

Willig, Robert A.

From: [REDACTED]
Sent: Monday, March 25, 2019 11:52 AM
To: Willig, Robert A.
Cc: [REDACTED]
Subject: Response/Information [REDACTED] CRE Complaint-North Middleton Township
Attachments: NMT AG Response [REDACTED] CRE Complaint.pdf; NMT ZHB Dkt 2019-01 File 1 of 3.pdf; NMT ZHB Dkt 2019-01 File 2 of 3.pdf; NMT ZHB Dkt 2019-01 File 3 of 3.pdf; NMT Zoning Definitions.pdf; NMT Zoning Rural Resource - Agricultural Use.pdf

Mr. Willig,

If an effort to more quickly get you the requested information as per your letter dated, February 20, 2019, which arrived February 25, 2019, I have scanned everything that we feel may assist you with your review. If you desire to see anything further, please let us know. If you would be so kind, could you respond that you received this email and its attachments? If you would like me to mail the originals, please let me know and I will send them right away.

Sincerely,

[REDACTED]
North Middleton Township
2051 Spring Road
Carlisle, PA 17013

[REDACTED]
Fax: 717.243.1135
www.nmiddleton.com

REDACTED
RESPONSE

Click [here](#) to report this email as spam.



NORTH MIDDLETON TOWNSHIP

2051 Spring Road, Carlisle, PA 17013-1059

OFFICE (717) 243-8550 • FAX (717) 243-1135 • POLICE (717) 243-7910

March 25, 2019

Mr. Robert A. Willig, Senior Deputy Attorney General
Office of Attorney General
1251 Waterfront Place
Mezzanine Level
Pittsburg, PA 15222

Re: ACRE Request Response [REDACTED]

Dear Attorney Willig,

North Middleton Township is in receipt of your letter dated February 20, 2019, in reference to an alleged ACRE complaint/violation by North Middleton Township, as reported to you by [REDACTED]

Attached are several documents provided by [REDACTED] Zoning and Codes Enforcement Officer for North Middleton Township. [REDACTED] has been involved with the [REDACTED] matter for a short period of time, though the [REDACTED] matter dates back beyond [REDACTED] employment.

There was a stenographic transcript of the hearing before the ZHB taken but not transcribed containing [REDACTED] testimony. If requested, North Middleton Township will have the recording transcribed and provide if you feel it is necessary and would be helpful.

We believe that the attached documents will provide you with helpful information that was requested. If you require anything further, contact us without hesitation.

[REDACTED]
[REDACTED]

The following is a link to the North Middleton Township Zoning Ordinance:
<http://nmiddleton.com/documents%20-%20code%20book.htm>

Sincerely,

Manager/Secretary
North Middleton Township

Cc: [REDACTED] Zoning & Codes Enforcement
[REDACTED] North Middleton Township Solicitor
[REDACTED]

Acvd.

N. Middleton Twp.

DEC 21 2018

North Middleton Township
Cumberland County, Pennsylvania

Zoning Hearing Application

1. I hereby apply for: (Identify request & complete Ordinance Section)

Do Not Write in This Space

- A. Variance _____ Ordinance Section: _____
- B. Special Exception _____ Ordinance Section: _____
- C. Appeal from Zoning Officer, other Municipal body or
Official _____ X _____ Ordinance Section VARIOUS
- D. Substantive Challenge:
Validity of Map _____ Zoning Ordinance _____
Ordinance Section: _____

CHECKLIST	Dates
DOCKET # <u>2019-01</u>	
Action Taken	
Application Filed	<u>21 DEC 2018</u>
Fee Paid: \$ <u>2250-</u>	<u>21 DEC 2018</u>
Receipt Issued	<u>✓</u>
Placed on calendar for ZHO meeting:	<u>2-12-19</u> ✓
Notice of Hearing:	
a) Sentinel	_____
b) Applicant	_____
c) Nearby Prop. Owners	_____
Sign set for posting	_____
Posting Signed by ZO	_____
Hearing Held	_____
Decision Made	_____
Notification of Decision Sent	_____
Appeal Filed	_____

2. Applicant's Name _____
Address _____
Phone No. _____

APPLICANT MUST BE PRESENT AT TIME OF HEARING

3. Owner's Name _____
Address _____
Phone No. _____

4. Applicant's Attorney _____
Address _____

5. Location of Property Affected _____

6. Detailed Description of Use of Land:

- A. Zoning District Rural Resource Zone (RR)
- B. Present Use Single Fam. Res. w/accessory
- C. Proposed Use Combine properties for vineyard, production & retail
- D. Expected Period of Time of Use Ongoing/permanent

7. Reason for Request: (Insert Attachment if Necessary)

Attached please find the original Zoning Permit Application of the [REDACTED] submitted to the Township on October 15, 2018, and the subsequent decision of the Zoning Officer. While the decision letter is dated October 29, 2018, it was not received until November 23, 2018. Applicant's counsel has verified with the Zoning Officer that the decision date is November 23, 2018, for purposes of appeal. The [REDACTED] renew all requests stated in the original Zoning Permit Application and incorporate it by reference in this appeal.

8. All required additional information and exhibits in compliance with Section 204-609 Zoning Hearing Board's Functions of the North Middleton Township Zoning Ordinance.

9. Fees: A. Special Use or Variance Request in;

1. Agriculture
2. Rural Resource
3. Low to Medium Density Residential
4. Medium to High Density Residential
5. Village / Mixed Use
6. Neighborhood Commercial
7. Commercial / Light Industrial
8. Industrial

Amount Due: \$500.00

Fees: B. Appeals and ordinance validity challenges in;

1. Agriculture
2. Rural Resource
3. Low to Medium Density Residential
4. Medium to High Density Residential
5. Village / Mixed Use
6. Neighborhood Commercial
7. Commercial / Light Industrial
8. Industrial

Amount Due: \$ 750.00

Plus Escrow Fee \$ 1,500.00

Total Fee \$ 2250.00

I certify the above information and submitted exhibits to be true, correct and complete. Any information I have failed to supply may be grounds for the Zoning Hearing Board to dismiss the application.

~~x~~ We agree the hearing by the Board on this application may be taped recorded rather than stenographically recorded. (Strike out if not agreed.)

APPLICANT MUST BE PRESENT AT TIME OF HEARING

Township Official

Applicant - Owner - Agent

Date

Date

12/20/18

Received

OCT 15 2018

11:57 pm
JS

PA Contractor Registration # N/A

ZONING PERMIT APPLICATION

North Middleton Township

2051 Spring Road

Carlisle, PA 17013

Ph. # 243-8550 Fax # 243-1135

Date of Application _____

Site Location _____

Cumberland County Tax Parcel No. _____

Applicant's Name _____

Address _____

Telephone # _____

Owner's Name _____

Address _____

Telephone # _____

PROPOSED USE (CHECK ONE)

RESIDENTIAL _____

COMMERCIAL _____

INDUSTRIAL _____

Agricultural x

(Description of Activity)

Please see attached sheet.

FEE RECEIVED \$ _____

Applicant's Signature

Permit Official

SITE OF PLOT PLAN DATA

ZONING DISTRICT Rural Resource Zone (RR)

Size and/or Dimensions of Affected Tract 10.07 acres [REDACTED]
2.05 acres [REDACTED]

Number of Structures Activity Affects 2--both at [REDACTED]
1 occupied residence; 1 residence
 Number of Occupied Units, Businesses, Etc converting to retail/event; 1 barn;
 In All Structures 1 production/bottling building

Off-Street Parking and Loading Spaces See attached sheet.

Utility Systems Affected and Proposed N/A

Any Additional Applicable Information See attached sheet.

DEPARTMENT REVIEW COMMENTS (Official Use Only)

Application Reviewed _____

Application Approval _____

Denied _____

 Permit Official

[REDACTED]
N. Middleton Twp.
Zoning Permit Application

Background:

The applicants, [REDACTED] are the owners of two parcels in North Middleton Township: [REDACTED] is approximately 10.068 acres; [REDACTED] is approximately 2.045 acres. Structures at [REDACTED] include a house, a barn, and a solar panel array. Structures at [REDACTED] include a house and a garage. Each property has its own driveway onto [REDACTED]. Exhibit "A," attached hereto, is a tax parcel map showing the two properties.

