Resolution No. 2020-10-4

RESOLUTION OF THE
MONMOUTH COUNTY AGRICULTURE DEVELOPMENT BOARD
REGARDING A SITE SPECIFIC AGRICULTURAL MANAGEMENT
PRACTICE DETERMINATION FOR
BLOCK 884, LOT 1.03 IN THE TOWNSHIP OF MIDDLETOWN
RELATED TO BUILDING HEIGHT AND SIDE YARD SETBACK

Ms. Butch offered the following resolution and moved its adoption:

WHEREAS, H. Christina Chen-Oster ["Applicant"] owned Block 884, Lot 1.03 in the Township of Middletown; and

WHEREAS, the Applicant acquired the subject property on June 28, 2001 from Matthew L. Johnson; and

WHEREAS, on October 15, 2019, the Applicant applied for a Site Specific Agricultural Management Practice ("SSAMP") recommendation for Block 884, Lot 1.03 in the Township of Middletown, that included requests for approval of a barn structure for wine production and storage of farm-related equipment/vehicles, and

WHEREAS, the Applicant requested relief from Middletown Township's standard for side yard setback and height related to the barn structure that had already been constructed; and

WHEREAS, the Applicant had received prior variance relief from the Township of Middletown to construct the barn 37.9 feet from the side yard, where 75 feet is required; and

WHEREAS, the Applicant also received prior variance relief from the Township of Middletown to construct the barn at a height of 18.6 feet, where 16 feet is permitted; and

WHEREAS, the Township of Middletown has an ordinance that permits farm-related buildings such as barns and stables built up to 25 feet in height; and

WHEREAS, the Applicant constructed the barn 20.7 feet from the side yard (15 feet when incorporating the trash enclosure) and built the barn smaller than as proposed and approved by the Township of Middletown; and

WHEREAS, in Twp. of Franklin v. den Hollander, 172 N.J. 147 (2002), standards had been set allowing the protection given under the Right to Farm Act to trump municipal land use law when appropriate. As per the Court, when exercising primary juris-

diction, the County Agriculture Development Board ("CADB") must first determine whether the Applicant's activities fall within the purview of agricultural management practices. Once established and, upon assuming jurisdiction, the CADB, where appropriate, must consider not only the impact of such practices on the municipality, but the standards established by local ordinances, all within the scope of the CADB's statutory obligation to consider public health and safety. If the CADB determines that the proposed activity falls within the scope of agricultural management practices, it may override the local ordinance; and

WHEREAS, during the pendency of this application, the Applicant sold the subject to John W. Rice and Suchi Saria; and

WHEREAS, John W. Rice and Suchi Saria submitted a signed affidavit certifying that they authorized Applicant to continue with the SSAMP application and would be bound by any decision made by the MCADB as it related to the subject property; and

WHEREAS, N.J.S.A. 4:1C-1 et seq. is known as the Right to Farm Act; and

WHEREAS, N.J.A.C. 2:76-2.1 et seq. details the State Agriculture Development Committee's ("Committee") rules; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.3(b) the Board advised the Committee and the Township of Middletown of the application and request; and

WHEREAS, the MCADB conducted a site visit to view the subject property and the proposed operation prior to scheduling a public hearing on the matter. The site visit was held on December 18, 2019 and attended by a minority of Board members, MCADB staff, and the Applicant; and

WHEREAS, pursuant to N.J.A.C. 2:76-2.3 (c), (d), upon receipt of a request for an SSAMP, the Board must determine whether the Applicant's agricultural operation is a commercial farm as defined by N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3; and

WHEREAS, on September 1, 2020, after deliberation at the public hearing, the MCADB found that the Applicant's operation is a "commercial farm" as defined by the Right to Farm Act, set forth in N.J.A.C. 2:76-2.1 and N.J.S.A. 4:1C-3, and memorialized its findings in Resolution No. 2020-9-1; and

WHEREAS, on October 6, 2020, after deliberation at the public hearing, the MCADB found the Applicant's use of the new building for wine production, processing and storage to be a generally acceptable agricultural management practice qualifying the activities for right to farm protection; and

