

BEFORE THE BOARD OF SUPERVISORS
OF CHARLESTOWN TOWNSHIP,
CHESTER COUNTY, PENNSYLVANIA

IN RE: APPLICATION OF PAUL AND	:	
JULIE MARSHALL FOR CONDITIONAL	:	
USE AND ADAPTIVE REUSE APPROVAL	:	CU-13-02
FOR THE PROPERTY LOCATED AT 12	:	
ALEXIS LANE (2226 CHARLESTOWN ROAD)	:	March 12, 2015

DECISION AND ORDER

I. INTRODUCTION

Paul Marshall and Julie Pfeifer Marshall (hereinafter, the "Marshalls" or "Applicants") seek approval to use their property for a "farm to table" educational use. The Board of Supervisors of Charlestown Township Board (the "Board") now considers the Marshalls' application for conditional use pursuant to Section 27-402.C(4) of the Charlestown Township Zoning Ordinance (the "Zoning Ordinance") for a "cultural, educational, religious, charitable or philanthropic use" and conditional use approval pursuant to Sections 27-402.C(9) and 27-1619.2.A(5) of the Zoning Ordinance for the adaptive reuse of a historic resource as "a museum, nature center, public garden, or other similar educational and cultural facility." The Marshalls' property is located at 12 Alexis Lane (also known as 2226 Charlestown Road), Charlestown Township, Pennsylvania in the FR-Farm Residential zoning district (the "Property").

The Board advertised and opened the hearing for the Application during the January 6, 2014 Board meeting and continued the hearing to the February 3, 2014 Board meeting at the request of the Marshalls. The duly advertised hearing on February 3, 2014, was canceled due to a snow event and there was a request for a continuance by counsel for the Marshalls. The hearing was re-advertised for March 3, 2014, but continued again at the request of Marshalls to April 7, 2014. Counsel for the Marshalls again requested a continuance of the duly advertised April 7, 2014, hearing, which was then scheduled for May 5, 2014. Hearings were held, pursuant to public notice, on the following dates: May 5, 2014; June 2, 2014; August 4, 2014; September 2, 2014; October 6, 2014; November 3, 2014; December 1, 2014 and January 5, 2015 (collectively the "Hearings").

The following individuals and entities entered appearances and were granted party status by the Board during the above referenced hearings: Charlestown Township (the "Township"); Cameron and Nancy Cloeter (the "Cloeters"); Larry and Cathy Bull; Regina Fried; Richard Finley; Merrill Johnston; Todd and Sharon Rouse; and James Hanna. The Applicants were represented throughout the proceedings by Marc B. Kaplin, Esquire. Michael B. Murray, Jr., Esquire represented neighboring property owners, the Cloeters, throughout the entire proceedings. The Township was represented by Gary Bender, Esquire. The Board was represented by Mark P. Thompson, Esquire of the firm of Lamb McErlane PC.

Applicants presented the testimony of Paul Marshall, Ellen Behrle and the expert testimony of Neal J. Camens, a registered Professional Engineer with Chester Valley Engineers, Inc. The Cloeters presented the testimony of Cameron Cloeter, John Strickland (a licensed general certified appraiser) and the expert testimony of Thomas F. Smith, a registered Professional Engineer with Bercek and Smith Engineering. The Township presented the testimony of Fred Delong. Applicants submitted Exhibits A-1 through A-30 into the record during the Hearings. The Cloeters submitted Exhibits C-1 through C-21 into the record during the Hearings. The Township submitted Exhibits PC-1 through PC-3 into the record during the Hearings. All testimony during the Hearings was taken under oath and stenographically by an official court reporter.

On January 5, 2015, the Board concluded testimony in the Hearings and, by agreement of the parties, left the record open until January 30, 2015 for the submittal of proposed findings of fact, conclusions of law and memoranda of law by the parties. Thereafter, on January 30, 2015, the parties separately submitted their proposed findings of facts and conclusions of law. The Cloeters also submitted a memorandum of law on January 30, 2015, at which time the record was closed. The Board enters the following Findings of Fact, Conclusions of Law, Decision and Order:

II. Findings of Fact

A. The Property

1. The Applicants are the owners of a 12.6-acre parcel of land referred to as "Half Hill Farm" with an address at 12 Alexis Lane (also known as 2226 Charlestown Road), Charlestown Township, and also identified as Chester County Tax Parcel No. 35-4-11.1. (N.T. 5/5/14 p. 15; Exhibits A-2 and A-4).

2. The Property was created and is identified as Lot 3 on the plan entitled "Final Subdivision Plan for Charlestown Woods" dated February 15, 2005, last revised October 26, 2005 and recorded with the Chester County Recorder of Deeds on December 7, 2005 (the "2005 Subdivision Plan"). (N.T. 5/5/14 pp. 17-18; Exhibits A-3 and C-3).
3. The 2005 Subdivision Plan, conditions of approval, and notes on the 2005 Subdivision Plan apply to the Property, and the Property is subject thereto.
4. The Property is subject to a Conservation Easement dated April 1, 2005 between Maureen R. Berg and Rodney H. Green and Natural Lands Trust, Incorporated recorded with the Chester County Recorder of Deeds on April 8, 2005. (N.T. 5/5/2014 p. 18; Exhibit A-4).
5. The Conservation Easement is a covenant running with the Property.
6. The Property is located in the FR-Farm Residential zoning district.
7. A historic farmhouse and a historic bank barn are located on the Property. (N.T. 5/5/14 pp. 15, 105).
8. The second floor of the bank barn on the Property was previously used as an apartment. (N.T. 5/5/14 p. 15).
9. The Marshalls currently reside in the existing farmhouse on the Property. (N.T. 5/5/14 p. 15).
10. Cameron and Nancy Cloeter (the "Cloeters") own properties located at 15 Alexis Lane and 17 Alexis Lane, Charlestown, Pennsylvania, identified as Lots 1 and 2 on the 2005 Subdivision Plan adjacent to the Property (the "Cloeter Property"). (Exhibit C-21).
11. The Cloeters reside at 15 Alexis Lane, Lot 1 on the Subdivision Plan, which is improved with a single family residence. (N.T. 11/3/14 p. 527).
12. The property at 17 Alexis Lane, Lot 2 on the 2005 Subdivision Plan, is unimproved. (N.T. 11/3/14 p. 527).
13. Alexis Lane is a private road.
14. Lot 2 on the 2005 Subdivision Plan is a "flag lot" with 50 feet of frontage on Charlestown Road. (N.T. 11/3/14 p. 528; Exhibit A-3).
15. The 2005 Subdivision Plan delineates a "common driveway easement" accessing Charlestown Road on Lot 2 for access to Lots 1, 2 and 3 on the 2005 Subdivision Plan. (N.T. 5/5/14 p. 92, Exhibit A-3).
16. The Property and the Cloeters' property use the common driveway.

17. At the time of the 2005 Subdivision approval the anticipated use of the common driveway was for residential purposes.

18. Concerning access to the Lots, Note 10 of the 2005 Subdivision Plan provides:

"It is proposed to subdivide the existing property into three lots using the Open Space Development requirements. Lots #1 & #2 are to be building lots. Lot #3 contains the existing dwelling and barn and additional improvements. It is proposed to build a single family dwelling on lots #1 & #2. Lots #1, #2, & #3 are to be accessed by a proposed common drive through Lot #1. The existing drive entrance on Lot #3 is to be abandoned and removed. The banks along Charlestown Road are to be graded back to obtain site distance as required by PennDOT standards. The total area of Lot #3, 12,6057 ac.± is to be under a conservation easement to be granted to Natural Lands Trust. The required Open Space, 40% of the gross tract area (7.1178 Ac ±) shall be included.

19. The Applicants gain access to the Property from Alexis Lane turning right onto an unpaved driveway onto Lot 3 of the 2005 Subdivision Plan (the "Marshall Driveway"). (N.T. 5/5/14 pp. 22-3, 95; N.T. 10/6/14 p. 413; Exhibit A-18).

20. The Marshall Driveway is currently configured as a one-way driveway with traffic entering the Property from Alexis Lane and re-entering Alexis Lane directly north of the barn south of the Cloeter residence. (N.T. 5/5/14 pp. 22-3, 95; N.T. 10/6/14 p. 413; Exhibit A-18).

B. Previous Applications Before the Township

21. By correspondence to the Township dated April 8, 2013 and May 30, 2013, the Applicants requested an amendment to the Zoning Ordinance to allow a "farm to table" use by conditional use in the FR District. (Exhibit PC-3).

22. By correspondence to the Township dated June 25, 2013, the Applicants proposed a revised amendment to the Zoning Ordinance to allow a "farm to table" use by conditional use in the FR District. (Exhibit PC-3).

