

Link to original [Agency Final Decision](#)

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. [ADC2609-03](#)

AGENCY DKT. NO. SADC ID # 1319-15

IN THE MATTER OF KAREN WILKIN

AND JAMES URBANO, JR.,

Susan McLaughlin and Peter McLaughlin, petitioners, *pro se*

Thomas G. Gannon, Esq., for petitioner, Howell Township (Hiering, Gannon and McKenna, attorneys)

Gil Messina, Esq., for respondent, Monmouth County Agriculture Development Board (Cassidy, Messina and Lafferty, attorneys)

Peter R. LaFrance, Esq., for Karen Wilkin and James Urbano, Jr.

Record Closed: March 15, 2005 Decided: April 18, 2005

BEFORE **BRUCE M. GORMAN**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Township of Howell, appealed the decision of the Monmouth County Agricultural Board. Howell Township requested a fair hearing and the matter was transmitted to the OAL on May 5, 2003, to be heard as a contested case pursuant to [N.J.S.A. 52:14B-1](#) to 15 and 14F-1 to 13. The matter was scheduled for a hearing on March 15, 2005, in Mercerville, New Jersey. The hearing proceeded on that date and the record closed.

FACTUAL DISCUSSION

Peter and Susan McLaughlin (hereinafter "petitioners") appealed the action of the Monmouth County Agriculture Development Board (hereinafter "Board") approving the application of Karen Wilkin and James Urbano, Jr. (hereinafter "respondents") to convert an existing chicken coop situate on their property located at 47 Yellowbrook Road in the Township of Howell into housing for farm labor to be employed on their horse farm known as Star Cross Stables located thereon. The Township of Howell (hereinafter "Township") intervened and appeared.

Respondents purchased the subject property in 1999. The previous two owners had utilized the premises as a farm, and respondents turned it into a horse breeding and training facility.

The property is approximately fifteen acres in size, and contains three buildings. The first is a principal farmhouse situate approximately 95 feet from Yellowbrook Road in the center of the property. To the rear of the farmhouse at almost the exact center of the property is a long frame building that respondents utilize as stable for the horses.

On the right side of the property facing it from Yellowbrook Road is a third building. This building is approximately 35 feet by 70 feet in size. Until 2002 this building served as a chicken coop for the housing of poultry by the prior owners. The building was serviced by electricity, which was utilized to maintain lighting in the coop.

The coop is situate 39.9 feet from the property sideline. Petitioners own the property adjacent to that sideline. Respondents seek to convert the chicken coop to a residence to house a caretaker for the horse farm.

The objectors raise two issues. The Township argues that the proposed caretaker's residence constitutes a second principal use for the property. The Howell Township Zoning Ordinance requires a fifty-foot side yard setback for principal uses. Petitioners join the Township and object to the conversion of the coop to a residential structure within the side yard setback.

Respondents counter that the converted coop will constitute an accessory use. The Township Zoning Ordinance imposes a side yard setback requirement for accessory uses equal to the height of the building, in this case approximately 15 feet.

Respondents filed an application for interpretation with the Township Zoning Board of Adjustment, then withdrew the application and applied to the Monmouth County Agriculture Development Board for approval of the caretaker's residence as farm labor housing.

The Board held hearings, and on February 5, 2003, adopted a resolution which was memorialized on March 5, 2003. That resolution (C-1) includes the following "findings of fact and conclusions of law:"

1. The Property is located at Block 177, Lot 56, in the Township of Howell and is commonly known as _____ ;
2. The Applicants, Karen Wilkin and James Urbano, Jr., are the owners of the Property;
3. The Applicants purchased the Property for horse breeding and training purposes and commenced commercial farming operations on December 22, 1999;
4. The operation located at the Property trades as Star Cross Stables;
5. The Property comprises approximately 15 acres and is operated as a horse breeding and training facility;
6. The Property produces agricultural products worth \$2,500 or more annually and the Property meets the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, P.L. 1964, c. 48 ([*N.J.S.A. 54:23.1, et seq.*](#));
7. The property is located in an ARE-6 zone which is in an area in which, as of December 31, 1997, or thereafter, agriculture has been a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan;

