

CHAPTER 314

AN ACT concerning commercial nonagricultural activities and personal wireless service facilities on preserved farmland, and supplementing P.L.1983, c.32 (C.4:1C-11 et seq.).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.4:1C-32.1 Special permit to allow a commercial nonagricultural activity on certain land; conditions; definitions.

1. a. Any person who owns qualifying land on which a development easement was conveyed to, or retained by, the committee, a board, or a qualifying tax exempt nonprofit organization pursuant to the provisions of section 24 of P.L.1983, c.32 (C.4:1C-31), section 5 of P.L.1988, c.4 (C.4:1C-31.1), section 1 of P.L.1989, c.28 (C.4:1C-38), section 1 of P.L.1999, c.180 (C.4:1C-43.1), or sections 37 through 40 of P.L.1999, c.152 (C.13:8C-37 through C.13:8C-40) may apply for a special permit pursuant to this section to allow a commercial nonagricultural activity to occur on the land.

b. The committee, in its sole discretion, may issue a special permit pursuant to this section to the landowner if the development easement is owned by the committee. The committee and the board, in their joint discretion, may authorize the committee to issue a special permit pursuant to this section to the landowner if the development easement is owned by a board. The committee and the qualifying tax exempt nonprofit organization, in their joint discretion, may authorize the committee to issue a special permit pursuant to this section to the landowner if the development easement is owned by a qualifying tax exempt nonprofit organization.

c. A special permit may be issued pursuant to this section provided that:

(1) the land is a commercial farm as defined pursuant to section 3 of P.L.1983, c.31 (C.4:1C-3);

(2) there is no commercial nonagricultural activity already in existence on the land at the time of application for the special permit or on any portion of the farm that is not subject to the development easement, except that the committee may waive the requirements of this paragraph, either entirely or subject to any appropriate conditions, (a) if such preexisting commercial nonagricultural activity is deemed to be of a minor or insignificant nature or to rely principally upon farm products, as defined pursuant to R.S.4:10-1, derived from the farm, or (b) for other good cause shown by the applicant;

(3) the permit is for one commercial nonagricultural activity only;

(4) no more than one permit may be valid at any one time for use on the land;

(5) the permit is for a maximum of 20 years duration;

(6) the permit does not run with the land and may not be assigned;

(7) the commercial nonagricultural activity utilizes, or is supported through the occupation of, a structure or structures existing on the date of enactment of this act, except that the permit may authorize, subject to the requirements of paragraph (12) of this subsection, an expansion of an existing structure or structures which expansion does not exceed 500 square feet in footprint area in total for all of the structures, provided that, for any such expansion, the applicant demonstrates to the satisfaction of the committee that:

(a) the purpose or use of the expansion is necessary to the operation or functioning of the commercial nonagricultural activity;

(b) the area of the proposed footprint of the expansion is reasonably calculated based solely upon the demands of accommodating the commercial nonagricultural activity and does not incorporate excess space; and

(c) the location, design, height, and aesthetic attributes of the expansion reflect the public interest of preserving the natural and unadulterated appearance of the landscape and structures;

(8) the commercial nonagricultural activity does not interfere with the use of the land for agricultural production;

(9) the commercial nonagricultural activity utilizes the land and structures in their existing condition except as allowed otherwise pursuant to paragraph (7) of this subsection;

(10) the commercial nonagricultural activity does not have an adverse impact upon the soils, water resources, air quality, or other natural resources of the land or the surrounding area, and does not involve the creation of additional parking spaces whether paved or unpaved;

(11) the commercial nonagricultural activity is not a high traffic volume business; and

(12) any necessary local zoning and land use approvals and any other applicable approvals

that may be required by federal, State, or local law, rule, regulation, or ordinance are obtained for the commercial nonagricultural activity.

d. In addition to those factors enumerated under subsection c. of this section, the committee, in evaluating an application for a special permit, shall also consider such additional factors as traffic generated and the number of employees required by the proposed commercial nonagricultural activity so as to limit to the maximum extent possible the intensity of the activity and its impact on the land and the surrounding area.

e. For the purposes of this section:

"Commercial nonagricultural activity" shall not include a personal wireless service facility as defined and regulated pursuant to section 2 of this act;

"Qualifying land" means a farm that was preserved for farmland preservation purposes prior to the date of enactment of this act under any of the laws cited in subsection a. of this section and for which no portion of the farm was excluded in the deed of easement from preservation; and

"Qualifying tax exempt nonprofit organization" shall have the same meaning as set forth in section 3 of P.L.1999, c.152 (C.13:8C-3).

