

[REDACTED]
[REDACTED]
[REDACTED]
August 27, 2023

Robert A. Willig
Senior Deputy Attorney General
1251 Waterfront Place
Mezzanine Level
Pittsburgh, PA 15222
[REDACTED]

RE: [REDACTED]
Acre review request
Site Location: [REDACTED]
[REDACTED]
Earl Township, Lancaster County

Dear Attorney Robert Willig:

On behalf of our client, [REDACTED] we are requesting assistance from your office to review the zoning ordinance and zoning officers' enforcement letter pertaining to a proposed poultry operation we are permitting in Earl Township, Lancaster County.

We believe the Township is operating outside the scope of Act-38 applying more stringent requirements to [REDACTED] application. [REDACTED] has received approvals from the State under the Nutrient Management and Odor Management programs.

These approvals represent that [REDACTED] is complying with the State standards as it relates to building location, manure application, and odors associated with the operation. The Township has contested that these approvals do not supersede the Townships authority to regulate the operation and are requesting the applicant apply to the Zoning Hearing board requesting Variances of Sections 27-1405 & 27-404.B for the operation being a prohibited use for potentially being noxious, offensive, and injurious, as well as, for not complying with the required setbacks within the ordinance.

In the event there are any questions regarding the above please feel free to contact me at [REDACTED]. We hope the Attorney Generals office can assist us providing the Earl Township Zoning Officer with the necessary information relating to regulatory application for current and future farms.

Sincerely yours,
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

EARL TOWNSHIP

July 07, 2023

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

RE: Addendum to June 19, 2023 Zoning Review for LD Plan: [REDACTED]

Dear [REDACTED]

The zoning ordinance has bulk regulations listed at the end of each zoning district. The Earl Township zoning ordinance, however, has also placed additional setback regulations for some specific uses within the text for specific uses. Therefore, in my first review of this LD Plan, I missed one of those embedded regulations. Section 27-402, the uses permitted by right in the agricultural zone, allows for Farm Buildings, but requires a larger setback for or any building used for the keeping or raising of livestock or poultry, which is larger than the setbacks found in the "area and dimensional regulation in Section 27-404. Therefore, in addition to the points listed in the original letter, there is the need for zoning relief from Section 27-402.B. The plan shows the building envelope setback line as 20 feet, and the distance from the chicken house to the property line is not indicated on the plan, but using the scale, the proposed structure is approximately 55 feet away from the southeasterly property line, and approximately 45 feet away from the southwesterly property line. Moving the proposed structure away from those property lines would increase the concerns listed in my original letter.

§ 27-402. Permitted Uses. [Ord. 11/411996, § 401; as amended by Ord. 3-1998, 51411998, § 1; by Ord. 1-2003, 417/2003, § 2; and by Ord. 3-2005, 9/6/2005, § 3(1.6)] Lands and buildings in the AG - Agricultural District shall be used only for the following purposes:

B. Farm buildings, provided that any building used for the keeping or raising of livestock or poultry shall be located not less than 100 feet from any street or other property line.

1. The zoning information on page one of the LD Plan should be updated for a setback of 100 feet.
2. The building envelope should be updated to reflect the setbacks lines.

Original Letter:

Dear [REDACTED]

I have reviewed the above plan. The zoning office has made the determination that the proposed plan, a 53,322 SF poultry barn on a 26.45 acre parcel, will violate at least one provision of Section 27-1405 effecting at least one abutting parcel to the proposed poultry farm. Therefore, the LD Plan will require zoning hearing board approval prior to the LD Plan being approved, and/or prior to any permits being issued.

[REDACTED]
[REDACTED]

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The applicant may seek a Variance from section 27-1405 to request permission to allow noxious, injurious, or offensive conditions to the surrounding area, or the applicant may appeal my determination, and demonstrate how no noxious, injurious, or offensive conditions will be caused by the proposed poultry barn.

