

SADSBURY TOWNSHIP ZONING HEARING BOARD DECISION

IN RE:

: **GDT-2022-ZH-002**
:
: No. 2022-002
:
:

APPLICATION OF MERVIN J. BEILER

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. FINDINGS OF FACT.

1. Applicant is Mervin J. Beiler, an adult individual residing at 5697 Strasburg Road, Gap, Pennsylvania 17527 ("Applicant").

2. The Property which is the subject of this application is located at 5697 Strasburg Road, Sadsbury Township (the "Property") and is in the Agricultural (A) Zoning District.

3. Applicant is the record owner of the Property.

4. On or about January 25, 2022, Applicant submitted a zoning application to the Sadsbury Township Zoning Hearing Board (the "Board") seeking a special exception pursuant to Section 401 of the Sadsbury Township Zoning Ordinance for the adaptive re-use of existing agricultural buildings to convert two barn structures on the Property to retreat center use along with VRBOs already permitted, or, alternatively, a special exception pursuant to Section 107 for a use not provided for to allow the retreat center use along with the VRBOs already permitted..

5. Notice of the hearing on the application was duly advertised and posted in accordance with the provisions of the Pennsylvania Municipalities Planning Code ("MPC") and the Sadsbury Township Zoning Ordinance of 2011 (the "Zoning Ordinance").

6. The Board held a hearing on the application on February 14, 2022. At the conclusion of the hearing, he Board closed testimony and continued the matter to its meeting on March 16, 2022, for the purpose of rendering a decision.

7. Applicant appeared personally at the hearing and was represented by his attorney, Aaron Martin, and his consultant, Craig Williams of Strausser Surveying and Engineering, Inc.

8. The Township appeared at the hearing through Township Solicitor Josele Cleary.

9. The Property is a tract of land located on the north side of Strasburg Road containing 19.978 acres identified as "Lot No. 1" on the Plan to Accompany a Zoning Hearing Board

Application for Mervin J. Beiler prepared by Strausser Surveying and Engineering, Inc. dated January 14, 2022 (the "Application Plan").

10. The Property was the subject of prior hearings before the Zoning Hearing Board, and the Board took administrative notice of the decision at Case No. 042116-02 issued May 17, 2016 (the "2016 Decision"), and the unnumbered decision granting the application of Richard Caplan filed March 15, 1994, for a 70-acre tract of land of which the Property was a portion (the "1994 Decision").

11. When Applicant acquired the Property it was part of a larger tract containing approximately 40 acres. Exhibit T-3.

12. Applicant subdivided the land into the Property and an adjoining lot to the north which Applicant subsequently conveyed by the Final Plan Two Lot Subdivision Mervin J. Beiler recorded on December 11, 2017, at Document No. 2017-0439-J (the "2017 Plan"). Exhibit T-3.

13. The Property presently contains four structures which the Application Plan identifies as "Existing Dwelling", "Existing Barn", "Exg. Polebarn/Anticipated Pavilion" and "Existing Building Contractor's Shop".

14. The 2016 Decision authorized the adaptive reuse of a structure for a contractor's shop.

15. Applicant removed the existing building to be reused for the contractor's shop and instead constructed a new building on that footprint.

16. The 2017 Plan contains a non-building waiver as Note 9 stating that no portion of the land being subdivided has been approved for installation of sewage disposal facilities and "[n]o sewage permit will be issued for the installation, construction, connection to or use of any sewage collection, conveyance, treatment or disposal system (except for repairs to existing systems) unless the municipality and DEP have approved sewage planning for the property/subdivision described herein". Exhibit T-3.

17. The 2017 Plan indicates that the Property contains one existing dwelling unit and no proposed development. Exhibit T-3.

18. After Applicant recorded the 2017 Plan, Applicant recorded an Affidavit to acknowledge continuation of preferential assessment for the Property. Exhibit T-4.

19. Applicant stated that 19.977 acres of the Property was in agricultural use and identified only M. Jay Builders Inc. as commercial activities on the Property in the Affidavit dated May 8, 2018. Exhibit T-4.

20. Page 2 of Applicant's application to the Board dated January 19, 2022, as modified January 25, 2022 (the "Application") identified the existing uses on the Property as follows:

- Existing Dwelling - single family dwelling - primary residence.
- Existing Barn and 120 person capacity event venue.
- One full kitchen and sink in storage room.
- Men's and Ladies' restrooms - two stalls each.
- Basement meeting room with one bathroom.
- Four VRBO units, each with kitchen, one bedroom and one bathroom.
- Existing Pole Barn/Anticipated Pavilion - Storage building.
- Contractor's Shop - with one bathroom including urinal and sink. Ten employees.

21. The Application further stated Applicant's "intention ... to convert one building to a pavilion".

22. The Application characterized the "VRBO Units" as "already permitted".

23. The "VRBO Units" are one-bedroom apartments.

24. Applicant obtained a permit for one of the four apartment units on August 28, 2019, with the work described as "remodel attic to create bed and breakfast" (the "2019 Permit"). Exhibit T-6.

