IN THE MATTER OF	**: BEFORE THE FAIRVIEW TOWNSHIP**
THE APPLICATION OF	**: ZONING HEARING BOARD**
BRUNO BERTIN AND	**: YORK COUNTY, PENNSYLVANIA**
ROBIN FERRARO	**: DOCKET NO. 2019-06**

DECISION GRANTING A SPECIAL EXCEPTION PURSUANT TO SECTION 300-4 OF THE FAIRVIEW TOWNSHIP ZONING ORDINANCE

The Applicants applied for a special exception pursuant to Section 300-4 of the Fairview Township Zoning Ordinance in order to use the property for wine manufacturing, tasting, and sales and to host social gatherings at 101 Spanglers Mill Road, New Cumberland, PA 17070, which is located in the Residential Mixed-Use (RMU) Zoning District. A hearing on the application was held on October 17, 2019, at 6:30 p.m., at the Fairview Township Municipal Building, 599 Lewisberry Road, New Cumberland, PA 17070.

FINDINGS OF FACT

1. The Applicants are Bruno Bertin and Robin Ferraro both of 101 Spanglers Mill Road, New Cumberland, PA 17070. Bruno Bertin and Robin Ferraro are the legal owners of this 12.11-acre parcel which is the subject of the application.

2. Notice of the hearing was properly advertised; the property was properly posted; and all neighboring property owners required to be notified of the hearing were notified in accordance with the Township Ordinance and the Pennsylvania Municipalities Planning Code.

3. The Applicants were represented by John Andrews, Esquire, of *McNees, Wallace & Nurick, LLC,* 100 Pine Street, Harrisburg, PA 17101. Robin Ferraro testified for the Applicants, providing written materials, pictures and a site plan which were entered as Applicants' Exhibits A-1 through A-11.

4. The Applicants are requesting a special exception pursuant to Section 300-4 of The Fairview Township Zoning Ordinance (Interpretation and Uses Otherwise Not Provided For) for the purpose of using the property for wine manufacturing, tasting and sales, as well as to host social gatherings.

5. There are three (3) existing structures on the property that will be specifically utilized for the winery. Grapevines would be planted and grown in four (4) different locations on the property. The largest building near the center of the property is the proposed event and wine production facility. A smaller building adjacent to the proposed event / wine production facility would be used for hosting social events. A third, smaller building to the northwest of the proposed event / wine production facility would be used as guest quarters for couples who wish to have their wedding ceremony on-site. *See Applicants' Exhibit "A-1"*.

6. The winery would operate under a "limited winery" license issued by the Pennsylvania Liquor Control Board ("PLCB"). Issuance of the license requires, *inter alia*, local governmental approval of the business. A limited winery license allows the licensee to sell the wine to other licensees, to individuals, on premises or by mail, phone, and internet. It would also allow the licensee to provide free sampling and food sales on the premises. 47 P.S. §5-505.2 sets out the terms and conditions related to "limited wineries".

7. Several residents and neighboring property owners on Limekiln Road and Pine Oak Drive appeared and testified. There was no opposition from the neighbors to the proposed limited winery, as such. The neighboring property owners were interested in traffic access to the property and possible noise from large events.

8. Stephen M. Waller, Codes Administration Director for Fairview Township, testified that the Applicants' property is in the RMU district of the township and that the

proposed use is not expressly provided for in the Zoning Ordinance. He noted that future development is proposed for the tract to the South and that there is an agreement to connect the subject premises to the public sewer when it is provided via the adjacent development.

9. Because a limited winery is neither permitted nor prohibited under the Ordinance, the Applicants demonstrated that the proposed limited winery use meets the requirements of the Ordinance for a Section 300-4 special exception which provides that the proposed use may be granted a special exception if it is "in general conformity" with the Fairview Township Comprehensive Plan and meets the criteria set out in Section 300-4.B(2)-(7) of the Ordinance. The limited winery operation at this location will be equal to or less intensive than other permitted uses which could be made of the property under the Ordinance. Furthermore, the requirements for all special exceptions, in Section 300-99 of the Ordinance were met, subject to the conditions set hereafter by the Board.

