

January 22, 2021

Delaware Township Zoning Board of Adjustment (via e-mail)  
P.O. Box 500  
Sergeantsville, NJ 08557



**Re: Brant Switzler  
Block 55, Lot 2 – 34 Sandy Ridge Road  
D(1) Use Variance Relief  
A-1 Agricultural/Residential Zone**

Dear Board Members:

Pursuant to the Board's request, I have reviewed the above captioned matter for compliance with the Land Use Ordinance of the Township of Delaware. The material reviewed, as supplied by the applicant, included the following:

1. Delaware Township Board of Adjustment Application including checklists dated October 1, 2020.
2. Preliminary Site Plan and Minor Subdivision, prepared by James A. Hill, PE of Frey Engineering, dated July 2020 consisting of 6 sheets.
3. Conceptual Planting Plan and Photo Location Map, prepared by Jim Mazzucco, LLC, of Bosenburg Landscape Architecture, dated July 17, 2020 consisting of 2 sheets.
4. Project Site Design and Drainage Report, prepared by James A. Hill, PE of Frey Engineering, dated October 19, 2020.

Based on the information provided with the application, the applicant seeks use variance approval for a tennis training facility including the construction of a new building, parking for 45 vehicles, a dumpster enclosure, stormwater management facilities and landscaping. Access to the facility would be from a new 24' wide driveway proposed from Sandy Ridge Road on the west side of the lot. The preliminary site plan depicts a 140'x120' structure totaling 16,800 square feet that will include 2 tennis courts, a gym/viewing area and bathrooms.

While no architectural plans were provided, the bulk table on sheet C-1 of the preliminary site plan indicates the building proposed is 40' tall. We should note that since the height of the building exceeds by 10% the maximum permitted height of 35' in the A-1 Agricultural/Residential District, the applicant will require a d(6) use variance in accordance with the requirements of the New Jersey Municipal Land Use Law. While not part of the current application, the nature and height of the structure is certainly something the Board should take into account in consideration of the negative criteria for the requested d(1) use variance. This is discussed later in this report in detail.

As noted on the plans, the applicant intends to subdivide Lot 2 into two (2) lots, one lot totaling 11.839 acres to contain the proposed tennis training facility and the other totaling 17.846 acres, with no development or disturbance proposed. Since the applicant is only seeking the use variance at this time, the subdivision shown should be considered conceptual. For future reference, should the Board approve the use variance requested, the subdivision as proposed may necessitate relief from the requirements of the New Jersey Municipal Land Use Law, 40:55D-35, which states that all building lots are to abut a street. In addition to the requirements of the Municipal Land Use Law, §230-12K in the Land Use Ordinance states “No building or use will be permitted on a lot unless that lot has frontage on a public street, a street for which improvements satisfactory to the Township Engineer have been guaranteed by either cash or bond, or a private accessway that has been suitably improved in accordance with Township standards.” This relief is only necessary should the applicant wish to seek a building permit for the erection of any building or structure on the lot, which can be addressed at the time minor subdivision approval is sought.

The subject property, known as Block 55, Lot 2 with a street address of 34 Sandy Ridge Road is located just west of Sergeantsville Road (CR 523) to the east of Sandy Ridge – Mt. Airy Road (CR 605). Totalling just over 30 acres, the site stretches south approximately 1,991’ from Sandy Ridge Road with approximately 685’ of frontage on Sandy Ridge Road. According to the notes on the plan, there are no streams or wetlands within 300’ of the subject property (per NJ Geoweb), no floodplains and no slopes greater than 15% on the property or within 200’. The map included at the end of this report shows a recent aerial photograph of the site, the outline of existing Lot 2 and surrounding uses, which are all residential single-family detached homes. Also depicted are the approximate area of proposed development and the approximate location of the proposed subdivision line.

