



EAST BRADFORD TOWNSHIP

CHESTER COUNTY, PENNSYLVANIA

Memo

To: Planning Commission

From: Mark Lucas, P.E. *ML*

Date: March 25, 2019

Subject: **John Marshall and Dara Gans, Amended Conditional Use Application for a Bed and Breakfast Estate, "The Farm at Birmingham", 415 Birmingham Road, TMP 51-7-113.01 (Riley, Riper, Hollin & Colagreco – Debra A. Shulski; Marshall Sabatini, PC – John C. Marshall, AIA; D.L. Howell & Associates, Inc. – Christopher M. Daily, P.E.).**

Introduction

John Marshall and Dara Gans have submitted a Conditional Use application for a Bed-and-breakfast estate for their properties located at 415 Birmingham Road, West Chester, Pennsylvania, 19382. The Applicant's entire holdings are approximately 11 acres in gross area, are located in the R-2 Residential Zoning District and the existing dwelling and barn located on the holdings are Class 1 Historic Resources as defined by the Township Historic Resource Inventory (HR #135). A Bed-and-breakfast estate is permitted in any Zoning District as a Conditional Use if it can fully comply with Section 115-48.2 of the Township Code, which requires that the Bed-and-breakfast estate use be conducted in an owner-occupied Class 1 Historic Resource, amongst other things noted in the ordinance.

The existing property is a former farmstead consisting of the existing dwelling, tenant house, barn, two sheds, driveways, turf grasses, individual trees/woodlands and residential landscaping. The lot is accessed from Birmingham Road with two driveways that lead to the farmstead compound. The property is serviced by private on-lot sewage disposal systems and a private well, although the type of water service is not shown on the submitted plan or application. Public water service is presumably available if necessary via a water main located within Birmingham Road.

The holdings also are subject to a Conditional Use Decision and Declaration recorded on the property on February 25, 1999, outlining areas of privately owned open space located throughout the undeveloped portions of the property that serve as the open space areas of the Natalie Drive development (aka John Drury Subdivision) and subject to restrictions on further subdivision as well as how the open space areas are to be maintained and used, further elaborated on below. The proposal also is subject to a Zoning Hearing Board Decision and Order granting the Applicant relief to use an existing accessory structure (tenant house) for the Bed and Breakfast, instead of the primary structure as required by the Code. However, the Township Board of Supervisors has appealed that decision due to issues regarding proper notification to nearby property owners required by the Code for Zoning Hearing proceedings, in an effort to enable participation in the hearing process by interested property owners. Two of the adjacent property owners have appealed that decision also. The court has evaluated the appeal and returned it to the Zoning Hearing Board for further evaluation/consideration of depositions taken. The Zoning Hearing Board has conducted additional hearings at the direction of the Court of Common Pleas regarding the matter, and the Zoning Hearing Board is in the process of preparing findings for return to the Court.

The Applicant is proposing a six-room bed and breakfast in the tenant house or a four-room bed and breakfast in the principal structure (depending on the outcome of the Zoning Hearing Board appeal) and to conduct events (non-profit events, community events, showers, birthday parties, graduation parties, indoor/outdoor weddings and receptions and other special events) indoors within a designated common area in the dwelling or outdoors with the use of a tent. The Applicant is requesting a maximum occupancy of 100 attendees for special events.

Presented below is commentary on the Conditional Use application, reviewed for conformance with the Code of the Township of East Bradford.

The following items were reviewed:

Plans titled "Conditional Use Parking Exhibit – The Farm @ 415 Birmingham", Sheets 1 and 2 of 3, prepared by D.L. Howell & Associates, Inc., (Christopher M. Daily, P.E.), prepared for John Marshall and Dara Glans, dated May 22, 2018, last revised February 7, 2019.

