RESOLUTION 2020-17

Hunterdon County Agriculture Development Board

Determination for the Site Specific Agricultural Management Practice Application

Boreland Family Farm

Block 20, Lot 2, Township of Franklin, County of Hunterdon

WHEREAS:

1. On August 23, 2020, an Application for Hearing (Form A), Request for Site Specific Agricultural Management Practice Application (Form B) and Commercial Farm Certification (Form C) were submitted by the Boreland Family Farm (hereinafter referred to as "Boreland Farm" or the "Applicant"), the owner of Block 20, Lot 2, in Franklin Township, County of Hunterdon, to the Hunterdon County Agriculture Development Board (hereinafter referred to as the "CADB" or "Board"). The Applicant sought a determination that would permit Applicant to undertake the following activity:

   A. Utilize open agricultural fencing anywhere on the commercial farm, including up to the property boundary line, providing relief from Franklin Township Code Section 220-42 which applies a five-foot setback for open agricultural fencing.

2. The Board determined that it has jurisdiction to review this application pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1 et seq.

3. On November 12, 2020, the Board certified the Boreland Farm as a commercial farm prior to conducting a public hearing on the Application. At that time Peter Boreland, the owner/operator of the Boreland Farm, testified and furnished proofs that the farming operation met the required economic standard for a Commercial Farm. The preserved farm consists of 8.53 acres, of which 6.86 acres are dedicated to permissible agricultural and/or horticultural uses, including the production and sale of lamb and hay. He provided documentation regarding his farming income and proof of farmland tax assessment.

4. On November 12, 2020, immediately following the certification of the Boreland Farm as a commercial farm, the CADB conducted a public hearing to determine whether the Boreland Farm is entitled to Site Specific Agricultural Management Practice approval and relief from the Franklin Township five-foot setback ordinance for open agricultural fencing.

5. The Board is satisfied that written notice of the hearing was published in the Hunterdon County Democrat and served via certified mail to all property owners within 200 feet of the Boreland Farm, as well as the Township of Franklin and the State Agriculture Development Committee.

6. The Applicant was represented by Nicole L. Voigt, Shanahan & Voigt, LLC.

7. Erica Edwards, Esq. appeared on behalf of Jill Kagan, a neighboring landowner opposed to the relief sought by the Applicant.

8. No representative for the Township of Franklin was present at the hearing, nor was any written objection to the Application raised by the Township of Franklin.

9. The Hunterdon County Agriculture Development Board Request for Site Specific Agricultural Management Practice Application for Hearing is part of the record presented to the Board. Counsel for the Applicant submitted a package of documents and materials under a cover letter dated October 29, 2020, for the Board's consideration prior to the November 12, 2020 hearing. At the November 12, 2020 hearing, the following documents and materials were specifically introduced and marked as Exhibits on behalf of the Applicant during the course of the hearing:

A-1 Google Map View of the Property

A-2 Consent to Boundary Agricultural Fencing agreement signed by the Applicant and Steve & Jean Abrams, dated October 28, 2020.

A-3 USDA Map of Boreland Farm property with Field Boundaries

- Yellow Line – USDA Boundaries
- Red Line – Existing Fence Line

10. The Board carefully considered the testimony of the Applicant, Opposing Neighbor, and the public in making its determination.

11. The Applicant's position, which was presented to the Board at the hearing by and through the Applicant and his attorney, Nicole L. Voigt, Esq., is as follows:

- The Applicant is a long standing farm that recently learned that its existing fencing does not comply with local zoning and/or encroaches upon neighboring lands. Approximately 2/3 of the fencing has existed for 17+ years. Construction of a new section of fence, with only posts in the ground, generated a complaint from the adjoining property owner based on its location within the five-foot setback.
- The Applicant desires to utilize open agricultural fencing anywhere on the commercial farm, including up to the property boundary line, providing relief from Franklin Township Code Section 220-42 which applies a five-foot setback for open agricultural fencing.
- Prior to seeking SSAMP approval, the Applicant made an application to the Franklin Township Land Use Board for a fence setback variance to deviate from the Township's five-foot setback requirement for open agricultural fencing, which was denied.
- Locating open agricultural fencing in compliance with the five-foot municipal setback not only imposes a physical and financial hardship on the Applicant, but will result in the

detrimental loss of approximately .276 acres of property, or 4.3% of the farmable land, which is crucial for the size and operation of this farm.

- Based upon the relief sought by this Application, the Boreland Farm seeks to:
    - Enclose additional pasture for its growing flock by installation of new agricultural fencing at property boundaries;
    - Relocate to the property boundary line older fencing which encroaches upon an abutting property owned by Jill Kagan and Jean M. Olsen (as reflected on Exhibit A-3); and
    - Continue the use of existing fencing which is located at the property boundary of Block 20, lot 2.21, owned by Steve Abrams and Jean Abrams, who have consented to the location of fencing up to their boundary line (as reflected in Exhibit A-2).
- The Boreland Farm is a commercial farming operation performing generally accepted agricultural management practices. The proposed agricultural fencing is a sound, recognized farming practice, and the Applicant should be afforded Right to Farm protection to install the fence up to the property boundary line.

12. The Opposition's position was presented to the Board at the hearing by and through Jill Kagan, a neighboring landowner (Block 20, Lot 2.20), and her attorney, Erica Edwards, as follows:

- There is a history of disputes between Ms. Kagan and Mr. Boreland, both related and unrelated to the existing and proposed location of the agricultural fencing at their respective properties.
- The Google Map View of the Property presented by the Applicant (Exhibit A-1) accurately represents the approximate encroachment of the existing agricultural fencing. She wants the fence relocated to within the Boreland Farm property.
- She seeks the protection of the Board and requests that that the Franklin Township five-foot setback ordinance for agricultural fencing be upheld and applied to the Boreland Farm property to provide sufficient distance between the fence and her boundary line to prevent trespassing.

NOW, THEREFORE, BE IT RESOLVED THAT THE HUNTERDON COUNTY AGRICULTURE DEVELOPMENT BOARD, AFTER HEARING AND CAREFULLY CONSIDERING THE TESTIMONY OF THE APPLICANT AND OPPOSING NEIGHBOR, AND NO OBJECTION TO THE APPLICATION HAVING BEEN MADE BY THE TOWNSHIP, MAKES THE FOLLOWING FINDINGS:

1. The Boreland Farm operates a commercial farm as defined at N.J.S.A. 4:1C-3 and conducts permissible farming activities at the farm pursuant to N.J.S.A. 4:1C-9.

2. The CADB approves the Boreland Farm's Site Specific Agricultural Management Practice Application and grants the Applicant's specific request for relief from Franklin Township Code Section 220-42, which applies a five-foot setback for open agricultural fencing. The Boreland Farm may construct and maintain open agricultural fencing up to the boundary line of its property. This approval should not be construed as advocating any form of trespass to erect or otherwise maintain agricultural fencing which encroaches upon neighboring lands.

3. The approval is conditioned upon the removal of all existing encroachments from neighboring lands, specifically Block 20, Lot 2.20.

4. This determination shall be forwarded to the State Agriculture Development Committee within thirty (30) days, pursuant to N.J.A.C. 2:76-2.3(e).

5. Any person aggrieved by this decision, may appeal to the State Agriculture Development Committee, pursuant to N.J.A.C. 2:76-2-3(f).

HUNTERDON COUNTY AGRICULTURE
DEVELOPMENT BOARD

Dave Bond

Dated: December 10, 2020

DAVE BOND, CHAIRMAN