The [REDACTED] wish to consolidate the two properties, eliminating the lot line between them. This application is being filed prior to submitting plans of consolidation so that the [REDACTED] may have pre-approval for their proposed uses. The consolidated lot would have a principal use of Agriculture. The garage currently at [REDACTED] would become an accessory structure to the Agriculture use and would be used as a wine production and bottling area for the grapes harvested from what is presently [REDACTED]. The garage would not be open to the public. Exhibit "B," attached hereto, shows the setback between the neighbors at [REDACTED] Road and the garage that would be used for bottling. The residence currently at [REDACTED] Road would be converted into another accessory structure to the Agriculture use: the bottom floor would be a small tasting area/retail space, open to the public, for the wine produced onsite; the top floor would be divided into two to three rooms that could be rented by private parties for gatherings, in conjunction with a purchase of products—such as the wine, but also honey and other agricultural products produced onsite. Applicants presently raise cattle for meat and have beehives producing honey, in addition to the grape vines and hops grown on the property at what is now [REDACTED]. If the top floor rental space does not correspond to an allowed Agriculture use, then it would be used simply for storage or some other innocuous and permitted use. Exhibit "C" (2 pages) shows the front-yard and side-yard setbacks for the house that would be converted into the Agriculture accessory structure.

The following additional attachments are provided herewith:

Exhibit "D" (2 pages) shows an overview of the structures presently at, as well as the proposed intended uses for, [REDACTED] and consists of one computer printout and one handwritten sketch plan.

Exhibit "E" (3 pages) consists of (1) a draft project plan prepared by [REDACTED] for the bottom floor of the house that is the proposed tasting room; (2) a computer printout of the same; and (3) a handwritten sketch plan.

Exhibit "F" (1 page) consists of a computer printout of the proposed use for the top floor of the house currently at [REDACTED].

Exhibit "G" (2 pages) consists of a computer printout and handwritten sketch of the garage currently at [REDACTED] and shows how the garage would be utilized as an accessory Agriculture structure.

The applicants understand that a zoning permit does not include necessary approvals for the consolidation of lots or of any necessary building permits. Applicants emphasize that the Zoning Ordinance permits partial approval and would proffer that any portion of this plan is severable. For instance, if the event space proposed for the second-floor of the house at [REDACTED] is determined not to be an acceptable accessory use, [REDACTED] would request approval for the remainder of the permissions sought.

Zoning Approvals Sought:

Applicants seek the following determinations/approvals:

- (1) That the proposed use of the consolidated properties is Agriculture (permitted under Section 402-47B of the Zoning Ordinance).
- (2) That the use of the garage currently at [REDACTED] for bottling/production of wine onsite is permitted as an accessory use within the definition of Agriculture, which includes "processing" (see Section 204-12 of the Zoning Ordinance).
- (3) That the use of the bottom floor of the house currently at [REDACTED] for a tasting room/retail is permitted as an accessory use within the definition of Agriculture, which includes "retail sale" (see Section 204-12 of the Zoning Ordinance).
- (4) That the use of the top floor of the house currently at [REDACTED] as an event space used in conjunction with the purchase of products produced onsite is an accessory use fitting within the definition of Agriculture (Section 204-12 of the Zoning Ordinance) and that, if not, use of the same for storage and/or office space would be an acceptable use fitting the definition of Agriculture.
- (5) That all setbacks are appropriate for the existing and proposed uses, as Agriculture—including accessory structures—require only 50-foot setbacks under Sections 204-25 and 204-47.B of the Zoning Ordinance. Alternatively, that any structures currently within a setback are permitted to continue as such as nonconforming structures.
- (6) That no buffer and screening requirements apply to Agriculture use (see 204-26.E) as proposed here (although such could be set as a condition if this matter comes before the Board at any time).
- (7) That the consolidated lot could continue to utilize both driveways (Section 204-32.A.1 of the Zoning Ordinance).
- (8) That the applicants have satisfied the parking requirement for Agriculture (Table 204-35A of the Zoning Ordinance), which requires 1 space per nonresident farm employee on the peak shift, plus 2 spaces per dwelling unit. At this time, the applicants do not anticipate nonresident employees, but given the abundance of parking currently available between the lots at each of the houses, it would appear that a small number of nonresident employees could be accommodated if necessary.
- (9) That the proposed use of event space on the second floor of what is presently the house at [REDACTED] is accessory to Agriculture and cannot be categorized as "Assembly Space," as there is no definition or provision for the same in the Zoning Ordinance, regardless of whether "Assembly Space" appears in the International

Building Code. Therefore, only Agriculture parking standards apply in the event that the event space is determined to be an accessory Agriculture use.

- (10) That the proposed use of the retail/tasting room for the first floor of the house presently at [REDACTED] does not constitute "Assembly Space," as there is no definition or provision for the same in the Zoning Ordinance, regardless of whether "Assembly Space" appears in the International Building Code. Rather, the proposed use of the retail/tasting room falls within uses accessory to Agriculture.
- (11) In the event that the retail/tasting room proposed for the first floor of the house presently at [REDACTED] does not qualify as a use accessory to Agriculture because of proposed seating therein, then that the same would qualify as retail space accessory to Agriculture if no seating would be permitted, such that customers could walk in, taste wine, purchase items produced onsite, and then leave without sitting.

Property Mapper

ROAD

X Q

Show search results for 94



EXHIBIT

A

Google

200ft

| Feet

Measurement Result

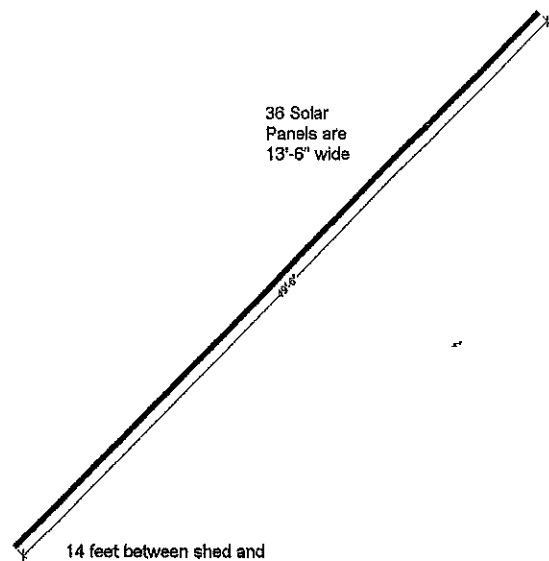
70 Feet

EXHIBIT

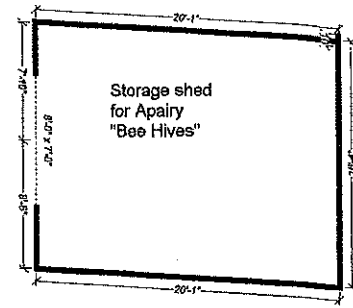
13

000105

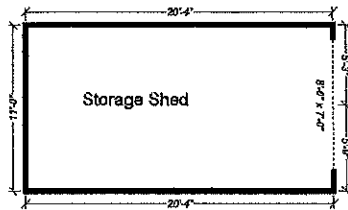
60ft



Top right corner of solar panels is 54 feet from center of door of Aairy Shed

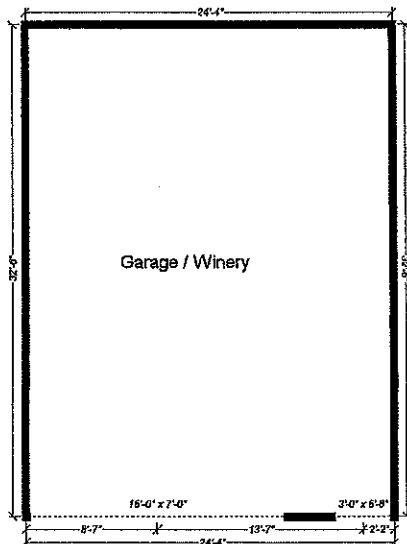


Aairy Shed bottom left corner is 132 feet to Corner "A"