A document titled "Conditional Use Application – The Farm @ 415 Birmingham – Narrative of Compliance with Bed and Breakfast Standards (§ 115-48.2)", Pages 1-8 of 8 (with attached 2 sheet soil percolation rate analysis), prepared by Riley Riper Hollin & Colagreco (Debra A. Shulski, Esquire), prepared for John Marshall and Dara Glans, dated February 7, 2019 with no revisions.

A document titled "Impact Assessment Statement", Pages 1-4 of 4 and two attached plans of the proposed interior and exterior property improvements, prepared by D.L. Howell & Associates, Inc., (Christopher M. Daily, P.E.), Prepared for John Marshall and Dara Glans, dated February 7, 2019 with no revisions.

Status of Township Staff/Consultant/Agency Reviews

1. **Zoning** – review completed by Melissa Needles. Review pending. Supplemental Zoning commentary is provided below.
2. **Chester County Health Department** – review of on lot sewage disposal systems pending submission to the Department.
3. **Pennsylvania Department of Transportation** – review of change in use category of proposed access pending submission to the Department.
4. **Landscaping** – review of proposed screening and buffering plan by Thomas Comitta Associates (Dan Mallach). Review previously issued.

Zoning Ordinance

115-48.2: Bed-and-breakfast estates

1. **115-48.2.A:** The Applicant has included a statement in response to this section indicating all the buildings on the property are to be considered owner occupied due to a statement in the Findings of Fact contained in the original Conditional Use decision issued to create the farmstead and adjacent subdivision. This statement is irrelevant to the current application since the Applicant is proposing to comply with the ordinance by operating the bed and breakfast estate in the tenant house assuming the Zoning Hearing Board original decision is upheld or dwelling that they intend to occupy, and potentially because the Conditional Use decision was in reference to a different owner at a different time and circumstance. The validity and relevance of the Applicant's statement as to the current application may be a question of law or fact for the Township Solicitor and Board of Supervisors to consider in the process of the Conditional Use hearings.

2. **115-48.2.K:** The Applicant has included a statement indicating that the tenant house is not an accessory structure, since the tenant house was used as a veterinarian clinic in the past. Major home occupations are permitted in accessory structures per 115-48.A, making the past uses conducted in the tenant house immaterial as to the determination of the structure classification. In addition, the Applicant applied for and obtained a variance to use the tenant house accessory structure for the bed and breakfast portion of the proposed use, which is contradictory to the included statement. The Zoning Decision granting that variance has been appealed by the Township and two other parties.

In addition, the application notes that the Applicant has asserted that the barn is not an accessory structure. Since the application does not propose to utilize the barn, this assertion is irrelevant to the current application, which the application response also indicates. The Township Zoning Officer has rendered an official interpretation on this issue and the Applicant filed an appeal to the Zoning Hearing Board challenging the interpretation, or alternatively requested a variance to use the barn for events. That hearing is pending.

3. **115-48.2.L:** The Applicant shall submit plans and other information indicating how the proposed Bed-and-breakfast estate will comply with the following design standards:

(2): Storage of any materials related the operation of the bed and breakfast estate. Applicant has indicated that no outdoor storage is proposed as part of the application. However, two outdoor storage areas are shown on the site plans prepared for the project. This discrepancy must be clarified.

(4): Access and traffic control standards. Access is proposed from Birmingham Road via the existing, multiple driveway configuration. The current driveway services the existing farmstead. The proposal will increase the driveway use significantly during special events. Birmingham Road is a PennDOT roadway and the change in use/volume of the driveway must be evaluated by PennDOT as part of the Highway Occupancy Permit Application process. The Applicant must obtain a Highway Occupancy Permit from PennDOT for the proposed change in use and construct all necessary improvements prior to receiving a certificate of occupancy for the proposed use, or correspondence from PennDOT indicating that no further improvements are required. Regardless, the Applicant must demonstrate that the existing access points have adequate sight distance for safe ingress/egress for the interior circulation patterns proposed. I recommend the required sight distances be based on the 85th percentile speed, instead of the posted speed limit due to the size and nature of the proposal and configuration of Birmingham Road in that area. The Township has recently conducted a speed analysis in the immediate vicinity of the driveway and that has been forwarded to the Applicant for the previous application submitted for the same use.