### **Zoning**

The subject property is located in the A-1 Agricultural Residential Zone, which permits the following uses:

(1) Permitted uses. Any of the following uses shall be permitted:

- (a) Agriculture or horticulture or agricultural or horticultural uses are permitted uses in the A-1 Zone, including single-family residences and accessory buildings for housing of farm labor that conform to federal and state laws and regulations and the requirements of Subsections C and D, herein, housing for animals, and selling and storing farm products and storing farm equipment.
- (b) Single-family detached dwelling as a principal structure.
- (c) Single-family detached dwellings within a lot size averaging subdivision.
- (d) Flag lot subdivisions [§ 230-16E(6)].
- (e) Lots on a private accessway [§ 230-16E(7)].
- (f) Accessory buildings clearly incidental to agricultural and residential uses, including:
  - [1] Private garage, not to exceed three spaces per dwelling, except for agricultural use.
  - [2] Home occupations meeting the standards set forth in § 230-104 of this chapter.
  - [3] Swimming pools.
  - [4] Tennis courts.

- [5] Signs subject to the provisions of § 230-108 of this chapter.
- [6] Fences and hedges subject to the provisions of § 230-103 of this chapter.
- [7] Other customary accessory structures and uses that are incidental and subordinate to the principal residential and/or agricultural structure and use.
- [8] Roof-mounted or ground-mounted minor solar or photovoltaic energy facilities and structures, provided the requirements of § 230-12X are met.

- (g) PWSFs as permitted at § 230-13V(3).
- (h) Second principal dwelling on a tract of 30 acres or more [§ 230-16E(8)].
- (i) Hamlets, subject to the provisions of § 230-27 of this chapter.
- (j) Open lands subdivision, subject to the provisions of § 230-16E(9) of this chapter.
- (k) Municipal or state recreational or park use.
- (l) Noncontiguous cluster option, subject to the provisions of § 230-29 of this chapter.

(2) Conditional uses. The following nonagricultural uses shall be permitted as conditional uses subject to approval by the Planning Board as described in Article IV of this chapter.

- (a) Bed-and-breakfast establishments.
- (b) Caretaker's and guest quarters as defined in this chapter. Caretaker's and guest quarters shall meet the standards set forth in § 230-31 of this chapter.
- (c) Conversion of existing accessory buildings into dwelling units.
- (d) Churches, synagogues, parish houses and similar religious uses, provided they are near a hamlet, village, or town center.
- (e) Government buildings and services that are necessary to the health, safety, convenience and general welfare of the inhabitants of the Township.
- (f) Public utility installations.
- (g) ECHO (elder cottage housing opportunity) units.
- (h) Farm rental units on large lots.
- (i) Public and private schools.
- (j) Senior citizen shared housing.
- (k) PWSFs as permitted and regulated at § 230-43.
- (l) Accessory apartments as permitted and regulated a § 230-135.
- (m) Major solar or photovoltaic energy facilities and structures, provided the requirements of § 230-44 are met.

While the ordinance permits “tennis courts” as an accessory use in the A-1 Zone, this is only as “clearly incidental to agricultural and residential uses”. The commercial nature of the facility proposed and the fact that it will exist on its own lot precludes consideration of the use as incidental, even if agriculture was proposed on the balance of the lot. As the proposed commercial tennis training facility is not among the permitted uses in the zone, a d(1) use variance to permit “a use or principal structure in a district restricted against such use or principal structure” in accordance with the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-70d(1) is required.

### **Use Variance Considerations**

Relative to the use variance sought, the applicant must demonstrate both the positive and

negative criteria. For the positive criteria, the applicant must show that the public welfare is promoted because the site is particularly suited to the proposed use, and that special reasons exist for the grant of the variance. Special reasons are generally derived from the purposes of the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-2. Note that as to the particular suitability of the site, the Court in Price v. Himeji, 214 N.J. 263, 292-292 (2013) clarified that an applicant need not show there are no other viable locations for the use but must rather show the characteristics of the site that make it uniquely suited to the use proposed. As to the negative criteria, the applicant must show the variance can be granted without substantial detriment to the public good, and that it will not substantially impair the intent and purpose of the zone plan and zoning ordinance. The enhanced quality of proof required by the Court in Medici v. BPR Co. must also be addressed. In this regard the applicant must demonstrate, and the Board must specifically find, that the grant of the variance is not inconsistent with the intent and purpose of the zone plan and zoning ordinance, proof that reconciles the governing body's continued omission of the use as among those permitted in the A-1 Agricultural/Residential Zone.