10. The hours of operation and the possibility of noise from outdoor events are issues that should be considered. Unless reasonably limited, the hours of operation could have a negative impact on the residential community. Therefore, the hours of operation should be limited as follows: Noon to 10:00 p.m. Monday through Saturday and Noon to 8:00 p.m. on Sundays. There should be no outdoor, amplified music in connection with any social events. Currently, the access from the property to Spanglers Mill Road is inadequate and unsafe for use under this special exception use. Also, public sewer is necessary for the proposed use. Therefore, there should be no events held at the location until the premises is connected to public sewer and a new access road to the public street is available. Both the public sewer and the new access to the public street will be provided at the time of and in connection with the subdivision development to occur on the property immediately to the South.

CONCLUSIONS

1. The Applicants have the burden of establishing entitlement to the requested special exception and demonstrating that all requirements of the Fairview Township Zoning Ordinance are met.

2. On the basis of the testimony and documentary evidence presented, the Board finds and concludes: (1) that the operation of a limited winery, which is not expressly permitted nor prohibited in any zoning district in the township, is a "use not otherwise provided for" which should be allowed as a special exception in the Residential Mixed-Use (RMU) Zoning District; and (2) the Applicants have met all the requirements for a special exception under Fairview Township Zoning Ordinances Sections 300-4 and 300-99 and thereby established their entitlement to a special exception for a limited winery at 101 Spanglers Mill Road, New Cumberland, PA 17070, subject to the following conditions:

A. The hours of operation shall be Noon to 10:00 p.m., Monday through Saturday; and Noon to 8:00 p.m., on Sunday;

B. No outdoor, amplified concerts or musical events shall be held; and

C. There shall be no events held at the location until the premises is connected to public sewer and to a new access road to the public street, both of which can be provided at the time of and in connection with the subdivision development to\ occur on the property immediately to the South.

DECISION

On the basis of the foregoing findings and conclusions and on the basis of all the testimony and evidence presented to the Board at the hearing, the request for a special exception for the purpose of operating a limited winery at 101 Spanglers Mill Road, New Cumberland, PA 17070, is granted subject to the following conditions:

A. The hours of operation shall be Noon to 10:00 p.m., Monday through Saturday; and Noon to 8:00 p.m., on Sunday;

B. No outdoor, amplified concerts or musical events shall be held; and

C. There shall be no events held at the location until the premises is connected to public sewer and to a new access road to the public street, both of which can be provided at the time of and in connection with the subdivision development to occur on the property immediately to the South.

The Application was approved as stated upon the motion of Mr. Perry, seconded by Mr. Bashore, and adopted 3-0 by the Board Members present and voting.

FAIRVIEW TOWNSHIP ZONING HEARING BOARD

Dated: November 21, 2019

By: _____
Timothy C. Mader, Chairman

Distribution: John Andrews, Esquire, *for Applicant*

Established 1803
FAIRVIEW TOWNSHIP

BOARD of SUPERVISORS
Dr. Larry Cox, *Chairman*
Korey Leslie, *Vice-Chairman*
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MANAGER
Donald F. Martin, III

The Fairview Township Zoning Hearing Board will hold a Public Hearing on Thursday, **October 17, 2019**, at 6:30 p.m., at the Fairview Township Municipal Building, 599 Lewisberry Road, New Cumberland, PA 17070, to discuss the following:

Docket No. 2019-06: Bruno Bertin and Robin Ferraro, 101 Spanglers Mill Road, New Cumberland, PA 17070. The Applicants are requesting a Special Exception to the Fairview Township Zoning Ordinance, §300-4.B – Uses not otherwise provided for. The Applicants are proposing to alter existing structures on the property for use as a winery which will include an accessory tasting room and an event facility with guest accommodations. The property is located at 101 Spanglers Mill Road, New Cumberland, PA 17070, and is in the Residential Mixed Use District.

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2019-06

FAIRVIEW TOWNSHIP

ZONING HEARING BOARD APPLICATION

YORK COUNTY, PENNSYLVANIA

❖ *Part 1:*

APPLICANT(S)/EQUITABLE OWNER
Name: Bruno Bertin & Robin Ferraro
Address: 101 Spanglers Mill Road
New Cumberland, PA 17070
Phone: 540-830-8406

EXISTING OWNER OF PROPERTY:
Name: Bruno Bertin & Robin Ferraro
Address: 101 Spanglers Mill Road
New Cumberland, PA 17070

PROPERTY LOCATION:
Address: 101 Spanglers Mill Road

Lot Size: 12.11 acres
Date Purchased: 1/16/19
Location: Western side of Spanglers Mill Road along Yellow Breeches Creek

PRESENT USE OF PROPERTY:
Single-family detached dwelling

EXISTING ZONE: RMU - Residential Mixed Use SRCO and FPO Districts

❖ *Part 2:*

ZONING REQUEST (Identification of the applicable request(s)):

( ) SUBSTANTIVE CHALLENGE

(X) SPECIAL EXCEPTION

( ) VARIANCE

( ) APPEAL OF THE ZONING OFFICERS DECISION

SECTION(S) OF ZONING ORDINANCE WHICH APPLY TO THIS REQUEST - Please identify the specific section(s) of the Zoning Ordinance involved in the request):

300-4.B uses not provided for - see attached narrative.