If seeking relief, the following section of the ordinance will need to be addressed for relief.

§ 27-1405 Prohibited Uses.

No building may be erected, altered or used, and no lot or premises may be used for any activity that is noxious, injurious or offensive by reason of dust, smoke, refuse matter, odor, gas, fumes, noise, vibration, illumination or similar substances or conditions. No use shall create any other objectionable condition in an adjoining area or property which will endanger public health and safety, or which will be detrimental to the proper use of the surrounding area.

If seeking to appeal my determination, the following section allows for such an appeal.

§ 27-1904. Jurisdiction. [Ord. 11/4/1996, § 1903; as amended by Ord. 3-2005, 9/6/2005, § 13(2)] .

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

A. Appeals from the determination of the Zoning Officer....

The following concerns, and any other concerns raised at the hearing, would need to be proven to have no impact by the proposed chicken facility, since any of the following would present injurious, offensive, or objectionable conditions to an adjoining property which would endanger public health and safety, or would be detrimental to the proper use of the surrounding area.

1. Odor
2. The proposed water source is the existing well. The need for water usage should be noted, and the location of the well verified, to better ensure the need for water will be available and maintainable, without depleting residential well sources at neighboring parcels.
3. Well contamination
4. Manure management plan approved by Lancaster County Conservation District.

Per page one of the LD Plan, under the AGRICULTURAL NUISANCE DISCLAIMER, the plans seeks to prepare for grievances resulting from NORMAL agricultural practices. Although the disclaimer mentions the word 'normal' 3 times, I'm not sure what defines normal. I could look to other ordinances that would classify this project as "intensive agriculture", which would then have a set of standards that provides for the safety and well-being of the community. If I were to do so, the perspective would most likely shift from what is normal, to what is allowed, or at least what is not prohibited, by the Earl Township zoning ordinance. The Earl Township ordinance does not list a use called 'intensive agriculture', which could trigger specific standards, and so it might be argued that the Earl Township zoning ordinance is more tolerant of intensive agriculture, but it could also be argued that the Earl Township zoning ordinance is more restrictive, since it establishes specific

[REDACTED]


[REDACTED]

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standards to all uses that transcends even the most restrictive standard to a specific use, should even the higher standards found elsewhere be met here.

While it is understandable to protect farmers against people moving-in next to a farm, and then restricting that farm because of normal agricultural practices, which the farm has engaged in prior to a resident moving in, it is equally understandable to protect existing homes from an intensive agricultural use moving-in next to existing residential uses, which would introduce new features that will be a nuisance at best, and harmful or deleterious at worst.

The agricultural disclaimer seeks to establish and understanding that, "OWNERS, OCCUPANTS AND USERS OF THIS PROPERTY SHOULD BE PREPARED TO ACCEPT SUCH INCONVENIENCES, DISCOMFORT AND POSSIBILITY OF INJURY FROM NORMAL AGRICULTURAL OPERATIONS, AND ARE HEARBY PUT ON OFFICIAL NOTICE THAT THE RIGHT TO FARM LAW, 3 P.S. § 951 ET SEQ., AS AMENDEND, MAY BAR THEM FROM OBTAINING A LEGAL JUDGEMENT AGAINST SUCH NORMAL AGRICULTURAL OPERATIONS." While this may put an official notice on the occupants of the farm, it should neither be seen as a legitimate basis to deprive residential property owners of their property rights, nor nullify the requirements found in the zoning ordinance. The ordinance is clear in its topics of concern making acceptable uses by category, prohibited uses by impact, and § 27-1405 [Prohibited Uses] in not surplusage. In no way should the agricultural zone, which allows agricultural uses, be viewed as a carte blanche to do whatever is desired, without regard to undesirable or harmful consequences to the surrounding area, any more than a residential zone, which allows residential uses, be viewed as a carte blanche to do whatever is desired, without regard to the density of units.


Zoning Officer

