

AGRICULTURE

STATE AGRICULTURE DEVELOPMENT COMMITTEE

Residual dwelling site opportunity

Proposed Amendments: N.J.A.C. 2:76-6.2 and 6.17

Authorized By: State Agriculture Development Committee, Susan E. Craft, Executive
Director

Authority: N.J.S.A. 4:1C-5f

Calendar Reference: See Summary below for explanation of exception to calendar
requirement

Proposal Number: PRN 2006-182

Submit comments by August 4, 2006 to:

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State Agriculture Development Committee

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The agency proposal follows:

Summary

The State Farmland Preservation Program currently allows a landowner to reserve an opportunity to construct a house on his or her farm, for agricultural purposes, after the farm is preserved. These housing allocations are called residual dwelling site opportunities (RDSOs). The criteria and procedures for granting and exercising such housing allocations are set forth in N.J.A.C. 2:76-6.15(a)14 and 6.17. The State Agriculture Development Committee (SADC) is proposing two amendments to N.J.A.C.

2:76-6.17 to clarify who can live in a house associated with a RDSO ("residential unit," as defined in N.J.A.C. 2:76-6.16(a)14).

One of the criteria to construct a residential unit is that at least one person residing in the house must be "regularly engaged" in common farmsite activities on the preserved farm. N.J.A.C. 2:76-6.15(a)14. Farmers recently started asking whether they can continue living in residential units after they retire. The SADC proposes to amend N.J.S.A. 2:76-6.17 to address who can continue living in a residential unit after the farmer living in the house has retired, becomes disabled or passes away.

Under the current rules, the farmer and his or her family would have to move out of the house upon retirement from farming if nobody in the house were regularly engaged in farming the preserved farm. Likewise, if the farmer passed away, the current rules would not allow his or her spouse or children to continue living in the house if they were not regularly engaged in farming the property. Proposed N.J.A.C. 2:76-6.17(h) would allow a farmer to continue living in a residential unit after he or she has retired from farming--or if he or she has suffered a disability--as long as he or she was regularly engaged in farming on the preserved farm for at least five years while residing in the residential unit. Proposed N.J.A.C. 2:76-6.17(h) would allow a farmer's children and spouse or domestic partner to continue living in the residential unit upon the farmer's death, with certain conditions. First, the farmer's children and spouse or domestic partner would have to be residing in the house at the time of the farmer's death (proposed N.J.A.C. 2:76-6.17(h)2i). If the farmer had a dependent child, that child could continue living in the house as long

as his or her status as a dependent for Federal income tax purposes is maintained (proposed N.J.A.C. 2:76-6.17(h)2ii). Once the child is no longer a dependent, he or she could continue residing in the house only if the farmer's spouse or domestic partner lived in the house, or if he or she becomes regularly engaged in farming the preserved farm (proposed N.J.A.C. 2:76- 6.17(h)2ii(1)). If a child was not a dependent at the time of the farmer's death, he or she could continue living in the house as long as the farmer's spouse or domestic partner lived in the house, or if he or she became regularly engaged in farming the preserved farm (proposed N.J.A.C. 2:76-6.17(h) 2iii).

The proposed amendments also give the SADC and county agriculture development boards (CADBs) the authority to decide whether family members not specifically mentioned in the rule could continue living in a residential unit after the farmer dies. Proposed N.J.A.C. 2:76-6.17(h)2iv would require the SADC and CADBs to consider the financial and health status of the family member making the request, and any serious hardships that may warrant the family member to live in the residential unit.

The SADC is also proposing to define the term "regularly engaged," at N.J.A.C. 2:76-6.2, which requires that a proposed occupant of the residential unit be actively engaged in the day to day agricultural operation on the preserved farm. As set forth in the definition, such involvement in the day to day operation cannot be established by merely showing that the proposed occupant owns the preserved farm, that the land is actively farmed, or that the land is assessed pursuant to the Farmland Assessment Act, N.J.S.A. 54:4- 23.1. As the Committee has provided a 60-day comment period in this notice of proposal, this

notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments will have a positive social effect, in that farmers and their families will be able to continue to reside in residential units on preserved farms after the farmer has retired, becomes disabled or passes away. The proposed amendments will affect all people who reside in houses associated with RDSOs--existing and to be constructed.

The SADC recognizes that it would be unfair to evict a farmer and/or his or her family after the farmer has retired, become disabled or passed away. On the other hand, a house associated with an RDSO must be tied to the agricultural use of a preserved farm, as non-agricultural uses are prohibited. The SADC has adequately balanced these two concerns by protecting the farmer's family from eviction, yet incorporating enough safeguards into the proposed amendments to ensure that the house does not lose its agricultural connection to the farm. In light of this balancing of interests, the SADC expects a positive reaction to the proposed amendments.