25. The Zoning Officer who issued the 2019 Permit was Anthony Campbell.

26. Applicant testified that the other three apartment units had been constructed prior to issuance of the 2019 Permit.

27. Applicant acknowledged that Zoning Officer Anthony Campbell did not inspect or enter the other apartment units when performing inspections under the 2019 Permit.

28. Applicant acknowledged that the uses on the Property other than the "existing residence" are connected to the on-lot sewage disposal system ("OLDS") that was authorized by a permit issued March 15, 1990 (the "1990 Sewage Permit"). Exhibit T-5.

29. The 1990 Sewage Permit authorized the OLDS to serve a nonresidential establishment and limited sewage flows of 375 gallons per day. Exhibit T-5.

30. Applicant did not perform any sewage planning and did not obtain any sewage permit before connecting the event venue, four apartment units, and the contractor shop to the OLDS with a capacity of 375 gallons per day.

31. Applicant's consultant Craig Williams testified that it would not be lawful to use the OLDS for weddings and similar functions at the event venue at the current time.

32. Mr. Williams testified that he was not hired until August or September of 2021.

33. Mr. Williams testified that the Pennsylvania Department of Environmental Protection requires zoning approval before the Pennsylvania Department of Environmental Protection will consider or approve a planning module for land development.

34. Applicant presented no testimony concerning a potential design of sewage disposal system, the results of testing for an on-lot sewage disposal system, or any other evidence that it would be possible to provide adequate sewage disposal for all of the uses Applicant currently operates on the Property, plus the additional pavilion and picnic area Applicant has requested that the Board approve.

35. Although the Application states that the capacity of the event venue is 120 persons, Applicant's website for the event venue states that the "banquet hall seats 80 people comfortably at circle tables and 120 at rectangle tables. It can seat up to 200 in a conference-type setting that requires chairs only." Exhibit T-1.

36. The Application does not indicate the capacity of the basement meeting room, which Applicant testified to be 30 to 40 persons.

37. Applicant offers seminars in the basement meeting room.

38. Applicant testified that he included a capacity of 200 persons for the event venue website because former Zoning Officer Anthony Campbell told him in 2017 that he could have a capacity of 200 persons.

39. Zoning Officer Anthony Campbell e-mailed Applicant on October 25, 2019, to respond to questions raised by Applicant, and the 2019 e-mail informed Applicant that the event venue was not a permitted use in the Agricultural Zone. Exhibit T-7.

40. Applicant presented no permits or approvals indicating that the Township authorized the event venue but stated that he had approvals from the Township.

41. When asked with whom he had spoken to get such approvals, Applicant stated that he had spoken with former Zoning Officer Bill Beers, the Board of Supervisors, Mila Robinson, and Brian, the current Zoning Officer.

42. Applicant's conversations with members of the Board of Supervisors, Mila Robinson, and the current Zoning Officer occurred after Applicant commenced the event venue use and undertook construction.

43. Applicant has hosted large events on the Property, including one of over 600 persons, as shown on the photographs from Applicant's Facebook page presented as Exhibit T-2.

44. Applicant admitted that he converted the single family residence into a two-family structure without any permits or approvals approximately two years ago.

45. Applicant admitted that he only ceased renting the second dwelling unit on January 1, 2022, and that the house is again a single-family residence.

46. Applicant has been aware of the Township's position that the event venue is not authorized for a number of months in 2021 but did not file an initial application with the Zoning Hearing Board until January 19, 2022. The initial application was amended on January 25, 2022, and that amended application was the one considered by the Board.

47. Applicant has continued to book events at the Property and has 20 future events scheduled.

48. Applicant conducted a banquet on February 12, 2022, for 90 persons at a charge of \$150 per couple.

49. Applicant testified that there was macadam and gravel off-street parking for 50 or 60 cars on the Property.

50. ~~The Application Plan shows seven existing parking spaces in a macadamed area near the building housing the event venue and three proposed handicapped accessible parking spaces to the rear of that building.~~

51. The Application Plan shows a stoned area surrounding the contractor's shop building.

52. The gravel areas and macadam areas shown on the Application Plan are not large enough to provide parking for 50 or 60 vehicles.

53. Applicant has installed stone across the area shown on the Application Plan as being reserved for a future on-lot sewage disposal system drain field.

54. The Application Plan shows 66 proposed grass parking spaces on the separate lot under separate ownership to the north of the Property, identified as Lot 2 on the 2017 Plan.

55. The off-street parking shown on Lot 2 on the Application Plan is conceptual.

56. Applicant presented no calculation for the number of off-street parking spaces required for the existing uses on the Property.

57. Applicant presented no calculations for off-street parking requirements, if Applicant changes the pole barn to a pavilion with seating.