23. By correspondence to the Township Zoning Officer, Surrender Kohli, P.E., the Applicant requested a preliminary opinion pursuant to Section 916.2 of the Pennsylvania Municipalities Code that a proposed Culinary Institute/Agricultural Education and Cultural Use was an "educational and cultural facility." (Exhibit PC-3).

24. On November 18, 2013, the Marshalls filed the current Application for conditional use approval to "use the bank barn as a culinary institute, providing education in Charlestown's agricultural history, sustainable agriculture, nutrition and culinary arts for school children, families and adults."

C. The Applicants' Proposed Use

25. The Applicants' proposed use is described on a document identified as Exhibit A-8 entitled "Culinary Institute/Farm to Table Agricultural Use", and outlining culinary workshops, agricultural education workshops, animal programs, educational partnerships, agricultural workshops and internships as the use. (Exhibit A-8).

26. The Applicant, Paul Marshall, testified that he proposed to renovate the interior of the barn with a "restaurant" to the right with an "exhibition kitchen and demonstration area" with "two farm tables where people will dine at the end of the event to eat." (N.T. 5/5/2014 pp. 27-30; Exhibit A-8).

27. The Zoning Ordinance defines the term Restaurant as: "a building used for the purpose of furnishing food and beverage to the public to be consumed within the building, and on the premises in a courtyard enclosed by a fence, hedge or wall, or as an outdoor café in a TND District, in which food is thereby prepared, with an area within the building of not less than 2,500 square feet, equipped with tables and chairs accommodating at least 40 persons at one time excluding counter or bar service seating areas. The building shall have separate toilet facilities for men and women customers and separate toilet facilities for men and women employees."

28. The Zoning Ordinance defines the term Café as: "a commercial establishment like a coffee shop or tearoom at which food and beverages are sold. Such facility is smaller than a restaurant and has seating for less than 40 persons."

29. The Applicants propose the following improvements to the outside of the existing barn in connection with the proposed educational use:

- a. replacing all of the wood siding, windows and doors (N.T. 5/5/14 pp. 21-22);
- b. adding a deck which as a second means of egress from the barn and providing visitors a location from which to view the Property (N.T. 5/5/14 pp. 22, 30; N.T. 10/6/14 pp. 410-411; Exhibit A-8);
- c. adding five (5) new parking spaces along the south side of the existing driveway on the Property creating approximately 1000 square feet of additional paving (N.T. 5/5/14 p. 22; Exhibit A-18);
- d. adding a double row of evergreen trees along the Property's frontage on Alexis Lane (N.T. 5.5.14 p.96; Exhibit A-18);

- e. restriping the existing driveway intersection from the Marshalls' Property onto Alexis Lane to orient vehicles leaving the Property; and
- f. increasing lighting on the property, namely along the walkways and parking area, as their architect recommends. (N.T. 6/2/14 pp. 183-184).

30. Applicants propose to employ no more than three (3) full time employees, one (1) of which will help prepare and cook food and "other attendants would be there to help with the rest of the experience, giving the tours, walking, staying with the groups." (N.T. 5/5/14 pp. 30-1; N.T. 6/2/14 pp. 170-1).

31. Applicants do not intend the proposed "culinary institute" to be a non-profit or charitable entity, but proposes to operate as a for-profit entity. (N.T. 6/2/14 pp. 143-5).

32. Applicants have a written business plan that was not offered into evidence. (N.T. 6/2/14 pp. 190-1).

33. The existence of a written business plan is more consistent with commercial rather than educational use.

34. Paul Marshall testified that he anticipates repeat patrons because "they have a great experience and will want to come back." (N.T. 6/2/14 p. 191).

35. Paul Marshall admits that he intends to operate a restaurant.

36. Paul Marshall described "farm to table" education, as "the appreciation of fresh ingredients, educating customers about the link between the farmer, farm communities and a desire to practice a better appreciation for the food we eat." (N.T. 5/5/14 p. 24; Exhibit A-7).

37. The Applicants' educational use is proposed to consist of two "culinary workshops" a day with up to thirty (30) people at a time, either adults or children, with mostly children during the day and adults during the evening and up to sixty (60) people in one day (the "Proposed Use") (N.T. 5/5/14 pp. 31, 54-5; Exhibit A-7).

38. Paul Marshall testified that the day and evening workshops would be "two completely different experiences." (N.T. 6/2/14 p. 141).

39. The Applicants' use is proposed to be six (6) days a week from 11:00 A.M. to 11:00 P.M. and last from two (2) to three (3) hours per workshop with the evening session beginning around 6:00 or 7:00 P.M.. (N.T. 5/5/2014 pp. 41, 54-55; N.T. 6/2/14 p. 183).

i. Proposed Nighttime Use

40. The Applicants' proposed use during the nighttime, which would be attended primarily by adults, includes the following:

- a. prior to entering the barn "patrons would walk the property" and tour the planted gardens to "see the workings of a farm" including the farm animals, chickens, Jersey cow and a horse, including an "animal component" with collecting eggs, milking the cow, and feeding, tacking and grooming the animals. (N.T. 5/5/14 pp. 32-3, 35, 47-8 and 56; N.T. 6/2/14 p. 185);
- b. agricultural workshops to "educate people who are interested in planting their own vegetables and how to plant"; (N.T. 5/5/14 p. 36; Exhibit A-7);
- c. patrons, in the "culinary institute", will see "agricultural artifacts" and "learn about Charlestown in general" when they are "being served hor d'oeuvres and kind of walking the room and looking at a piece of history"; (N.T. 5/5/14 p. 32; Exhibit A-7);
- d. "patrons" may meet the "local farmers, guest chefs, artisan cheese makers, butchers depending on the workshop that's being delivered at that time." (N.T. 5/5/14 p. 32; Exhibit A-7);
- e. "the patrons are then seated" and asked, two patrons (e.g. the "big time foodies") per course, to become "active participants in their food plating and preparation of their meal" (N.T. 5/5/14 pp. 32, 44; N.T. 6/2/14 p. 193);
- f. employees will serve the patrons as a part of the "hospitality" experience (N.T. 6/2/14 pp. 172-3);
- g. there will be no ordering from a menu, and no food will be taken home. (N.T. 6/2/14 pp. 186-7);
- h. at the end of the culinary workshop, there are two farm tables where people sit down and eat a full "multi-course farm to table dinner." (N.T. 5/5/14 pp. 29-31, 33; N.T. 6/2/2014 pp. 137-139, 143, 186-8, 193; Exhibit A-7).

41. The Proposed Use is consistent with a restaurant.

42. Restaurants typically explain food, ingredients and preparation to restaurant patrons.

43. Paul Marshall testified that the Proposed Use is similar to a "farm and table restaurant" with the difference being that, in a restaurant, "you can walk in any time you want" (N.T. 6/2/14 p. 192).

44. The difference between and "farm to table" restaurant and a typical restaurant is inconsequential.

45. The Applicants anticipate charging anywhere from \$3.00 to \$140.00 to each participant during the evening use. (N.T. 6/2/14 p. 215).

46. There is no explanation in the record for the disparity in price in the context of an educational use.

47. Restaurants typically charge a range of prices for quality of food, ingredients and preparation.

48. The Applicants propose that patrons be permitted to bring and consume alcoholic beverages on the Property as a part of the educational use. (N.T. 6/2/14 pp. 177-181).

49. There is no evidence in the record concerning how consuming alcoholic beverages is consistent with an educational use or whether alcoholic beverages are necessary for the Applicants' proposed use. (N.T. 6/2/14 p. 195; N.T. 12/1/14 p. 636).

50. There is nothing educational about consuming alcoholic beverages.

51. There are educational aspects to the Proposed Use; however, as proposed, the "culinary institute" evening activities of the Proposed Use are primarily a commercial restaurant use.

ii. Proposed Daytime Use

52. The daytime activities are proposed to be "teaching children about life on a farm" and how a farm operates including "feeding the farm animals, collecting eggs, milking a cow and they will learn how to churn butter," which occurs outside. (N.T. 5/5/14 pp. 23, 37; Exhibits A-7 and A-14).

53. These daytime activities are proposed to occur outside of the barn building. (N.T. 5/5/14 p. 37; Exhibits A-7 and A-14).

54. The Applicants have had discussions regarding hosting educational programs on healthy eating with the Great Valley School Superintendent and a school board member, Ellen Behrle (N.T. 5/5/14 p. 80-84; N.T. 6/2/2014 p. 124-5; Exhibit A-14).