8. The Applicants' operation at the Property qualifies as a commercial farm as defined in the New Jersey Right to Farm Act ([N.J.S.A. 4:1C-3](#));

9. The following conditions at the Property were observed during the Site Visit: an equine breeding operation, with 9 Friesian horses on site, of which 7 are for breeding purposes; approximately 8 acres are devoted to permanent pasture and divided into 11 separated fenced areas; 2 to 3 additional acres being cleared for more pasture; a small area of nursery stock was observed; a farm house; a large wood frame building with 11 horse stalls, including 2 large foaling stalls; outbuildings utilized for hay storage were converted from chicken coops; a storage building converted from a chicken coop was in the process of being again converted to agriculture labor housing; tree harvesting in process; manure management by field spreading; extensive collection of carriages for training purposes, trails under construction for carriage training; and farm implements (tractor, wagons, manure spreader, etc.) are stored outside or under temporary plastic cover;

10. Karen Wilkin resides in the farm house at the Property;

11. The Applicants propose to complete the conversion of the storage building/former chicken coop into 2 one bedroom units of agriculture labor housing consisting of approximately 420 square feet for each;

12. It is usual and customary for a horse breeding and training operation such as that conducted at the Property to have agriculture labor that resides in on-site agriculture labor housing in order to provide continuous security and care for the livestock at the farm, especially when the owner is away attending horse shows and conducting other farm business;

13. Agriculture labor housing of the type proposed is a permitted accessory use in the Agriculture Rural Estate Zones as defined by section 14-17.2(b)(1) of Howell Township's Land Use Ordinance ("Ordinance") because it is "customarily incidental and ancillary to a permitted use" which, in this case, is agriculture;

14. Agriculture labor housing of the type proposed is not a "second principal building" as that term is used in section 14-15.7(a) of the Ordinance because it does not share the kind of structural or use equivalence with any principal building on the lot as contemplated by the wording of that section, and to hold otherwise would arbitrarily prohibit residential structures in excess of two farmhouses, or one farmhouse and one building used for agriculture labor housing or two buildings used for agriculture labor housing, where the size and nature of a farm's operations might require more;

15. The objection to the application by Howell Township officials is not based on issues of public health or safety or other issues involving the nature of the farm's operation, but is based instead on their conclusion that the proposed agriculture labor housing does not meet the 50 feet setback requirements applicable to second principal buildings on a lot;

16. The conversion of the former chicken coop to agriculture labor housing implicates the Ordinance's setback requirements for an accessory building and the building meets those setback requirements which require a setback at least equal to the height of the accessory building.

17. If the application is denied because the proposed agriculture labor housing does not meet setback requirements for second principal buildings on a lot, the Applicants would be relegated to constructing completely new agriculture labor housing at substantial additional cost in another area of the farm, leaving the storage building/former chicken coop in its present location and condition;

18. The Applicants have proposed a landscape plan which the Board finds acceptable and sufficient to buffer the proposed agriculture labor housing from the adjoining property;

19. The proposed improvements to the Property are appropriate to the agricultural use of the Property;

20. The existing horse breeding and training operation at SCS and the proposed use of the storage building/former chicken coop as agriculture labor housing are accepted agriculture management

practices relative to the operation being conducted by the Applicants at the property.

At the hearings, respondents presented evidence in support of their contention that providing a caretaker's residence for farm labor personnel constitutes an agricultural management practice within the meaning of the New Jersey Right to Farm Act. Respondent Wilkin testified she has owned horses for over 25 years, and in her experience, the horses require round-the-clock supervision necessitating on-site residence by the horses' caretaker. Respondents submitted a letter from Elden V. Klayman, an equine veterinarian practicing in Freehold. Dr. Klayman opined that full time help and observation of the horses was essential to the success of respondent's horse farm. Similarly, at the Board hearing, respondents presented the testimony of a neighbor, Wendell Nanson. Mr. Nanson testified he is a farmer and comes from a family of farmers. He stated his family has employed as many as one hundred farm laborers at a time and provided those laborers with living accommodations on-site. He opined that on-site living quarters for farm laborers were essential to the operation of any successful farm.

