

11/29/17

PA Office of Attorney General
Attn: ACRE
15th Floor, Strawberry Square
Harrisburg, PA 17120
ACRE@attorneygeneral.gov

Dear Attorney Willig,

My name is [REDACTED] I own the property where [REDACTED] in North Cornwall Township, Lebanon County is located. The vineyard and winery are located in an Agricultural Zoning district. In 2009 I approached North Cornwall Township about beginning to grow grapes, and creating a winery to sell the wine produced from my vineyard. The vineyard was planted and developed throughout the next several years. On 10/10/10, [REDACTED] became a Pennsylvania S corporation with myself as President and sole stockholder. On 11/8/13 [REDACTED] received it's TTB Limited Winery license approval. In mid-2013, a land development plan was completed and submitted to the township. This original plan included a modest winery and separate tasting room, designed to meet the township agricultural ordinance requirements for a roadside stand. After an initial refusal to review the plans by a third party zoning officer, a meeting was held with township officials on 12/5/13. The Township Manager at the time was excited about the concept. She encouraged me to think bigger by suggesting many of the activities that are common with vineyard/winery operations. All in attendance of the meeting agreed that the proposed structure would not accommodate the suggested activities. The township manager said that by making it a commercial use, the size of the building could be increased, as well as the parking, and noted that I should begin to think about increasing the parking further than what could be expanded on the plan. The Zoning Officer at the time was in support of this plan, also. The land development plan was re-designed to include the now required paved parking spaces, ADA requirements, septic system and increased building size which included a covered deck for the purposes of outdoor seating. However, it was later found to include the following wording: "ZONING ORDINANCE #266 DOES NOT HAVE A CATEGORY FOR THE PROPOSED USE, WHICH IS THE DISPLAY AND SELLING OF WINE PRODUCED ON-SITE FROM GRAPES GROWN ON-SITE. A USE THAT IS CATAGORIZED WHICH IS SIMILAR IN NATURE IS THAT OF A ROADSIDE STAND."

Upon completion of our winery building renovations, we held a Lobsterfest celebration on 10/30/15. This would mark our first official event which included live music and catered food. We also began promoting the winery by hosting a series of paint & sip events including wine glass, Christmas ornaments and children's paint & sip, providing grape juice for the kids. In addition, we had live music in our winery building. Prior to the completion of the tasting room, in March of 2016, our winery building and a portion of the surrounding outside area was approved by the Pennsylvania Liquor Control Board (PLCB) for wine sales.

The original design documents, which were submitted to the Township, strictly adhered to the Roadside Stand provision within the agricultural district zoning ordinance. After the suggestions from meeting that took place on 12/5/13, some of the subsequent plans and revisions reflecting the suggested changes, acknowledge that the ordinance didn't specifically accommodate vineyards/wineries, and that the closest option to accommodate what I wanted to do, was the Roadside Stand requirements. In 2013, during a meeting with Township representatives, the requirements I was to follow changed to a Commercial Use, but I'm unclear what Section it falls under in the Zoning Ordinance, or how that change was authorized. But, since the

Township seemed in support, and provided the necessary permits to move forward with the construction and eventual expansion of a sales building, and wine tasting room, I didn't question too much. I have included a time line of permits received, which provides additional information. I have copies of the approvals, which are submitted with this letter. Recently, the township began to receive inquiries from 3 different neighbors asking if I was in violation or not. One of which was explained to me by the complainant because her son, who sold lemonade from a stand in her backyard which abuts a golf course was sent a cease and desist order from the township. The order came after a complaint was received by the township from the golf course owner claiming that her son was in direct competition of their snack shop. The order from the township stated that she was only permitted to sell the products that were grown on her property. As a result, she thought that I would naturally be in violation as well. I have submitted the correspondences between the parties and the Township response. Following the receipt of the inquiries/complaints, the Township gave me a Notice of Violation, a "cease and desist" letter, stating that a *"multitude of unpermitted and unauthorized uses, including the following: Indoor and Outdoor Recorded and Live Music, including Open Mic Night; Catered Meals/Food Truck Vendors; Specials Events, including but not limited to Terrarium parties, Home Brewfest, Paint and Wine Nights; Private Dinner Events; Retail Sale of items other than the wine made from grapes grown on the property; Importing grapes/juice for wine and other beverage production"*. That list is taken directly from the [REDACTED] Facebook page. The music is never obnoxiously loud. I am a Sound Engineer by trade, and I know how to control the sounds that are on the property. The patrons do not get out of control, and it has never been a detriment to the neighborhood. We are never open later than 9 PM. Actually, the vast majority of my neighbors are in complete support of my venue. I also have hundreds of documented witness's that attest to these facts through a petition that was signed in support of the vineyard/winery, as well as via Facebook comments.