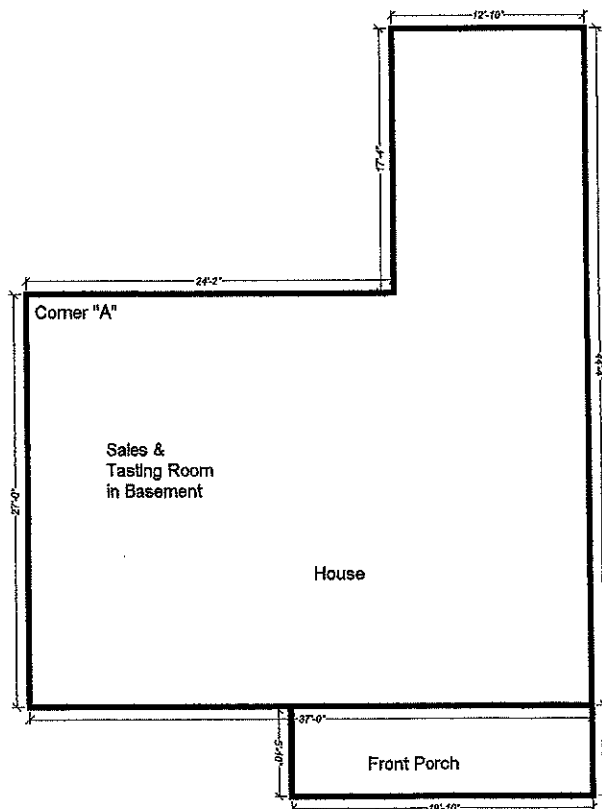
25'-4" between winery building and shed

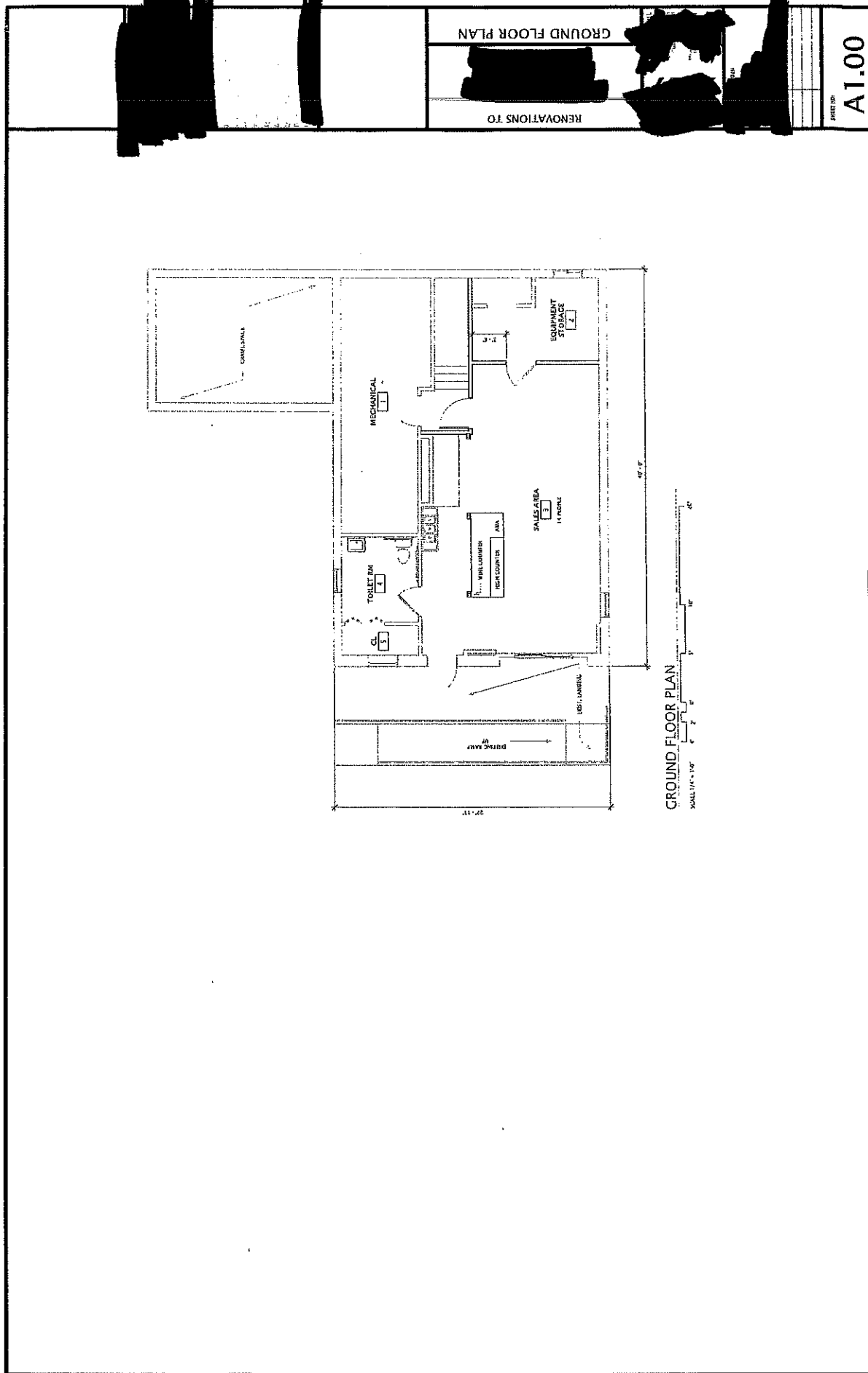
General Overview of Buildings at



Garage / Winery is 10 feet back (towards top of page) and 51 feet to the left of the house at corner maked "A"

DRAWING NOT TO SCALE





GROUND FLOOR PLAN

RENOVATIONS TO

SHEET NO.

A1.00

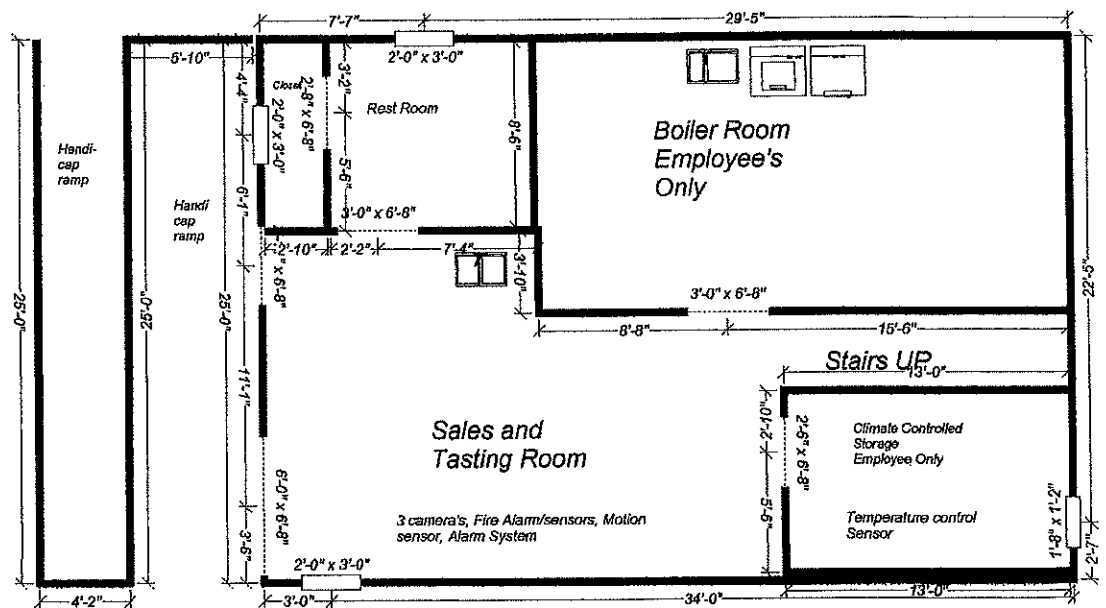
NOT FOR CONSTRUCTION 9/21/2018

EXHIBIT

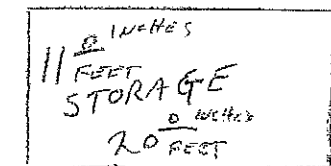
3

tables

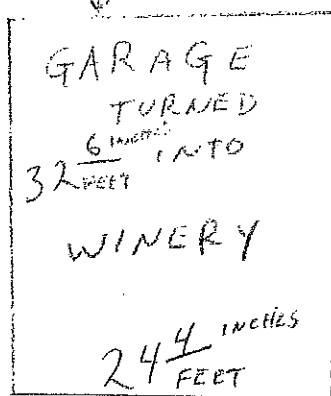
[REDACTED]