58. Pine Creek flows through the western portion of the Property. Application Plan.

59. A portion of the Property is within the 100-year floodplain. Application Plan.

60. Applicant's answers were often inconclusive, including statements that he could not recall whether he had obtained any approvals for a public or community water system or done any testing of the well serving the event venue and that no one told him that any action would have to be taken in regard to sewage disposal to connect four apartment units, an event venue, and a contractor shop to the existing sewage system.

61. Applicant's testimony was inconsistent with documentary evidence, including Applicant's statement that Anthony Campbell told him in 2017 that the event venue had a permitted capacity of 200 persons, while an e-mail from Mr. Campbell in 2019 indicated that the use was not allowed.

62. Several neighbors appeared at the hearing and expressed support for Applicant's requests.

II. CONCLUSIONS OF LAW

1. "The important characteristic of a special exception is that it is a conditionally permitted use, legislatively allowed if the standards are met. [Commonwealth Court] explained that an applicant for a special exception has both the duty of presenting evidence and the burden of persuading the ZHB that the proposed use satisfies the objective requirements of the zoning ordinance for the grant of the special exception." *Vineyard Oil and Gas Company v. North East Township Zoning Hearing Board*, 215 A.3d 77, 85 (Pa. Cmwlth. 2019) (citations omitted; internal quotes omitted).

2. An applicant seeking a special exception for adaptive reuse of an agricultural building must demonstrate "an approved means of water supply and sewage disposal to serve all proposed area." Zoning Ordinance §401.1.e.

3. An applicant for a special exception for adaptive reuse of an existing agricultural building must "provide for specific off-street parking spaces and off-street loading spaces for all of those uses proposed accordingly." Zoning Ordinance §401.1.g.

4. All uses within the Agricultural Zone shall also comply with the general requirements in Article III of the Zoning Ordinance. Zoning Ordinance §201.13.

5. More than one principal use may be erected on a single lot provided that all lot and yard requirements, standards, and other requirements of this Ordinance shall be met for each structure, as though it were on an individual lot. Zoning Ordinance §307.

6. Off-street parking regulations for assembly purposes are based on one off-street parking

space for each 50 square feet of gross floor area used for assembly purposes. Zoning Ordinance §311.5.

7. Industrial, manufacturing, and similar uses are required to provide 1.25 spaces per employee on the largest shift. Zoning Ordinance §311.5.

8. It is not possible to determine the precise amount of off-street parking required for the existing uses on the Property with the limited information Applicant provided at the hearing.

9. Off-street parking is not permitted as a principal use within the Agricultural Zone. Zoning Ordinance §201.

10. For off-street parking to be considered an accessory use, it must be customarily incidental and subordinate to the principal use of the land or principal building and located on the same lot with such principal use or building. Zoning Ordinance §112.

11. The off-street parking proposed on the lot to the north of the Property is not a permitted accessory use and requires a use variance.

12. The Zoning Ordinance defines the term hotel/motel as a “facility offering transient lodging accommodations to the general public and providing additional services such as restaurants, meeting rooms, and recreational facilities.”

13. A hotel/motel is authorized within the Mixed Use Zone. Zoning Ordinance §208.2.20.

14. Applicant’s existing use of an event venue with associated short term rental units fits within the definition of hotel/motel.

15. Section 107 of the Zoning Ordinance authorizes the Zoning Hearing Board to grant a special exception for a use not provided for if the use “is not permitted in any other Zone” within the Zoning Ordinance.

16. Applicant’s existing use of an event venue with associated short term rental units is permitted within the Mixed Use Zone.

17. Applicant has not met the specific requirements of Section 107 of the Zoning Ordinance to be entitled to a special exception as a use not provided for.

18. Applicant has failed to sustain his burden of proof in establishing the right to a special exception pursuant to Section 401 for the adaptive re-use of existing agricultural buildings or his alternative request of a special exception pursuant to Section 107 for a use not provided for to allow a retreat center use with VRBOs.

III. DECISION

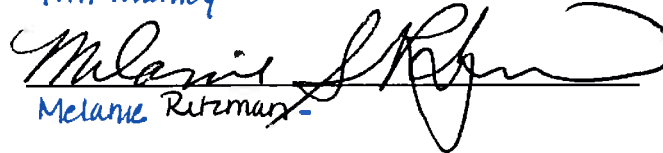
Based on the testimony produced at the hearing, the Board hereby denies the request of Mervin J. Beiler for a special exception pursuant to Section 401 of the Sadsbury Township Zoning Ordinance to allow the adaptive re-use of existing agricultural buildings to allow a retreat center use and VRBOs. The Board also denies Applicant’s alternative request for a special exception pursuant to Section 107 for a use not provided for to allow the retreat center use and VRBOs.

This written decision has been issued this 24th day of March, 2022, and confirms the oral decision rendered by the Board on March 16, 2022.

Sadsbury Township Zoning Hearing Board



Frank Leslie - Chairman

Tim Manley -


Melanie Ritzman -