

[REDACTED]

October 20, 2023

PA Office of Attorney General
General Att'n: ACRE Request for Review
15th Floor, Strawberry Square
Harrisburg, PA 17120

Re: [REDACTED]

Zoning Classification Agricultural-Residential

Dear Attorney General Henry,

[REDACTED] owns an approximately 5.5 acre property, whereon he resides, in the Agricultural-Residential zone in North Whitehall Township. He is a beekeeper and has been receiving confusing and largely discouraging input from the Zoning Department concerning his proposed operation of raising bees and conducting direct commercial sales from his land of the products of bee-raising, including bees, honey, wax, propolis and associated products. He will be producing at least 50% of the bees and products sold and anticipates that this operation will generate over \$10,000 annually.

On September 13, 2023, [REDACTED] requested permission from the North Whitehall Township Zoning Department to engage in three uses from his parcel: Livestock Raising (honeybees), Crop Farming (honey and other products from bees), and Retail Sales of Ag Products related to the previous two uses. All three uses are explicitly listed in the NWT Zoning Ordinance as "permitted by right" uses in the AR zone, found here: <https://ecode360.com/attachment/NO3503/NO3503-440a%20Table%20of%20Permitted%20Uses.pdf>

When making the request, [REDACTED] clearly stated the intent of the uses and why he felt they were permitted by right and that he believed he also qualified for PA Right to Farm protections. In subsequent email discussions on September 21, September 28, and October 2, the NWT Zoning Department indicated in a preliminary determination that the use of Livestock Raising was permitted, however a variance would need to be obtained for this and any other use on the permitted by right use table because [REDACTED] was entitled to only one principal use which was his residence and the addition of any other use required a variance. In section 440-41(A)(4)(c) in relation to agriculture as a principal use it reads: "This use may be on the same lot as other permitted agricultural uses, provided that the requirements for each use are

met." <https://ecode360.com/38398929> The requirements for each use would be met, however a variance is still being requested.

Additionally, NWT informed [REDACTED] that "honey is not a crop" and therefore was not able to be approved as a Crop Farming use, and finally, Retail Sales was not permitted since there was no principal use approved that it would be an accessory to [REDACTED] attempted to further discuss the issue with NWT but their stance was that [REDACTED] had to submit the proposal for uses for an official determination and that they were done with back and forth communication regarding this request.

The North Whitehall Township Zoning Ordinances can be found in totality here:
<https://ecode360.com/NO3503>

We believe [REDACTED] proposed operation cannot legally be prohibited by the zoning ordinance nor any other municipal Ordinance for the following reasons:

- NWT restricts the number of principal uses to a maximum of one per lot as described here: <https://ecode360.com/35648437> In the September 2019 – Philadelphia County ACRE determination: <https://www.attorneygeneral.gov/wp-content/uploads/2019/09/Philadelphia-County-Redacted-04.26.2023-Follow-Up-Letter-to-the-City.pdf>, we believe it addresses the fact that [REDACTED] should be entitled to engage in Livestock Raising, or any other agricultural permitted by right principal use on his property as a customary use to his residing on a farm and therefore not subject to seeking approval through the variance process.
- By NWT creating its own definition of Crop Farming found here: <https://ecode360.com/35646318> they are illegally restricting [REDACTED] from Crop Farming honey which is an internationally, federally and state accepted agricultural commodity specialty crop which directly conflicts with the PA Right to Farm law:

"Agricultural commodity" is defined in 3 P. S. 952 to include:

"(4) The products of....bee raising".

- By not allowing [REDACTED] to conduct retail sales of the agricultural commodities they are further violating the PA Right to Farm law:

Purdons Title 3 P. S. *Agriculture*, Chapter 14B, *Protection of Agricultural Operations From Nuisance Suits and Ordinances*, at 3 P. S. 953, *Limitation on local Ordinances*, Subsec (b), provides in pertinent part:

"Direct 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."

- NWT restricts the keeping of bees when classified as “pets” by imposing a 150’ setback requirement. (<https://ecode360.com/35647893>) However, no commercial activity may be conducted unless it is classified as a Livestock Raising operation. When such a classification is placed on this activity, NWT then further restricts with an increased blanket setback of 300’ for all livestock operations from residential lot lines. (<https://ecode360.com/35647323>) It is our belief that [REDACTED] would be considered a “small livestock operation” as the OAG defined in a letter dated May 7, 2020 to South Strabane Township and further supported in the August 2023 – Independence Township ACRE determination and is not subject to the illegally imposed setback requirements. <https://www.attorneygeneral.gov/wp-content/uploads/2023/09/Independence-Township-Redacted-30-Day-Acceptance-Letter.pdf>
- NWT fails to use the approved terms of CAO and CAFO in their ordinance, only defining “intense livestock raising”. [REDACTED] operation would not meet the requirements of a CAO or CAFO, he does not meet the requirements for being required to have a NMP and is not considered an NMP operation. The use of the term “intense livestock raising” was addressed in the OAG Letter from 2006 to Lower Towamensing Township. <https://www.attorneygeneral.gov/wp-content/uploads/2018/04/2006-Lower-Towamensing-Intensive-Ag.-Setbacks.pdf>

Given that we have found so many clear inconsistencies we are requesting that the OAG review the NWT Ordinances and make a determination on them. Should you require any further information please do not hesitate to ask.

This is a Request for Review under the Agricultural Code, 3 Pa CSA 314(a), of certain ordinances and/or enforcement thereof of North Whitehall Township, (Lehigh County), 3256 Levans Road, Coplay, Pa 18037. The attorney and solicitor for North Whitehall Township are [REDACTED] and [REDACTED] respectively.

Thank you for your consideration.

[REDACTED]