Page 3



25 $\frac{4}{12}$ INCH
FEET



10⁰ FEET
51⁰
FROM HOUSE

PAK 1146

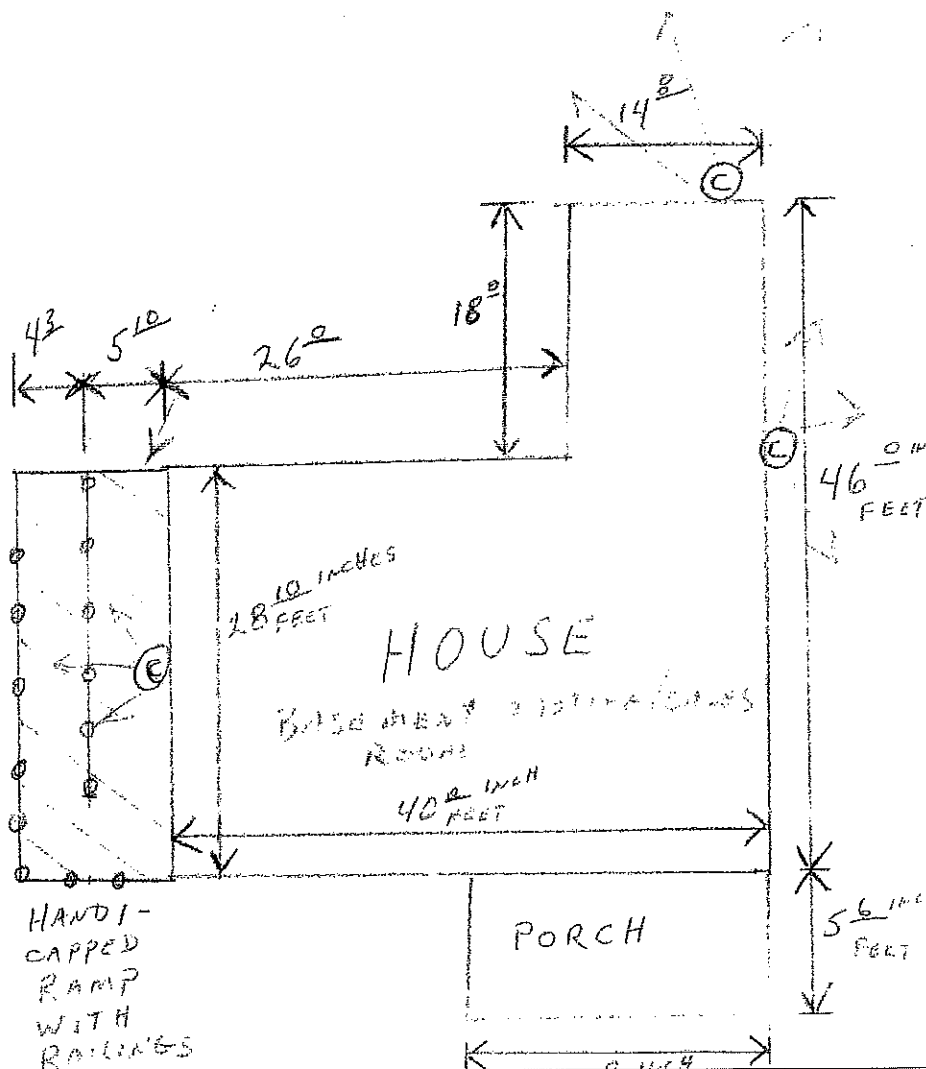
(C) = Security & Confidentiality

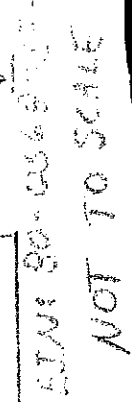
NOT TO SCALE
PIN: 80-0568037

NORTH →

GENERAL OVERVIEW OF BUILDINGS ON PROPERTY

132 ⁰/_{FEET}
SHED TO HOUSE



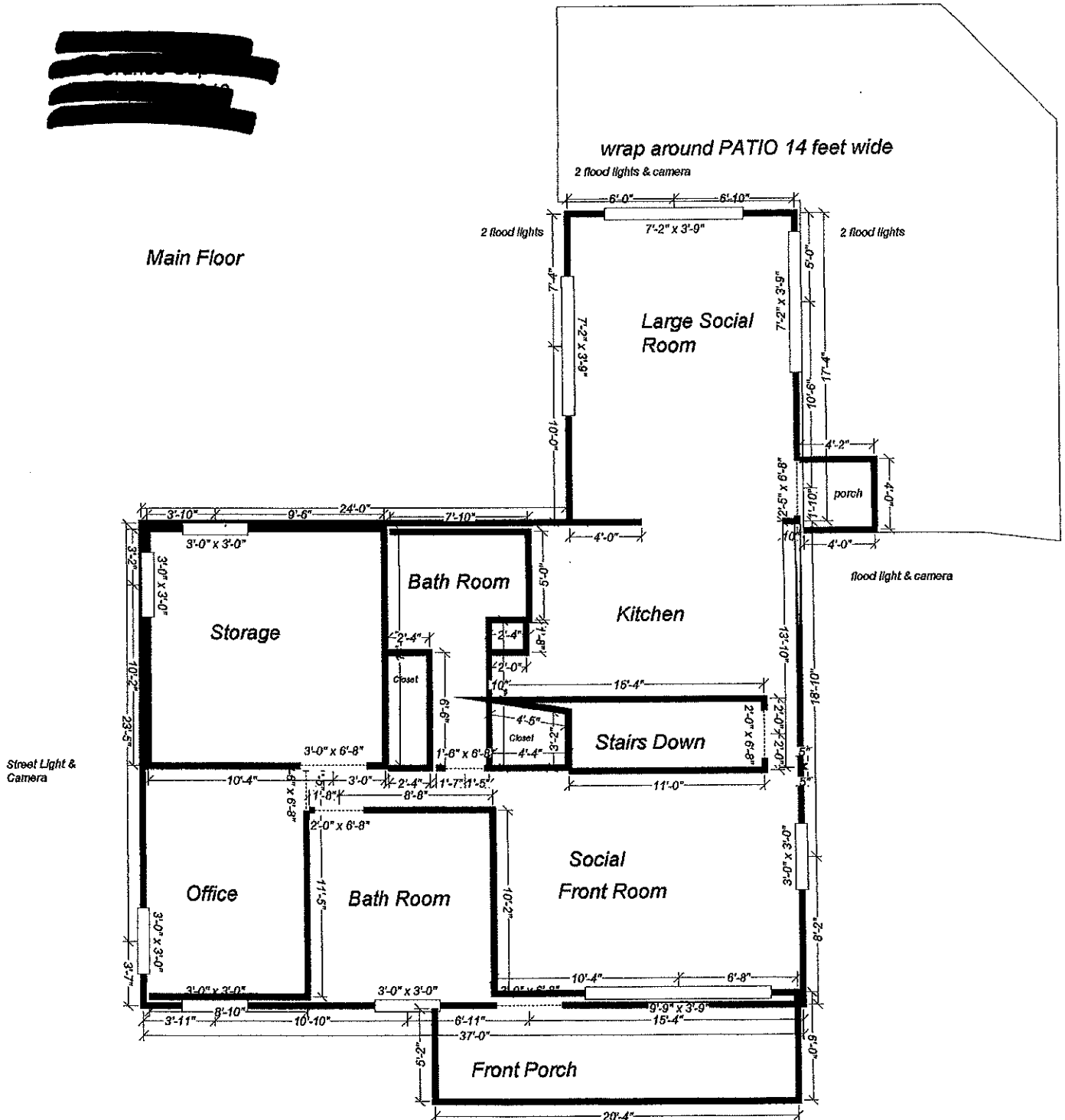


BASEMENT OF HOUSE TURNED INTO
TASTING/SALES ROOM AND WINE
STORAGE

202

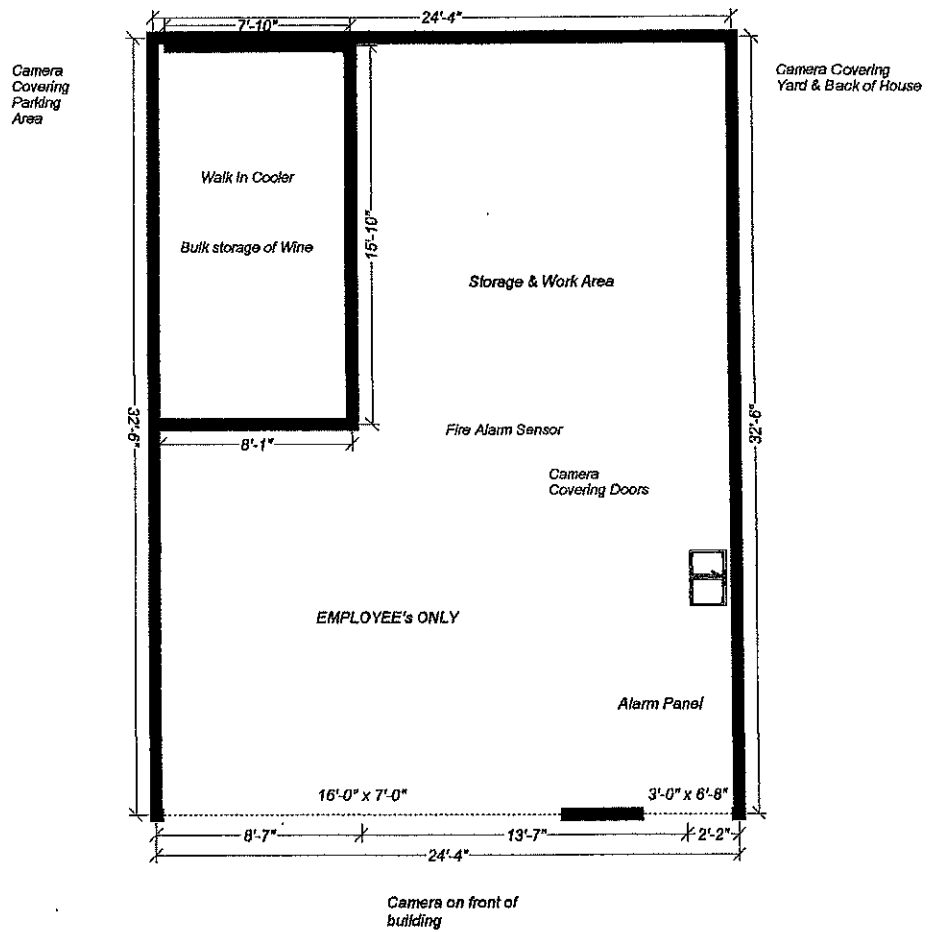
[REDACTED]

Main Floor



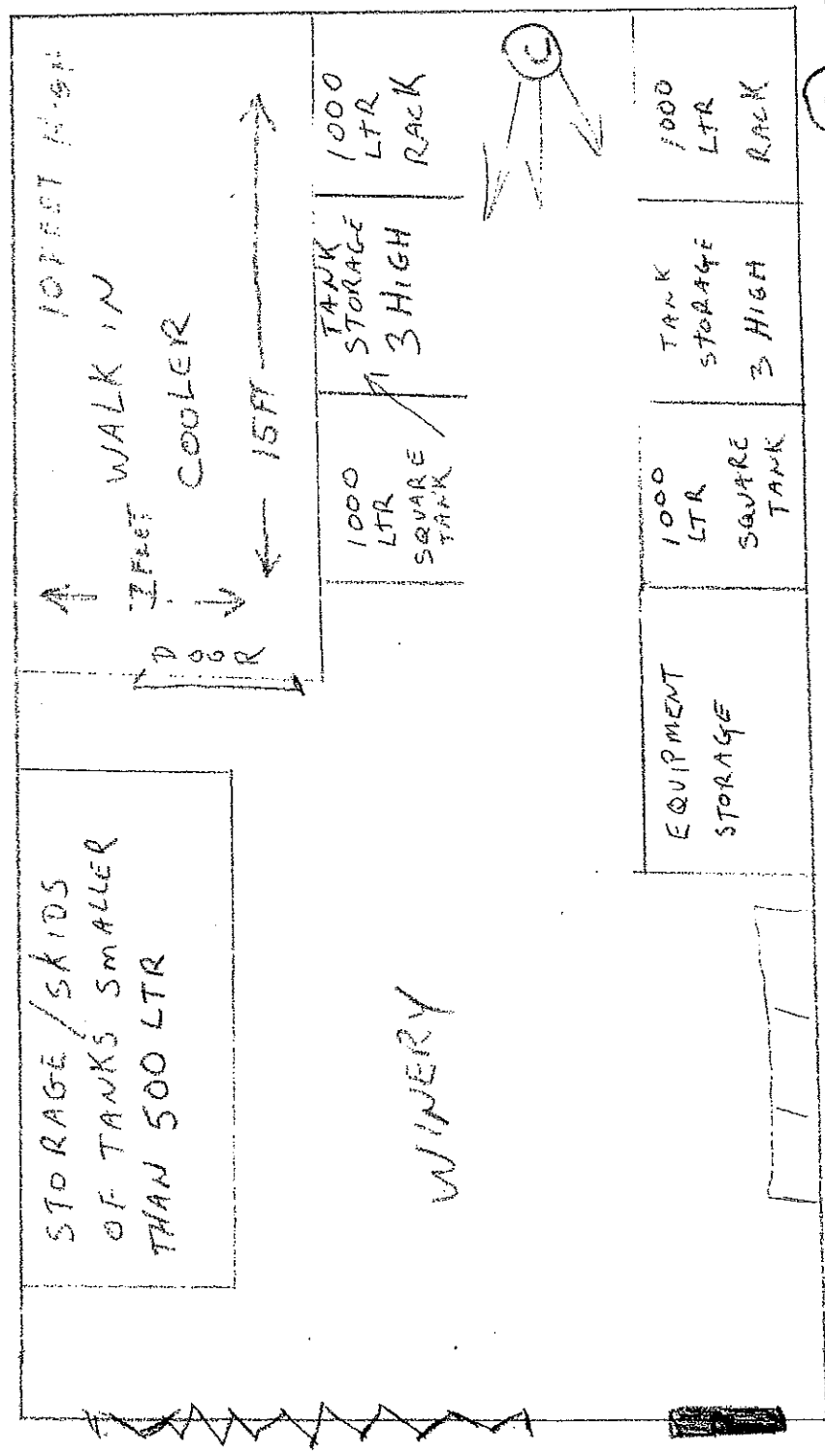


Winery Building & Bulk Storage of Wine



32 FEET

24 FEET



C OUTSIDE

3 BAY SINK

C = SECURITY CAMERA

NOTE:

GARAGE TURNED INTO WINERY

6148 90-0560077

[REDACTED]

North Middleton Township Zoning Ordinance Definitions

AGRIBUSINESS — Agricultural uses that involve, but are not necessarily limited to, one or more of the following conditions:

- (1) **CONCENTRATED ANIMAL FEEDING OPERATION (CAFO)** — An agricultural operation that meets the criteria established by the Department of Environmental Protection under authority of the act of June 22, 1937 (P.L. 1987, No. 394), known as the Clean Streams Law.
- (2) **CONCENTRATED ANIMAL OPERATION (CAO)** — An agricultural operation that meets the criteria established by the State Conservation Commission in regulations under the authority of 3 Pa.C.S.A. Chapter 5 (relating to nutrient management and odor management) in Pa. Code Title 25, Chapter 83, Subchapter D (relating to nutrient management).
- (3) **OTHER AGRIBUSINESS** — Any agricultural operation other than a CAFO or CAO, whether involving animal, animal product, or vegetable production, which occurs within an enclosed structure exceeding 10,000 square feet per building or a cumulative total of 15,000 square feet of building area.

AGRICULTURE — The principal use of land which shall include, but not be limited to, the tilling of the soil, the raising of crops, horticulture, apiculture, floriculture, viticulture and gardening. The production, keeping or maintenance, for sale, lease or personal use, of plants and animals useful to man, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products, poultry and poultry products; livestock, including beef cattle, sheep, swine horses, ponies, mules, or goats, or any mutations or hybrids thereof, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; fruits of all kinds, including grapes, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products; or lands devoted to a soil conservation or forestry management program, but excluding concentrated animal operations (CAOs), concentrated animal feeding operations (CAFOs), and forestry. This definition also includes the processing and accessory retail sale of goods produced and including one detached dwelling and other necessary structures and equipment to support the agricultural activity.

AGRICULTURAL OPERATION — An enterprise that is actively engaged in the commercial production and preparation for market of crops, livestock and livestock products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities. The term includes an enterprise that implements changes in production practices and procedures or types of crops, livestock, livestock products or commodities produced consistent with practices and procedures that are normally engaged by farmers or are consistent with technological development within the agricultural industry.

