



OPEN SPACES CAPE MAY COUNTY

Will Morey, Freeholder

Leslie L. Gimeno, PP, AICP, Planning Director

Barbara Ernst, Division Director



August 1, 2023

Michael A. & Robin A. Halpern

██████████
Marmora, New Jersey 08223

Ref: Upper Township
Block 723, Lot 37
5.208 Acres

Dear Mr. and Mrs. Michael Halpern:

Attached please find a copy of adopted and approved resolution CADB 2-2023. Should you need any other information, please do not hesitate to call.

Very truly yours,

Barbara M. Ernst

BME/bme

Enc.

Cc: Jeffrey R. Lindsay, Esq. County Counsel
Jon D. Batastini, Esq. Counsel CADB
Frank L. Corrado, Esq.
Richard M. King, Esq.
Colin G. Bell, Esq.
Brian Smith, Esq. SADC
Joanne R. Herron, Clerk Township of Upper

RESOLUTION CADB 2-2023

**RESOLUTION OF THE CAPE MAY COUNTY AGRICULTURE DEVELOPMENT
BOARD GRANTING A SITE-SPECIFIC AGRICULTURAL MANAGEMENT PRACTICE
FOR OCEAN CITY WINERY**

WHEREAS, pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1, *et seq.* and State Agriculture Development Committee regulations, N.J.A.C. 2:76-2.3, a commercial farm owner or operator may make a request to the County Agriculture Development Board (hereinafter "Board") to determine if his or her operation constitutes a generally accepted agricultural management practice; and,

WHEREAS, on July 1, 2021, Michael and Robin Halpern (the "Applicants"), owners and operators of the farm located at [REDACTED], Cape May County (the "Farm"), Block 723, Lot 37 on the most recent Tax map for the Township of Upper, County of Cape May, made a request in writing to the Board for the development of a site-specific agriculture management practice (hereinafter, "AMP") for the operation of a winery; and,

WHEREAS, on September 20, 2021, pursuant to N.J.A.C. 2:76-2.3(c), the Board advised in writing the State Agriculture Development Committee and Upper Township of the Halperns' request; and,

WHEREAS, in with their application, pursuant to N.J.A.C. 2:76-2.3(b), the Applicants provided the Board with documentation to support the claim that their agricultural operation is a commercial farm as defined by N.J.S.A. 4:1-C-3 and N.J.A.C. 2:76-2.1, including a commercial farm certification and supporting documentation; and,

WHEREAS, on October 12, 2021, some of the Board members conducted a site inspection of the Farm; and,

WHEREAS, on October 14, 2021, at its regular meeting, the Board was presented with the findings of the site inspection; and,

WHEREAS, on October 14, 2021, the Applicants presented a proposal for a site-specific AMP ("SSAMP") for the Farm; and,

WHEREAS, the Board sought the assistance of the Rutgers Cooperative Extension, and the Atlantic and Cape May County soil conservation district in the determination of generally accepted agriculture management practices and standards relating to wineries; and

WHEREAS, N.J.S.A. 4:1C-9 states in pertinent part:

Notwithstanding the provisions of any municipal or county ordinance, resolution or regulation to the contrary, the owner or operator of a commercial farm, located in an area in which, as of December 31, 1997, or thereafter, agriculture is a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan, or which a commercial farm is in operation as of the effective date of P.L. 1998, c. 48 (C:4:1C-10.1 et. al.), and the operation of which conforms to agricultural management practices recommended by the committee and adopted pursuant to the provisions of the "Administrative Procedures Act," P.L. 1968, c. 410 (C.52: 14B-1 et. seq.), or whose specific operation or practice has been determined by the appropriate county board, or in a county where no county board exists, the committee, to constitute a generally accepted agricultural operation or practice, and all relevant federal or State statutes or rules and regulations adopted pursuant thereto, and which does not pose a direct threat to public health and safety may

- a. Produce agricultural and horticultural crops, trees, and other commodities....
- b. Process and package the agricultural output of the commercial farm
- ...
- e. Control pests, predators and diseases of plants and animals

WHEREAS, N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3 defines a commercial farm as either

(1) A farm management unit of no less than five acres producing agricultural or horticultural products worth \$2,500 or more annually, and satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, or

(2) a farm management unit less than five acres, producing agricultural or horticultural products worth \$50,000 or more annually and otherwise satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964; and

WHEREAS, on October 14, 2021, the Board considered the testimony presented by the Applicants and Vincent Orlando, P.E., P.P. on behalf of the Applicants in support of the proposed site plan and SSAMP for the Farm, as well as from officials from Upper Township in opposition thereto and numerous members of the public during a public hearing,

WHEREAS, the Board considered and reviewed the following exhibits entered into evidence during the public hearing:

1. Exhibit A – January 4, 2021 Farm Area Plan and Survey by Stephen C. Martinelli
2. Exhibit B – June 4, 2021 Site Plan by Vincent C. Orlando, P.E., P.P.
3. Exhibit C – October 31, 2005 Deed or [REDACTED]
4. Exhibit D – July 22, 2005 Deed of Easement
5. Exhibit E – Historical Financial and Taxation Documents
6. Exhibit F – July 11, 2018 United States Department of Agriculture Conservation Plan
7. Exhibit G – June 11, 2021 Cape Atlantic Conservation District Conservation Plan
8. Exhibit H – November 6, 2019 Letter from Upper Township
9. Exhibit I – September 2014 SADC Presentation “Agricultural Management Practice” (AMP) for “On Farm Directing Marketing” (OFDM)
10. Exhibit J – June 27, 2013 Resolution of the Gloucester County Agriculture Development Board
11. Exhibit K – October 2, 2013 Resolution of the Monmouth County Agriculture Development Board
12. Exhibit L – Rutgers Agricultural Experiment Station “2019 Commercial Grape Pest Control Recommendations for New Jersey”
13. Exhibit M – Applicants’ Pesticide Licenses and Certificates
14. Exhibit N – New Jersey Department of Agriculture “New Jersey Wine Industry”
15. Exhibit O – 2017 HEL Study for [REDACTED]
16. Exhibit P – Upper Township Tax Map Sheet for [REDACTED]
17. Exhibit Q – United States Department of Agriculture Land Plot of [REDACTED]

18. Exhibit R – Upper Township Demolition Approvals
19. Exhibit S – Certificate of Occupancy for Existing Pole Barn;
20. Exhibit T - Revised Site Plan
21. Exhibit U - Revised SSAMPs
22. Exhibit V – DEP Findings for Violations
23. Exhibit W – Township Resolution from 2005 for preservation

WHEREAS, on October 14, 2021 by a vote of 4-1 the Board determined that the Farm is a commercial farm under the Right to Farm Act and therefore is entitled to pursue an SSAMP; and

WHEREAS, thereafter the Township of Upper was represented by Frank Corrado, Esq. and a group of property owners in the area was represented by Richard King, Esq. (the “Objectors”) to oppose the application; and

WHEREAS, thereafter at a subsequent hearing to consider the SSAMP on March 31, 2022, the Township of Upper and the Objectors contended that Applicants' initial notice of the hearing was defective and the CADB should therefore reconsider its commercial farm designation vote; and

WHEREAS, after receiving and considering legal briefs on the issue, on June 13, 2022, the CADB by a 4-1 vote determined the initial notice was adequate; and

WHEREAS, the Objectors and Township then appealed the June 13, 2022 jurisdictional decision to the SADC; and

WHEREAS, the SADC dismissed the appeal as premature and determined it would consider the issue after the CADB acted on the SSAMP; and

WHEREAS, prior to the Board's consideration of the SSAMP scheduled for February 27, 2023, the Applicants and the Township discussed potentially mutually agreeable conditions and limitations on the SSAMP, including a revised site plan (Exhibit T); and

WHEREAS, on February 27, 2023 after the Applicant re-noticed and submitted a second revision of the site plan and revised the SSAMPs (Exhibit U), the Board heard testimony as to the requests for the SSAMP and voted 5-0 to approve the SSAMP for the Applicant; and

WHEREAS, at the February 27, 2023 hearing the Applicants advised the Board that the Applicant is expanding the field to the east as shown on the plan and agreed to numerous limitations and conditions of approval in order to address certain concerns raised by Upper Township and the public most significantly removing the request for the development onsite wine tasting and sales room, and presented additional Exhibits V and W; and

WHEREAS, the Objectors testified that the commercial farm did not meet the minimum five (5) acres of farming or otherwise meet the commercial farm requirements; and the Objectors further asserted that the approval for the right to farm would negative impact the neighborhood from the additional traffic; the use of pesticides, fertilizers and herbicides; and general noise from the farming machinery; and

NOW, THEREFORE, BE IT RESOLVED, that upon consideration of the entire record, the Board makes the following findings of fact and conclusion of law:

1. The Farm is located in a residential zone in which agriculture is not a permitted use, and, as such, the applicants must meet the requirements of N.J.S.A. 4:1C-9 for the Board to consider whether it qualifies a commercial farm as defined by N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3.

a. The Board has determined that the Farm is a commercial farm as defined by N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3 because

- i. it has been in operation since 1998 as demonstrated by the tax and historical financial records submitted by the Applicants as well as the testimony provided by the Applicants; and
- ii. The Farm is greater than five acres as demonstrated by the Farm Plan and Survey submitted by the Applicants as well the testimony provided by the Applicant's expert; and
- iii. The Applicants have demonstrated that the farm has produced agricultural and horticultural products worth \$2,500 per year based on the sale of trees and grapes as demonstrated by the tax and historical financial records of the Farm, and as well as the testimony provided by the Applicants, except for the years when the agricultural product was being actively rotated from trees to grapes as permitted by the Right to Farm Act; and
- iv. The Farm is eligible for differential property taxation under the Farmland Assessment Act of 1964 because it consists of more than 5 acres that have been actively devoted to agricultural use for more than 2 years and generates more than \$1,000 in annual revenue; and