55. Ellen Behrle testified regarding the "farm to school" initiative, which she described as the "practice of using local foods for schools and providing agriculture, health and nutrition education opportunities such as school gardens, farm field trips, cooking lessons, and it's all done in an attempt to promote healthier choices and food with a higher nutritional value." (N.T. 5/5/14 p. 72).

56. Ellen. Behrle discussed the educational components of the “buy local, buy fresh” program, which that the Great Valley School District has in place with “raised bed gardens” that allow the “children to decide what they are going to plant,” then plant the seeds, watch the seeds grow and harvest a crop that “will go to the cafeteria.” (N.T. 5/5/14 pp. 77-8).

57. Raised bed programs are typically operated by schools in conjunction with agencies such as the Chester County Food Bank.

58. The Applicants intend to enter into partnerships to provide educational programs to elementary school students. (N.T. 5/5/14 p. 80-84; N.T. 6/2/2014 p. 124-5; Exhibit A-14).

59. The Applicants propose to include a lunch as part of the daytime activities similar in cost to a school lunch. (N.T. 6/2/14 pp. 142-3).

60. The Applicants do not currently have a curriculum for providing education to elementary school students. (N.T. 6/2/14 pp. 125-6).

61. The Applicants proposes to develop an educational curriculum after they receive conditional use approval for their proposed use from the Township. (N.T. 5/5/14 pp. 55-62; N.T. 6/2/14 pp. 125-126).

62. Applicants do not currently have a partnership with the Great Valley School District or any organization, scouting groups or Great Valley Nature Center, to educate children as proposed. (N.T. 5/5/14 pp. 38, 53-54).

63. The Applicants anticipate that children participating in the proposed educational program on the Property would arrive to the Property by school bus. (N.T. 5/5/14 pp. 61, 89).

64. The Applicants are not certain on the number of students that would visit the Property as part of the proposed educational use. (N.T. 6/2/14 pp. 133-135).

65. Paul Marshall does not have any formal training or certifications on education. (N.T. 5/5/14 pp. 11-14; Exhibit A-1; N.T. 6/2/14 pp. 119, 121-2).

66. Paul Marshall does not have any formal training or certifications on providing agricultural education.

67. There are educational aspects to the daytime use described in the Proposed Use.

A. Standards and Criteria for an Adaptive Reuse Pursuant to Section 27-1619.3 of the Zoning Ordinance

68. Applicants are requesting condition use approval as an adaptive reuse pursuant to Section 27-1619.2 of the Zoning Ordinance, which allows an adaptive resource to be used “subject to the provisions of subsection .3 [27-1619.3 of the Zoning Ordinance] and subject to Part 13 [Off-Street Parking and Loading].”

69. Pursuant to Part 13, Section 27-1309.2 for “any use which requires an aggregate of more than five parking spaces or which will have a gross floor area in excess of 2,000 square feet, *a land development application and plans shall be filed as required by, and shall be subject to the Subdivision and Land Development Ordinance of 1982 [Chapter 22].*” (emphasis added).

70. Section 27-1619.3.D of the Zoning Ordinance provides that “the area use for an adaptive reuse shall occupy no more than 2,000 square feet in the principal or accessory building except for conversions as provided for in subsection .2A.(10)[relating to apartments].”

71. The Applicants propose to use 2,000 square feet of the second floor of the barn for the proposed educational use. (N.T. 5/5/14 pp. 27-8, 30, 108; N.T. 8/4/14 p. 260; Exhibit A-8).

72. The three (3) car garage in the first floor of the barn is proposed to be used for storage of trash dumpsters related to the use. (N.T. 5/5/14 pp. 50-2; N.T. 6/2/14 pp. 165-6; Exhibit A-18).

73. The three (3) car garage in the first floor of the barn is also proposed to be used for parking three cars related to the use. (N.T. 5/5/14 p. 97).

74. There are unused spaces identified in the second floor of the barn adjacent to the proposed sanitation area, which the Applicants intend to use as an office. (N.T. 5/5/14 p. 50-1; Exhibit A-8).

75. The Applicants do not include the three parking spaces, office or any other storage area in the barn as part of the permitted the 2,000 square foot adaptive reuse area. (N.T. 5/5/14 pp.50-52; 6/2/14 p. 212; N.T. 8/14/14 pp. 267-8; N.T. 10/6/14 pp. 410-411; Exhibits A-8 and A-18).

76. The Applicants propose to use farm animals living on the Property as a part of the educational use. (N.T. 5/5/14 pp. 35-36 and 56-7; N.T. 6/2/14 pp. 185, 201);

77. Farm animals are not permitted to be housed in the barn.

78. Section 27-1619.3.E of the Zoning Ordinance prohibits noticeable noise, odor, vibration, glare, electromagnetic interference, or smoke beyond the Property line.

79. The existing barn, in which the Proposed Use is primarily located, is located is 50 feet from Applicants' Property line and approximately 170 feet¹ away from the Cloeter residence. (N.T. 9/2/2014 p. 314; Exhibits A-18 and C-3).

80. Headlights of vehicles exiting the Property at night will shine directly on to the adjacent properties and dwellings. (N.T. 10/6/14 pp. 409, 415; N.T. 11/3/14 p. 558, Exhibit A-22, Exhibit 20, Photographs 9, 21-32 and 48-49).

81. The exit from the Property onto Alexis Lane is proposed to be angled to reduce headlight glare, however headlight glare will still occur on adjacent properties and dwellings. (N.T. 5/5/14 p. 96; Exhibit A-18).

82. Odors from cooking and noise from persons inside and outside the barn will be heard from the adjacent property during the Proposed Use. (N.T. 10/6/14 p. 414; N.T. 11/3/14 pp. 558; Exhibit A-20).

83. Applicants propose using a filter hood system to reduce cooking odor and smoke, fire retardant insulation in the barn and landscape screening to reduce noise. (N.T. 6/2/14 pp. 189-190; N.T. 8/4/14 pp. 261, 272-3).

84. Section 27-1619.3.F of the Zoning Ordinance provides off-street parking requirements for adaptive reuses and requires one off-street parking space for every 250 square feet of use, and one space for each full-time equivalent non-resident employee in addition to other off-street parking spaces required in Part 13 and subsection .2.A(7).

85. The Property is severely limited by steep slopes and has no readily available areas where parking can be accomplished on the scale proposed by the Applicants. (Exhibit A-3).

86. The Applicant proposes to provide thirteen (13) parking spaces for the Proposed Uses on the Property. (N.T. 5/5/14 p. 109; N.T. 8/4/2014 pp. 249-50; Exhibit A-18).

87. Of the thirteen (13) proposed parking spaces two parking spaces are proposed in front of the house on existing pavement. (N.T. 5/5/14 pp. 96-7; Exhibit A-18).

88. Three (3) of the parking spaces are proposed to be "inside the lower level of the barn." (N.T. 5/5/14 pp. 96-7; Exhibit A-18).

¹ Both the barn and the Cloeter residence are depicted on Applicants' Conditional Use Plan (Exhibit A-18), which scales the distance at 1 inch per 20 feet and depicts the buildings as almost 3.5 inches away from each other.

89. The Applicants propose to construct "five new parking spaces along the south side of the, of the existing driveway" consisting of approximately 1,000 square feet of new paving along with a stormwater trench south of the paving. (N.T. 5/5/14 pp. 96-7; Exhibit A-18).

90. Two (2) of the parking spaces are proposed to be "outside of the lower level of the bank barn on existing pavement." (N.T. 5/5/14 p. 97; Exhibit A-18).

91. One (1) of the parking spaces is proposed to be "handicap accessible outside of the barn which would be at grade with the upper level of the inside of the barn." (N.T. 5/5/14 p. 97; Exhibit A-18).

92. Section 27-1302 of the Zoning Ordinance requires two parking spaces for a residential dwelling.

93. One (1) parking space is required for each of the three (3) proposed full time non-resident employees for the proposed use.

94. Permitting use of the three parking spaces located inside the barn would increase the area devoted to the adaptive reuse beyond the 2,000 square foot limitation in Section 27-1619.3.F.

95. Five (5) parking spaces on the Property would accommodate patrons of the proposed educational use.

96. Section 27-1619.3.H of the Zoning Ordinance requires all reuses to be operated in compliance with the standard terms and conditions for conditional use approval in Section 27-1809 of the Zoning Ordinance.

97. Section 27-1809.1.A of the Zoning Ordinance requires a proposed use to be consistent with the purpose of the Part whereby it is permitted and the overall purpose of the Zoning Chapter as contained in Section 27-103.

98. The 2005 Subdivision Plan, pursuant to Note 13, states that the "land use recommendation in the Charlestown Comprehensive Plan" at the time of the 2005 Subdivision Plan was "low intensity residential." (Exhibit C-3, note 13).

