

RESOLUTION 2006-03

RESOLUTION OF THE BERGEN COUNTY AGRICULTURE DEVELOPMENT BOARD

DECISION ON AN APPLICATION FILED PURSUANT TO THE NEW JERSEY RIGHT TO FARM ACT FOR A DETERMINATION OF A SITE-SPECIFIC AGRICULTURAL MANAGEMENT PRACTICE (AMP)

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

WHEREAS, pursuant to the Right to Farm Act, N.J.S.A. 4:1C-10.1 and the State Agriculture Development Committee regulations, N.J.A.C. 2:76-2.3 any person aggrieved by the operation of a commercial farm shall file a complaint with the applicable County Agriculture Development Board prior to filing an action in court; and

WHEREAS, by letter dated January 6, 2005 the Borough of Closter [Borough] alleged that the farm failed to obtain municipal site plan approval and subsequent thereto the Borough’s Construction Code official issued stop work orders to compel compliance of the municipal zoning code and the State Construction Code, including subcodes, as set forth hereinafter; and

WHEREAS, on January 17, 2005 Mary Crain (“Crain”), as the operator of the Abram Demaree Homestead [the farm] located in Closter, applied to the Bergen County Agriculture Development Board [the Board] pursuant to N.J.A.C. 2:76-2.3 requesting a determination as to whether the proposed use of the Property as a commercial farm with a farmstand and ancillary structures as set forth hereinafter constitute generally accepted agricultural management practices with regard to: the production of agricultural and horticultural crops; the processing and packaging the agricultural output of the commercial farm; and the operation of a farmstand pursuant to N.J.S.A. 4:1C-9 (c) (hereinafter referred to as “Site-Specific AMP Request”); and

WHEREAS, on September 15, 2005 the Abram Demaree Homestead filed an “Application for a Zoning Permit” for a commercial kitchen to include a stove, oven, steam kettle and fryer to process farm produce and farm related items and has requested that it be made part of the request for a generally accepted agricultural management practice; and

WHEREAS, both the Borough’s complaint and the Abram Demaree Homestead’s Site-Specific AMP Request were forwarded to the SADC for consolidation with a pending case involving soil movement and water drainage; and

WHEREAS, on January 18, 2006 and February 3, 2006 the parties engaged in good faith discussions of the issues and participated in informal meetings in at Closter's Borough Hall and at the farm; and both parties participated in an informal mediation session at the Board meeting on January 24, 2006; and

WHEREAS, the Borough has agreed to withdraw its January 6, 2005, complaint as to all zoning issues and have the Board treat the issues raised therein in the context of Abram Demaree Homestead's Site-Specific AMP Request pursuant to N.J.A.C. 2:76-2.3; and

WHEREAS, the parties have jointly requested that the Board conduct a public hearing and issue a formal ruling on the merits of their respective positions; and the SADC has consented to jurisdiction by the Board; and

WHEREAS, the Board's review shall be limited to those issues raised in the Abram Demaree Homestead's site-specific AMP Request and shall not include a review of the issues pending before the SADC in the matter involving soil movement and water drainage or issues heard previously by the County Construction Board of Appeals; and

WHEREAS, a Site Review was conducted on March 29, 2006 ("the Site Visit"), which was attended by BCADB Board members Evelyn Spath-Mercado, Ronald Binaghi Jr., Mark M. Cole and Daryl Secor as well as Closter Officials; and Mary Crain and her attorney, Anthony Sposaro Esq., at a meeting noticed in compliance with the New Jersey Statutes and the Open Public Meetings Act; and

WHEREAS, the Board members present during the site visit made observations including but not limited to the location of existing and proposed structures as well as traffic movements; and

WHEREAS, the BCADB noticed a meeting for May 23, 2006 in compliance with the Open Public Meetings Act and a quorum of the Board being present at the aforesaid meeting, the BCADB considered the application; and

WHEREAS, the Abram Demaree Homestead represented by Anthony J. Sposaro, Esq., appeared before the Board on May 23, 2006 at a meeting noticed in compliance with the Open Public Meetings Act and is authorized to consent to the form of this resolution; and