WHEREAS, WHEREAS, the Applicant now requests approval for an SSAMP de-

termination from the Board for relief from the Township of Middletown's standard for side yard setback; and

WHEREAS, notice of the request and public hearing for the SSAMP was provided pursuant to N.J.A.C. 2:76-2.3(b) and 2:76-2.8(c); and

WHEREAS, the following documents comprise a list of exhibits and materials submitted for the Board's consideration prior to the September 1, 2020 hearing as well as additional documentation submitted for Board consideration prior to the October 6, 2020 SSAMP hearing:

Applicant's Exhibits:

Request for Right to Farm Site-specific Agricultural Management Practice Recommendation Submitted October 16, 2019 with Attachments a to i	A-1
Request for Site-specific Agricultural Management Practice (AMP) Recommendation (Part 1 – Commercial Farm Determination Questionnaire) dated October 8, 2019	A-1a
Request for Site-specific Agricultural Management Practice (AMP) Recommendation (Part 2 – Agricultural Management Practices Questionnaire) dated October 8, 2019	A-1b
Request for Site-specific Agricultural Management Practice (AMP) Recommendation (Part 3 – Notarized Commercial Farm Certification Form) Dated October 12, 2019	A-1c
2020 FA-1 Farmland Assessment Form	A-1d
Township of Middletown Tax Map Prepared by Richard M. Schultz, P.E., P.L.S., of T&M Associates Dated December 17, 1992	A-1e
Amended Plot Plan Prepared by David A. Cranmer, P.E., of Cranmer Engineering Dated August 10, 2016	A-1f
Architectural Plans (2 Sheets) for the Oster Residence Prepared by Grammer Designs, LLC, Dated April 27, 2015 and April 18, 2016, Respectively	A-1g
Memo Providing Annual Agricultural Income and Proofs for the Last Five (5) Years Prepared by Michael P. Castore Esq., of Ansell Grimm & Aaron, PC, Dated October 3, 2019	A-1h

Superior Court of New Jersey, Appellate Division, Decision (Docket No. A-0037-17TS) Decided January 11, 2019	A-1i
Email from Cristina Chen-Oster to Sean M. Pizzio Dated December 11, 2019 Detailing the Equipment Currently Stored in the Structure	A-2
Climate Controlled Barn Plan, Dated July 31, 2020	A-3
2021 Application for Farmland Assessment and Associated Documents	A-4
August 28, 2020 Bill of Sale	A-5
Packet submitted by Giordano, Halleran & Ciesla, P.C. dated September 23, 2020	A-6
Owner's Affidavit of Authorization and Consent	A-7

Exhibits from the Monmouth CADB:

Aerial Map Depicting Block 884 Lot 1.03 in Middletown Township Dated December 18, 2019	B-1
Site Visit Photos from December 18, 2019	B-2
Township of Middletown Schedule of Standards and Regulations Affecting R-220 Zone	B-3
Township of Middletown Appendix A (Schedule of Permitted Uses)	B-4
Notice of Settlement for 719 Navesink River Road, Filed on August 21, 2020 and	B-5;

WHEREAS, the MCADB heard testimony, reviewed submissions and exhibits, and considered the Applicant's request during the Board's public meetings on September 1, 2020 and October 6, 2020; and

WHEREAS, the Applicant was represented by John A. Giunco, Esq. of Giordano, Halleran & Ciesla, PC; and

WHEREAS, the Applicant presented the following witnesses' testimony in support of the application: John Gizzi and Jose J. Trejo Jasso; and

WHEREAS, John Gizzi, testified to his experience related to wine making, the floor plan for the wine production and storage facility that would be constructed in the

barn, the need to situate the barn in proximity to utilities, as well as the reasoning for the barn's location in an effort to establish the need for ordinance relief and if this need fell within the scope of generally accepted agricultural management practices. He further testified that the use of the winery and agricultural output on the property would continue in the same manner as presented in the subject application by the new title owners to the property; and

