

## CHAPTER 275

**AN ACT** concerning the operation of rural microenterprises on preserved farms, amending the title and body of P.L.2005, c.314, and designated as the “New Jersey Rural Microenterprise Act.”

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. The title of P.L.2005, c.314 is amended to read as follows:

Title amended.

**AN ACT** concerning rural microenterprise activities and personal wireless service facilities on preserved farmland, and supplementing P.L.1983, c.32 (C.4:1C-11 et seq.).

2. Section 1 of P.L.2005, c.314 (C.4:1C-32.1) is amended to read as follows:

C.4:1C-32.1 Special permit to allow rural microenterprise activity on land; terms defined.

1. a. Any person who owns qualifying land may apply for a special permit pursuant to this section to allow a rural microenterprise activity to occur on the land.

b. The committee, in its sole discretion, may issue a special permit pursuant to this section to the owner of the premises if the development easement is owned by the committee or a board. If the development easement is owned by a qualifying tax exempt nonprofit organization, the committee, in consultation with the qualifying tax exempt nonprofit organization, may issue a special permit pursuant to this section to the owner of the premises. The committee shall provide the holder of any development easement on the farm with a copy of the application submitted for the purposes of subsection a. of this section, and the holder of the development easement shall have 30 days after the date of receipt thereof to provide comments to the committee on the application. Within 90 days after receipt of a completed application, submitted for the purposes of subsection a. of this section, the committee shall approve, approve with conditions, or disapprove the application.

c. There shall be two categories of rural microenterprise activities, as follows:

(1) Class 1 shall include customary rural activities, which rely on the equipment and aptitude historically possessed by the agricultural community, such as snow plowing, bed and breakfasts, bakeries, woodworking, and craft-based businesses; and

(2) Class 2 shall include agriculture support services, which have a direct and positive impact on agriculture by supplying needed equipment, supplies, and services to the surrounding agricultural community, such as veterinary practices, seed suppliers, and tractor or equipment repair shops.

d. A special permit may be issued pursuant to this section provided that:

(1) the owner of the premises establishes, through the submission of tax forms, sales receipts, or other appropriate documentation, as directed by the committee, that (a) the qualifying land is a commercial farm as defined pursuant to section 3 of P.L.1983, c.31 (C.4:1C-3), and (b) the owner of the premises is a farmer, as defined pursuant to subsection k. of this section;

(2) the permit is for one rural microenterprise only;

(3) no more than one permit is valid at any one time for use on the qualifying land;

(4) the permit is for a maximum duration of 20 years;

(5) the permit does not run with the land and may not be assigned;

(6) the rural microenterprise does not interfere with the use of the qualifying land for agricultural or horticultural production;

(7) the rural microenterprise utilizes the land and structures in their existing condition, except as allowed in accordance with the use restrictions prescribed in subsection g. of this section;

(8) the total area of land and structures devoted to supporting the rural microenterprise does not exceed a one-acre envelope on the qualifying land;

(9) the rural microenterprise does not have an adverse impact upon the soils, water resources, air quality, or other natural resources of the land or the surrounding area; and

(10) the rural microenterprise is not a high traffic volume business, and is undertaken in compliance with the parking and employment restrictions prescribed by subsection h. of this section.

e. The owner of the premises may apply to the committee to renew a permit within 10 years before the date of the scheduled permit expiration. The committee shall review the renewal application in accordance with the process and criteria set forth in this section for the issuance of a special permit, including the consultation required by subsection b. of this section.

f. The committee shall provide reasonable opportunity for the continued operation of a rural microenterprise in the event of:

(1) the death, incapacitation, or retirement of the owner of the premises;

(2) transfer of the ownership of the farm; or

(3) disruption of income from gross sales of agricultural or horticultural products, caused by circumstances beyond the farmer's control, such as crop failure.

g. The use of land and structures for a rural microenterprise activity shall be subject to the following conditions and restrictions:

(1) A structure that is designated in the deed of easement as agricultural labor housing, or a structure that has been constructed or designated as agricultural labor housing since the date of the conveyance of the easement, shall not be used for the rural microenterprise;

(2) No new structures may be constructed on the premises to support a rural microenterprise. Any structure constructed on the premises since the date of the conveyance of the easement, and in accordance with the farmland preservation deed restrictions, shall not be eligible for a special permit for a rural microenterprise for a period of five years following completion of its construction;

(3) Improvements shall not be made to the interior of a non-residential structure in order to adapt it for residential use;

(4) The entire floor area of existing residential or agricultural building space may be used to support a rural microenterprise where the building has not been substantially altered or finished to support the microenterprise;

(5) No more than 2,500 square feet of the interior of existing residential or agricultural building space may be substantially altered or finished to support the rural microenterprise, except that, at the request of the owner of the premises, the committee may allow the alteration or finishing of up to 100 percent of an existing heritage farm structure, provided that the owner agrees to place on the structure, in a form approved by the committee, a heritage preservation easement, which shall be recorded against the premises, shall be held by the committee, and shall run with the land;