Neither petitioners nor the Township offered any evidence to support the conclusion that providing living quarters for farm laborers is not a proper agricultural management practice. Vito Marinaccio, Township Zoning Officer, admitted that other farms in Howell Township provide on-site housing for their farm laborers.

Mr. Marinaccio testified. He stated the property was situate within the Agricultural Rural Estate District. The Township Zoning Ordinance permits both single family dwellings and agricultural uses in this district, and deems them to be principal uses. Accessory uses are likewise permitted, including "accessory uses customarily incidental and ancillary to a permitted use". (Township Zoning Ordinance, Section 14:17.2b)

Mr. Marinaccio testified in his opinion as Zoning Official, the proposed conversion of the chicken coop into a caretaker's dwelling would constitute a second principal use on the property. He cited Section 14-15.7 of the Zoning Ordinance, which states:

14-15.7 Second Principal Building on Same Lot Prohibited.

(a) Only one principal building may be erected on a lot except for related compatible buildings constituting one basic use or operation under one management and limited to the following:

* * *

5. Farms.

Mr. Marinaccio admitted the ordinance defined "'Accessory Use' or 'Building'" as:

2. "Accessory Use" or "Building" shall mean a subordinate use, the purpose of which is incidental to that of main use or buildings on the same lot, excluding that of a deck.

However, Mr. Marinaccio testified the Township Zoning Board of Adjustment had consistently held that structures such as the proposed caretaker's dwelling constituted a second principal use, and in his capacity as Zoning Official, he concurred with that conclusion. Consequently, opined Mr. Marinaccio, the fifty foot side yard setback would apply, and the proposed conversion of the chicken coop to farm labor housing would violate the Township Zoning Ordinance.

Mr. Marinaccio testified that health and safety considerations impacted upon his decision. The caretaker's dwelling will require a well and a septic system. Consequently, its proximity to the property line raised concern that the new systems could adversely impact the water supply and sewage disposal at the adjacent McLaughlin home.

Susan McLaughlin testified. Ms. McLaughlin stated the chicken coop was used for storage prior respondent's acquisition of the property. In August 2001, respondents ran a gas line to the chicken coop and dug a hole for a septic system and a trench for a water line. Prior to that time, no person had utilized the chicken coop as a dwelling. Mr. Marinaccio confirmed that respondents had no municipal permits to make these improvements.

Ms. McLaughlin testified the caretaker's dwelling is situate directly across from her family room window. The proximity of strangers constitutes an invasion of her privacy. The traffic around the building bothers her, and she worries about possible noise issues. Although the Monmouth County Agriculture Board required screening, she stated the screening consisted of small trees and bushes which in no way block the coop's view of her home. The plantings are situated under trees and will not grow quickly because of lack of sunlight.

LEGAL ANALYSIS

The Monmouth County Agriculture Board made findings of fact and law and embodied them in its resolution of March 5, 2003. The Board's authority to do so is derived from the Right to Farm Act ([N.J.S.A. 4:1C-1 et seq.](#)). Specifically, [N.J.S.A. 4:1C-9](#) states in pertinent part:

Notwithstanding the provisions of any municipal or county ordinance, resolution, or regulation to the contrary, the owner or operator of a commercial farm, located in an area in which, as of December 31, 1997 or thereafter, agriculture is a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan, or which commercial farm is in operation as of the effective date of P.L.1998, c. 48 (C.4:1C-10.1 *et al.*), and the operation of which conforms to agricultural management practices recommended by the committee and adopted pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 *et seq.*), or whose specific operation or practice has been determined by the appropriate county board, or in a county where no county board exists, the committee, to constitute a generally accepted agricultural operation or practice, and all relevant federal or State statutes or rules and regulations adopted pursuant thereto, and which does not pose a direct threat to public health and safety may:

a. Produce agricultural and horticultural crops, trees and forest products, livestock...(Emphasis added)

In *Township of Franklin v. Den Hollander*, 172 N.J. 147 (2002), the Supreme Court held that the County Agriculture Boards have the power to determine whether the operation of a commercial farm implicates proper agricultural management practices. The Court stated, 150:

The Legislature has reposed trust in the County Agricultural Boards (CAB) and the State Agricultural Development Committee (SADC) to make the appropriate decisions in respect of whether the operation of a commercial farm implicates agricultural management practices, and, if so, whether those practices affect or threaten public health and safety.