99. The Proposed Use is not consistent with the Township Comprehensive Plan, which designated the property for single family residential use. (N.T. 10/6/14 p. 405; Exhibit A-3).

100. Section 27-1809.1.B of the Zoning Ordinance requires a proposed use to satisfy all of the provisions and requirements of the Charlestown Township Subdivision and Land Development Ordinance and any other applicable ordinances and codes.

101. Applicants do not propose to submit a land development plan in connection with the Proposed Use. (N.T. 10/6/14 pp. 405, 429-30).

102. Note 18 on the Subdivision Plan states that "Lot #3 is to be Deed restricted, prohibiting further subdivision." (Exhibit A-3).

103. Note 17 on the Subdivision Plan prohibits the use of the existing barn on the Property "for sheltering or housing livestock or poultry." (Exhibit A-3, Note 17).

104. Farm animals, including chickens, a horse, a cow, dogs and a cat, are proposed to be part of the Proposed Use and brought inside the existing barn on the Property at night. (N.T. 6/2/14 pp. 160-1, 201).

105. Bringing farm animals into the existing barn at night violates the 2005 Subdivision Plan approval.

106. Section 27-1809.1.C of the Zoning Ordinance requires a proposed use and its location to be consistent with the Comprehensive Plan, including the sewer facilities plan and water resources plan.

107. Section 27-1809.1.E of the Zoning Ordinance requires a proposed use to be consistent with the nature of the uses existing on any immediately adjacent lots; and, to not detract from or cause harm to neighboring lots and to be maintained in a manner in keeping with the character of the neighborhood.

108. The Proposed Use is an intensive commercial use unlike the residential use and farm uses in the surrounding area. (N.T. 8/4/14 p. 258; N.T. 10/6/2014 p. 406; Exhibit A-22).

109. The Marshalls have had various events where their guests have come onto the Cloeter property at night without the Cloeters' permission.

110. Vehicles driven by the Applicants' guests have driven onto the Cloeters' Property (N.T. 11/3/14 pp. 536-7).

111. The Marshalls' Proposed Use has a negative effect upon the residential nature of the area and residential use of the common driveway, which is more than would be expected in normal circumstances.

112. The common driveway shown on the 2005 Subdivision Plan was not designed for use by the number of people contemplated in the Proposes Use.

113. The Cloeters presented the testimony of the real estate appraiser who opined that their Property would be reduced in value by \$100,000 if the Proposed Use was permitted. (N.T. 12/1/14 p. 605, Exhibit C-21).

114. Section 27-1809.1.F of the Zoning Ordinance requires the proposed use to be consistent in concept and design with other granted conditional uses

115. The day time activities of the Proposed Use are similar to the agricultural programs currently operated at the Rushton Farm. (N.T. 5/5/14 pp. 36-7, 86-89; Exhibits A-9, A-15, A-16).

116. No witnesses testified as to the activities at Pennypack Farm or Springton Manor Farm.

117. There was no evidence presented as to what land use approvals Pennypack Farm, Rushton Farm and Springton Manor Farm received from the municipalities in which they are located.

118. Fred Delong, the Director of Rushton Farm, testified at the Hearings.

119. The Great Valley School District has a partnership with Ruston Farm and District students visit Rushton Farm for field trips. (N.T. 8/4/14 p. 238-9).

120. All of the food that is sampled at Ruston Farm is grown on the farm property. (N.T. 12/1/14 pp. 634).

121. Rushton Farm held a single fundraising event on its property where meals and alcohol were consumed. (N.T. 12.1.14 pp. 638-9).

122. Only small food samples are provided, and no meals or alcohol are provided or consumed as part of the education programs at Rushton Farm. (N.T. 12/1/14 pp. 636-7).

123. During school event at Rushton Farm, three and a half hours are spent on education and only half of an hour on tasting small food samples that are prepared. (N.T. 12/1/14 p. 638).

124. Serving a sit-down dinner and allowing consumption of alcohol does not further any educational goals or objectives. (N.T. 12/1/14 p. 636).

125. Rushton Farm does not have cooking as part of its educational programs. (N.T. 12/1/14 p. 644).

126. As proposed, the Proposed Use is dissimilar to the educational program at Ruston Farms. (N.T. 12/1/14 pp. 631-637; Exhibit A-7).

127. Section 27-1809.1.J of the Zoning Ordinance requires the proposed use to provide safe and adequate access to roads and public services (existing or proposed) and not result in

excessive traffic volumes or congestion, or will make any improvements needed to guarantee compatibility with adjacent roads and public services.

128. Alexis Lane is a private residential driveway.

129. The Applicants do not intend to make any modifications to Alexis Lane. (N.T. 5/5/14 p. 22; N.T. 10/6/14 p. 406).

130. Alexis Lane is located within an access easement depicted as twenty-five (25) foot in width on the 2005 Subdivision Plan on Lot 2. (N.T. 9/2/14 p. 300; Exhibit A-2).

131. The cart-way of Alexis Lane is twenty (20) feet wide where it intersects with Charlestown Road, and tapers back to twelve (12) beyond the driveway access for the Property. (N.T. 5/5/14 pp. 93-5; N.T. 9/2/14 pp. 342-3; Exhibit A-18).

132. All three (3) lots on the 2005 Subdivision Plan are accessed by way of Alexis Lane. (N.T. 5/5/14 pp. 93-5; N.T. 9/2/14 pp. 342-3; Exhibit A-18).

133. The Proposed Use does not provide safe and adequate access for nighttime use as required by Section 27-1809.1.J of the Zoning Ordinance.

134. A Minimum Use Driveway permit was issued for Alexis Lane for access to Charlestown Road and to allow drainage improvements and the driveway to be constructed within the highway right-of-way. (N.T. 8/4/14 p. 279; N.T. 9/2/14 pp. 333-4; Exhibit C- 16).

135. A Minimum Use Driveway permit allows for twenty-five (25) vehicles per day (fifty (50) trips per day). (N.T. 8/4/14 p. 279; N.T. 9/2/14 p. 334).

136. A typical residential lot is estimated to generate ten (10) trips per day per lot, which amounted to thirty (30) trips per day. (N.T. 9/2/14 pp. 334-335).

137. The existing uses on Alexis Lane are below the maximum fifty (50) trips permitted for a Minimum Use Driveway. (N.T. 9/2/14 pp. 334-335).

138. School buses are proposed to access the Property as part of the Proposed Use. (N.T. 5/5/14 pp. 61, 89).

139. The Applicants would have food deliveries to the Property as a part of the Proposed Use. (N.T. 6/2/14 pp. 163-4).

140. Applicants propose thirty (30) guests, themselves and up to three (3) employees accessing the Property with vehicles for the proposed evening use. (N.T. 5/5/14 pp. 19-20, 31; N.T. 8/4/2014 pp. 251-2).

141. The Proposed Use of Alexis Lane and the Property's driveway would increase to as much as 116 daily trips. (N.T. 6/14 p. 167; N.T. 9/2/14 pp. 336, 339-40).

142. Section 27-1809.1.K of the Zoning Ordinance requires a proposed use to provide for adequate sanitation and water supply.

143. The Proposed Use would at a minimum double the trash currently on the Property, and, would require at least an extra trash dumpster that will be stored inside the existing barn. (N.T. 6/2/2014 pp. 165-167).

144. Applicants intend on having farm animals on the Property, which will create animal waste or manure.

145. The improvements on the Property are served by an existing 1000 gallon septic tank. (N.T. 5.5.14 p. 104).

146. A 1,000 gallon septic tank adequately serves a three to five bedroom house. (N.T. 10/6/14 p. 383-4).

147. The existing septic system was designed for residential use of 600 gallons per day. (N.T. 10/6/2014 p. 378 and 386).

148. Any on-lot sewage disposal system serving the Proposed Use would need to meet the criteria for pretreatment and greases that are required for establishments with food preparation under Chapter 73 of the Pennsylvania Code. (N.T. 10/6/14 pp. 379-82).

149. The proposed use would generate at least 650 gallons per day and would need to be designed for at least 650 gallons per day, plus pretreatment and grease traps. (N.T. 10/6/14 pp. 387-8).

150. Section 27-1809.1.L of the Zoning Ordinance requires a proposed use to provide for adequate screening where needed, parking according to Part 12, signage according to Part 14, sound control, and the minimization of the potential effects of any offensive or hazardous elements or substances.

151. The Proposed Use does not provide adequate screening to alleviate the headlight glare from traffic flow onto Alexis Lane.