WHEREAS, Jose J. Trejo Jasso testified to his expertise in pesticides and use of the same on the subject property as part of the wine making process; and

WHEREAS, the Board carefully considered the testimony of the Applicant's experts in making its determination; and

WHEREAS, after considering the testimony given and the exhibits presented at the hearing, the Board makes the following findings of fact:

1. Block 884, Lot 1.03 in the Township of Middletown is greater than five acres.

2. The property is located within the R-220 zone that permits agriculture.

3. The subject property had been purchased during the pendency of this application and the new owner's, John W. Rice and Suchi Saria, submitted a signed affidavit certifying that they authorized Applicant to continue with the SSAMP application and would be bound by any decision made by the MCADB.

4. The Farm is engaged in the agriculture production of production of grapes, peaches, pears, and sheep and by-products of the same.

5. If operating a farm market on the property, at least fifty-one (51%) percent of the annual sales from the farm market must come from the farm's agricultural output, or at least fifty-one (51%) percent of the sales area must be devoted to the farm's agricultural output.

6. This portion of the SSAMP request relates to a request to permit the following:

    a. Relief from the Township of Middletown's side yard setback ordinance to permit the existing barn to remain at 20.7 feet from the side yard (15 feet when incorporating the trash enclosure), where 75 feet is required.

7. Since Resolution 2020-10-3 confirmed that the barn is being used for a permissible agricultural purpose, the structure complies with the township's height maximum of 25 feet, and the Applicant does not need further relief for that issue.

NOW, THEREFORE, BE IT RESOLVED, based on exhibits presented, tes-

timony given and the aforesaid findings of fact, the Monmouth County Agriculture Development Board makes the following determinations:

1. The current location of the barn 15 feet from the side yard setback is approved as it serves a legitimate agricultural purpose in that the location that avoids taking other land out of production and allows access to utilities such as water and electric that are necessary in conducting the approved activities within the barn.

2. The property owner and/or lessee agrees to plant a buffer with vegetation suited to the ecosystem and further agrees to be responsible for the maintenance and upkeep of that vegetation to ensure that the buffer remains effective to mitigate or eliminate any detriment to the adjoining property caused by the setback variance.

3. The relief granted is tied directly to the approvals of Resolutions 2020-9-1 and 2020-10-3 in that should the operation substantially change or be abandoned then the approval for variance relief shall also be extinguished, subject to the below additional comments.

BE IT FURTHER RESOLVED that the activities on the farm must conform to all relevant Federal and State statutes, rules and regulations, including, but not limited to the New Jersey Department of Agriculture, the New Jersey Department of Environmental Protection, Freehold Soil Conservation District; and

BE IT FURTHER RESOLVED that if over time the subject Farm substantially changes its operations to deviate from the provisions agreed upon in these resolutions, the Applicant, municipality or any other aggrieved party would be entitled to return to the Board to request relief; and

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the Applicant through counsel, the State Agriculture Development Committee, the Township of Middletown, the current property owners, and the Applicant.

BE IT FURTHER RESOLVED that any person aggrieved by this resolution may appeal to the SADC in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, within 45 days from the receipt of this resolution. The decision of the SADC shall be considered a final administrative agency decision. If this resolution is not appealed within 45 days, this resolution is binding.

Seconded by Ms. Grbelja and adopted on roll call by the following vote:

	Yes	No	Abstain	Absent
Mr. Bullock	X			
Mr. Buscaglia	X			
Ms. Butch	X			
Mr. Clayton*	X			
Mr. DeFelice				X
Mr. Giambrone	X			
Ms. Grbelja	X			
Mr. Holmes	X			
Mr. Matthews		X		
Mr. Potter	X			

* Alternate member in 2020

I do hereby certify that the foregoing is a true copy of a resolution adopted on October 6, 2020 and memorialized by the Monmouth County Agriculture Development Board at a meeting on the 1st of December, 2020.

Gary DeFelice, Secretary