❖ *Part 3:*

DESCRIPTION OF REQUEST:

See attached narrative.

SPECIAL EXCEPTION NARRATIVE
BRUNO BERTIN & ROBIN FERRARO
101 SPANGLERS MILL ROAD

I. INTRODUCTION

Bruno Bertin and Robin Ferraro (the "Applicant") are the legal owners of an approximately 12.11-acre lot along the western side of Spanglers Mill Road with an address of 101 Spanglers Mill Road and identified as Tax Parcel No. 27000RE00290000000 (the "Property") in Fairview Township (the "Township"). The Property is in the Township's Residential Mixed Use District (the "RMU District").[1] The Applicant currently resides in the single-family detached home that is located on the Property. The Applicant intends on using the Property as a winery with an accessory tasting room and space for hosting events such as weddings (collectively, the "Winery"). Wineries that include an accessory tasting room and event space are not permitted in any zoning district in the Township. Pursuant to Section 300-4.B of the Township's Zoning Ordinance (the "Zoning Ordinance"), uses not provided for in any zoning district may be permitted by special exception. The Applicant submits this Narrative as part of its request for special exception approval for the Winery.

II. BACKGROUND

The Property is a beautiful streamside plot of land located along the banks of the Yellow Breeches Creek. The soil is conducive to the growing of grapes to produce wine. The rows of grape vines and the Yellow Breeches will combine to create a perfect setting for the occasional event such as a wedding. Enclosed with the application is a site plan depicting the Property (the "Plan").

As depicted on the Plan, grape vines would be planted and grow in rows at four different locations on the Property. The grapes would be pressed and produced into wine in the existing barn that is identified as Building B on the Plan. The existing building marked as Building C on the Plan would be used as a tasting room with occasional hours for tasting of the wine. Small plates of food would be served with the wine tastings, but this would not constitute a restaurant. Both the wine and small plates of food would be sold for consumption. The tasting room would operate no later than 10:00 p.m. Monday thru Saturday and no later than 8:00 p.m. on Sunday. The Applicant will need to obtain a license from the Pennsylvania Liquor Control Board (the "PLCB") for the Winery and tasting room operations. Both Building B and Building C already have plumbing and electricity service.

The Applicant also intends to use the Property to host occasional events, such as weddings. The existing barn marked as Building B on the Plan will be used as an event space. There is space both upstairs and downstairs in the barn for hosting an event. The wine production operations would occur in separate space downstairs in the barn. Parking for events would be provided in the areas shaded on the Plan. Finally, the existing guest

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[1] Portions of the Property also are located in the Township's SCRO – Scenic River Corridor Overlay District and FPO – Floodplain Overlay District.

quarters that is marked as Building A on the Plan would be used as overnight accommodations for any couple that is married on site for the night of the wedding. There is one bedroom available for guests. The guest accommodations would not otherwise be available to the public.

III. REQUEST FOR RELIEF – SPECIAL EXCEPTION

Pursuant to Section 300-4.B of the Zoning Ordinance, "heavy industrial" uses are permitted by special exception in the RMU Zone. The Applicant requests a special exception to permit the proposed Winery on the Property in the RMU Zone.

A. SPECIFIC REQUIREMENTS FOR USES NOT PROVIDED FOR (§ 300-4.B)

The specific requirements that apply to "uses not provided for" are set forth in Section 300-4.B of the Zoning Ordinance. Those requirements are reproduced (or summarized) in bold below. A brief discussion follows each requirement.

Section 300-4.B(1)	**The proposed use is in general conformity with the most recent version of the Fairview Township Comprehensive Plan, and/or other applicable plans adopted by Fairview Township, and in harmony with the zoning district, neighborhood, and area in which it is proposed.**

The proposed Winery is in conformance with the Township's Comprehensive Plan and is in harmony with the RMU District, neighborhood and area around the Property. The proposed Winery is an agricultural use with small-scale accessory commercial aspects (e.g. the tasting room and event center). The RMU District permits agricultural uses. The RMU District also permits numerous commercial uses, including food service, restaurants and retail businesses. Finally, the RMU District permits bed and breakfast operations as an accessory use. All of these principal uses are permitted in the RMU District. The Zoning Ordinance simply does not currently envision all the uses together as proposed for the Winery.