(5): Interior circulation standards:

- A. 115-56.B(21): ADA compliant parking stalls and an ADA compliant pathway from the stalls to the facilities must be shown on the plans. The Applicant has provided this for the proposed tent area. Stalls and/or walkways must be designated for the bed and breakfast facility, also, wherever it is conducted (dwelling and/or tenant house).
- B. 115-56.D(1): Intended or designated pedestrian walkways must be shown on the plan at main access crossings, which must be field delineated with a temporary marking system.

(7): Emission of smoke, fumes, odors and noise. The impact assessment report addresses certain concerns with noises generated by the proposed use associated with events and indicates the Applicants intent to comply with the noise ordinance, also indicating that the noise levels are not expected to be greater than those normally associated with another, similar bed and breakfast estate use. This statement lacks clarity and could be interpreted that events can generate as much noise as desired as long as the same event could be held at another bed and breakfast estate use in the Township. Since the proposed use is located in a residential district, noise levels should be kept at residential levels, not at levels experienced at an event hall. The Applicant's interpretation would be more applicable if the proposed use were located in a commercial zoning district where event halls are permitted as a commercial use.

The Applicant has presented case law indicating that noise assessments are not required as part of the application. This would appear to be a question of law or fact for the Township Solicitor and Board of Supervisors to consider in the process of the Conditional Use hearings. The assessment report as submitted does not address the impact of the event guest parking area in general during late departure times associated with loud conversation/laughter, vehicle doors slamming, engine starting, vehicle sound systems, vehicle alarm systems, horn blowing and other noises associated with a grassed parking area that is not well defined during nighttime hours and not proposed to be lighted (nor would lighting be desirable to the adjacent residential properties). This is an issue that likely will be difficult for both the Applicant and the Township to regulate should it arise. As such, I recommend this item be addressed as part of the conditional use hearing via noise analysis/expert testimony to demonstrate that noise levels will be at or below normal residential levels.

The applicant also has indicated in the application the intent to comply with the Township noise ordinance. The bed and breakfast estate ordinance operational hours are more stringent than the noise ordinance in that the hours of operation are limited to 9 AM to 9 PM, whereas the noise ordinance applies to the hours of 6 AM to 10 PM. The Applicant must clarify which standard they are proposing to abide by and present any explanations pertaining to the discrepancy.

(8): Establishment of maximum occupancy. The Applicant has indicated a desired maximum occupancy of 100 guests. The maximum is dictated by the size of the available common area in the bed and breakfast establishment at a ratio of one guest for every 10 square feet of common area (as well as the ability to provide adequate parking). The Applicant has presented a first floor plan of the dwelling indicating 1,514 square feet of indoor common area, but has not identified what the common areas are (such as open furnished/unfurnished areas, dining areas, great rooms, bathrooms, staircases, kitchens, etc.) . The interpretation of the common area is an area where an event can be held and guests can congregate, which may be difficult in some of the areas designated depending on what they are used for. Those areas must be labeled on the plan for further evaluation.

The area of 1,514 square feet may be overstated on the plan. The four largest designated rooms total approximately 993 square feet noting the scale of 1/8 inches/foot for the submitted 11"x17" plan size. The smaller areas in the midst total approximately 217 square feet, creating a grand total of approximately 1,210 square feet.

(9): Off-street parking requirements. 62 spaces are shown on the plan in proposed parking areas. Based on the requested maximum occupancy for guests (100), the number of employees per 100 guests proposed by the Applicant (2) and the number of guest rooms provided (6), 58 spaces are required. If the original Zoning Hearing Board decision regarding the use of the tenant house for the purposes of the bed and breakfast is upheld and the Applicant chooses to use all 10 guest rooms available, the required parking is 62 spaces, which are provided on the proposed parking plan.