BE IT FURTHER RESOLVED, that based on the foregoing determinations, the Applicants' operation is a "commercial farm" as defined by the Right to Farm Act; and

BE IT FURTHER RESOLVED, that based upon the Farm's qualification as a commercial farm, the Board has jurisdiction to review and approve an SSAMP; and

BE IT FURTHER RESOLVED, that upon consideration of the entire record, the Board makes the following additional findings of fact and conclusion of law:

1. The cultivation and harvesting of wine grapes and tree fruit, and the production and packing of those agricultural products into about 1,350 gallons of wine (approximately 6,750 bottles of wine), subject ABC approvals, and associated byproducts, including, but not limited to, grapeseed oil, grape skin flour, grapevine and fruit tree wood, are recognized and generally accepted agricultural management practices in the State of New Jersey.
2. The development of a wine production and bottling facility by retrofitting the existing pole barn as reflected on the Applicants' second revised site plan is consistent with generally accepted agricultural management practices in the operation of wineries.
3. The development of a wine production and bottling facility by retrofitting the existing pole barn as reflected on the applicant's second revised site plan will not implicate any health, safety, or welfare issues, and the Applicants have a legitimate farm-based reason for the same.
4. The following events and activities at the farm are usual and customary in the wine production and bottling business and consistent with generally accepted agricultural management practices and the Applicant has agreed to certain other conditions:
 - a. The production, cultivation, harvesting, and storage of wine grapes and tree fruit, including the application of appropriate pesticides and fertilizers consistent with the requirements of any applicable state and federal law.

b. The application of agricultural and horticultural techniques, including the application of appropriate pesticides and fertilizers, consistent with the Rutgers Agricultural Experiment Station "2019 Commercial Grape Pest Control Recommendations for New Jersey" and N.J.A.C. 2A:76-2A.6 (adopting New Jersey Commercial Tree Fruit Production Guide as an AMP).

c. The implementation of approved farm conservation plans pursuant to N.J.A.C. 2:76-2A.7.

d. The production, bottling, packaging, and/or storage of wine on the Farm for sale offsite and/or online.

e. The production, bottling, packaging and/or storage of wine byproducts, including, but not limited to, grapeseed oil, grape skin flour, grapevine and tree fruit wood, for sale offsite and/or online.

f. The storage of supplementary and complementary agricultural products, such as branded wine glasses, wine accessories, shirts, hats, and similar promotional items for sale offsite and/or online.

g. The Applicant has specifically agreed not to have a tasting room, salesroom, commercial tasting, or commercial parking, and that the SSAMP at issue does not include permission to conduct special occasion events or conduct on-farm directing marketing activities, which the Applicant may seek permission from the Board upon another Application.

h. The Applicant has specifically agreed that traffic would not be significantly increased as a result of the bottling, packaging, and/or storage of wine on the Farm for sale offsite and/or online.

i. The Applicant has specifically agreed that the buffer on the **south** side, consisting of trellis, grape vine, and open space, shall be increased to 30 feet and to provide a six-foot high solid fence for the first three properties along Lots 43, 44 and 45 with some planting and some shade trees and for additional buffers as set forth in the approved plan.

j. The Applicant has agreed not to store any material in the storage area greater than six (6) feet in height.

k. The Applicant has agreed that no tractor-trailers deliveries will be to the site.

l. The Applicant has agreed to maintain and erect the current fences and proposed fences.

m. The Applicant shall revise the site plan to delineate the driveway entrance.

n. The Applicant has agreed that bottling shall be during business hours and shall be in accordance with Upper Township.

BE IT FURTHER RESOLVED, that the Board's approval of development of the winery and the related agricultural activities set forth above shall constitute a site-specific agricultural management plan ("SSAMP") for the Farm and therefore does not require site plan or municipal planning or zoning board approvals and the Township of Upper shall immediately issue all appropriate construction and other permits for the development; and

BE IT FURTHER RESOLVED, that the Board's approval of the SSAMP and site plan for the Farm is subject to the following additional conditions and those set forth above:

1. All retrofitting and construction approved by the SSAMP shall be done in accordance with the applicable construction and building code standards and shall be subject to inspection for compliance with applicable code requirements by the Township of Upper.

2. All wine production, bottling, and storage at the Farm shall be in compliance with applicable ABC laws and regulations.

3. The Farm shall comply with all applicable ABC laws but shall not otherwise provide for the on-site sale of wine and associated byproducts, including, but not limited to, grapeseed oil, grape skin flour, grapevine and fruit tree wood.

4. If the Farm's operations substantially change or deviate from the provisions of this SSAMP in the future, the Applicant or any aggrieved party may return to the Board to seek appropriate relief as provided by law.

BE IT FURTHER RESOLVED, that the Board shall forward a copy of resolution to the Applicant, the Township of Upper, and the SADC within 30 days.



Matthew P. Stiles, Chairman

Offered By: *Alfred Natali*

Seconded By: *Robert Schumann*

Yes: *4*

No: *1*

Absent: *Ineligible 1*

Adopted: *July 31, 2023*