152. Applicants propose one (1) sign entitled, "Marshall's HALF HILL FARM Charlestown Road 2226," which will be four (4) square feet in size. (N.T. 5/5/2014 p.41; Exhibit A-11). Section 27-1619.3.M of the Zoning Ordinance requires the exterior of the barn to maintain

the architectural appearance which existing prior to the adaptive reuse. Applicants seek to construct a deck attached to the existing historic barn.

153. The Proposed Use includes the construction of a second floor, 320 square foot deck attached to the side of the barn for visitors to use as an outside observation deck with chairs and a secondary egress. (N.T. 5/5/14 pp. 22, 30 and 49-50; N.T. 6/2/14 pp. 175-6; N.T. 10/6/14 pp. 410-411; Exhibit A-8).

154. The proposed exterior deck will alter the architectural appearance of the historic barn as it existed prior to the adaptive reuse. (N.T. 10/6/14 p. 415).

155. The Applicants presented no evidence that they have complied with all fire safety and Department of Labor and Industry requirements. (N.T. 10/6/14 p. 416).

156. The Applicants presented no evidence that the Charlestown Historic Commission/HARB reviewed the Proposed Use. (N.T. 10/6/14 p. 416).

III. CONCLUSIONS OF LAW

1. The Hearings were duly advertised and the Hearings were subject of prior notice as required by the Zoning Ordinance and the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P.L. 805, as amended, ("MPC") 53 P.S. §§10101 *et seq.*

2. The Board has jurisdiction of this matter.

3. Section 27-402.C of the Zoning Ordinance provides that a "building or other structure may be erected, altered, or used, and a lot may be used and/or occupied, subject to Parts 11 and 12," to permit "conditional uses" for the following:

a. "Cultural, educational, religious, charitable or philanthropic use." (§27-402.C(4))

b. "Adaptive reuse, subject to the provisions of §§27-1619.2 and 27-1619.3." (§27-402.C(9)).

4. Section 27-1619.2.A(5) of the Zoning Ordinance provides for adaptive reuse of historical resources as a conditional use subject to Section 27.1619.3 and Part 13 (Off-street Parking and Loading) for use as a "museum, nature center, public garden, or other similar educational and cultural facility."

5. Part 13 the Zoning Ordinance provides:

§27-1302. Schedule of Parking and Loading Requirements.

The schedule of off-street parking and loading requirements presents the minimum parking space and loading space requirements of this Chapter. Where a lot contains more than one use, the minimum requirements must be satisfied for each and every such use. For uses that do not fall within the categories listed, the Board of Supervisors shall set the minimum parking space and loading space requirements, based on the specific nature of the facility.

27-1309. Board of Supervisors or Land Development Plan Review.

1. The Board of Supervisors may refer any plan providing for parking to the Township Engineer for review or report prior to acting on any plan. The Township Engineer, after considering, in addition to any other appropriate matters, the standards of this Part [13] and their applicability to the particular circumstances, may recommend revisions to the plan and may recommend any other revisions to the plan necessary to achieve safe and proper internal traffic circulation, convenient ingress and egress, safe pedestrian movement to and through the parking area and criteria for design for the handicapped.

2. For any use which requires an aggregate of more than five parking spaces or which will have a gross floor area in excess of 2,000 square feet, a land development application and plans shall be filed as required by, and shall be subject to the Subdivision and Land Development Ordinance of 1982 [Chapter 22].

6. Section 27-202 of the Zoning Ordinance defines "land development" as:

"any of the following activities: a subdivision of land; or the improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving: (1) a group of two or more residential or nonresidential buildings, whether proposed initially or cumulatively, or a single nonresidential building on a lot or lots regardless of the number of occupants or tenure; or, (2) the division or allocation of land or space, whether initially or cumulatively, between or among two or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, building groups or other features."

7. Section 22-202 of the Zoning Ordinance defines "conditional use" as:

"a use which is not appropriate to a particular zoning district as a whole, but which may be suitable in certain locations within the district only when specific conditions, factors or provisions prescribed for such cases within this Chapter are present. Conditional uses and applications for permits therefor, are allowed or

denied by the Board of Supervisors after recommendations are provided the Planning Commission in conjunction with subdivision and/or land development application is filed as to the lot on which conditional lot is proposed in which case they are allowed or denied by the Board of Supervisors.”

8. Section 27-202 of the Zoning Ordinance defines “adaptive reuse” as “a use permitted in a principal or accessory building as an historic resource as described and subject to the provisions of §§27-1619.2 and 27-1619.3”.

9. “Educational Use” and “Educational” are not defined terms in the zoning ordinance.

10. Section 27-1619.3 of the Zoning Ordinance sets forth the conditional use standards and criteria for adaptive reuse, which incorporates the general conditional use standards and criteria set forth under Section 27-1809.

11. Applicants have failed to meet their burden of proof that their Proposed Use is a permitted “educational” use, pursuant to Section 402.C(4) and (9) of the Zoning Ordinance.

12. Applicants have otherwise failed to satisfy the standards and conditions required for conditional use pursuant to Sections 1619.3 and 1809 of the Zoning Ordinance.

13. As stated, the Proposed Use will cause an adverse, detrimental impact on the adjacent property owners, which is more than would be expected in normal circumstances.

14. The Proposed Use would have a detrimental impact on the public health, safety, morals and general welfare.

15. Under the Zoning Ordinance and MPC, the Board may impose such conditions as are necessary to insure any or all of the above matters as well as any other ordinances, regulations and laws.

IV. DISCUSSION

This Board recognizes that the concept of “farm to table” is a laudable movement, and that this movement aligns in many ways with the agricultural history of Charlestown Township. However, based on the record before the Board, part of the Applicants’ Proposed Use, specifically the evening “culinary institute” uses, are more similar to a restaurant use than a true educational use as contemplated by the Zoning Ordinance. In contrast the record does demonstrate that the “farm to table” educational activities proposed for the daytime in conjunction with school districts and other educational institutions do fit within an “educational” re-use under the Zoning Ordinance. As Mr. Marshall himself recognized, the daytime and nighttime activities are two

complete different experiences. With that in mind, the Board considers the Marshalls' application, pursuant to Section 27- 402.C(4) of the Zoning Ordinance for a "cultural, educational, religious, charitable or philanthropic use" and additional conditional use approval pursuant to Sections 27-402.C(9) and 27-1619.2.A(5) of the Zoning Ordinance for an adaptive reuse of a historic resource as "a museum, nature center, public garden, or other similar educational and cultural facility."

Prior to this instant application, the Marshalls had previously sought a zoning amendment to add a new use described by them as a "farm to table" use by conditional use in the FR-Farm Residential zoning district, a use which appears similar to the current proposal. In support of their current application for conditional use, Applicants presented evidence generally describing the Proposed Use and asserted that it is permissible because an "educational" use is broadly defined, and that the proposed "farm to table" activities qualify as education. The relevant analysis, based on the record, initially is whether the Applicants have demonstrated that the activities detailed in the Proposed Use are an "educational" use, and, if so, whether the Applicants have established that the Proposed Use complies with the objective standards for grant of conditional use for an adaptive reuse under the Zoning Ordinance.

A. Legal Standard

Generally, a conditional use is a form of permitted use. *Pennridge Development Enterprises, Inc. v. Volovnik*, 624 A.2d 674 (Pa. Cmwlth. 1993). The fact that a use is permitted as a conditional use evidences a legislative decision that the particular type of use is not adverse to the public interest *per se*. *Vision Quest National Ltd. v. Board of Supervisors of Honeybrook Township*, 169 A.2d 915 (Pa. 1990). Initially, both the burden and the duty fall upon the applicant to affirmatively prove they comply with "specific requirements" of the ordinance. A conditional use applicant must demonstrate that it is entitled to a conditional use by establishing compliance with the specific objective criteria for the use detailed in the zoning ordinance. *Bray v. Zoning Board of Adjustment*, 410 A.2d 909 (Pa. Cmwlth. 1980).

The burden then shifts to any objectors to establish that the proposed use is not, in fact, consistent with the promotion of health, safety and general welfare in the community. *Id.* The protestants must present sufficient evidence to establish that there is a high degree of probability that the use will cause substantial threat to the community. *In re: Appeal of the Cutler Group, Inc. from the Decision of the Board of Supervisors of East Vincent Township*, 880 A.2d 39 (Pa. Cmwlth. 2005). Such evidence must be more than a mere speculation of harm. *Szewczyk v. Zoning Board*

of *Adjustment of the City of Pittsburgh*, 654 A.2d 218 (Pa. Cmwlth. 1995) (citing *Abbey v. Zoning Hearing Board of the Borough of East Stroudsburg*, 329 A.2d 912, 917 (Pa. Cmwlth. 1974)). The adverse impact upon the public interest must exceed that which might be expected in normal circumstances. *Brentwood Borough v. Cooper*, 431 A.2d 1177 (Pa. Cmwlth. 1981).