C.4:1C-32.2 Special permit to allow a personal wireless service facility on certain land; conditions; definitions.

2. a. Any person who owns land on which a development easement was conveyed to, or retained by, the committee, a board, or a qualifying tax exempt nonprofit organization pursuant to the provisions of section 24 of P.L.1983, c.32 (C.4:1C-31), section 5 of P.L.1988, c.4 (C.4:1C-31.1), section 1 of P.L.1989, c.28 (C.4:1C-38), section 1 of P.L.1999, c.180 (C.4:1C-43.1), sections 37 through 40 of P.L.1999, c.152 (C.13:8C-37 through C.13:8C-40), or any other State law enacted for farmland preservation purposes may apply for a special permit pursuant to this section to allow a personal wireless service facility to be erected on the land.

b. The committee, in its sole discretion, may issue a special permit pursuant to this section to the landowner if the development easement is owned by the committee. The committee and the board, in their joint discretion, may authorize the committee to issue a special permit pursuant to this section to the landowner if the development easement is owned by a board. The committee and the qualifying tax exempt nonprofit organization, in their joint discretion, may authorize the committee to issue a special permit pursuant to this section to the landowner if the development easement is owned by a qualifying tax exempt nonprofit organization.

c. A special permit may be issued pursuant to this section provided that:

(1) the land is a commercial farm as defined pursuant to section 3 of P.L.1983, c.31 (C.4:1C-3);

(2) there is no commercial nonagricultural activity already in existence on the land at the time of application for the special permit or on any portion of the farm that is not subject to the development easement, except that the committee may waive the requirements of this paragraph, either entirely or subject to any appropriate conditions, (a) if such preexisting commercial nonagricultural activity is deemed to be of a minor or insignificant nature or to rely principally upon farm products, as defined pursuant to R.S.4:10-1, derived from the farm, or (b) for other good cause shown by the applicant;

(3) the permit is for one personal wireless service facility only, although this paragraph shall not prohibit the committee, board, or qualifying tax exempt nonprofit organization, as the case may be, from approving the sharing of the single permitted facility by more than one personal wireless service company, or the use of the facility for other compatible wireless communication uses deemed by the committee, board, or qualifying tax exempt nonprofit organization, as the case may be, to not be violative of the intent or the goals, purposes, or requirements of this section;

(4) no more than one permit may be valid at any one time for use on the land;

(5) the permit is for a maximum of 20 years duration;

(6) the permit does not run with the land and may not be assigned;

(7) the personal wireless service facility utilizes, or is supported through the

occupation of, existing structures, except that the permit may authorize, subject to the requirements of paragraph (12) of this subsection, an expansion of an existing structure or structures which expansion does not exceed 500 square feet in footprint area in total for all of the structures, or the construction of a new structure not to exceed 500 square feet in footprint area which is independent of any existing structure, provided that in either case the applicant demonstrates to the satisfaction of the committee that:

(a) the expansion or the new structure is necessary to the operation or functioning of the personal wireless service facility;

(b) for a new structure, (i) there are no existing structures on the land which could be utilized or occupied to adequately support the personal wireless service facility, and (ii) the relevant deficiencies associated with each such existing structure, as indicated in a written description provided by the applicant, support that conclusion; and

(c) the area of the proposed footprint of the expansion or the new structure is reasonably calculated based solely upon the demands of accommodating the personal wireless service facility and does not incorporate excess space;

(8) the location, design, height, and aesthetic attributes of the personal wireless service facility reflect, to the greatest degree possible without creating an undue hardship on the applicant or an unreasonable impediment to the erection of the personal wireless service facility, the public interest of preserving the natural and unadulterated appearance of the landscape and structures;