Section 115-56.B(9) prohibits double parking. The space to the immediate east of the tenant house may be double parked if there is no exit through the grassed area between the existing shed and tree located to the immediate east of the parking spot. If there is an exit planned at that location, it should be noted on the plans as part of the circulation pattern, as other vehicles may choose to exit through that area as well.

4. **115-48.2.M:** The Applicant has indicated that amplified music/sound systems will not be used for outdoor events. However, the Applicant also has indicated the potential for indoor weddings and events in the Impact Assessment Statement. The Code prohibition of amplification does not differentiate between indoor and outdoor events due to the possibility of open doors and windows.
5. **115-48.2.P:** A structural analysis of the designated common areas assuming harmonic loads (dancing) prepared by an engineer licensed in the Commonwealth of Pennsylvania must be submitted for review. Applicant has indicated that the review is forthcoming.

6. **115-48.2.T:** The Applicant has indicated that no additional impervious coverage is proposed for the current application. However, a minor expansion of the driveway area is shown on the parking lot layout plan to provide adequate two-way passage. This discrepancy must be clarified.
7. **115-48.2.U:** This section prohibits enlargements, alterations or changes to the exterior of the Class I historic resource except as required by applicable agency codes and for reasons of safety. The Applicant has indicated that no enlargements or additions are proposed for the *purposes of the bed and breakfast estate use*. The Applicant must clarify that statement and indicate whether or not enlargement or additions are intended for other reasons/uses.
8. **115-48.2.V:** The Applicant has indicated that the on-site septic systems will be used for the proposed use, both the bed and breakfast and event portions. The Applicant must obtain approval from the Chester County Health Department for use of the existing systems for these purposes, the construction of any supplementary systems or designation of replacement areas as may be required or any expansions of the existing systems. The Applicant also has indicated the potential to expand the system or create replacement areas within the open space, opining that it was permitted by the original conditional use decision for the property. Sewage disposal systems are no longer permitted in areas of open space under the current Ordinances, and therefore the use of expansion or replacement areas appears to be a question of law or fact for the Township Solicitor and Board of Supervisors to consider in the process of the Conditional Use hearings.

The Applicant also has indicated that the existing facilities will be supplemented with portable systems for special events. The Applicant must demonstrate how the existing facilities will not be overused during such events, causing a surcharge or overflow to the existing drain fields even with the use of the portable systems (i.e. how the use of the existing facilities will be regulated to prevent an overload).

General Commentary

9. The dwelling and associated areas proposed for the bed and breakfast and events is serviced by a private water system. The Applicant must demonstrate the ability to provide adequate water to simultaneously service the owners, bed and breakfast guests, employees, event guests and the events at maximum capacity.
10. The statement "Applicant agrees to comply *when the use is operational*" (emphasis added) is stated throughout the application narrative. This statement must be clarified to define the Applicant's interpretation of when the use is determined to be operational. For example, if the Applicant has a personal birthday party with 300 guests, amplified outdoor music, inadequate parking, etc., is the use considered not "operational". Due to the proximity of the adjacent residences, this issue could become very confusing and require excessive Township involvement to respond to complaints.

Conclusion/Recommendation

The Board of Supervisors should require the Applicant to satisfactorily address the aforementioned commentary during the Conditional Use process to establish conditions for any approval or reasons for denial that may be issued for the application. Critical items where the intent of the Applicant is in question (per the application as submitted) are as follows: Establishment of the common area which may dictate maximum occupancy, areas to be used for events which may require variances from the bed and breakfast estate ordinance related to use of accessory structures and amplification of music and future alterations of Class I historic structures that may or may not be part of the bed and breakfast estate use.

Copy:

Board of Supervisors

Environmental Advisory Council
Traffic Committee
Historical Commission
Mandie Cantlin
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Andrew D.H. Rau, Esq.
John Marshall and Dara Gans

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