As time passed, the Township Manager who originally supported and encouraged this business was terminated, following 28 years of service to the township. Incidentally, by the same township supervisor who has instituted this action against us. The "acting" Zoning Officer has also been replaced and is also the same "new" Township Manager. I fully intend to run my business under the allowable limits of the N. Cornwall Township zoning ordinance as well as state, federal and PLCB regulations. But, the lack of clear direction about IF a vineyard and/or winery are even allowed in the entire township makes it difficult. I feel like I established my business with necessary permits in full knowledge, and encouragement, of the Township, so to receive a "cease and desist" letter from the Township is extremely frustrating, and unexpected.

The North Cornwall Township zoning ordinance can be found at <http://www.nctown.org/departments-services/building-zoning-permits>. The items that I would like you to consider regarding the North Cornwall Township ordinance include:

- 1) Vineyards and Wineries are never specifically mentioned as permitted activities or businesses in the Zoning Ordinance. Viticulture is specifically mentioned in PA's Right to Farm Law as "agricultural commodity", but N. Cornwall Township doesn't seem to recognize it as an agricultural commodity or enterprise. The definition of "agriculture" in the Zoning Ordinance is as follows:
 - a. *AGRICULTURE: The tilling of the soil, the raising of crops, horticulture, and the keeping or raising of livestock such as alpacas, birds, beaver, bees, cattle, chinchilla, cows, emus, fowl, foxes, hogs, horses, lynx, sable, sheep, goats, llamas, mink, ostriches, peacocks, pot-belly pigs, poultry, rabbits, raccoons, seal, shellfish and other similar animals for commercial distribution. This definition also includes noncommercial greenhouses and mushroom houses as well as the processing and retail sale of goods produced on the farm. This definition also includes uses devoted to research into agricultural technology that would change the conduct of normal farming operations and custom work. For the purposes of this definition custom work shall mean the hiring of another person or agency who does not reside on the subject property to perform one or more activities necessary to the function of the principal farm use as a whole. This definition does not include concentrated animal feeding operations, concentrated animal operations, commercial produce operations and gardening, each, as defined herein.*