Section 300-4.B(2)	**The proposed use is:**
Section 300-4.B(2)(a)	**Similar to and compatible with the permitted uses in the zoning district in which the subject property is located;**

See above.

Section 300-4.B(2)(b)	**Not permitted in any other zoning district under the terms of this chapter; and**

Wineries, including those with accessory uses of tasting rooms and event space, are not permitted in any zoning district in the Township.

Section 300-4.B(2)(c)

In no way conflicting with the general purposes and intent of this chapter or the zoning district in which the subject property is located.

The purpose of the RMU District is to "predominately include[] moderate-density residential with a compatible mixture of smaller, less intense commercial businesses and related uses." That is what is proposed for the Winery on the Property – the existing single-family detached dwelling together with a small, less intense commercial business.

Section 300-4.B(3)

The external impacts associated with the proposed use would be equal to or less intensive than external impacts associated with other uses that are permitted in the zoning district in which the subject property is located.

The Winery will not have any external impacts more intensive than other uses permitted in the RMU District. The agricultural operations of growing grapes is low intensive in terms of noise and odor. The tasting room and guest accommodations will not create any external impacts. The only potential external impacts from the Winery would be noise associated with events held in the barn (i.e. Building B on the Plan). It is expected that music will be played at events hosted at the Winery. However, the barn is situated in the middle of the 12-acre tract and is isolated from adjacent properties. The nearest residence to the barn (other than the Applicant's residence) is approximately 1,000 feet away on the other side of Spanglers Mill Road. The Applicant does not expect noise from the events to have any detrimental impact on the neighborhood.

Section 300-4.B(4)

The location of the proposed use would not endanger the public health and safety, and the use will not deteriorate the environment or generate nuisance conditions such as traffic congestion, noise, dust, smoke, glare or vibration.

The Winery will not endanger the public health or safety. The Winery and tasting room will be operated in accordance with a PLCB-issued license and PLCB regulations. Moreover, the Winery will deteriorate the environment or generate nuisance conditions such as traffic congestion, noise, dust, smoke, glare or vibration. In fact, there will not be any dust, smoke, glare or vibration associated with the Winery. Any potential noise will come only from the occasional events.

Section 300-4.B(5)

The proposed use shall 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.

As discussed above, the Applicant will secure a license from the PLCB and comply with the license and all PLCB regulations. Moreover, the Applicant will comply with all federal, state and Township code and licensing requirements for the Winery.

Section 300-4.B(6) **The proposed use would meet the standards that apply under Article XII of this chapter relating to special exceptions.**

See Section III.B below.

Section 300-4.B(7) **The applicant shall provide:**

(a) The information required in Article VII of this chapter relating to hours of operation and management plan. This information is required for both residential and nonresidential uses.

(b) A detailed description of how the proposed use and development complies with Subsection B(1) through (6) of this subsection.

(c) Plot/site plans required in Article XII of this chapter relating to applications for zoning permits.

(d) A schematic architectural drawing of the principal building(s) front facade(s).

As required in Article VII, the following information is provided:

Address - 101 Spanglers Mill Road, New Cumberland, PA 17070; Tax Parcel No. 27000RE00290000000

Use – Winery with accessory tasting room, event space and guest accommodations.

Contact Information – Bruno Bertin & Robin Ferraro,

On-site Activities and Operations – Agricultural equipment used for planting and growing grapes; grape press and aging containers; materials for bottling of wine; food preparation and service equipment. Wine will be produced, served and sold on site.

Advertising – Will be conducted through website, promotions, farmers markets, social media, and other standard means. Any signage will conform to Zoning Ordinance standards.

Number of Employees and Maximum Occupancy – One to ten total employees. Maximum occupancy of the barn event space will be determined by code official.

Gross Floor Area of Buildings – Building A is approximately 540 square feet; Building B is approximately 5,500 square feet; and Building C is approximately 900 square feet.

Estimated Amount of Sales – To be determined.