With respect to substantial detriment to the public good, the Board must consider potential impacts to surrounding properties that could result from the grant of a use variance for the proposed tennis training facility. These could include noise and traffic considerations as well as any visual impacts from the proposed improvements. On impact to surrounding properties, the Board should keep in mind the term "substantial detriment". Any application for a use not permitted in a particular zone district is likely to have some impact on surrounding properties. The question is whether that impact rises to the level where it could be considered "substantial", potentially altering the character of the neighborhood in a significant way. Here the Board should consider the following:

- Hours of operation of the facility and the days of the week on which operations will occur
- Frequency of lessons and court usage which in turn relates to the number of vehicles arriving to and departing from the site
- The nature of any lighting proposed, which is not currently detailed on the preliminary site plan
- Proximity of adjacent residential uses and potential visibility of the proposed structure and parking area
- The physical nature of the proposed structure, i.e. building mass, height and design
- Proposed landscape screening intended to address potential negative impacts of the proposed use

As to the intent and purpose of the zone plan and zoning ordinance, the Land Use Ordinance, §230-3 (Purpose), states the following:

*"The fundamental purpose of this chapter is to provide development options that will allow each property owner the reasonable use of the development capability of the land while promoting the permanent dedication of tracts of priority farmland for continuing agricultural use and to preserve and protect sensitive and aesthetic natural resources in accordance with state and county planning policies and to the benefit of the citizens of the State of New Jersey, Hunterdon County, and Delaware Township. This chapter is adopted pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., in order to promote the public health, safety, morals and general welfare; secure safety*

*from fire, flood, panic and other natural and man-made disasters; provide adequate light, air and open space; insure that development does not conflict with the general welfare of neighboring municipalities, the county, and the state as a whole; promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and to the preservation of the environment; encourage the appropriate and effective expenditure of public funds by the coordination of public development with land use policies; provide sufficient space and appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both private and public, according to the respective environmental requirements in order to meet the needs of Delaware Township's citizens; encourage the industrial uses and open space, both private and public, according to the respective environmental requirements in order to meet the needs of Delaware Township's citizens; encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight; promote a desirable visual environment through creative development techniques and good civic design and arrangements; promote the conservation of open space and valuable natural resources and prevent urban sprawl and the degradation of the environment through improper use of land; encourage senior citizen community housing construction consistent with provisions permitting other residential uses of a similar density in the same zoning district; encourage coordination of the various public and private procedures and activities shaping land development to lessen the cost of such development and promote the more efficient use of land; and promote the conservation of energy through the use of planning practices designed to reduce energy consumption and to provide for maximum utilization of renewable energy sources."*

§230-15 of the Land Use Ordinance sets forth general considerations related to both the A-1 and A-2 Zones. Relevant sections for the Board's consideration include the following:

A. Purpose. One of the purposes of the Municipal Land Use Law (N.J.S.A. 40:55D-2g) is "to provide sufficient space in appropriate locations for agricultural uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens."

B. Agricultural designation. The land in the A-1 and A-2 Zones of Delaware Township has been explicitly targeted for preservation in the state, county, and Township master plans. A-1 and A-2-zoned land is designated as "Agricultural" in the State Development and Redevelopment Plan and is included in the "Agricultural Development Areas" identified by the County Agriculture Development Board. In addition, the A-1 and A-2 Zones are intended for future agricultural use in the Hunterdon County Master Plan.

§230-16A also sets forth the specific intent of the A-1 Zone, which is shown below.

