

December 11, 2023

VIA REGULAR MAIL AND E-MAIL TO:

Elizabeth K. Spangenberg, Esq., Deputy Attorney General
Office of Attorney General
15th Floor Strawberry Square
Harrisburg, PA 17120

Emeline L.K. Diener, Esq.
102 Kitchen's Lane
Pocono Lake, PA 18347

**RE: ACRE REQUEST FOR REVIEW – NORTH WHITEHALL TOWNSHIP –
LEHIGH COUNTY**

Dear Attorney Spangenberg:

The Board of Supervisors (hereinafter, "Supervisors") of North Whitehall Township (hereinafter, the "Township") is in receipt of your letter dated November 07, 2023 (hereinafter, "Letter"). wherein you alert the Supervisors that [REDACTED] (hereinafter, the "Property") filed an ACRE complaint with your office, dated October 20, 2023 (hereinafter, "Complaint"), a copy of which was included with the Letter. Please accept this letter as the Township's official response to the Complaint.

The Property consists of approximately 5.20 acres located within the Township's Agricultural Rural-Residential (AR) Zoning District. The Property is presently improved with a single-family detached dwelling and four (4) outbuildings. It has been owned by [REDACTED] since December of 2021.

Prior to purchasing the Property, from approximately February 2020 to November 2021, [REDACTED] had extensive email and telephone communications with the former and current Township Zoning Officer and Assistant Zoning Officer wherein [REDACTED] inquired about the zoning status of various properties within the Township and expressed [REDACTED] interest in purchasing property in the Township for simultaneous use as a residence, the keeping of bees for the harvest of honey, sales of honey and "related beekeeping items," and operation of a dog grooming business. Shortly after purchasing the Property, [REDACTED] continued discussions with the Township Zoning Officer regarding required permits for electrical upgrades, converting from well water to public water, installing a pasture fence, expanding the existing non-conforming barn, building accessory structures for animals, raising of bees, and replacement of the residence's furnace system with an HVAC system.

In February of 2023, [REDACTED] contacted the Township's Zoning Officer to express interest in operating a dog grooming business at the Property as a general or light home



occupation use. On May 30, 2023, after meeting with [REDACTED] to discuss the proposed dog-grooming business, the Township's Assistant Zoning Officer issued a determination to [REDACTED] indicating that, based on the proposed volume and operational parameters, the dog grooming business would not be permitted as a general or light home occupation use. The Assistant Zoning Officer informed [REDACTED] that the dog grooming business would be considered a personal service use—a use not permitted in the AR District—and that [REDACTED] would require a variance to permit the same, as well as a special exception to permit more than one (1) principal use on a single lot. [REDACTED] subsequently applied for said relief but was denied by the Township's Zoning Hearing Board by written decision issued September 13, 2023, after a public hearing on August 16, 2023.

In May of 2023 [REDACTED] shared (but did not submit) a zoning permit application for a light home occupation with the Township's Zoning Department. The application described the proposed use as "sale of honey and honey bee related products by appointment only. Products are ordered and appointment required to pickup when ready. Small self serve farm stand may be utilized." When the Zoning Department attempted to follow up with [REDACTED] to inquire about the specifics of this proposed use, [REDACTED] indicated that [REDACTED] would revisit the subject with the Township at a later time because [REDACTED] was presently focused on obtaining the zoning relief for the dog grooming business. To this date, [REDACTED] has not submitted a zoning application to the Township to permit the raising of bees or the sale of beekeeping-related products, nor has [REDACTED] identified what kinds of "beekeeping-related products" [REDACTED] intends to sell.

On August 08, 2023, the Township received a complaint that [REDACTED] was operating a retail business ("Beeyond Honey Apiaries & Supplies") at the Property in violation of the Township's Zoning Ordinance (hereinafter, "Ordinance"). On August 09, 2023, the Township's Assistant Zoning Officer issued a Notice of Violation to [REDACTED] listing the following violations:

1. Operation of a retail beekeeping store without a zoning permit in violation of Section 440-10A.(2)(a) of the Ordinance;
2. Operation of a Retail Store use in the AR Zoning District where the same is not listed as a permitted use in Section 440-36, Attachment 1 (Table of Permitted Uses) of the Ordinance; and
3. Maintenance of more than one (1) principal use on a single lot in violation of Section 440-77B. of the Ordinance—a Single-Family Detached Dwelling use and a Retail Sales use.

The above-referenced Notice of Violation was issued after the Township's Assistant Zoning Officer performed online research that revealed [REDACTED] was offering retail products for sale from the Property, including commercial beekeeping equipment not manufactured by [REDACTED] (e.g., beekeeping suits and prefabricated hive-housing structures).

On August 09, 2023, the Township's Assistant Zoning Officer also issued a Cease and Desist Order ordering [REDACTED] to cease operation of the illegal Retail Store use. In response to the Notice of Violation and Cease and Desist Order, [REDACTED] emailed the Township's Assistant Zoning Officer on August 16, 2023, alleging, *inter alia*, that [REDACTED] only sold small amounts of honey and only sold pre-manufactured products off-premises. [REDACTED] also indicated that [REDACTED] would comply with the Order and, accordingly, the Township withdrew the Notice of Violation and Cease and Desist Order. Thereafter, [REDACTED] filed [REDACTED] Complaint with your office.

