing on-farm direct marketing facilities, activities, or events, including existing areas permanently devoted to parking, are not subject in their current layout and configuration to the provisions of (i)2ii through iv above. If such facilities, activities, events, or parking areas are situated at lesser distances than the standards specified in (i)2ii through iv above, the use of screening for buffer purposes shall be considered.
- vii. Existing on-farm direct marketing activities or events that are offered and located in different fields over time shall not be considered new activities or events under this paragraph.

Township Recommendation to MCADB:

The Township does not object to the Applicant's request to construct a vestibule as proposed.

VIII. ACCESSORY STRUCTURE HEIGHT

Applicable Township Land Use Ordinance(s):

§ 21-6.4: “Encroachments in Required Yards. The space in any required yard shall be open and unobstructed except as follows:

. . . .
b. Except as provided in subsection 21-6.5 no accessory structure shall exceed a height of 30 feet.”

Proposed Deviation:

“The brewery and on-farm direct marketing activities, events, and facilities will be a principal, not accessory use of the property. . . . Backer Farm proposes to convert an existing barn into a brewery with a beer tasting room, patios and deck, processing facility, bathrooms, and storage/delivery space. There may be a *de minimus* increase in the building height to accommodate building insulation being installed above existing roofing material to maintain exposure of woodwork inside the building. This allows preservation of the agricultural and historic character of this iconic building, in furtherance of its appeal to customers seeking a farm experience. The historic and agricultural character of the dairy barn is maintained.”

Township Recommendation to MCADB:

The Township does not have an issue with a *de minimis* increase in the height, i.e., one foot or less to provide insulation on the roof to preserve the interior.

IX. SIGN SIZE

Applicable Township Land Use Ordinance(s):

§ 21-4.5(b): “Signs. The only signs permitted are as follows:

1. Name plate signs not exceeding one square foot in area, or professional or announcement signs not exceeding two square feet in area. Said signs may be placed anywhere in the front yard.
2. Temporary real estate signs not more than four feet in area advertising the sale or lease of the premises on which such sign is maintained. Not more than one sign shall be permitted on any lot. A sign shall be removed within 7 days after the execution of a contract of sale or lease for the lot upon which the sign is located.

No sign shall be illuminated by other than white, non-flashing, non-moving illumination. The direct source of light shall not be visible from any point along the boundary lines of the property.”

Proposed Deviation:

“It is a common practice for farms to have larger signage, such as the existing standard form of preserved farmland signage. This is in keeping with the character of farms and allows better sign visibility amongst the larger acreage parcels. The farm will comply with the Right to Farm Act Regulations at N.J.A.C. 2:76-2A.13(g), which sets forth standards for permanent signage for commercial farms engaging in on-farm marketing.”

Right to Farm Act Regulation(s):

N.J.A.C. 2:76-2A-13(g): “The standards for the use of signs for on-farm direct marketing facilities, activities, and events on commercial farms shall be as follows:

1. A commercial farm may use permanent and temporary signs to promote its on-farm direct marketing facilities, activities, and events.
 - i. Examples of signs include, but are not limited to, directional signs; advance signs; signs promoting the products available for sale; and facility, activity, and event signs.
2. The following general standards shall apply to all signs used for on-farm direct marketing facilities:
 - i. Signs shall be installed and maintained in a manner that does not pose a direct threat to public health and safety. Signs shall not interfere with sight distances at street