General. Development in this zone requires residential usage averaging three-acre-minimum lots. Continuing agricultural and woodland use of land shall be encouraged. More specifically, the intent of the A-1 Zone is:

- (1) To facilitate land use patterns, densities and practices that support local, county and state efforts toward sustaining agriculture;
- (2) To support the continuation of existing and future agricultural operations by limiting opportunities for nonagricultural land use conflicts and nuisance complaints;
- (3) To preserve prime agricultural soils and soils of statewide importance which are inextricably linked to long-term agricultural productivity and whose agricultural value, once lost, is irretrievable;
- (4) To offer diverse land use options, and in so doing, support a variety of agricultural pursuits;
- (5) To provide opportunities for compact development patterns that are a logical extension of existing historic hamlets or similarly configured new hamlets and that result in preservation of farmland and open space;
- (6) To facilitate land use patterns and practices that avoid environmental degradation, which may in turn threaten public and/or ecosystem health;
- (7) To maintain residential densities that ensure the protection of drinking water supplies and quality;
- (8) To ensure adequate recharge areas for new residential lots to protect drinking water supply and quality and provide for future agricultural needs;
- (9) To facilitate land use patterns, densities and practices that retain woodlands; and
- (10) To implement the Land Use Plan Element of the Master Plan.

The 2012 Master Plan Reexamination refined the 28 goals and objectives of the master plan and set forth 32 goals *“to guide future planning and development within the Township of Delaware”*. These goals and objectives are as follows:

#### **Land and Water**

1. To preserve sensitive and aesthetic areas in their natural state and to protect natural resources. In particular, to minimize erosion, minimize depletion and prevent contamination of well water, maintain and improve the water quality of streams and identify critical environmental or scenic areas for special preservation efforts.
2. To identify and encourage the preservation of significant woodlands in the Township.
3. To provide for development location and density that respect environmental limitations.
4. To seek appropriate locations for the establishment of greenways linking areas of environmental and recreational importance.
5. To carefully document the natural resources of Delaware Township.

#### **Agriculture**

6. To encourage the agricultural diversity needed to provide a viable agricultural economy.
7. To foster farmland preservation.
8. To encourage the farm industry.
9. To promote partnerships, leasing or other unique collaborations that would maintain the active farming of preserved farmland.
10. To support on-farm direct marketing facilities, activities and events.

#### **Housing**

11. To provide more varied housing to meet the needs of Township residents.

12. To preserve our historic sites and encourage compatibility of new development with the character of the Township.
13. To site new housing to preserve open space, using mechanisms such as hamlets or villages.
14. To encourage housing infill in areas with presently available infrastructure.

#### **Commerce & Industry**

15. To provide for retail uses to serve the municipality.
16. To provide for limited commercial and light industrial uses that are compatible with the environment of the Township.
17. To encourage commercial enterprises that will support the agricultural economy of the Township.
18. To encourage commercial enterprises in areas that will support them.

#### **Recreation**

19. To encourage the development of recreation facilities that meet the needs of Delaware Township citizens of all ages.
20. To continue the recreational development of the Dilts Farm in a manner that will provide opportunities for the greatest number of residents.
21. To provide for parks and green spaces throughout the Township.

#### **Community**

22. To provide for public safety.
23. To encourage facilities for local groups to meet and work together.
24. To encourage community assistance for those having special needs.
25. To promote excellence in the education of Township students.
26. To promote conservation of energy.

#### **Transportation**

27. To maintain the rural character of Township roads.
28. To carefully site and design new roads to fit in with the existing road structure where appropriate.
29. To provide, in select and suitable locations, traffic calming mechanisms.

#### **Solid Waste**

30. To protect the aesthetic character of the Township and to encourage swift removal of any accumulated solid waste.
31. To promote recycling.

#### **Site Plan Considerations**

While the applicant has submitted a preliminary site plan and minor subdivision plan, they are not seeking specific approval of these at this time. They are however informative as to the ultimate form of development proposed and are useful in determining the potential impact of the proposed tennis training facility on surrounding residential properties. To the extent conditions noted on the site plan and subdivision plans are relevant to the Board's consideration of the use variance sought, we have provided comments below, along with other areas relevant for the Board's consideration.