(6) The expansion of existing building space shall be permitted, provided that: (a) the expansion does not exceed 500 square feet in total footprint area; (b) the purpose or use of the expansion is necessary to the operation or functioning of the rural microenterprise; and (c) the area of the proposed footprint of the expansion is reasonably calculated, based solely

upon the demands of accommodating the rural microenterprise, and does not incorporate excess space;

(7) Improvements to the exterior of a structure shall be compatible with the agricultural character of the premises, and shall not diminish the historic or cultural character of the structure;

(8) Repairs may be made to the interior or exterior of a building provided that they do not diminish the historic or cultural character of the structure;

(9) The location, design, height, and aesthetic attributes of the rural microenterprise shall reflect the public interest of preserving the natural and unadulterated appearance of the landscape and structures;

(10) No public utilities, including water, gas, or sewage, other than those already existing and available on the qualifying land, shall be permitted to be extended to the qualifying land for purposes of the rural microenterprise, except that the establishment of new electric service required for the rural microenterprise shall be permitted;

(11) On-site septic and well facilities may be established, expanded, or improved for the purpose of supporting the rural microenterprise provided such facilities are contained within the one-acre envelope provided for in paragraph (8) of subsection d. of this section; and

(12) No more than a combined total of 5,000 square feet of land may be utilized for the outside storage of equipment, vehicles, supplies, products, or by-products, in association with the microenterprise. Any improvements to the land that are undertaken for the purposes described in this paragraph or paragraph (11) of this subsection shall be limited to those that are necessary either to protect public health and safety or to minimize disturbance of the premises and its soil and water resources.

h. Parking and employment at a rural microenterprise shall be subject to the following conditions and restrictions:

(1) The area dedicated to customer parking shall not exceed 2,000 square feet or provide for more than 10 parking spaces;

(2) Improvements to the parking area shall be limited to those improvements that are required to protect public health and safety or minimize the disturbance of soil and water resources on the premises;

(3) The number of parking spaces shall be sufficient to accommodate visitors to the rural microenterprise under normal conditions; and

(4) At peak operational periods, the maximum number of employees or workers who are associated with the rural microenterprise and work on the premises shall not exceed four full-time employees, or the equivalent, in addition to the owner or operator.

i. Committee approval of a special permit for a rural microenterprise activity pursuant to this section shall not relieve the applicant from obtaining all other permits, approvals, or authorizations that may be required by federal, State, or local law, rule, regulation, or ordinance.

j. (1) A rural microenterprise shall not be considered to be an agricultural use as defined in subsection b. of section 3 of P.L.1983, c.32 (C.4:1C-13).

(2) Nothing in this section shall be interpreted as providing a rural microenterprise with protection under section 6 of the "Right to Farm Act," P.L.1983, c.31 (C.4:1C-9) if that rural microenterprise is not otherwise eligible for such protection.

k. For the purposes of this section:

"Farmer" means the owner and operator of the premises who:

(1) exclusive of any income received from the rental of lands, realized gross sales of at least \$2,500 for agricultural or horticultural products produced on the premises during the calendar year immediately preceding submission of a special permit application; and

(2) continues to own and operate the premises and meet that income threshold every year during the term of the permit.

“Heritage farm structure” means a building or structure that is significantly representative of New Jersey’s agrarian history or culture and that has been designated as such by the committee exclusively for the purposes of sections 1 and 3 of P.L.2005, c.314 (C.4:1C-32.1 and C.4:1C-32.3).

“Heritage preservation easement” means an interest in land less than fee simple absolute, stated in the form of a deed restriction executed by or on behalf of the owner of the land, appropriate to preserving a building or structure that is significant for its value or importance to New Jersey’s agrarian history or culture, and to be used exclusively for the purposes of implementing sections 1 and 3 of P.L.2005, c.314 (C.4:1C-32.1 and C.4:1C-32.3), to limit alteration in exterior form or features of such building or structure.

“Owner of the premises” means the person or entity who owns qualifying land.

“Qualifying land” means a farm on which a development easement was conveyed to, or retained by, the committee, a board, or a qualifying tax exempt nonprofit organization prior to January 12, 2006, the date of enactment of P.L.2005, c.314 (C.4:1C-32.1 et seq.), and in accordance with the provisions of section 24 of P.L.1983, c.32 (C.4:1C-31), section 5 of P.L.1988, c.4 (C.4:1C-31.1), section 1 of P.L.1989, c.28 (C.4:1C-38), section 1 of P.L.1999, c.180 (C.4:1C-43.1), or sections 37 through 40 of P.L.1999, c.152 (C.13:8C-37 through C.13:8C-40), and for which no portion of the farm was excluded from preservation in the deed of easement.