- intersections, ingress and egress points to or from parking areas, and other locations;
- ii. Signs may be attached to farm buildings, fences, or other structures or be freestanding;
 - iii. Signs may have information on both sides.
 - iv. The use and location of signs shall comply with relevant Federal and State laws, rules, and regulations;
 - v. Along the approach to the farm on the road on which the on-farm direct marketing facility, activity, or event is located, a commercial farm may install advance signs up to one-half mile away from the farm's entrance. Advance signs are designed to alert drivers of an approaching on-farm direct marketing facility, activity, or event and are generally located in close proximity to one another along the road approaching, and leaving, the site upon which the facility, activity, or event is located;
 - vi. Directional and other signs may be installed at key intersections or other important locations;
 - vii. A commercial farm shall obtain the permission of the appropriate landowner or easement holder when locating signs at off-farm locations;
 - viii. Temporary signs promoting a seasonal on-farm direct marketing facility, activity, or event may be installed up to one month prior to the facility, activity, or event's seasonal opening and shall be removed within 15 days of seasonal closing; and
 - ix. Internally-lit and neon-type signs are not eligible for Right to Farm protection.
3. A commercial farm's primary on-site farm business sign shall comply with the following standards (if the commercial farm has frontage on multiple roads, one primary on-site farm business sign may be placed on each frontage):
 - i. The sign is set back at least 10 feet from the paved portion of the street right of way;
 - ii. The maximum size (meaning the physical size of the sign and not the combined square footage of both sides) is 32 square feet; and
 - iii. The maximum height to the top of the sign does not exceed 15 feet from the ground.
 4. The provisions of this subsection shall not apply to a commercial farm's primary on-site farm business sign(s), commercial billboards, New Jersey Department of Transportation Tourist Oriented Directional Signage (TODS), Farmland Preservation signs, signs whose

sole purpose is to facilitate and provide for safe traffic movement directly onto or from the farm site, and signs within the interior of the farm that are not intended to be visible from a public right of way. A commercial farm's on-farm direct marketing facility, activity, and event signs shall meet the following criteria:

- i. The maximum size of any one sign (meaning the physical size of the sign and not the combined square footage of both sides) is 16 square feet;
- ii. The total combined square footage of the signs does not exceed 160 square feet (this is calculated by summing the physical sizes of the signs and not the square footage of the signs' front and back sides); and
- iii. If a commercial farm has multiple distinct and separate on-farm direct marketing locations, such as two on-farm direct marketing facilities located on two different properties within the farm management unit, each on-farm direct marketing location may utilize a total combined square footage of signs of 160 square feet, as specified in (g)4ii above.”

Township Recommendation to MCADB:

It is difficult to comment on this item without a signage proposal before the Township. The Applicant’s assurances that it will comply with the Right to Farm Act regulations concerning signage for on-farm direct marketing facilities provide no detail for the Township to comment on. Should the Applicant propose illuminated lighting, the Township requests that any lighting shall be turned off within 30 minutes after closing.

X. ALCOHOLIC BEVERAGE SERVING HOURS

Applicable Township Ordinance(s):

§ 87-4(A): “Hours of sale. No alcoholic beverages shall be sold, served, consumed in or delivered to any licensed premises on weekdays between the hours of 2:00 a.m. and 7:00 a.m.; on Sunday between the hours of 3:00 a.m. and 12:30 p.m.; and on New Year’s Day when it is a Sunday between the hours of 5:00 a.m. and 12:30 p.m., and when it is a weekday, between the hours of 5:00 a.m. and 7:00 a.m.”

Applicable Township Land Use Ordinance(s):

§ 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:

- ...
- (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:
 - ...
 - j. The conduction of farm practices at any and all times when necessary.”

Proposed Deviation:

“As a condition of the ABC license, Backer Farm will be required to comply with an ABC approved operational plan that includes best practices related to the service of alcohol and sale for off-site consumption. . . . Backer Farm proposes to open its brewery to the public, with service for on-site consumption and sales for off-site consumption (packaged goods) during the following hours of operation:

- Wednesdays and Thursdays 3:00 p.m. to 8:00 p.m., Fridays 3:00 p.m. to 10:00 p.m., Saturdays and Holidays noon to 10:00 p.m., and Sundays noon to 9:00 p.m.
- Holidays are Federal Holidays, St. Patrick’s Day, Monday before a Holiday that occurs on a Tuesday, and Fridays after a Holiday that occurs on a Thursday.
- The brewery will be closed non-Holiday Mondays and Tuesdays, New Year’s Day, Thanksgiving, and Christmas Day.”

