

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

Robert A. Willig, Esq.  
Senior Deputy Attorney General  
1251 Waterfront Pl.  
Mezzanine Level  
Pittsburgh, PA 15222

Feb. 6, 2019

Dear Attorney Willig:

We are sending this directly to you at the suggestion of our neighbor and fellow Farm Bureau member, [REDACTED] who has a pending ACRE complaint against Upper Milford Twp.

We also request a review of the Zoning Ordinance of Upper Milford Township, Lehigh County, PA, but for different reasons relating to agricultural operations.

We believe a review will find that the ordinance is not based on and, in fact, runs counter to the Pennsylvania Right to Farm Act, and perhaps other state laws dealing with agriculture.

Briefly, we applied to the township on June 26, 2018, for a building permit to erect a 40- by 40-foot pole building in which to store our farm products and process most of them into kombucha.

Citing the zoning ordinance, the township denied our application on July 6, 2018. The zoning officer said what we were doing constituted a "Farm-Based Business" that lacked the required minimum acreage of 25 acres (our permanently preserved farm is 19.2 acres) and violated the minimum 100 foot setback on new construction.

Never mind that the Pennsylvania Right to Farm Act requires only 10 acres — or less with an anticipated yearly gross income of \$10,000.

The township said we needed a "Special Exception" for an "accessory use" of a "Farm-Based Business," and, two variances because we lacked sufficient acreage and wanted to build 28 feet from the nearest property line. (Our building site was 346.5 feet from the nearest house. That neighbor did not object to our plans.)

Long story made short, the township Planning Commission OK'd our project on July 30, 2018. The Zoning Hearing Board also unanimously approved on Aug. 13, 2018. We finally received our Certificate of Occupancy in early 2019 — five months later.

The net effect of the zoning ordinance on our farm was:

- Delayed construction.
- Increased costs.
- Difficulty scheduling contractors.

- Constant aggravation.
- Repeatedly pumping flooded utility trenches.
- Manhandling mountains of mud to backfill utility trenches.
- Battling increasingly bad and cold weather.

We respectfully request your review of the entire zoning ordinance as it relates to agriculture, because we believe the ordinance is unreasonably restrictive and blatantly violates state law. For example:

- Our production of kombucha. The township claimed that adding value and shelf life to what we grow transformed a “commodity” into a “product” that must be heavily regulated.

But Section 952 (Definitions) of the Pennsylvania Right to Farm Act does not agree:

**“Agricultural Commodity.”** Any of the following ...

(6) Any products raised or produced on farms intended for human consumption and the processed or manufactured products of such products intended for human consumption.

- What constitutes a farm? The same section of the Right to Farm Act says this:

**“Normal agricultural operation.”**

(1) not less than ten contiguous acres in area; or

(2) less than ten acres in area but has an anticipated yearly gross income of at least \$10,000.

The term includes new activities, practices, equipment and procedures consistent with technological development within the agricultural industry ...

**Penn State’s** Dickinson Agricultural Law Resource and Reference Center adds this concerning farm “products” and marketing:

“Farms can have direct sales of agricultural commodities on their property as long as no less than 50% of the products were produced on that farm. (There are exceptions in circumstances of crop failure). These direct sales are allowed despite zoning.”

However, Upper Milford’s Zoning Ordinance severely limits retail sales to “occasional in nature, and shall occur by appointment or during a maximum of 20 hours per week (except customary retail sales as part of a barber/beauty shop). This provision shall not restrict permitted sale of agricultural products.” Alas, the ordinance does not define “agricultural products.”

While Upper Milford Township bills itself as being “farmer-friendly,” its zoning ordinance speaks otherwise. For example, in the case of grazing “large animals” (cattle, horses, goats, pigs, etc.) the ordinance requires a 10-foot fencing setback from property lines.

That imposes an unreasonable and, to our minds, an illegal hardship on farmers.

The shape of our farm is highly irregular. Long before we bought the place in 1984, most of the road frontage was sold off in small, shallow and/or narrow lots for residential development. In between those houses, we have 270 feet of road frontage — in three separate locations.

As a result, our farm adjoins 12 properties and has 23 property lines with which to contend. Total length of those property lines is more than one mile (roughly 5,676 feet).

Multiply that number by the required 10-foot setback. The area then rendered unusable for pasture, mowing and other farm activities by the township zoning ordinance totals 56,760 square feet. That's slightly more than 1.3 acres — or roughly seven percent of our entire farm. (Before the ordinance was amended in 2013, the setback was a whopping 50 feet. That's from a property line, not a dwelling that may be many hundreds of feet away from the line.)

In conclusion, we contend that the Upper Milford Township Zoning Ordinance is unreasonably restrictive and in violation of the Pennsylvania Right to Farm Act.

Thank you in advance for your consideration in this matter. Should you require additional information, please do not hesitate to contact us directly. Thank you.

Sincerely,

A large black rectangular redaction box covers the signature area, obscuring the name and any handwritten notes.

Enclosures

1. Building permit application letter.
2. Township denial letter
3. Relevant passages of township zoning ordinance
4. Ruling of the Zoning Hearing Board