Adjacent Land Uses – Agricultural and Residential

Intended Market/Service Area – Central Pennsylvania

Vehicles/Traffic Expected – Occasional box truck delivery of materials. Otherwise, customers will use passenger vehicles. Sporadic traffic expected for the regular tasting room hours. Slightly more traffic expected for the occasional events.

Hours and Days of Operation – Tasting room will be open from 11:00 a.m. until no later than 10:00 p.m. Monday thru Saturday and from 11:00 a.m. until no later than 8:00 p.m. on Sundays. The event space will be used only on occasions as scheduled and will not be used past 11:00 p.m. The guest accommodations will be used only in conjunction with the event space.

Disposal of Materials – Typical trash and rubbish materials will be disposed of through normal trash service. There are no hazardous or unusual trash materials to be disposed of.

Possible Impacts – Addressed above in response to Section 300-4.B(3) and Section 300-4.B(4).

As discussed above, the Plan is enclosed with the application and depicts the proposed Winery improvements on the Property. Pictures or architectural drawings of Building A, Building B and Building C will be provided at the hearing. The responses to the requirements of Section 300-4.B(1)-(6) are set forth above.

B. GENERAL STANDARDS FOR SPECIAL EXCEPTIONS (§ 300-99.E(3)(b))

The proposed Winery complies with all the general standards for special exceptions as set forth in Section 300-993E(3)(b) of the Zoning Ordinance. As discussed more specifically above, the Winery is consistent with the purpose of the RNMU District, which is to permit agricultural, residential and commercial uses together. The Winery also is compatible with the other uses permitted in the RMU District. In fact, if separated out, each of the use components of the Winery (e.g. agricultural, retail sales, food service and bed and breakfast) are permitted in the RMU District. The Winery will not detract from the use and enjoyment of nearby properties or substantially change the character of the neighborhood. The Winery can be adequately served by public facilities. The Winery will not include any improvements within the Floodplain Overlay District. The Winery complies with all of the requirements in Section 300-4.B of the Zoning Ordinance. Finally, the Winery will not impair the integrity of the Township's Comprehensive Plan.

IV. CONCLUSION

Finally, the fact that a use is permitted as a special exception evidences a legislative decision that the particular type of use (in this case, the proposed "heavy industrial" use) is consistent with the zoning plan and presumptively consistent with the health, safety and welfare of the community. *Id.*; *Northampton Area Sch. Dist. v. East Allen Twp. Bd. of Supervisors*, 824 A.2d 372, 376 (Pa. Commw. Ct. 2003); *Abbey v. Zoning Hearing Bd. of East Stroudsburg*, 559 A.2d 107, 109 (Pa. Commw. Ct. 1989); *Warren Cty. Probation Ass'n v. Warren Cty. Zoning Hearing Bd.*, 414 A.2d 398, 399 (Pa. Commw. Ct. 1980); *Foster Grading Co. v. Venango Twp. Zoning Hearing Bd.*, 412 A.2d 647, 629 (Pa. Commw. Ct. 1980).

Therefore, a special exception application that satisfies objective standards of the Zoning Ordinance must be granted unless opponents present sufficient evidence that the use will generate adverse impacts not normally generated by this type of use and that those impacts will pose a substantial threat to the health and safety of the community. *Greaton Props., Inc. v. Lower Merion Twp.*, 796 A.2d 1038, 1045 (Pa. Commw. Ct. 2002); *In re Cutler Group, Inc.*, 880 A.2d 39, 43 (Pa. Commw. Ct. 2003). Such evidence cannot consist of mere speculation, bald assertions, or personal opinions and perceptions of the effect of the use on the community. *Id.* Rather, opponents must demonstrate that there is a *high degree of probability* that the use will cause a substantial harm that is not normally associated with the proposed use. *Id.*; *Ruddy v. Lower Southampton Twp. Zoning Hearing Bd.*, 669 A.2d 1051, 1057 (Pa. Commw. Ct. 1995).

For the foregoing reasons, the Applicant respectfully requests that the Zoning Hearing Board grant the requested special exception.

NO.	DATE	DESCRIPTION	BY

DESIGN : SRR
DRAWN : SRR
CHECKED : LCB
DATE : 9/12/2019

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APPLICATION FOR ZONING VARIANCE
CONCEPTUAL SITE PLAN

BERTIN - 101 SPANGLERS MILL RD

FAIRVIEW TOWNSHIP, YORK COUNTY, PENNSYLVANIA

PROJECT NO. 319567
SURVEY BOOK :
SCALE : 1" = 50'
SHEET 1 of 1