In Finding 8 of its March 5, 2003, resolution, the Agriculture Board appropriately found that the property qualified as a commercial farm. Ms. Wilkins' uncontroverted testimony was that she bred and trained horses on the property. That activity renders the property a farm pursuant to *N.J.S.A. 4:1C-9a, supra*.

Similarly, in Finding 12 of the March 5, 2003, resolution, the Board determined that it is usual and customary for a horse-breeding and training farm to provide agriculture labor housing on-site for its labor force. Again, that finding was not seriously opposed by petitioners or by Township. The letters from Dr. Klayman and Mr. Nanson are uncontroverted on the record, and support Finding 12.

Therefore, the Board's determination that the caretaker's dwelling constituted a generally accepted agricultural operation and practice was correct, and its authority to make that determination comes directly from *N.J.S.A. 4:1C-9, supra*. If the appropriateness of farm labor housing were the issue before me, respondents would prevail.

But the appropriateness of farm labor housing is not the issue. The case turns not on the use to be made of the property, but on the location of the proposed use. Specifically, petitioners and the Township note that the placement of the proposed farm labor housing lies within the side yard setback limitation for principal uses. The Zoning Official has found the caretaker's dwelling to constitute a principal use. The question becomes, what impact, if any should the municipal zoning ordinance have on the Board's ruling?

N.J.S.A. 4:1C-9 specifies that the Board's authority to determine what constitutes a generally accepted agricultural operation or practice is not limited by any municipal ordinance. However, in *Township of Franklin, supra*, the Supreme Court qualified that exemption. Quoting from the Appellate Division opinion below, the Supreme Court noted, 151:

The Legislature has reposed trust in the County Agricultural Boards (CAB) and the State Agricultural Development Committee (SADC) to make the appropriate decisions in respect of *whether the operation of a commercial farm implicates agricultural management practices*, and, if so, whether those practices affect or threaten public health and safety. (Emphasis added)

The Supreme Court then placed limitations on the Board's power to supersede local ordinances. It held, 151-152:

In other words, although the CAB and the SADC have primary jurisdiction over disputes between municipalities and commercial farms, the boards do not have *carte blanche* to impose their views. Because the authority of the agricultural boards is not unfettered when settling disputes that directly affect public health and safety, the boards must consider the impact of the agricultural management practices on public health and safety and "temper [their] determinations with these standards in mind."

The Supreme Court went on to provide a road map for adjudicating the limitation of the Board's power. The Court stated, 152:

As a general rule the threshold question will be whether an agricultural management practice is at issue, in which event "the CAB or SADC must then consider relevant municipal standards in rendering its ultimate decision." *den Hollander, supra*, 338 *N.J. Super.* at 393, [769 A.2d 427](#). There will be those cases where the local zoning ordinance simply does not affect farming. There will be other disputes where, although the ordinance has a peripheral effect on farming, it implicates a policy that does not directly conflict with farming practices. In such cases greater deference should be afforded to local zoning regulations and ordinances. Even when the CAB or SADC determines that the activity in question is a generally accepted agricultural operation or

practice according to *N.J.S.A. 4:1C-10.1(c)*, the resolution of that issue in favor of farming interests does not vest the board with a wide-ranging commission to arrogate to itself prerogatives beyond those set forth in the Act. The boards must act in a matter consistent with their mandate, giving appropriate consideration not only to the agricultural practice at issue, but also to local ordinances and regulations, including land use regulations, that may affect the agricultural practice. *Id.* at 390- 391, [769 A.2d 427](#). (Emphasis added)

Applying the Supreme Court's mandated procedure; I must first determine whether the Township Zoning Ordinance affects an agricultural management practice. For the reasons set forth below, I **FIND** that the Zoning Ordinance does not affect an agricultural management practice in this case, and that, consequently, the deference must be shown to the local zoning ordinance.