COMMERCIAL RECREATION — Any establishment whose main purpose is to provide the general public with an amusing or entertaining activity, and where tickets are sold or fees are collected for the activity:

- (1) **INDOOR COMMERCIAL RECREATIONAL ESTABLISHMENT** — An establishment operated as a gainful business, open to the public, for the purpose of leisure-time activities, public recreation or entertainment, including, but not limited to, amusement arcade, arena, assembly hall, bingo parlor, bowling alley, gymnasium, health and fitness club, miniature golf course, skating rink, swimming pool, dance or gymnastic instructional school, tennis courts, etc., when operated within a completely enclosed building. This use does not include a theater.
- (2) **OUTDOOR COMMERCIAL RECREATIONAL ESTABLISHMENT** — An establishment operated as a gainful business, open to the public upon open land, wholly or partially outside of a building, for the purpose of leisure-time activities, public recreation or entertainment such as a swimming pool, tennis court, batting and pitching cages, go-carts and skating rinks, but also includes amusement rides or regular live entertainment. For purposes of this chapter, this use excludes a park, golf course and an outdoor shooting range.

FARM OCCUPATION — A business activity administered or that is clearly conducted as an accessory use to and/or within a principal agricultural use, within an accessory structure.

HOME OCCUPATION — A business activity administered or that is clearly conducted as an accessory use to and within a single-family detached dwelling.

HORTICULTURE — The growing of fruits, vegetables, flowers, or ornamental plants.

LOADING SPACE — An off-street paved space suitable for the loading or unloading of goods and having direct usable access to a street or alley.

MANUFACTURE — A function involving either the processing, conversion or production of materials, goods or products.

NIGHTCLUB — Any building used for on-site consumption of alcoholic or nonalcoholic beverages where live entertainment is offered. For the purposes of this definition, "live entertainment" is meant to include the use of disc jockeys for the purposes of supplying musical entertainment. Nightclubs may also provide for on-site consumption of food. Additionally, nightclubs can offer the retail sale of carry-out beer and wine as an accessory use. This is also meant to include an "under 21" club which features entertainment.

NO-IMPACT HOME OCCUPATION — A business activity administered or that is clearly conducted as an accessory use to and within residential dwelling and which involves no customer, client or patient traffic, whether vehicular or pedestrian, pickup, delivery or removal functions to or from the premises, in excess of those normally associated with the residential use. (Also known as "no-impact home based business" per the MPC.)

OUTDOOR FARMERS/FLEA MARKET — A retail sales use where more than one vendor displays and sells general merchandise that is new or used in an outdoor setting.

OUTDOOR CAFE/DINING — A portion of an establishment which includes an exterior seating area associated with a food services, restaurant, tavern/bar, or other similar establishment.

OUTSIDE DISPLAY AND SALES — The display and sales of products and services primarily outside of a building or a structure.

PARKING — The temporary stopping or standing of a licensed, inspected and operable vehicle, whether occupied or not, off the roadway.

PARKING LOT — Any area of a lot used for off-street parking facilities, providing for the transient storage of automobiles, and other motorized and nonmotorized vehicles.

PROCESSING — A function which involves only the cleaning, sorting, sizing, packaging, or any combination thereof, of products and materials.

RETAIL BUSINESS — An establishment which sells goods or merchandise and repair services for goods or similar merchandise sold on the premises to the general public for personal and household consumption and rendering services incidental to the sale of such goods. Retail businesses shall not be construed to be an adult-related use as defined herein.

RETAIL — Those businesses whose primary activities involve the display and sales of goods and products to the general public. This term shall not include adult-related uses as defined herein.

ROADSIDE STAND — An accessory structure which primarily involves the retail sale of agricultural and/or garden products such as fresh fruits, vegetables, herbs, flowers or plants produced on site or on property contiguous to the property on which they are offered for sale during the harvesting season.

RURAL OCCUPATION — A business activity administered or that is clearly conducted as an accessory use to a single-family detached dwelling, within an accessory structure.

USE — The specific purpose or activity for which land, structures, or buildings are designed, arranged, or intended or for which land, structures, or buildings are occupied or maintained.

- (1) USE, ACCESSORY — A use customarily incidental and subordinate to the principal use or the principal structure or building and located on the same lot with such principal use or principal structure or building. If no principal use or principal structure or building exists on a lot with a lawful accessory use, then such accessory use shall only be considered a principal use, if the use would otherwise be allowed as a permitted principal use in the zone, and which shall then be subject to provisions in this chapter relating to principal uses. The accessory use cannot not exceed 75% of the gross area square footage of the principal use on the property.
- (2) USE, PRINCIPAL — The main, primary, or predominant use of any lot or parcel of land.
- (3) USE, TEMPORARY — A use established for a limited duration with the intent to discontinue such use upon the expiration of the time period.

§ 204-14. Rural Resource Zone (RR).

- A. Purpose. This zone is meant to encourage the continued use of the land for rural, forest, and agricultural purposes, and to permit low-density residential development which will not require extensive public services or facilities. This area is not meant to support intensive agricultural operations. Areas of the Township classified as rural resource are, for the most part, not served by public utilities and are rural, forested, or agricultural in nature. These areas are designed to support rural-style living and development, and are designated separately from the agriculture classification because they are either predominantly wooded, or are located in proximity to existing or planned residential areas. They are not intended to encourage large influxes of residential growth.
- B. Permitted uses. Only the following uses listed in Table 204-14A are permitted within this zone, provided that, in addition, the specific criteria for certain uses established in Article IV and all applicable general provisions in Article III are met. Uses permitted by special exception are subject to the approval by the Zoning Hearing Board pursuant to a public hearing set forth with the provisions of Article VI. Uses permitted by conditional use are subject to approval by the Board of Supervisors pursuant to a public hearing set forth with the provisions of Article VII.

**Table 204-14A
Permitted Uses
Rural Resource Zone (RR)**

Use	Specific Criteria	Right	Permitted by	
			Special Exception	Conditional Use
Agricultural/Forestry				
Agriculture (excluding agribusiness)	§ 204-47B	X		
Forestry	§ 204-47C	X		
Natural areas or wildlife refuges	N/A	X		
Riding schools and stables	§ 204-47D	X		
Residential				
Bed-and-breakfasts	§ 204-48A	X		
Flag lot residences	§ 204-48D	X		
Group homes	§ 204-48E	X		
Single-family detached dwellings	N/A	X		
Nonresidential				
Airports/airpads/heliports/ helipads	§ 204-49B			X
Animal hospitals/veterinary offices	§ 204-49C	X		
Campgrounds and recreational vehicle parks	§ 204-49I		X	
Cemetery	§ 204-49K	X		
Club, clubhouse or lodge, meeting grounds - private	§ 204-49L	X		
Commercial recreation, outdoor	§ 204-49N		X	
Communication antennas, towers and equipment	§ 204-49O			X

Convention centers	§ 204-49Q		
Golf courses	§ 204-49T		X
Kennels, commercial	§ 204-49Z		X
Large solar energy production facility	§ 204-49AA		X
Large wind energy production facility	§ 204-49BB		X
Mineral extraction and recovery establishments	§ 204-49DD		X
Municipal owned uses	N/A	X	
Outdoor shooting ranges	§ 204-49KK		X
Parks, playgrounds, and other noncommercial recreational uses	§ 204-49LL	X	
Place of worship	§ 204-49MM	X	
Public/private utility building or structure	§ 204-49OO	X	
Sawmills	§ 204-49PP	X	
Schools, public or private	§ 204-49RR		X
Shooting range, indoor	N/A		X
Accessory			
Accessory structures and uses customarily incidental to the above permitted uses	N/A	X	
Day care, accessory	§ 204-50C	X	
Day care, family	§ 204-50D	X	
Farm occupations	§ 204-50F	X	
Home occupations	§ 204-50G	X	
No-impact home occupation	§ 204-50H	X	
Noncommercial keeping of livestock	§ 204-50I	X	
Roadside stand	§ 204-50M	X	
Rural occupations	§ 204-50N	X	
N/A — Not applicable			

- C. Area and design requirements. Unless further specified in the specific criteria for certain uses established in Article IV and all applicable general provisions in Article III are met, all new permitted uses within this zone shall comply with the following area and building dimensional requirements set forth in Table 204-14B.¹
- D. Compliance with other standards of this chapter. All uses shall comply with all applicable provisions contained within:
- (1) Overlay zones set forth herein Article II.
 - (a) Floodplain Overlay Zone (§ 204-21).

¹. Editor's Note: Table 204-14B is included as an attachment to this chapter.