WHEREAS, the Borough, represented by Edward T. Rogan Esq. received notice of the May 23, 2006 meeting and Borough Officials Leonard Sinovitz, Zoning Officer, Nick DeNicola, P.E. from Boswell Engineering, and Keith Sager, Construction Code Official have been consulted with and the Borough has authorized its counsel to consent to the form of this resolution; and

WHEREAS, the Board heard the sworn testimony of Mary Crain as to existing signage; and

WHEREAS, the Board received the following Exhibits into evidence:

1. An Aerial Photo (Exhibit "A"), 8.5" x 11", taken in 2002 entitled "Abram Demaree Farm Market - May 2006" showing a portion of the Farm adjacent to Old Hook Road, and the existing: parking lot, driveways, and buildings as well as the approximate location of a proposed historic barn.
2. A "Parking Plan" (Exhibit "B"), 8.5" x 11", dated April 24, 2006, depicting 20 parking spaces (14 required by ordinance).
3. An "Application for a Zoning Permit" (Exhibit "C") for a commercial kitchen to include a stove, oven, steam kettle and fryer to process farm produce and farm related items.
4. A "Sign Plan" (Exhibit "D"), 8.5" x 11", dated April 24, 2006 depicting the number and locations of signs.
5. A "Driveway Sight Distance - Abram Demaree Homestead" Plan (Exhibit "E") dated April 26, 2006, prepared by the Judd Rocciola of Rocciola Engineering showing sight distances for a vehicle exiting from the Farm's westerly driveway onto Old Hook Road
6. A "Site Distance Report" (Exhibit "F") dated April 17, 2006, prepared by Judd Rocciola of Rocciola Engineering which addresses the adequacy of site distances.
7. A "Letter from County Engineer", Gary Ascolese, (Exhibit "G") dated May 12, 2006, asserting County jurisdiction over Old Hook Road (County Rt. 502), turning movements and site distances and advising of the restriping of Old Hook Road to provide for one westbound lane and three east bound lanes between the rail road tracks and Schraalenburg Road.

WHEREAS, the Board took judicial notice of the:

1. Cluster Zoning Ordinance
2. Cluster Zoning Map
3. Cluster Master Plan

WHEREAS, the BCADB has considered the farm's application and exhibits and the Borough's complaint as well zoning ordinances, etc.

NOW THEREFORE BE IT RESOLVED, that the BCADB makes the following determinations:

PROCEDURAL BACKGROUND

1. On May 10, 2004, the Borough's Zoning Officer filed a municipal court complaint against the farm for violating Ordinance 200-76A "Certificate of Zoning Approval" which states that "No building hereinafter erected or altered shall be occupied or used, in whole or in part, for any use whatsoever, and no property shall be used and no change or use shall hereafter be made of any building or part thereof or any premises used until a certificate of zoning approval has been issued by the Zoning Officer indicating that the building complies with the provision of this chapter." On January 6, 2005 the Borough Prosecutor filed a letter complaint with the BCADB, superseding the municipal court complaint, alleging that the farm failed to obtain municipal site plan approval. In January of 2006 the Construction Code official issued stop work orders.

2. On January 17, 2005, the Abram Demaree Homestead filed for an Agricultural Management Practice (AMP) determination by the Bergen County Agriculture Development Board (BCADB), pursuant to the Right to Farm Act, that she has a right to operate a farmstand pursuant to N.J.S.A. 4:1C-9 (c) which provides for "the operation of a farm market, including the construction of building and parking areas in conformance with municipal standards." She also seeks to compel the issuance of a building permit for the construction of an addition to the farmstand; for a building permit to construct and operate a commercial kitchen, related to farm produce, inside the building; and for the reconstruction of an historic barn. The Borough of Closter seeks documented compliance for all buildings with the Construction Code, including subcodes; compliance with fire and health codes for a commercial kitchen; and the application of municipal site plan standards including but not limited to ingress and egress, hours of operation, signage, traffic movements, parking, etc. as they relate to health and safety.