Under Sections 603(c)(2) and 913.2(a) of the MPC (53 P.S. §§10603(c)(2) and 913.2(a)), the Board of Supervisors, as the governing body of the Township, has the authority to grant conditional uses pursuant to the express standards and criteria set forth in the Zoning Ordinance and to attach such reasonable conditions and safeguards in addition to those expressed in the Zoning Ordinance, as it may deem necessary to implement the purposes of the MPC and the Zoning Ordinance. *Clinton County Solid Waste Authority v. Wayne Township*, 643 A.2d 1162 (Pa. Cmwlth. 1994). Any conditions which the Board imposes must be upheld if the conditions are reasonably related to the health, safety or welfare of the public. *Id.*

B. Educational Use

This Board must first determine whether there is sufficient evidence demonstrating that the Proposed Use fits within an “educational” use under Section 27-402.C(4) and/or an “educational facility” under Section 27-1619.2.A(5). An educational use is permitted in the FR-Farm Residential District, where the property is located, in relevant part as follows:

§ 27-402. Use Regulations.

A building or other structure may be erected, altered, or used, and a lot may be used and/or occupied, subject to Parts 11 and 12, for the following:

C. Conditional Uses. (Refer to §27-1809)

(4) Cultural, educational, religious, charitable or philanthropic use.

(9) Adaptive reuse, subject to the provisions of §§27-1619.2 and 27-1619.3.

Both of these conditional use sections contain the term “educational” in describing a “use” or “facility”. The term “educational” is not defined in the Zoning Ordinance for purposes of granting a conditional use. The leading case interpreting the term “educational use” involved Charlestown Township’s interpretation of the term as it applied to a licensed, “accredited school of equitation”. *Burgoon v. Zoning Hearing Bd. of Charlestown Twp.*, 277 A.2d 837, 839 (Pa. Cmwlth. 1971). In citing to the Pennsylvania Supreme Court, the Court in *Burgoon* held that in the absence of a stated definition, the word “education”:

“The word [education] taken in its full sense, is a broad, comprehensive term and may be particularly directed to either mental, moral or physical faculties, but in its

broadest sense it embraces them all, and includes not merely the instruction received at the school, college or university, but the whole course of training -- moral, intellectual and physical." *Gilden Appeal*, 406 Pa. 484, 492, 178 A.2d 562, 566 (1962)."

Id. Thus, the word "educational" was associated with any type of training which promotes moral, intellectual or physical well-being. *Id.* The Commonwealth Court found that the "educational nature" of the equestrian center was evident from the factual record as follows: (1) that there were three trained professionals working for the center; (2) the center had a curriculum directed toward qualifying its students to instruct in the equestrian art; (3) horses were only available to those taking riding instruction; (4) accredited institutions included equestrian instruction; and (5) the center was licensed as a private academic school by the Department of Public Instruction. *Id.* at 842.

On these points, the Applicants have provided scarce testimony and documentary evidence on how the nighttime activities described in the Proposed Use accomplish such "farm to table" education or are in any way different than an "open kitchen" meal served at a "farm to table" restaurant located in a town or city. This Board also finds that Applicants were not credible in their description and presentation of an "educational" purpose to the nighttime activities described in the Proposed Use. Rather, Applicants repeatedly confirmed that their proposed nighttime activities were commercial, not "educational".

Prior to this application, Applicants previously sought to amend the Zoning Ordinance to conduct the substantially similar "farm to table" use sought in this application. Therefore, the Marshalls themselves fundamentally recognized that the manner in which they seek to use their Property, without conditions and safeguards ensuring that this is used for "educational" purposes only, was otherwise impermissible in the FR District. After consideration of the testimony and exhibits presented during the lengthy hearings on this application, this Board has determined that Applicants failed to present the quantum of evidence to sufficiently demonstrate that the evening activities described in the Proposed Use are in fact proposed as an "educational" use.

The record clearly demonstrates that the evening activities are not, as proposed, "educational". Mr. Marshall's own words call in to question the nature of this aspect of the Proposed Use. He repeatedly referred to the interior of the barn as a "restaurant" with "patrons". Significantly, Mr. Marshall only distinguished the nighttime activities in the Proposed Use from a "farm to table" restaurant by stating that the latter allows patrons to walk in whenever they want.

This is an inconsequential distinction, which means that the Proposed Use is at its core a restaurant use, not an "educational" use. Beyond Mr. Marshall's admissions, his description of the use indicates that there would be employees serving and ensuring a good "hospitality" experience for the patrons, including "big time foodies". At the end of the evening, he testified that patrons will sit down and have a "multi-course" meal with alcohol if they so choose. This Board credits the testimony Fred Delong, Director of Rushton Farms, that the educational programs provided at Rushton Farm do not allow alcohol as the consumption of alcohol is not conducive to learning. Rushton Farm also limits the consumption of food to tastings, not full portions, and the tasting is a small percentage of their educational program. The only reasonable inference that can be drawn from the fact that Applicants want to include alcohol and have a full course meal during an "educational" program is that, as stated, the nighttime activities in the Proposed Use are not "educational".

As to the daytime activities described in the Proposed Use, the "educational nature" of the use proposed is more akin to the "educational nature" of the use in *Burgoon*. The record demonstrates, particularly with respect to the proposed daytime activities, with children or adults, that there could be "educational" aspects to the Proposed Use. This Board credits the testimony of Ellen Behrle regarding the "farm to school" initiative and the educational components of the "buy local, buy fresh" program, which that the Great Valley School District has in place with "raised bed gardens" that allow the "children to decide what they are going to plant," then plant the seeds, watch the seeds grow and harvest a crop that "will go to the cafeteria". Rather, the Applicants have not presented sufficient evidence to suggest any indicia of certainty as to the "educational nature", as the applicant did in *Burgoon*, pertaining to the daytime educational activities. For instance, Applicants have not yet established partnerships with any schools or groups to implement an educational program. Applicants did not present a curriculum or any other evidence pertaining to an educational program for children. Mr. Marshall may be a trained chef, but there is no evidence that he is a trained educator, and moreover there was no evidence that any of the proposed employees have training in providing education. No expert witnesses were presented regarding the instructional nature of the Proposed Use, and, importantly, Applicants have not obtained any certification or accreditation as an "educational" institution.

While, this Board recognizes the value to "farm to table" education and that there are programs providing "such education as with the Great Valley School District, Springton Manor

Farm, Rushton Farm and Pennypack Farm,” there are some differences that cannot be ignored. For example, Pennypack Farm & Education center is a 501(c)(3) not-for-profit organization. The Applicants do not intend the “culinary institute” to be a non-profit or charitable entity and propose to operate as a for-profit entity charging as much as \$140 per patron. Rushton Farm provides educational programs through public workshops and events. Based on the record presented, the daytime educational activities, with conditions limiting and providing assurance as the “educational” nature of the use, are within reach of the permissible “educational” use.

Recognizing the value of “farm to table” education, this Board considered and weighed the evidence in determining whether the Applicants met their burden of proof. As to the proposed nighttime activities, the Board cannot lower the bar so low, in terms of the evidence required demonstrating an “educational” use, that the requirement will become inconsequential. This concern would be alleviated, to some extent, if the Applicants were requesting to conduct solely educational activities. However, Applicants are requesting to have a fully functioning restaurant with educational aspects that are accessory to the main “restaurant” use to be given weight. Moreover, the overwhelming evidence, and, particularly Mr. Marshall’s own testimony, evidence that the nighttime activities described in the Proposed Use are not “educational” and fall far outside of a permitted use to be capable of conditional use.

The daytime activities, on the other hand and as Mr. Marshall testified, are a completely different experience and as determined by the Board, a different use. The proposed daytime activities are much closer to the “educational nature” set forth in *Burgoon*. This Board is satisfied that the deficiencies in meeting their burden of proof as an “educational nature” can be adequately addressed through conditional use to permit the daytime activities. .

C. Non-compliance with Adaptive Re-use and Conditional Use Conditions and Standards

Setting aside the question of whether the Applicants have met their burden of proving that the Proposed Use is “educational,” the Applicants are required to demonstrate that they are entitled to a conditional use by establishing compliance with the specific, objective criteria for the use detailed in the Zoning Ordinance. The Applicants are requesting conditional use approval as an adaptive reuse pursuant to Section 27-1619.2 of the Zoning Ordinance, which allows an adaptive reuse of a historic resource to be used “subject to the provisions of subsection .3 [27-1619.3 of the

Zoning Ordinance] and subject to Part 13 [Off-Street Parking and Loading].” Pursuant to Part 13, Section 27-1309.2 for “any use which requires an aggregate of more than five parking spaces or which will have a gross floor area in excess of 2,000 square feet, *a land development application and plans shall be filed as required by, and shall be subject to the Subdivision and Land Development Ordinance of 1982 [Chapter 22].*” (emphasis added). Applicants are proposing more than five (5) parking spaces as part of the Proposed Use, and therefore are required to submit a land development plan in order to comply with Section 27-1309.2 and 1619.2 of the Zoning Ordinance.