It is the Township's belief that [REDACTED] presently continues to operate Beeyond Honey Apiaries & Supplies, including the sale of commercial beekeeping equipment, from the Property despite the Township informing [REDACTED] that such operation violates the Ordinance without proper permitting. This belief is based on results of online investigation of the website and Facebook page for Beeyond Honey which continue to advertise the sale of commercial beekeeping equipment.

The Township respectfully posits that, despite requests from the Township's Zoning Department to do so, [REDACTED] has failed to supply the Township with sufficient information needed to make a determination as to the permissibility of [REDACTED] proposed beekeeping operations and sale of beekeeping-related products. For example, in his discussions with the Township regarding his operation of an apiary, [REDACTED] inquired about applicable zoning ordinance provisions and associated setback requirements. However, [REDACTED] has not provided information to the Township regarding the scale of [REDACTED] proposed beekeeping operation or the sale of non-agricultural products such as commercial beekeeping equipment. Without this necessary information, the Township is unable to determine whether [REDACTED] proposed use would fall within the Township's definitions of Crop Farming, Raising of Livestock, or Retail Sales of Agricultural Products as an Accessory Use.

As you are likely aware, ACRE (3 Pa.C.S.A. § 311 *et seq.*) prohibits a municipality from prohibiting or limiting normal agricultural operations through the enforcement of a local ordinance unless expressly or impliedly authorized by State law to adopt such ordinance. Pennsylvania's Right to Farm law (3 P.S. § 951 *et seq.*) provides a definition for "normal agricultural operation" as follows:

"The activities, practices, equipment and procedures that farmers adopt, use or engage in the production and preparation for market of poultry, livestock and their products and in the production, harvesting and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities and is:

- (1) not less than ten contiguous acres in area; or

(2) less than ten contiguous acres in area but has an anticipated yearly gross income of at least \$10,000.”¹

Moreover, the Right to Farm law states, in relevant part, that “[d]irect commercial sales of agricultural commodities upon property owned and operated by a landowner who produces not less than 50% of the commodities sold shall be authorized, notwithstanding municipal ordinance, public nuisance or zoning prohibitions.”² Mirroring the Right to Farm law, the Township’s Zoning Ordinance provides for “Retail Sales of Agricultural Products as an Accessory Use” in all residential zoning districts.³ This use is defined in relevant part, as:

“A use involving:

(1) The retail sale of only horticultural products and/or agricultural products, in addition to any handmade crafts made by the operator of the market and his/her immediate family; and

(2) Where a minimum of 50% of the total amount of products offered for sale were produced by the operator of the market or his/her immediate family.”⁴

At this juncture, the Township suggests that [REDACTED] submit a formal zoning application to permit [REDACTED] proposed beekeeping operations and retail sales of beekeeping products. Based upon the limited information provided by [REDACTED] during [REDACTED] discussions with the Township over the past three (3) years, it is likely that [REDACTED] use would qualify as a “Crop Farming” use under the Township’s Zoning Ordinance.⁵ If this were the case, then [REDACTED] use of his Property would change from a single-family dwelling use to a Crop Farming use, and the existing residence on the Property would be considered to be part and parcel of the Crop Farming use—thus avoiding the need for special exception relief to permit more than one (1) principal use on a lot. Additionally, if [REDACTED] provides information to the Township regarding [REDACTED] anticipated retail sales, The Township will be able to determine whether [REDACTED] can conduct retail sales of agricultural products as an accessory use. Of course, the Township would require sufficient information to determine whether [REDACTED] proposed use qualifies as crop farming and whether he meets the criteria for retail sales of agricultural products. Examples of the kind of information needed would include the amount of honey anticipated to be sold on an annual basis as compared to sales of pre-manufactured commercial beekeeping equipment as well as anticipated annual revenue.

¹ 3 P.S. § 952.

² Id. § 953.

³ North Whitehall Township Zoning Ordinance § 440-36, Attachment 1, Table of Permitted Uses.

⁴ North Whitehall Township Zoning Ordinance § 440-30.

⁵ See id.

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The Township appreciates your attention to this matter and looks forward to hearing from you regarding this response. If there is any additional information needed from the Township, please do not hesitate to let me know. If your review indicates that the Township's Zoning or other ordinances are in any way out of compliance with ACRE or the Right to Farm law, we would appreciate any guidance you may be able to provide, as the Township is currently in the process of drafting an update to its Zoning Ordinance and any necessary changes can easily be accommodated during this process.

Sincerely,

A handwritten signature in black ink, appearing to read "Rocco Beltrami", with a long horizontal flourish extending to the right.

Rocco Beltrami, Esq.
North Whitehall Township Solicitor

Cc: Emeline L.K. Deiner, Esq., Attorney for [REDACTED]