Other Notes:

Backer Farm suggests that § 87-4(A) “appears to describe limitations on ABC retail licenses, with a focus on the sale of packaged goods, whereas Backer Farm is an ABC manufacturing license and further operating under a state agricultural management practice regulation which preempts municipal ordinances provided public health and safety is protected.” Backer Farm further argues that § 87-4(A) conflicts with §§ 21-4.1(e) and 21-4.1(e)(1)(j) of the Township Land Use Ordinances.

Finally, Backer Farm contends that “[l]imiting the sale of packaged goods to one weekend day per week and/or to shortening the hours of operation for product sales would substantially interfere with the legitimate farm purpose of being commercial viability by unreasonably interfering with the ability of the farm to market and sell its farm products.”

Township Recommendation to MCADB:

While all of the health, safety and welfare issues presented by this application are important, the hours of operation are among the most consequential. As stated in the attached correspondence, neighbors who purchased or built their homes near a preserved farm held certain reasonable expectations when they did so. Recognizing that the issues attending the operation of a brewery differ significantly from those created by a typical farm operation, the Township requests that the Applicant shall be limited to 29 hours of operation per week, as follows:

| | |
|-----------------------|-------------------------|
| Wednesday & Thursday: | 3:00 p.m. to 8:00 p.m. |
| Friday: | 5:00 p.m. to 10:00 p.m. |
| Saturday: | 12:00 p.m. to 9:00 p.m. |
| Sunday: | 12:00 p.m. to 5:00 p.m. |

In addition, the Township requests that the Applicant shall be limited to a maximum capacity of 78 persons at the proposed brewery.

XI. NOISE

Applicable Township Ordinance(s):

The Township adopted a comprehensive noise ordinance on March 28, 2022. Section 229-3(A) specifically exempts traditional agricultural activities; “e.g., the operation of farm equipment in the nature of tractors, planters, harvesters, to cultivate the soil, produce crops and raise livestock.”

Proposed Deviation:

“Backer Farm will agree to voluntarily comply with the objectively quantified sound level standards set forth in New Jersey’s Noise Control Act of 1971 when engaging in on-farm marketing events and activities. . . . Backer Farm’s events and activities will include live background music for the legitimate agricultural purposes expressly set forth in N.J.A.C. 2:76-2A.13(b). . . . Backer Farm has designed its brewery operation thoughtfully, so that the distance from the area where on-farm direct marketing activities and events are proposed to the closest neighboring property not owned by Backer Farm is approximately 700’. This distance creates a significant buffer from noise generated from these permitted agricultural activities to adjacent properties. All on-farm marketing noise generating activities will take place during the hours of operation permitted in the on-farm marketing agricultural management plan.”

Right to Farm Act Regulation(s):

N.J.A.C. 2:76-2A-13(b): “‘Ancillary entertainment-based activities’ means non-agricultural offerings, commonly used as incidental components of on-farm direct marketing activities, that are accessory to, and serve to increase, the direct-market sales of the agricultural output of a commercial farm. Such activities are designed to attract customers to a commercial farm by enhancing the experience of purchasing agricultural products. Examples of ancillary entertainment-based activities include but are not limited to: background live or recorded music, face painting, storytelling, sandbox area, small swing set or playground equipment, pedal carts for children, and picnic tables. Such activities may have a fee associated with them, but such fees shall be de minimis compared to the income generated from the sale of the agricultural output of the commercial farm.”

Township Recommendation to MCADB:

The Applicant should be required to comply with the Township’s noise ordinance. Clearly, crowd noise and background music are not the typical noise one would anticipate emanating from a farm. The Township and its residents must be afforded additional protections from “ancillary entertainment-based activities” under the Right to Farm Act, which are clearly not the traditional noises expected from a commercial farm.