Initially, Section 27-1619.3.D of the Zoning Ordinance limits the square footage of the adaptive reuse in the barn to 2,000 total square feet. Applicants submitted a floor plan (Exhibit A-8) depicting the proposed adaptive reuse, which all occurs in the second floor of the barn. Despite testimony that Applicants proposed to use the barn for three (3) additional parking spaces, housing animals, and an office and for storage, the Applicants’ did not include the square footage of those areas as part of the permitted the 2,000 square foot adaptive reuse area. All of these areas must be included as part of the Proposed Use **inside of the barn**. Thus, the evidence clearly shows that the proposed area within the barn devoted to the adaptive reuse occupies more than 2,000 total square feet; therefore, in order to comply with Section 27-1619.3.D of the Zoning Ordinance the Proposed Use must be conditioned on use of only 2,000 square feet of the interior of for the educational use.

Section 27-1619.3.E of the Zoning Ordinance prohibits noticeable noise, odor, vibration, glare, electromagnetic interference, or smoke beyond the Property line. There was considerable testimony regarding the impact of nighttime headlight glare on the Cloeter property and into the Cloeter residence as a result of activities on the Applicants’ property. All of this evidence must be viewed with an understanding that the Cloeter and Marshall properties share a common driveway, located on the Cloeter property, and the barn (where activities are proposed to primarily occur) is located approximately 170 feet² away from the Cloeter residence. Thus, the evidence suggests that, without conditions, there will be noticeable noise, odor, and glare, at or beyond the property line.

Section 27-1619.3.F of the Zoning Ordinance provides off-street parking requirements for adaptive reuses and requires one off-street parking space for every 250 square feet of use, and one

² Both the barn and the Cloeter residence are depicted on Applicants’ Conditional Use Plan (Exhibit A-18), which scales the distance at 1 inch per 20 feet.

space for each full-time equivalent non-resident employee in addition to other off-street parking spaces required in Part 13 and subsection .2.A(7). Part 13 at Section 27-1302 requires the Property as single family residence to have two (2) parking spaces. The Applicants are therefore required to provide thirteen (13) parking spaces on the Property. Three (3) of those parking spaces are proposed to be inside the lower level of the barn. Allowing the three (3) parking spaces inside of the barn would exceed the maximum permitted square footage allowed in Section 27-1619.3.D as previously discussed. Therefore, the balance of the Applicants' proposed parking spaces, which amount to ten (10) parking spaces, is insufficient for the use as proposed to comply with Section 27-1619.3.F of the Zoning Ordinance. If the use is limited to the proposed daytime activities, the Board anticipates that parking on the Property may be sufficient as the students will be brought by bus. Most notably, as shown on Exhibit A-3 the Property is severely limited by steep slopes and has no readily available areas where parking can be accomplished on the scale proposed by the Applicants. Clearly this circumstance is related to why the Applicants are proposing parking inside the barn and moreover why the number of vehicles proposed as part of the use should not be permitted.

Section 27-1619.3.M of the Zoning Ordinance requires the exterior of the barn to maintain the architectural appearance which existed prior to the adaptive reuse. Applicants seek to construct a deck attached to the existing historic barn as part of the Proposed Use. Clearly adding such a deck would change the architectural appearance of the barn in violation of this Section. Therefore the Board cannot permit such a deck as part of the proposed adaptive reuse.

The Applicants failed to present evidence that the Proposed Use will comply with all fire safety and Department of Labor and Industry requirements as required by Section 27-1619.3.N of the Zoning Ordinance, however such a review by the Township and Department of Labor and Industry officials responsible for ensuring compliance with these safety standards can be accomplished.

Applicants must demonstrate compliance with Section 27-1619.3H of the Zoning Ordinance, which requires compliance with the general terms and conditions for conditional uses set forth in Section 27-1809 of the Zoning Ordinance. Based on the evidence presented the Proposed Use, specifically the nighttime "restaurant" use, is not consistent with the FR-Farm Residential district and the overall purpose of the Zoning Ordinance as contained in the findings of Section 27-103. The 2005 Subdivision Plan, pursuant to Note 13, states that the "land use

recommendation in the Charlestown Comprehensive Plan” at the time of the Subdivision Plan was “low intensity residential”. The Proposed Use, without modification pursuant to this Order is not consistent with the Township Comprehensive Plan based on the close proximity of the Cloeters’ adjacent residential dwelling and additional possible dwelling unit to be served by the common driveway, which the Property is served by.

There was significant amount of evidence presented regarding the substantial adverse impact to the neighbors, particularly with the nighttime “restaurant” proposed use. For instance, the neighboring properties will experience increased traffic, headlight glare, odors, and there was evidence of past instances from events similar in nature to what the Applicants propose with the nighttime activities as part of the application. The nature of these activities would also increase in a manner that is inconsistent with neighboring residential and agricultural use. Based on the evidence presented, the these uses are inconsistent with the nature of the uses existing on immediately adjacent lots and will detract from or cause harm to neighboring lots and are not in keeping with the character of the neighborhood as required by Section 27-1809.1.E of the Zoning Ordinance.

Section 27-1809.1.J of the Zoning Ordinance requires the provision of safe and adequate access to roads and public services for the use. Compliance with this Section is particularly problematic given the shared driveway and current access to Charlestown Road. As it is currently proposed the use will result in excessive traffic volumes or congestion, and Applicants do not propose improvements that may be needed to guarantee compatibility with adjacent roads and public services; therefore, in order to comply with Section 27-1809.1.J of the Zoning Ordinance, all necessary improvements to the driveway and access to Charlestown Road must be made to ensure that any and all vehicles proposed to access the Property for the use may be accommodated safely. Charlestown Road is state road under the jurisdiction of PennDOT, therefore any necessary PennDOT approvals for the use must be obtained as a condition to permission of the use by the Township.

Adequate sanitation and water supply must also be provided as required by Section 27-1809.1.K of the Zoning Ordinance. Based on the evidence presented, the Board cannot judge whether this requirement has been met, however, the Board notes that the Chester County Health Department has jurisdiction over issues related to the provision of potable water and the disposal of sewage effluent on individual properties, in addition to the provision of prepared food to the

public. There is no doubt that the Applicants must satisfy the Health Department is moving forward with an educational use, therefore such a condition is justified.

Finally, there was no evidence that the Proposed Use is consistent in concept and design with other conditional uses for which approval has been granted as required by Section 27-1809.1.F of the Zoning Ordinance. To this point, the Board relies on the *Burgoon* case and the distinctions that have been draw in this Decision in making its determination to limit the use to educational activities only.

D. Conclusion

The Applicants have failed to meet their burden of proof that the Proposed Use, without modification as set forth below, is a permitted "educational" use, pursuant to Section 402.C(4) and (9) of the Zoning Ordinance and satisfies the standards and conditions required for conditional use pursuant to Sections 1619.3 and 1809 of the Zoning Ordinance.

VI. ORDER

AND NOW, this 12th day of March, 2015, following and on the basis of an evidentiary hearing and the testimony and exhibits presented, the Application of Paul and Julie Marshall for conditional use approval pursuant to Sections 27-402.C(4), 27-402.C(9) and 27-1619.2.A(5) of the Zoning Ordinance is denied in part as to the proposed nighttime use and granted in part as to the proposed daytime educational use subject to the conditions specified herein below. The Board finds and concludes that, as to the proposed daytime educational programs, the Application, if amended and supplemented in accordance with the conditions specified herein below, will meet all of the specific standards and conditions of Sections 27-402.C(4),(9) and 27-1619.2 of the Zoning Ordinance. The Property shall be used in compliance with all of the testimony, plans and other exhibits presented by the Applicant and admitted into the record, unless modified by the enumerated conditions herein below.

This Decision and Order grants only conditional use approval in accordance with their express terms for the Proposed Use as described in the Application and by the testimony and exhibits. Nothing contained in this Decision and Order shall be construed to abrogate or limit the obligation of Applicants to comply with the applicable requirements of the Township's

Subdivision and Land Development Ordinance ("SALDO"). Except as expressly augmented and clarified by these conditions, review of any land development application shall be in accordance with all of the otherwise applicable standards, specifications, and regulations of the Township and of all other agencies with jurisdiction over the Property or any aspect thereof. Any proposed development or use of the Property different in any aspect from Applicants' proposal will require conditional use application to and approval from the Board.