FACTUAL DISCUSSION

3. Mary Crain operates the Abram Demaree Homestead, a fourteen-acre farm a portion of which is located at [redacted], Closter (Block 202 Lot 1). The Abram Demaree Homestead purchased the farm from the Hackensack Water Company in 1992. The land has been continuously farmed for more than 200 years. The property is shaped roughly as a rectangle. The northern portion of the farm borders Old Hook Road and has two curb cuts. The eastern portion of the farm borders Schraalenburgh Road. The westerly border, containing two sewer easements, abuts railroad tracks on property owned by CFX (formerly Conrail) railroad. The southerly border of the farm abuts the Harvest restaurant on Lot 2.

4. The BCADB finds, and the parties stipulated, that:

A. The Abram Demaree Homestead is a "commercial farm" as defined by the statute as "a farm management unit of no less than five acres producing agricultural or horticultural products worth \$2,500 or more annually, and satisfying the eligibility criteria for differential

property taxation pursuant to the 'Farmland Assessment Act of 1964,' ... [N.J.S.A.] 54:4-23.1 et seq." N.J.S.A. 4:1C-3; see N.J.S.A. 54:4-23.1 to -23.23.

B. The Abram Demaree Homestead is located in an area in which, as of December 31, 1997 or thereafter, agriculture has been consistent with the municipal master plan and is a permitted use under the municipal zoning ordinance:

"Article IV, District No.1, Residence Area A, Section 200-6(F) Uses: Farms, nurseries or greenhouses, provided that said uses must reserve on site no less than one acre of open space."

C. The Abram Demaree Homestead was in operation as of July 2, 1998.

D. The Farm is located on [redacted] (2) and has driveway curb cuts reconstructed when the roadway improvements on [redacted] road - were installed. The County of Bergen has jurisdiction over ingress and egress on this County road. The farm also has frontage on [redacted].

LEGAL ANALYSIS

5. Prior to the Right to Farm Act the general rule of law was that a municipal governing body is vested with the ultimate responsibility of establishing the essential land use character of the municipality through the adoption of zoning ordinances that divide the municipality into districts, identify the uses permitted in each district, and impose general limitations on construction.

6. The Right to Farm Act (N.J.S.A. 4:1C-1 et seq.), as amended in 1998, renders its provisions *preeminent* to "any municipal or county ordinance, resolution, or regulation to the contrary," N.J.S.A. 4:1C-9. The New Jersey Supreme Court affirmed, in Twp. of Franklin v. Hollander, 172 N.J. 147 (2002), that the Farm Act's provisions as preeminent over a municipality exercising its powers under the Municipal Land Use Law, N.J.S.A. 40:55D-1 to -112...and that the Act was designed "to promote to the greatest extent practicable and feasible, the continuation of agriculture in the State of New Jersey while recognizing the potential conflicts among all lawful activities in the State." Senate Natural Res. and Agric. Comm. Statement No. 854- L. 1983, c. 31 (N.J.1998).

7. The Court acknowledged the difficulty and complexity of the agriculture board's assignment, observing: "The potential for conflict between farming interests and public health and safety exists. Nevertheless, we repose trust and discretion in the agricultural boards to decide carefully future disputes on a case-by-case basis and to balance competing interests." It also cautioned that in the exercise of jurisdiction over agricultural practices, the county agriculture development board is limited by public health and safety concerns. These issues of health and public safety must also be given due consideration by the agricultural agencies citing

the appellate court's finding that:

“We consider the statutory language in the Act which speaks to conduct that poses a '*direct threat to public health or safety*' must be considered broadly, and not as a narrow limitation in considering complaints of an aggrieved party that local land use or other relevant ordinances are being violated by the conduct of the commercial farm operator. In sum, in exercising its authority under the Act, the CAB or SADC must afford a local agency comity in recognition that the municipality interests must be appropriately acknowledged and considered.”

8. Lastly, the New Jersey Supreme Court recognized that the Right to Farm Act may preempt municipal regulations, but directed the CADBs and SADC to consider relevant municipal standards and, in instances where the ordinance “has a peripheral effect on farming that does not directly conflict with farming practices,” defer to the ordinance. Township of Franklin v. den Hollander, 338 N.J. Super. 373 (App. Div. 2001), *aff’d*, 172 N.J. 147, 151-152 (2002). CADBs and the SADC are also required to consider the impact of the agricultural activity on public health and safety “and temper their determinations with these standards in mind.” *Ibid*.