(9) the personal wireless service facility does not interfere with the use of the land for agricultural production;

(10) the personal wireless service facility utilizes the land and structures in their existing condition except as allowed otherwise pursuant to paragraph (7) of this subsection;

(11) the personal wireless service facility does not have an adverse impact upon the soils, water resources, air quality, or other natural resources of the land or the surrounding area, and does not involve the creation of additional parking spaces whether paved or unpaved; and

(12) any necessary local zoning and land use approvals and any other applicable approvals that may be required by federal, State, or local law, rule, regulation, or ordinance are obtained for the personal wireless service facility.

d. In addition to those factors enumerated under subsection c. of this section, the committee, in evaluating an application for a special permit for a personal wireless service facility, shall also consider such additional factors as traffic generated and the number of employees required by the proposed personal wireless service facility so as to limit to the maximum extent possible the intensity of the activity and its impact on the land and the surrounding area.

e. Notwithstanding any law, rule, or regulation to the contrary, a personal wireless service company whose proposed facility is the subject of a permit application pursuant to this section shall be required to obtain all applicable local zoning and land use approvals and any other applicable approvals that may be required by State or local law, rule, regulation, or ordinance even if the proposed facility includes a compatible wireless communication use, such as law enforcement or emergency response communication equipment, which may otherwise allow the proposed facility to be exempt from obtaining any such approvals.

f. As a condition of the issuance of a permit pursuant to this section, a personal wireless service facility shall agree to allow, at no charge to the requesting State or local governmental entity, the sharing of the facility for any State or local government owned or sponsored compatible wireless communication use for public purposes, such as law enforcement or emergency response communication equipment, approved by the committee.

g. For the purposes of this section:

"Qualifying tax exempt nonprofit organization" shall have the same meaning as set forth in section 3 of P.L.1999, c.152 (C.13:8C-3); and

"Personal wireless service facility" means a personal wireless service tower and any associated equipment and structures necessary to operate and maintain that tower, as regulated pursuant to federal law.

C.4:1C-32.3 Special permit, application fee, grounds for suspension, revocation.

3. a. The application fee for a special permit authorized pursuant to either section 1 or section 2 of this act shall be \$1,000, payable to the committee regardless of whether or not a permit is issued. All proceeds from the collection of application fees by the committee pursuant to this act shall be utilized by the committee for farmland preservation purposes.

b. The committee may suspend or revoke a special permit issued pursuant to either section 1 or section 2 of this act for a violation of any term or condition of the permit or any provision of the respective section.

c. The committee shall, within 60 days after the date of enactment of this act, develop guidelines for the implementation and administration of this act, including, but not limited to, procedures and standards for the filing, evaluation, and approval of permit applications, which seek to balance, as equally important concepts, the public interest in protecting farmland from further development as a means of preserving agriculture and agricultural structures and enhancing the beauty and character of the State and the local communities where farmland has been preserved with the public interest in providing support to sustain and strengthen the agricultural industry in the State.

d. Every two years, the committee shall prepare a report on the implementation of this act. The report shall include a survey and inventory of all commercial nonagricultural activities occurring on, and of all personal wireless service facilities placed on, preserved farmland in accordance with this act; the extent to which existing structures, such as barns, sheds, and silos, are used for those purposes, and how those structures have been modified therefor; the extent to which new structures, instead of existing structures, have been erected to host personal wireless service facilities and the number and type of new structures used to disguise those facilities, such as artificial trees and faux barns, sheds, and silos; and such other information as the committee deems useful. The report prepared pursuant to this subsection shall be transmitted to the Governor, the President of the Senate, the Speaker of the General Assembly, the respective chairpersons of the Senate Economic Growth Committee, the Senate Environment Committee, the Assembly Agriculture and Natural Resources Committee, and the Assembly Environment and Solid Waste Committee or their designated successors. Copies of the report shall also be made available to the public upon request and free of charge, and shall be posted on the website of the State Agriculture Development Committee.

e. The committee shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and regulations necessary to carry out the purposes of this act.

4. This act shall take effect on the 60th day after the date of enactment.

Approved January 12, 2006.