Respondent has presented the matter as if the petitioners and the Township were disputing that the caretaker's shelter is a generally accepted agricultural operation or practice. But such is not the case. Petitioners were forthright both at the hearing below and at trial that they had no objection to construction of a caretaker's shelter on the property. Similarly, the Township has raised no objection to the construction of the dwelling itself.

The objection herein is to the *location* of the caretaker's dwelling, not to the use to be made of it. The proposed location lies within the side yard setback limitation for principal uses imposed by the municipal zoning ordinance. If the dwelling were to be situated eleven feet further inside the property line, there would be no dispute.

The evidence before me shows that respondent's property is approximately fifteen acres in size. The survey of the premises (A-1) shows ample area on the site for the construction of farm labor housing for as many agricultural laborers as respondents may need.

But instead respondents have chosen to construct on a site within the side yard setback. The reason for their decision to utilize the old chicken coop was summarized and validated by the Board in Finding 17, which states:

17. If the application is denied because the proposed agriculture labor housing does not meet setback requirements for second principal buildings on a lot, the Applicants would be relegated to constructing completely new agriculture labor housing at substantial additional cost in another area of the farm, leaving the storage building/former chicken coop in its present location and condition;

In other words, this case is not about the right of respondents to engage in a generally accepted agricultural operation or practice. The "right to farm" is not at issue here. The issue in this case is money. Respondents want to save money, even if in doing so they must infringe on their neighbors' rights as established in the Township Zoning Ordinance. Had respondents demonstrated that locating the farm labor dwelling anywhere else on the property would impair the operation of the farm, that is, had they shown construction of farm labor housing was possible only on the site of the old chicken coop, the result herein might well be different. But the record is devoid of anything proving such a detriment to the farm.

I **FIND** that respondents' desire to construct the farm labor dwelling in the cheapest way possible does not "affect" their right to farm, and therefore "does not meet the standard set forth in *Township of Franklin, supra*,

necessary to authorize the Agriculture Development Board to take action. The threshold question posited by Justice Zazzali must be answered in the negative.

That such is the case is demonstrated by the examples cited by the Supreme Court in *Township of Franklin*. Justice Zazzali wrote, 152:

Examples invest those abstract principles with meaning. A farmer may seek... to construct a barn with a 50-foot side yard, but the local ordinance requires 100 feet. On the face of it, such ordinances do not interfere with farming and, therefore, the zoning ordinance limitations ordinarily should be respected.

Justice Zazzali's example is strikingly similar to the case before me. Here, the side yard setback requirements of the Township Zoning Ordinance do not "interfere with farming." They only require that respondents spend more money on construction of the caretaker's dwelling than they would like.

The wisdom of Justice Zazzali's approach can be seen when the Board's "Findings of Fact and Law" are examined. The Board premises its action on several determinations. Among them are Finding 14, which determines that the agricultural labor dwelling is "not a `second principal building.'" In Finding 13, the Board determined that the agricultural labor dwelling is a "permitted accessory use in the Agriculture Rural Estate Zones as defined by section 14-17.2(b)(1) of Howell Township's Land Use Ordinance...because it is `customarily incidental and ancillary to a permitted use' which, in this case, is agriculture."

Nothing contained in the Right to Farm Act ([N.J.S.A.4:1C-1, et seq.](#)) affords the Agriculture Development Board the power to determine whether a use is principal or accessory. "Principal use" and "accessory use" are zoning concepts. The authority to interpret their meaning as used in the Howell Township Zoning Ordinance is statutorily vested in the local Zoning Board of Adjustment. See [N.J.S.A. 40:55D-70b](#).