Economic Impact

The proposed amendments will economically benefit farmers and their families who currently reside in houses associated with RDSOs, both socially and monetarily. Under

the current rule, a farmer and/or his or her family could be required to move out of the house after the farmer retires, becomes disabled, or passes away. The proposed amendment ameliorates this potentially costly consequence and provides assurance to the family that they will not have to find a new home.

The proposed amendments will not affect funding for the farmland preservation program. The proposed amendments give minimal additional administrative responsibilities to the SADC and county agriculture development boards, as they authorize these entities to review requests from family members--other than spouses and children--to continue living in a house associated with an RDSO after the farmer has passed away.

Federal Standards Statement

A Federal standards analysis is not required because the subject matter of the proposed amendments is not subject to any Federal requirements or standards.

Jobs Impact

The proposed amendments will neither create, nor cause a loss of, any jobs.

Agriculture Industry Impact

The proposed amendments will have a positive effect on the agriculture industry in the State as they give assurance to farmers and their families that the residents of a house associated with a RDSO will not be evicted upon the farmer's death, retirement or disability. This assurance will make preserved farms that have been allocated RDSOs more attractive to potential purchasers. Likewise, landowners may be more apt to preserve farmland if they are assured that future residents of houses associated with

RDSOs will not be evicted upon the farmer's death, retirement, or disability. This will ultimately benefit the farmland preservation program, which serves to ensure the viability of New Jersey's agriculture industry.

Regulatory Flexibility Analysis

The majority of farms that are enrolled in the SADC's farmland preservation programs are owned by small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments will not, however, impose any reporting, recordkeeping or other compliance requirements on farms. The proposed amendments merely clarify who can initially live in a house associated with a RDSO and who can remain in such a house upon the farmer's death, disability, or retirement.

Smart Growth Impact

The proposed amendments would achieve smart growth and implement the State Development and Redevelopment Plan. The State Development and Redevelopment Plan designates a Rural Planning Area (Planning Area 4), which comprises much of the countryside of New Jersey where large masses of cultivated or open land surround rural regional, town, village and hamlet centers. The State Plan's intentions in the Rural Planning Area include maintaining large contiguous areas of farmland and promoting a viable agricultural industry. The Farmland Preservation Program has been highly successful in implementing the State Plan with nearly 94 percent of its purchases occurring in the Rural Planning Area, thus furthering the Plan's goals in this Area.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

2:76-6.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

"Regularly engaged in farmsite activities" means actively engaged in the day-to-day agricultural operation on the premises.

1. A landowner cannot establish that he or she is actively engaged in the day-to-day agricultural operation merely by showing that:

i. He or she owns the premises;

ii. The land is actively farmed; or

iii. The land is assessed pursuant to the Farmland Assessment Act,

N.J.S.A. 54:4-23.1.

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(a)-(f) (No change.)

(g) A person who was, but is no longer, regularly engaged in common farmsite activities on the premises may continue living in a residential unit only if he or she has:

1. Retired from farming, as long as he or she was regularly engaged in common farmsite activities on the premises for at least five years while residing in the residential unit; or

2. Suffered a disability and can no longer engage in farming as a result of the disability.

(h) Upon the death of a person who was regularly engaged in common farmsite activities on the premises (farmer occupant), the farmer occupant's spouse, domestic partner registered pursuant to N.J.S.A. 26:8A (domestic partner) and children may continue residing in the residential unit subject to the following conditions:

1. The farmer occupant's spouse, domestic partner, or children must have been residing in the residential unit at the time of the farmer occupant's death;

2. A child who was claimed as a dependent on the farmer occupant's most recent Federal income tax return filed before his death may continue residing in the house as long as his or her status as a dependent for Federal income tax purposes is maintained.

i. Upon losing his or her status as a dependent for Federal income tax purposes, the child may continue residing in the residential unit as long as the farmer occupant's spouse or domestic

partner resides there. If the farmer occupant's spouse or domestic partner no longer lives in the residential unit, the child shall:

(1) Vacate the residential unit; or

(2) Become regularly engaged in common farmsite activities on the premises;

3. A child who was not claimed as a dependent on the farmer occupant's most recent Federal income tax return filed before his death may continue residing in the residential unit as long as the farmer occupant's spouse or domestic partner continues to reside in the residential unit. If the farmer occupant's spouse or domestic partner no longer resides in the residential unit, the child shall:

i. Vacate the residential unit; or

ii. Become regularly engaged in common farmsite activities on the premises; and

4. Other family members not addressed in this subsection above, including but not limited to a parent or sibling of the farmer occupant, may reside in the residential unit only with the joint approval of the board and committee (or with the sole approval of the committee if the committee owns the development easement). When considering requests, the board and committee shall consider the financial and health status of the family member and serious hardships that may warrant the family member to live in the residential unit.

Susan E. Craft
Executive Director, SADC

Date