- b. If you refer to a letter dated Nov. 14, 2013 by [REDACTED] the Zoning Officer, it specifically says... *"That said, and based upon the information you have provided, I have reviewed the proposal in conjunction with the uses permitted by right, by special exception, and by conditional use in the Agricultural District and cannot find where the proposal to offer wine tasting is a use permitted within the district. Approval of this use would require that the North Cornwall Township Zoning Hearing Board approve a variance of Sections 200.B., 200.C., and 200.D of the Zoning Ordinance which specify the uses permitted....Section 200 .B. 1. of the Zoning Ordinance does permit by right agricultural and horticultural uses, but those uses require the presence of one single family detached dwelling. Absent the dwelling, I would contend that your proposal cannot be approved without appropriate relief from the Zoning Hearing Board."*
- 2) From a broader perspective, Pennsylvania and surrounding states seem to be embracing and encouraging agri-tourism and agri-tainment venues. Agritourism and agritainment provide existing farms an additional source of income, in order to keep a farm in business. Wineries are a recognized aspect of agritourism. [REDACTED] would help sustain the rural atmosphere of N. Cornwall Township, and would add value to local farms, and other agritourism venues that might be established in this region. I am providing many supporting documents about agritourism venues in Pennsylvania and the surrounding states.
- 3) The Township is requiring that all products sold at my winery be 100% grown/produced on my own property. It seems to me that conflicts with Section 953. (b) of the PA Right to Farm Law.
- a. The Notice of Violation letter I received recently, specifically states two items which are considered a violation:
- i. "Retail sale of items other than wine made from the grapes grown on my property"
- ii. "Importing grapes/juice for wine and other beverage production"
- b. Please note that I only use the grapes grown on my property to make [REDACTED] wine. We locally source strawberries and blueberries to flavor two of our wines. We are working on growing our own strawberries in the near future.
- c. I do offer incidental items for sale that complement wine drinking, but significantly more than 50% of the items sold on a regular basis is my wine.
- 4) As a vineyard owner, making my own wine and selling it, I am conducting my business consistent with industry standards conducted by my fellow winery owners in Pennsylvania. The TTB & PLCB dictate and regulate where I am able to source fruit beyond my own vineyard. I have also applied for the Pennsylvania Preferred Program. This is a collaboration between the Pennsylvania Department of Agriculture and the PLCB. The designation will ultimately allow our wine to be featured in PA State Stores. However the restrictions by N. Cornwall Township don't seem to support my ability to reasonably have a winery and provide events or products to my customers. If the PA Municipalities Planning Code recognizes viticulture as an allowable commodity/business, why doesn't N. Cornwall Township seem to allow it anywhere? Where is a "fair share" allowed?
- 5) As I look at the occupations that could potentially permit a vineyard/winery in North Cornwall, it doesn't seem that wineries would be reasonably allowed in ANY zone in the ordinance. According to the Definitions in Section 113 of the Ordinance:
- a. Road Side Stand-- an agricultural use for the sale of local agricultural or horticultural produce, livestock or merchandise (definition in Sect. 113 of Ordinance);
- i. according to Sect 319.S, roadside stands shall not exceed 250 square feet of total display area
- b. Accessory Occupation—Doesn't allow repairs, manufacturing, services, *retail sales* or wholesale commerce to be conducted at the business. And no signage is allowed. (definition in Sect. 113 of Ordinance);

- c. Farm Occupation—where permitted, a business or commercial activity must be conducted on actively farmed parcels containing at least 25 acres as a secondary use to a principal agricultural or horticultural use (definition in Sect. 113 of Ordinance);
 - i. according to Sect 319.G, farm occupations must only have retail sales of the products principally produced on the farm, and the display area cannot exceed 600 square feet; no more than 2 nonresidents of the farm parcel shall be employed by the farm occupation
 - ii. why is 25 acres required? In today’s agricultural world, many fruits and vegetables and niche crops such as hops, can be grown on much smaller acres, and still preserve the agricultural/farming nature of a community.
 - d. Rural Occupation—business or commercial activity that is conducted within an accessory structure of a principal single-family detached dwelling (definition in Sect. 113 of Ordinance);
 - i. according to Sect 319.T, rural occupations may be conducted as an accessory use on the same property as the owner’s principal residence, and shall not exceed the area of the principal residence’s ground floor or 1000 square feet, whichever is lesser; shall be conducted within one completely enclosed outbuilding; maximum number of employees who do not reside on site shall be equal to 2 full time positions; any area of retail sales display shall be limited to 20 percent of the overall size of the rural occupation
- 6) Referring to the letter from the Township asking me to cease and desist key aspects of attracting people to my business, it includes a list of events as taken right off our business Facebook page. Specifically,
- a. Indoor and Outdoor Recorded and Live Music, including Open Mic Night
 - b. Catered Meals/Food Truck Vendors
 - c. Other Non-Food Truck Vendors
 - d. Special Events, such as Terrarium Parties, Home Brewfest, Paint and Wine Nights
 - e. Private Dinner Events
 - i. Recognizing that this list potentially applies to ALL businesses or commercial aspects of ALL agriculturally allowed entities; does this mean that no dairy farmer is allowed to listen to music while he/she milks the cows? Does this mean that no one can have a karaoke party in their house for fun? Where is allowable music addressed in the Zoning Ordinance? And is music allowed inside or outside other businesses in other zones within N. Cornwall Township?
 - ii. Does this mean that no agricultural entity is allowed to have private dinner events, or does it only mean wineries, or does it mean only MY business?
 - iii. Where are Food Trucks addressed in the Zoning Ordinance? Are food trucks or catered meals allowed at other businesses in other zones within N. Cornwall Township?
 - iv. What if a different agriculturally related or non-agriculturally related business wanted to offer special events, are they allowed? Where does N. Cornwall Township regulate “special events” in the Ordinance? Who gets to decide what “special events” are allowed, and what is not allowed? And if “special events” are not allowed at any property in the Agricultural Zone, are they allowed in Residential or Commercial districts?
 - v. If the Right to Farm Law in PA states that normal agricultural operations are protected from nuisance suits, are “Terrarium Parties” considered a nuisance?