The following conditions are imposed and attached pursuant to the authority of the MPC Sections 603(c) (53 P.S. § 10603(c)) and 913.2 (53 P.S. § 10913.2) as well as Sections 27-402 and 27-1619.2 of the Zoning Ordinance:

1. The educational use shall be limited to occur between the hours of 9:00 a.m. to 5:00 p.m. Monday through Saturday.
2. The Applicants shall comply with all requirements the Charlestown Township Subdivision and Land Development Ordinance and Stormwater Management Ordinance, including, but not limited to, submission and approval of a land development application for the proposed parking, and must obtain all other appropriate permits prior to commencing the permitted educational use.
3. The Applicants shall provide documentation from the Natural Lands Trust that the proposed improvements and use of the Property comply with the Conservation Easement. The permitted use may not commence until documentation is provided to the Zoning Officer verifying that the permitted use is in compliance with the Conservation Easement.
4. The Applicants must obtain and maintain appropriate accreditation or licensing as an educational institution from an organization recognized by the Pennsylvania Department of Education to provide accreditation or licensing. The permitted use may not commence until documentation is provided to the Zoning Officer verifying appropriate accreditation or licensing as an educational institution. Applicants must maintain the accreditation or licensing and provide documentation upon request from the Township. Failure to maintain accreditation or licensing will invalidate the use.
5. The permitted use may not commence until documentation is provided to the Zoning Officer verifying the Great Valley School District, or other public or private school or

similar educational institution, has a partnership in place whereby students engage in educational programs on the Property.

6. The permitted use may not commence until documentation is provided to the Zoning Officer verifying there is an approved educational curriculum to implement at the Property.

7. The Applicants are not permitted to construct the proposed deck as part the educational use and shall otherwise maintain the architectural appearance of the exterior to the barn which existed prior to the permitted adaptive reuse.

8. The Applicants shall not use the Property for any commercial use, including but not limited to as an event venue, restaurant, café, or for the provision of catering services on or off the Property.

9. There shall be no off-site parking and transportation of persons participating in the educational use.

10. The educational use shall be operated by the owner of the Property who shall reside on the Property.

11. No alcohol shall be permitted as part of the proposed educational use on the Property.

12. No outdoor seating shall be permitted as part of the proposed educational use on the Property.

13. Food may only be prepared for consumption as one (1) small tasting (not a full, multi-course meal) per participant, and all food must be consumed within the barn.

14. No accessory structures related to the educational use, including but not limited to gazebos, pavilions, sheds or garages, shall be permitted.

15. The Applicants must comply with all restrictions and requirements for having animals on the Property, including, but not limited to, the Conservation Easement, the Subdivision Plan and any other law, regulation or ordinance.

16. The Applicants shall not shelter or otherwise house animals in the barn or within any structure attached to the barn.

17. All traffic for the permitted use must turn into the Applicants' private driveway, (within 75 feet of Charlestown Road), and must remain on the Applicants' Property when parked or turning around.

18. The Applicants shall erect signage directing vehicles to travel on the Applicants' Property solely (other than as required to turn onto the Marshall driveway).

19. The Applicants shall comply with all PennDOT requirements, including, but not limited to, acquiring any necessary permit to use Alexis Lane for the permitted use and, at their sole responsibility and expense, make any improvements necessary for school buses to safely access the Property. The Applicants shall provide documentation from PennDOT demonstrating compliance with this condition prior to commencing the permitted use.

20. The Applicants shall not allow parking related to the permitted use on Alexis Lane or within the driveway easement area.

21. The Applicants shall provide documentation to the Zoning Officer that the Chester County Health Department has approved the current on-site water source to be adequate to support the educational use.

22. If steep slopes are disturbed by any proposed improvement, conditional use approval shall be required in accordance with Section 1203.2.B(2) of the Zoning Ordinance.

23. Parking stalls shall be striped in accordance with Section 27-1304.F of the Zoning Ordinance.

24. Any parking areas shall be graded, surfaced, and drained in accordance with Section 27-1311.B of the Zoning Ordinance.

25. Except for the parking areas accessory to the dwelling, perimeters of all off street parking shall be screened and landscaped in accordance with Section 27-1306 of the Zoning Ordinance.

26. The Applicants shall comply with all Chester Health Department requirements, including, but not limited to food preparation certificate(s) and certification from the Chester County Health Department that the existing sewage system can accommodate the maximum usage permitted. Applicants shall provide documentation from the agency to the satisfaction of the Township Engineer proving compliance prior to commencing the educational use.

27. The Applicants shall comply with all fire safety and Department of Labor and Industry requirements, as determined by the Township Code Enforcement Officer, in order for a use and occupancy permit to be issued for the permitted use in the barn.

28. The Applicants shall install a fire suppression system, either Halon or sprinklers, in the barn housing the educational use.

29. The Applicants must submit a plan for odor suppression, including a manure plan that is required to be approved by the Township Zoning Officer prior to commencing the permitted use.

30. All proposed improvements shall be reviewed by the Charlestown Township Historic Commission/HARB, who shall comment on their appropriateness.

31. The Applicants are required to obtain an occupancy permit issued by the Zoning Officer prior to commencement of the permitted use. Any request for the issuance of a permit shall be accompanied by a copy of the order of the Board of Supervisors approving a conditional use for the adaptive reuse on the property upon which the use will be maintained and operated. The owner/operator shall provide evidence of current ownership of the Property upon application for the occupancy permit, and the adaptive use shall not be operated at any time without a valid occupancy permit. No occupancy permit shall be issued unless the Applicants have demonstrated compliance with the terms and conditions set forth by the Board of Supervisors in its conditional use order.

32. The Zoning Officer shall be permitted to inspect the Property at any time with notice, including any on-lot sewage disposal and any on-lot water systems, and determine whether it is in compliance with the provisions of the Zoning Ordinance, all other applicable ordinances and regulations, and any conditions of the conditional use order or occupancy permit. The occupancy permit may be revoked if the property is not in compliance.

33. An occupancy permit for the operation and maintenance of the use shall be issued only to an individual or individuals who own and reside within the Property for which the permit is sought. An occupancy permit issued for an adaptive reuse shall be valid for 5 years from the date of issuance. The permit shall be renewed every 5 years. The application procedure and fee shall be the same as applicable to Township occupancy permits in general. The initial and renewal permits shall not be issued until the facility has been inspected by the Zoning Officer to insure compliance with all applicable ordinances and regulations, the conditional use order and, if a renewal application, the original occupancy permits.

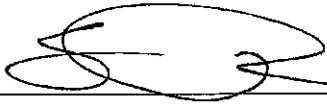
34. The Applicants shall execute and provide to the Township a recordable, notarized copy of a memorandum containing a metes and bounds description of the Property in question and stipulating the terms and conditions of this approval and shall consent to the recording by the Township in the office of the Recorder of Deeds of Chester County within sixty (60) days

following the date of this Decision and Order. Within 30 days of the date of this Decision and Order, Applicant shall pay in full all fees charged by Township consultants for review of the Application of the Applicant and plans and preparation of this Decision and Order.


35. The Applicants shall express to the Board in writing delivered to the Township administrative offices within ten (10) days of Applicants' receipt of this Decision its full and complete consent to the conditions specified herein above or the Application of the Applicants is denied; the Board expressly finds and concludes that the Application of the Applicants, in the absence of compliance with the said conditions, is inconsistent with the standards, criteria, purposes and policies codified in the Zoning Ordinance.

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CHARLESTOWN TOWNSHIP



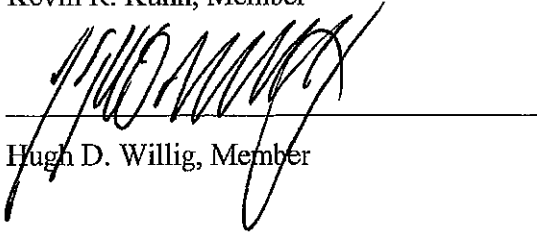
Frank A. Piliero, Chairman



Michael C. Rodgers, Vice-Chairman



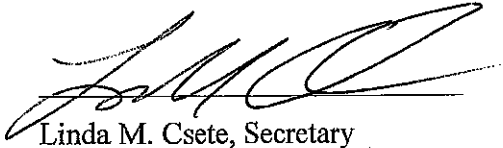
Kevin R. Kuhn, Member



Hugh D. Willig, Member



Charles A. Philips, Member



Linda M. Csete, Secretary