1. The applicant has not provided architectural drawings with the application materials. While the basic interior components of the proposed building are noted on the site plan,

no elevations or details on the exterior appearance of the structure are provided. The Board should consider whether such information is necessary to better understand the potential visual impact of the proposed commercial structure. As noted previously, the zoning parameters on the site plan note a proposed building height of 40' where 35' is the maximum permitted, which will ultimately require a d(6) height variance.

2. The landscape plan provided is conceptual in nature and does not provide specific species or size of the plant material proposed other than noting evergreen or deciduous trees. While the site cross section on Sheet C-4 of the preliminary site plan appears to depict a berm for the proposed landscape buffer along Sandy Ridge Road, this is not reflected on a grading plan nor on the conceptual landscape plan. Based on the information provided, it is difficult to determine how effective the landscape buffering proposed will be. Aside from the buffer along Sandy Ridge Road, a buffer area is proposed along the driveway serving Lot 2.03 to the south on the east side of the site. It appears this buffer is to address the potential open view from the rear of Lot 2.04 to the east. The drone photos below, taken on January 22<sup>nd</sup>, depict site conditions and views to adjacent residential dwellings on both Sandy Ridge Road immediately across from the site as well as those fronting on Sandy Ridge-Mt. Airy Road (Photo 1). Photos 2 and 3 on page 9 were taken from an elevation 40' above ground level, which represents the proposed height of the structure based on information contained in the site plans.



**Photo 1** - View of adjacent Lot 2.04 to the east of Lot 2.





**Photo 2** - View of homes and existing tree line on Sandy Ridge Road, north of Lot 2.



**Photo 3** - View of lots on Sandy Ridge Road to the northwest of Lot 2.

3. The applicant should provide detailed testimony on the frequency of training and play at the facility. Is the facility intended solely for training or will patrons be able to rent court time and play recreational games? We also note the gym facility on the east side of the

building. The intent of this area should be detailed to determine who is using those particular facilities and what the frequency of use will be. Will patrons be able to visit the site just to utilize the gym?

4. One particular area of concern in this rural residential area is site lighting. As indicated previously, the preliminary site plan does not detail how lighting will be handled. The applicant's engineer should be prepared to address lighting as it has some bearing on consideration of the negative criteria.

I trust the Board will find this information useful in consideration of the matter at hand. We will attend the hearing on January 28<sup>th</sup> and reserve the right to provide additional comment based on the applicant's presentation. Should you wish to discuss this review memo, please feel free to contact me via e-mail ([jkyle@kylemcmanus.com](mailto:jkyle@kylemcmanus.com)) or phone at 609-529-8692.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Kyle", is shown on a light gray background.

James T. Kyle, PP/AICP, Board Planner

attachment

Cc: Kathy Klink, Board Secretary (via e-mail)  
Steven P. Goodell, Esq., Board Attorney (via e-mail)  
Rob O'Brien, PE, Board Engineer (via e-mail)  
Erica Edwards, Esq., applicant's attorney (via e-mail)  
Leah Furey-Bruder, PP/AICP, applicant's planner (via e-mail)  
James A. Hill, PE, applicant's engineer/planner (via e-mail)



# Aerial Photo and Tax Parcel Basemap

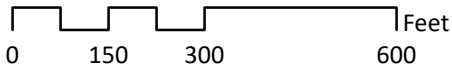
Block 55, Lot 2  
A Portion of Delaware Township  
Hunterdon County, New Jersey

Map Prepared January 21, 2021

## Legend

 Block 55, Lot 2

Map Scale = 1:3,600  
or 1"= 300'



Map Prepared by:  
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**Data Sources:**  
NJ Office of Information Technology, Office of Geographic  
Information Systems, ESRI World Imagery

POLICY  
PLANNING  
DESIGN



Source: Esri, i-cubed, USDA, USGS, AEX, GeoEye, Getmapping, Aerogrid, IGN, IGP, and the GIS User Community