“Qualifying tax exempt nonprofit organization” means the same as that term is defined pursuant to section 3 of P.L.1999, c.152 (C.13:8C-3).

“Rural microenterprise” means a small-scale business or activity that is fully compatible with agricultural use and production on the premises, does not, at any time, detract from, diminish, or interfere with the agricultural use of the premises, and is incidental to the agricultural use of the premises. “Rural microenterprise” shall not include a personal wireless service facility as defined and regulated pursuant to section 2 of P.L.2005, c.314 (C.4:1C-32.2).

3. Section 3 of P.L.2005, c.314 (C.4:1C-32.3) is amended to read as follows:

C.4:1C-32.3 Application fee for special permit; suspension, revocation; report.

3. a. The application fee for a special permit authorized pursuant to section 1 of P.L.2005, c.314 (C.4:1C-32.1) shall be \$250. The application fee for a special permit authorized pursuant to section 2 of P.L.2005, c.314 (C.4:1C-32.2) shall be \$1,000. All application fees shall be payable to the committee regardless of whether or not a permit is issued. All proceeds from the collection of application fees by the committee pursuant to P.L.2005, c.314 (C.4:1C-32.1 et seq.) shall be utilized by the committee for farmland preservation purposes.

b. The committee may suspend or revoke a special permit issued pursuant to section 1 or 2 of P.L.2005, c.314 (C.4:1C-32.1 or C.4:1C-32.2) if the permittee violates any term or condition of the permit, or any provision of the applicable statutory section.

c. (1) In order to expedite the review and approval of routine applications for a special permit, which have been submitted pursuant to section 1 or 2 of P.L.2005, c.314 (C.4:1C-

32.1 or C.4:1C-32.2), the committee may delegate to its executive director, by resolution, the authority to review and approve an application. The delegation of review and approval authority pursuant to this subsection shall be authorized by the committee only in those cases where (a) the committee has not received comments from the board or a qualifying nonprofit organization concerning the potential negative impacts of an application's approval, and (b) the application complies with all provisions of P.L.2005, c.314 (C.4:1C-32.1 et seq.) and the rules and regulations adopted pursuant thereto.

(2) An applicant whose application is denied by the executive director may appeal the decision to the committee.

(3) Nothing in this subsection shall preclude the executive director from bringing any application before the committee for review and approval, when such action is deemed by the executive director to be appropriate.

d. The committee may take action to deny an application for a special permit or to suspend or revoke a special permit issued pursuant to P.L.2005, c.314 (C.4:1C-32.1 et seq.). The applicant or permittee shall be afforded the opportunity for a hearing prior to the committee taking any such action.

e. Within two years after the date of enactment of P.L.2015, c.275, the committee shall adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as is necessary to implement and administer the provisions of P.L.2005, c.314 (C.4:1C-32.1 et seq.), as amended by P.L.2015, c.275. These rules and regulations shall include, at a minimum, procedures and standards for the filing, evaluation, and approval of special permit applications, which procedures and standards shall seek to balance, as equally important concepts, the public interest in: (1) protecting farmland from further development as a means of preserving agriculture; (2) protecting heritage farm structures and enhancing the beauty and character of the State and the local communities where farmland has been preserved; and (3) providing support to sustain and strengthen the agricultural industry in the State.

f. Every two years, the committee shall prepare a report on the implementation of P.L.2005, c.314 (C.4:1C-32.1 et seq.), as amended by P.L.2015, c.275. The report shall include a survey and inventory of:

(1) all rural microenterprise activities occurring, and all personal wireless service facilities placed, on preserved farmland in accordance with the provisions of P.L.2005, c.314 (C.4:1C-32.1 et seq.);

(2) the extent to which existing structures, such as barns, sheds, and silos, are used for the purposes identified in paragraph (1) of this subsection, and the manner in which those existing structures have been modified to serve those purposes;

(3) the extent to which new structures, instead of existing structures, have been erected to host personal wireless service facilities, and the number and type of new structures used to disguise those facilities, such as artificial trees and faux barns, sheds, and silos;

(4) the extent to which heritage farm structures have been protected through the placement thereon of heritage preservation easements; and

(5) any other information the committee deems useful.

Any report prepared pursuant to this subsection shall be transmitted to the Governor, and, in accordance with the provisions of section 2 of P.L.1991, c.164 (C.52:14-19.1), to the President of the Senate and the Speaker of the General Assembly, as well as to the respective chairpersons of the Senate Economic Growth Committee, the Senate Environment and Energy Committee, the Assembly Agriculture and Natural Resources Committee, and the Assembly Environment and Solid Waste Committee, or their designated successors. Copies

of the report shall also be made available to the public upon request and free of charge, and shall be posted at a publicly-accessible location on the committee's Internet website.

4. This act shall take effect immediately.

Approved January 19, 2016.