While the Agriculture Development Board has the authority to *override* the local zoning ordinance where the right to farm is threatened, it has no statutory authority to *interpret* the zoning ordinance or construe such concepts as principal use and accessory use. Since the side yard setback requirements of the local Zoning Ordinance in this case do not *affect* a generally accepted agricultural operation or practice, but only the amount of money respondents must expend to engage in that practice, the Agriculture Development Board must show deference to the local Zoning Ordinance.

Respondents argue that the farm labor housing at the chicken coop does not violate the Township Zoning Ordinance because it is an accessory use, not a principal use. Respondents may well be correct, but Mr. Marinaccio has ruled to the contrary. By statute, only the Zoning Board of Adjustment is authorized to hear an appeal from the determination of the Zoning Official. See [N.J.S.A. 40:55D-70a](#). Respondents have remedies, but they lie at the Zoning Board of Adjustment and not at the Agriculture Development Board.

For all the reasons set forth above, the action of the Agriculture Development Board must be **REVERSED**.

ORDER

I **ORDER** that the action of the Monmouth County Agriculture Board approving the construction of the farm labor housing on the site of the existing chicken coop within the side yard setback of the Howell Township

Zoning Ordinance be **REVERSED**.

I hereby **FILE** my initial decision with the **STATE AGRICULTURE DEVELOPMENT COMMITTEE** for consideration.

This recommended decision may be adopted, modified or rejected by the **STATE AGRICULTURE DEVELOPMENT COMMITTEE**, which by law is authorized to make a final decision in this matter. If the State Agriculture Development Committee does not adopt, modify or reject this decision within forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with [N.J.S.A. 52:14B-10](#).

Within thirteen (13) days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **EXECUTIVE DIRECTOR OF THE STATE AGRICULTURE DEVELOPMENT COMMITTEE**, health/Agriculture Building, PO Box 330, Trenton, New Jersey 08625-0330, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

Date **BRUCE M. GORMAN**, ALJ

Receipt Acknowledged:

Date STATE AGRICULTURE DEVELOPMENT COMMITTEE

Mailed to Parties:

Date OFFICE OF ADMINISTRATIVE LAW

/sd

WITNESSES

For Petitioner:

Patricia Hoover

Vito Marinaccio

Susan McLaughlin

For Respondent:

None

EXHIBITS

For Petitioner:

P-1 Letter from Karen Wilkin to Vito Marinaccio, December 6, 2001

For Respondent:

R-1

Joint:

J-1 Howell Township Zoning Ordinance

For the Court:

C-1 Monmouth County Agriculture Development Board, Resolution 3-2003-01

C-2 Monmouth County Agriculture Development Board Meeting, December 4, 2002

C-3 Monmouth County Agriculture Development Board Meeting, January 8, 2003

C-4 Monmouth County Agriculture Development Board Meeting, February 5, 2003

C-5 Monmouth County Agriculture Development Board Meeting, March 5, 2003

C-6 Survey

C-7 Construction Permit

C-8 Letter from Dr. Klayman, December 3, 2002

C-9 Letter from Betty Lou Textor to Karen Wilkin, January 2, 2002

C-10 Letter from Vito Marinaccio to Peter LaFrance, March 11, 2002

C-11 Detailed Survey

C-12 Income Certification from Site Specific Agriculture Management Practice Application

C-13 Landscape Design

C-14 Copy of Staff Powerpoint presentation (7 slides/photos)

C- 15 Staff Review Sheet

C-16 Site Visit Report of S.P. Dey, C.V.M.

C-17 Site Visit Report of Richard Obal, Monmouth County Agricultural Agent

C-18 Memo from Paul Szymanski to Howell Township Zoning Board, September 23, 2002

C-19 Objector Photo

C-20 Objector Photo #2

C-21 Letter from William Merkler to Patty Hoover, December 4, 2002

C-22 Letter from D.G. Thompson to Howell Township, January 4, 2002

OAL DKT. NO. [ADC2609-03](#)

8

New Jersey is an Equal Opportunity Employer

This archive is a service of [Rutgers University School of Law - Camden](#).