9. As a result of the Hollander case agriculture boards, such as the BCADB, have primary jurisdiction over municipal/farm disputes but do not have unlimited authority regarding issues that directly affect public health and safety. In other words the BCADB must give appropriate consideration to municipal concerns - including but not limited to hours of operation, lighting, traffic and parking - where they are implicated and balance the commercial agricultural operation, activity or structure which conforms to agricultural management practices against the governmental regulation and any direct threats to public health and safety. N.J.S.A. 4:1C-10.

10. For a farm to receive this protection, the appropriate CADB must determine that the activity at issue conforms with agricultural management practices (AMPs) adopted by the SADC pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. or that it constitutes a generally accepted agricultural operation or practice. Thus, when an agriculture board issues an AMP, on a case-by-case basis, it creates an “irrebuttable presumption” that any activity of a commercial farm that is determined by the CAB “to constitute a generally accepted agricultural operation or practice [cannot]...be deemed to otherwise invade or interfere with the use and enjoyment of any other land or property,” provided the operation or practice “does not pose a direct threat to public health and safety.” N.J.S.A. 4:1C-10.

CONCLUSIONS AND ISSUANCE OF AMP

11. In deciding this matter the BCADB has weighed both agricultural and municipal interests. The BCADB finds, and the Abram Demaree Homestead concurs, that the farm structures must comply with the Uniform Construction Code; farm operations must comply with

health codes, i.e., commercial kitchen operations; and that the farm's site operation must satisfactorily address site plan issues that involve health and safety concerns such as traffic turning movements, adequate parking, lighting, etc. in a way that does not pose a direct threat to public health and safety. See N.J.S.A. 4:1C-9.

12. In accordance with title 4:1C-1 et. seq. the BCADB has considered the relevant municipal public health and safety standards including those which might have a peripheral effect on farming but do not directly conflict with farming practices. It has also considered the concerns of the parties, exhibits and stipulations and, after weighing the facts and circumstances, makes the following findings and rulings:

A. The Abram Demaree Homestead qualifies as a commercial farm as defined in the New Jersey Right to Farm Act (N.J.S.A. 4:1C-3) and is entitled to operate a farmstand pursuant to N.J.S.A. 4:1C-9.

B. The municipal zoning code applies to the farm only to the extent that it applies to issues of public health or safety.

C. The County Engineer is the sole authority on traffic issues relating to County Roads such as County Route 502 and Old Hook Road.

D. The proposed uses and improvements to the Property are appropriate to the Agricultural Management Plan (AMP) uses of the Property as hereinafter set forth:

(1) Site Plan.

(a) The BCADB approves the site plan - as modified to account for the Borough's public health and safety standards based upon the following exhibits and subject to the following conditions:

- (i) Aerial Photo (Exhibit "A"), 8.5" x 11", taken in 2002 entitled "Abram Demaree Farm Market - May 2006" showing a portion of the Farm adjacent to Old Hook Road, parking lot, driveways, existing buildings and the site of a proposed historic barn. The location for the reconstruction of a historic barn shall be approximately 453 feet from the intersection of Old Hook Road and 203 feet from the intersection of Old Hook Road and the property line.
- (ii) "Parking Plan" (Exhibit "B"), 8.5" x 11", depicting twenty (20) parking spaces (14 required by ordinance).
- (iii) An "Application for a Zoning Permit" (Exhibit "C") for a commercial kitchen to include a stove, oven,