(b) Historic Resources Overlay Zone (§ 204-23).

(2) Article III, General Provisions.

(3) Article IV, Specific Criteria.

§ 204-47. Principal agricultural/forestry uses.

B. Agriculture. Agriculture is permitted subject to the following criteria:

(1) The following setbacks are required:

(a) Except for dwellings and residential accessory use and structures which shall comply with the residential area and design requirements of underlying zone districts, all structures shall be set back a minimum of 50 feet from any lot line.

(b) Any manure storage facility shall be located in accordance with the setback requirements established by Act 38 of 2005² known as "ACRE," and all current regulations.

(2) The applicant shall demonstrate that the methods of disposing of dead animals are in strict compliance with applicable standards established by PADEP. Dead turkeys, chickens, or piglets shall be kept in airtight containers. Larger dead animals shall be kept in a manner so as to minimize the spread of odors and disease.

(3) The applicant shall demonstrate that the farming operation allows for the safe and efficient movement of all vehicles associated with the operation.

(4) All areas utilized for grazing or pasture areas shall be fenced.

(5) All proposed entrances and exits to the operation shall be designed and improved in a manner which does not allow mud or gravel to be deposited or accumulate on or along abutting public streets.

(6) Areas designed for outdoor storage of pallets, machinery, or other materials shall be provided with buffering and screening in accordance with Article III of this chapter.

(7) Surface water runoff from areas where animals are enclosed shall be diverted away from adjacent properties and shall not contaminate downstream watercourses.

(8) Any new operation or expansion of an existing agriculture operation shall not be approved by the Township until a soil erosion and sedimentation control plan has been prepared, and found satisfactory by the County Conservation District.

(9) All uses must comply with Township building, health, housing, rental, safety, property and other applicable local, county, state, and federal code and licensing requirements. All such licenses, certificates, and permits shall have been obtained and presented to the Township, or shall be a condition of approval. A list of all chemicals utilized in the propagation and care of farm products shall be filed annually with the Zoning Officer.

2. Editor's Note: See 3 Pa.C.S.A. § 311 et seq.



NORTH MIDDLETON TOWNSHIP

2051 Spring Road, Carlisle, PA 17013-1059

OFFICE (717) 243-8550 • FAX (717) 243-1135 • POLICE (717) 243-7910

10/29/2018

[REDACTED]
[REDACTED]
[REDACTED]

RE: Zoning Permit Application – Agriculture Use with Retail Sales

Dear [REDACTED]

On 10/15/2018, North Middleton Township received your Zoning Permit Application to gain approval for an Agriculture Use including retail sales on property zoned Rural Resource. The application proposes combining two lots into one, creating a single lot of approximately 12.113 acres. A brief summary of the proposed function was provided with the application. Agriculture Use is a permitted Use by Right according to Zoning Ordinance Table 204-14A. Zoning Ordinance section 204-47B lists specific criteria for an Agriculture Use.

The use, as described in the documents submitted does not conform to the definition of Agriculture. For that reason, the application is not approved.

Zoning Approvals Sought:

Applicants seek the following determinations/approvals:

- (1) That the proposed use of the consolidated properties is Agriculture.

Response: The Zoning Officer has determined that the proposed use of the land meets the definition for Agriculture. However, the proposed use of the accessory buildings does not.

- (2) That the use of the garage at [REDACTED] for bottling/production of wine onsite is permitted as an accessory use within the definition of Agriculture, which includes retail sale.

Response: AGRICULTURE *The principal use of land which shall include, but not be limited to, the tilling of the soil, the raising of crops, horticulture, apiculture, floriculture, viticulture and gardening. The production, keeping or maintenance, for sale, lease or personal use, of plants and animals useful to man, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products, poultry and poultry products; livestock, including beef cattle, sheep, swine horses, ponies, mules, or goats, or any mutations or hybrids thereof, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; fruits of all kinds, including grapes, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products; or lands devoted to a soil conservation or forestry management program, but excluding concentrated animal operations (CAOs), concentrated animal feeding operations (CAFOs), and forestry.*

*This definition also includes the **processing** and accessory **retail sale of goods produced** and including one detached dwelling and other necessary structures and equipment to support the agricultural activity.*

PROCESSING *A function which involves only the cleaning, sorting, sizing, packaging, or any combination thereof, of products and materials.*

Production of wine is not processing as defined in the Zoning Ordinance. Further, the definition of Agriculture allows production of plants and animals only, not production of alcoholic beverages for sale to the public. Wine production involves more than cleaning, sorting, sizing, or packaging. Wine production is Manufacturing.

MANUFACTURE *A function involving either the processing, conversion, or production of materials, goods, or products.*

The production of wine does not meet the definition of Agriculture.

- (3) That the use of the bottom floor of the house at 940 Cranes Gap Road for a tasting room/retail is permitted as an accessory use within the definition of Agriculture, which includes retail sale.

Response: The use of an accessory space used for private gatherings and private parties does not meet the definition of Retail. **RETAIL** *Those businesses whose primary activities involve the display and sales of goods and products to the general public.* The definition does not include private gatherings, private parties, or tasting rooms.

- (4) That the use of the top floor of the house as an event space used in conjunction with the purchase of products produced onsite is an accessory use fitting within the definition of Agriculture.

Response: The use of an accessory space used for private gatherings and private parties does not meet the definition of Retail. **RETAIL** *Those businesses whose primary activities involve the display and sales of goods and products to the general public.* The definition does not include private gatherings, private parties, or tasting rooms.

- (5) That all setbacks are appropriate for the existing and proposed uses, as Agriculture – including accessory structures – require only 50-foot setbacks.

Response: The proposed uses of the existing barn and the existing house do not meet the criteria for Agriculture Accessory Structures. Therefore, the setback requirements have not been established.

- (6) That no buffer and screening requirements apply to Agriculture use.

Response:

1- The proposed use of the buildings does not meet the definition for Agriculture.

2- The proposed use requires parking to accommodate "gatherings". Parking lots require screening. Zoning § 204-35C(5) and 204-35C(5)(c)

- (7) That the consolidated lot could continue to use both driveways.

Response: No determination can be made until the Use is established.

- (8) That the applicants have satisfied the parking requirements for agriculture.

Response: Parking requirements to accommodate "private gatherings" have not been addressed. Parking lots require adequate lighting for the safety of the public. Parking lots require a minimum number of accessible parking spaces. Parking lots must be provided with a hard, dustless surface. Parking lots require screening. Zoning § 204-35A, 204-35C(1)(b), 204-35C(1)(d), 204-35C(2)(e)

- (9) That the proposed use of event space on the second floor of what is presently the house at [REDACTED] is accessory to Agriculture and cannot be categorized as "Assembly Space" as there is no definition or provision for the same in the Zoning Ordinance.

Response: A room or space used for "gatherings" or "private parties" is not included in the definition for Agriculture or Retail in the North Middleton Township Zoning Ordinance.

- (10) That the proposed use of the retail/tasting room for the first floor of the house presently at 940 Cranes Gap Road does not constitute "Assembly Space" as there is no definition or provision for the same in the Zoning Ordinance.

Response: A space used for Retail sales incidental to a permitted Agriculture Use is a permitted use. See definition for Retail above.

- (11) In the event that the retail/tasting room proposed for the first floor of the house presently at [REDACTED] does not qualify as a use accessory to Agriculture because of proposed seating therein, then that the same would qualify as retail space accessory to Agriculture if no seating would be permitted, such that customers could walk in, taste wine, purchase items produced onsite, and then leave without sitting.

Response: A space used for Retail Sales is a permitted use in an accessory building used for Agriculture. A space used for or private parties is not included in the definition of Retail. Whether people are standing or sitting has no bearing in the determination.

The applicant has the right to appeal the decision of the Zoning Officer. The applicant has other rights including requesting a variance, a special exception, or a substantive challenge to the validity of the ordinance. Please view the following sections from the North Middleton Township Zoning Ordinance for more information. Please contact this office if you would like to discuss this matter or if you have any questions.

Respectfully,



[REDACTED]
[REDACTED]

§ 204-69 B No zoning permit or certificate of use and occupancy shall be granted for any purpose except in compliance with the literal provisions of this chapter.

§ 204-64. Zoning Hearing Board's functions.