- vi. How can an "Outdoor Shooting Range" be allowed by Conditional Use in an Ag Zone, and not be considered a nuisance, but a vineyard/winery is not reasonably accommodated or allowed?
- 7) I have been trying to find an answer about what is the difference between municipal "uses" as approved/allowed/regulated by a municipality, under the authority granted in the PA Municipalities Planning Code, or other similar legislation, and "activities" conducted on a property within the municipality. Who has the authority to define and/or regulate specific "activities" allowed on a "use" approved by the municipality?
- 8) The PA Liquor Control Board (PLCB) and the federal Alcohol & Tobacco Tax and Trade Board (TTB) also regulate wineries. If you refer to the PLCB Limited Winery Handbook, LCB-458; Section 47 P.S. § 5-505.2 (6.1) it states that Limited Winery Licensees may *"Sell food for consumption on or off the licensed premises and at the limited winery's additional board-approved locations and sell by the glass...."* Additionally, it states that a Limited Winery licensee is allowed to sell:
- a. PA grown fruits and products including juice, juice concentrates, jellies, jams
 - b. PA grown mushrooms
 - c. home winemaking equipment and supplies
 - d. wine serving and storage accessories, including cork removers, wine glasses and decanters, wine racks, serving baskets and buckets, and bottle stoppers
 - e. publications dealing with wine and winemaking
 - f. cheese, crackers, breads, nuts and preserved meats for consumption off the premises
 - g. gift packages of any combination of items above
 - h. promotional items advertising the Limited Winery licensee
 - i. to customers, such as other businesses
- 9) Relating to noise; noises in an Agricultural Zone are subject to N. Cornwall Township Ordinance 297, which can be found at [http://www.nctown.org/resource/Ordinances/2017 NUISANCE ORD. final draft.pdf](http://www.nctown.org/resource/Ordinances/2017%20NUISANCE%20ORD.%20final%20draft.pdf). Specifically, in section 2.01, definition 45. *Unreasonable Noise. In residential districts, or if the abutting property is used for residential purposes, it shall be considered an unreasonable noise and a public nuisance, between the hours 11:00 p.m. of one day and 7:00 a.m. the following day, regardless of the sound level which is emitted, for any person to play or permit the playing of any radio, television, drum, musical instrument, music player, sound amplifier, phonograph or similar device which produces, reproduces or amplifies sound in such a manner as to be plainly audible across a property line or from within another dwelling unit; to rebuild, test or otherwise work on any motorcycle, motor vehicle, motorboat or aircraft in such a manner as to be plainly audible across a property line; to yell, shout, whistle, sing or otherwise create noise across property lines that disturbs the quiet, comfort or repose of persons in any dwelling, hotel, or other type of residence. Additionally, in Section 3.01, (7. a.13) Noise Exemptions; 13. Any existing legitimate or licensed business, commercial, or industrial operation between the hours of 7:00 a.m. and 11:00 p.m., prevailing time, provided any appliances, equipment, machinery or devices used in such operation are operated within the manufacturer's specifications and with all standard noise-reducing equipment in use, unmodified and in proper operating condition.*

I will be submitting numerous supporting documents to substantiate the above information. I sincerely appreciate your consideration of this matter. If you have any questions or need additional explanation, please do not hesitate to contact me at [REDACTED]

Sincerely,

[REDACTED]