steam kettle and fryer to process farm produce and farm related items

- (iv) A "Sign Plan" (Exhibit "D"), 8.5" x 11", dated April 24, 2006 depicting the number and locations of signs
- (v) "Driveway Sight Distance - Abram Demaree Homestead" Plan (Exhibit "E") dated April 26, 2006 prepared by the Judd Rocciola of Rocciola Engineering showing sight distances for a vehicle exiting from the Farm's westerly driveway onto _____ (a County road). The position of the driver is set at a point fifteen (15) feet behind the exiting curb line of the County road. The driver's eye level is set at a point 3.5 feet above the pavement and the driver should be capable of seeing an object two (2) feet high placed in the center of all lanes. Clear sight distances are dimensioned.
- (vi) Site Distance Report (Exhibit "F") dated April 17, 2006 prepared by Judd Rocciola of Rocciola Engineering which addresses the adequacy of site distances.
- (vii) Letter from County Engineer, Gary Ascolese, (Exhibit "G") dated May 12, 2006. Due to the projected restriping of Old Hook Road to provide for one westbound lane and three east bound lanes between the rail road tracks and Schraalenburg Road the Farm shall post no left turn in out and no left hand turn in signs at each entrance; the Farm's permanent sign shall be relocated so that it is 15 feet or farther from the existing curb to provide adequate site distance; all plants and shrubs and structures within 15 feet of the curb shall be limited to a height of two (2) feet so as to maintain sight distance standards for both driveways looking east and west; the truncated telephone poles at the driveway entrance(s) shall be removed and replaced by standard galvanized or equivalent pipe posts situated fifteen (15) feet from the curb. The County Engineer's determination preempts any conflicts with the Rocciola Report and Site Distance Plan.

- (b) In the event that the Farm seeks an entrance with full turning movements it should propose a gravel driveway from the southeast corner of its parking lot to a future entrance located on Schraalenburg Road south of its intersection with Old Hook Road.
- (c) No signs, displays or structures shall interfere with sight distances.
- (d) Limit all plants and shrubs within 15 feet of the Old Hook Road curb to 24 inches or less in areas that affect sight distance.

(2) Site Operation

- (a) The hours of operation shall be 10:00 a.m. to 6:00 p.m.
- (b) The farmstand building and/or the site will not contain seating for onsite food consumption.
- (c) (1) The farm's signage, all of which is preexisting, shall be set back 15 or more feet from the curb and the locations and number of signs shall be consistent with the depiction on an 8.5" x 11" sheet (Exhibit "D") dated April 24, 2006 (unless otherwise modified herein) which shows:
 - (i) One 4' x 8' permanent *free standing* sign
 - (ii) One 4' x 8' permanent *wall* mounted sign
 - (iii) Seven seasonal/temporary, *verbiage* signs on H-frames which shall be no more than five (5) feet in height and no more than three (3) feet in width (and no more than nine square feet on either side as follows:
 - Annuals (2' x 3')
 - Apples (2' x 3')
 - Fresh Corn (2' x 3')
 - Perennials (2' x 3')
 - Plants (2' x 3')
 - Tomatoes (2' x 3')
 - Tomatoes (2' x 3')

(iv) Five Seasonal/temporary, *ground* signs on posts illustrating painted pictures of fruits and vegetables as follows:

Apple (4' x 4')
Corn (2' x 6')
Flowers (4' x 4')
Pumpkin (4' x 4')
Tomato (4' x 4')

(2) The number of seasonal and ground signs during the calendar year shall be limited as follows:

<u>Month</u>	<u>Seasonal Signs</u>	<u>Ground Signs</u>
January	0	0
February	0	0
March	2	0
April	3	1
May	4	3
June	4	3
July	4	3
August	7	3
September	7	5
October	7	1
November	7	1
December	3	1

(3) Only the permanent free standing sign and the permanent wall mounted sign may be illuminated - provided that the lighting complies with the Borough's zoning ordinance.

(4) All signs shall comply with the Closter Zoning Ordinance unless otherwise excepted herein.

(5) Nothing contained herein shall prevent the Borough from reopening the issue of temporary/seasonal signs if it modifies its zoning ordinance to incorporate a section dedicated to farm signs.

- (d) The historic barn shall not be used as a retail store.
 - (e) There shall be no prescheduled “tours” of the site and/or historic barn when the farm is open to the public.
 - (f) Individual “pick your own” activities are permitted in the field.
 - (g) One bus/multi-passengered vehicle at a time is permitted during farm hours for “pick your own activities” involving school classes or similar organizations. The Borough reserves the right to reopen this provision if traffic or other safety and health concerns warrant same.
- (3) Building Permits and Certificates of Occupancy.
- (a) The Abram Demaree Homestead shall submit the following to the Borough’s Construction Code Officer:
 - (i) Sealed architectural plans for the proposed shed addition;
 - (ii) Sealed as-built architectural plans for the existing farmstand building, formerly permitted as a barn, evidencing that all required codes for “M” (Mercantile) use groups have been satisfied.
 - (iii) Sealed plans for the proposed commercial kitchen.
 - (iv) All plans shall comply with the Uniform Construction Code and all applicable subcodes and health and fire codes.
 - (b) Upon receipt of the applicable plans and a determination by the BCADB - as memorialized in this resolution -

that the proposed use within this zone is permitted under the Right to Farm Act the Borough will:

- (i) Issue a building permit for the construction of the proposed shed;
- (ii) Issue an amended Certificate of Occupancy for the existing farmstand; and
- (iii) Issue a Certificate of Occupancy for the commercial kitchen.

(4) Health and Fire Codes.

The operation of the Abram Demaree Homestead commercial kitchen shall comply with applicable health and fire codes.

(5) Timing of Certificate of Occupancies.

Notwithstanding anything to the contrary completion of the Site Modifications set forth in a paragraph "3" above is a prerequisite to the issuance of Certificate of Occupancies and/or modified Certificate of Occupancy set forth herein.

(6) Construction Code Compliance and Municipal Court.

(a) Nothing herein shall prevent the Borough from seeking enforcement of or compliance with construction code requirements - now or in the future - before the Bergen County Construction Board of Appeals

(B) The Right to Farm Act (N.J.S.A. 4:1C-1 et seq.), as amended in 1998, renders its provisions preeminent to "any municipal or county ordinance, resolution, or regulation to the contrary," N.J.S.A. 4:1C-9. The Borough shall dismiss any pending municipal court violations with prejudice.

FINDINGS OF FACT & CONDITIONS

The testimony and proofs given by the Applicant at the aforementioned public hearing and the BCADB's finding of fact and conclusions of law as set forth above are incorporated herein by reference and form the basis of this BCADB's determination herein.

A. In the event of any material deviation or change from the testimony, representations or findings of fact the BCADB reserves the right and option to modify, alter, change or revoke the within approval.

B. If terms and conditions agreed to on the record below are omitted from this resolution, the Applicant and the Borough are nevertheless bound to abide by same pursuant to Fieramosca V. Barnegat Tp., 335 N.J. Super, 526, 533-534 (Law Div.2000)).

NOW, THEREFORE, IS IT FURTHER RESOLVED that, based on the aforesaid findings of fact, the Bergen County Agriculture Development Board finds that the operation of the Abram Demaree Homestead by Crain is a commercial farm and is entitled to an Agriculture Management Plan as set forth herein approving a farmstand; a proposed shed addition to the existing farmstand; proposed historic barn; and a proposed commercial kitchen to include a stove, oven, steam kettle and fryer to process farm produce and farm related items pursuant to an "Application for Zoning Permit" dated September 15, 2005 which is hereby incorporated by reference.

PROVIDED FURTHER THAT, all permitting and construction of buildings and all permitting, construction and operation of a commercial kitchen must comply with the applicable codes and subcodes.

PROVIDED FURTHER THAT, nothing herein shall prevent the Borough of Closter from seeking further determinations on either site issues that directly affect health and safety or compliance with Construction Code, subcodes and applicable health codes.

PROVIDED FURTHER THAT, that the applicant shall have the right to file an application and supporting documents with the County for ingress and egress on Schraalenburg Road (a County road) south of its intersection with Old Hook Road and the County Engineer, who is the sole authority on traffic issues relating County roads, shall have the right to approve turning movements, after comment by the Borough.

PROVIDED FURTHER THAT, the SADC has continuing jurisdiction over the soil movement and water issues presently pending and that nothing herein applies to same.

YES: James Alan Abma Sr., Ronald Binaghi Jr., Mark M Cole, Chris G. James, Daryl Secor, Evelyn Spath-Mercado

NO: None

ABSTAIN: None

ABSENT: None

I certify that the foregoing is a true copy of the Resolution of the Bergen County Agriculture Development Board, duly adopted at a regular meeting of the Board on May 23, 2006.

Dated: May 23, 2006

Evelyn Spath-Mercado,
Chairperson