The Zoning Hearing Board shall have the exclusive jurisdiction to hear and render decisions in the following matters:

- A. Substantive challenges to the validity of the Zoning Ordinance, except those brought before the Board of Supervisors pursuant to § 204-72F of this chapter.
 - (1) If a challenge heard by a Zoning Hearing Board is found to have merit, the decision of the Zoning Hearing Board shall include recommended amendments to the challenged ordinance which will cure the defects found. In reaching its decision, the Zoning Hearing Board shall consider the amendments, plans and explanatory material submitted by the landowner and shall also consider:
 - (a) The impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities.
 - (b) If the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of the ordinance or Zoning Map.¹
 - (c) The suitability of the site for the intensity of use proposed by the site's soils, slopes, woodlands, wetlands, floodplains, aquifers, natural resources and other natural features.
 - (d) The impact of the proposed use on the site's soils, slopes, woodlands, wetlands, floodplains, natural resources and natural features, the degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts.
 - (e) The impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.
 - (2) Public notice of the hearing shall be provided as specified in § 204-72B(2) of this chapter.
 - (3) The Zoning Hearing Board shall commence its hearings within 60 days after the request is filed unless the landowner requests or consents to an extension of time.
 - (4) The Zoning Hearing Board shall render its decision within 45 days after the conclusion of the last hearing. If the Board fails to act on the landowner's request within this time limit, a denial of the request is deemed to have occurred on the 46th day after the close of the last hearing.
- B. Challenges to the validity of the Zoning Ordinance, raising procedural questions or alleged defects in the process of enactment or adoption which challenges shall be raised by an appeal taken within 30 days after the effective date of the ordinance.
- C. Special exceptions, as provided for in this chapter and subject to all applicable requirements, including but not limited to:
 - (1) Filing requirements. In addition to the required zoning permit information (see § 204-70) each special exception application shall include the following:
 - (a) Ground floor plans and elevations of proposed structures.
 - (b) Names and address of adjoining property owners, including properties directly across a public right-of-way.
 - (c) A scaled drawing (site plan) of the site with sufficient detail and accuracy to demonstrate compliance with all applicable provisions of this chapter.
 - (d) A written description of the proposed use in sufficient detail to demonstrate compliance with all

1. Editor's Note: The Zoning Map is on file in the Township offices.

applicable provisions of this chapter.

- (2) General criteria. Each applicant must demonstrate compliance with the following:
 - (a) The proposed use shall be consistent with the purpose and intent of the Zoning Ordinance.
 - (b) The proposed use shall not detract from the use and enjoyment of adjoining or nearby properties.
 - (c) The proposed use will not substantially change the character of the subject property's neighborhood.
 - (d) Adequate public facilities are available to serve the proposed use (e.g., schools, fire, police and ambulance protection, sewer, water and other utilities, vehicular access, etc.).
 - (e) For development within the Floodplain Overlay Zone, that the application complies with those requirements listed in § 204-21 of this chapter.
 - (f) The proposed use shall comply with those criteria specifically listed in Article IV of this chapter. In addition, the proposed use must comply with all other applicable regulations contained in this chapter.
 - (g) The proposed use will not substantially impair the integrity of the Township's Comprehensive Plan.
- (3) Conditions. The Zoning Hearing Board, in approving special exception applications, may attach conditions considered necessary to protect the public welfare and the purposes listed above, including conditions which are more restrictive than those established for other uses in the same zone. These conditions shall be enforceable by the Zoning Officer, and failure to comply with such conditions shall constitute a violation of this chapter and be subject to the penalties described in Article VII.
- (4) Site plan approval. Any site plan presented in support of the special exception pursuant to § 204-64C shall become an official part of the record for said special exception. Approval of any special exception will also bind the use in accordance with the submitted site plan. Therefore, should a change in the site plan be required as part of the approval of the use, the applicant shall revise the site plan prior to the issuance of a zoning permit. Any subsequent change to the use on the subject property not reflected on the originally approved site plan shall require the obtainment of another special exception approval.

D. Variances. The Zoning Hearing Board shall hear requests for variances where it is alleged that the provisions of this chapter inflict unnecessary hardship upon the applicant. The Zoning Hearing Board may, by rule, prescribe the form of application to the Zoning Officer. The Zoning Hearing Board may grant a variance, provided that all of the following findings are made where relevant in a given case:

- (1) That there are unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot size or shape or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of this chapter in the neighborhood or zone in which the property is located.
- (2) That because of such physical circumstances or conditions, there is not possibility that the property can be developed in strict conformity with the provisions of this chapter and that the authorization of a variance is therefore necessary to enable reasonable use of the property.
- (3) That such unnecessary hardship has not been created by the appellant.
- (4) That the variance, if authorized, will not alter the essential character of the zone or neighborhood in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
- (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulations in issue.
- (6) That variances within the Floodplain Overlay Zone shall comply with § 204-21 of this chapter.
- (7) In granting any variance, the Zoning Hearing Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this chapter. These conditions shall be enforceable by the Zoning Officer, and failure to comply with such conditions shall constitute a violation of this chapter and subject to the penalties described in Article VII.

- (8) Filing requirements. In addition to the required zoning permit information (see § 204-70), each variance application shall include the following:
 - (a) Ground floor plans and elevations of existing and/or proposed structures.
 - (b) Names and addresses of adjoining property owners, including properties directly across a public right-of-way.
 - (c) A scaled drawing (site plan) of the site with sufficient detail and accuracy to demonstrate compliance with all applicable provisions of this chapter.
 - (d) A written description of the proposed use in sufficient detail to demonstrate compliance with all applicable provisions of this chapter.
 - (9) Conditions. The Zoning Hearing Board, in approving variance applications, may attach conditions considered necessary to protect the public welfare and the purposes listed above, including conditions which are more restrictive than those established for other uses in the same zone. These conditions shall be enforceable by the Zoning Officer, and failure to comply with such conditions shall constitute a violation of this chapter and be subject to the penalties described in Article VII.
 - (10) Site plan approval. Any site plan presented in support of a variance shall become an official part of the record for said variance. Approval of any variance will also bind the use in accordance with the submitted site plan.
- E. Appeals from the determination of the Zoning Officer, including but not limited to the granting or denial of any permit or failure to act on the application therefor, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot.
 - F. Appeals from a determination by a Municipal Engineer or the Zoning Officer with reference to the administration of any provisions contained within the Floodplain Zone.
 - G. Appeals from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of the Zoning Ordinance.
 - H. Appeals from the Zoning Officer's determination under § 204-65 (and any subsequent amendments of the Act).²
 - I. Appeals from the determination of the Zoning Officer or Municipal Engineer in the administration of any land use ordinance with reference to sedimentation and erosion control and/or stormwater management for applications not involving a subdivision/land development, or a planned residential development as regulated in Articles V and VII of the Act, respectively.³

§ 204-65. Parties appellant before Zoning Hearing Board.

Appeals under § 204-64E, F, G, H and I and proceedings to challenge this chapter under § 204-64A and B may be filed with the Zoning Hearing Board, in writing, by the landowner affected, any officer or agency of the Township or any person aggrieved. Requests for a variance under § 204-64D and for special exception under § 204-64C may be filed with the Zoning Hearing Board by any landowner or any tenant with the permission of such landowner. Any appeal shall state:

- A. The name and address of the appellant and applicant.
- B. The name and address of the landowner of the real estate to be affected.
- C. A brief description and location of the real estate to be affected by such proposed change together with a plot plan drawn to scale with sufficient clarity to show the nature and character of the request.
- D. A statement of the present zoning classification of the real estate in question, the improvements thereon and the present use thereof.
- E. A statement of the section of this chapter under which the request may be allowed and reasons why it should or should not be granted.

². Editor's Note: See 53 P.S. § 10101 et seq.

³. Editor's Note: See 53 P.S. § 10501 et seq. and 53 P.S. § 10701 et seq.

§ 204-66. Time limitations.

- A. No person shall be allowed to file any proceeding with the Zoning Hearing Board later than 30 days after an application for development, preliminary or final, has been approved by the Zoning Officer or the agency responsible for granting such approval if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and proves that he had no notice or knowledge or reason to believe that such approval had been given. If such person has succeeded to his interest after such approval, he shall be bound by the knowledge of his predecessor in interest.
- B. The failure of anyone other than the landowner to appeal from an adverse decision by the Zoning Officer on a challenge to the validity of this chapter or the Official Zoning Map,⁴ pursuant to § 204-65, as amended, shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative preliminary approval.

⁴. Editor's Note: The Zoning Map is on file in the Township offices.