

A photograph of a green tractor with a person driving it on a dirt path in a field. The sun is low in the sky, creating a warm, golden glow. A large tree is on the left side of the path.

FARMS, MUNICIPALITIES, AND ACCESSORY ON FARM BUSINESSES

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WHAT IS A FARM?

- \$2,000.00 generated from the sale of principally produced agricultural products on an average annual year
- 4.0 contiguous acres of land involved in agricultural activity
- Managed by farmer filing a 1040(F) tax form in at least one of the past two years
- Prospective business or farm management plan
- Designated by the Secretary

WHAT IS FARMING?

- Cultivation or other use of land for food, fiber, Christmas Trees, Maple, or orchard crops
- Livestock, Greenhouses and Maple syrup production
- Storage, prep or sale of ag products or Fuel or power from ag products or waste principally (>50%) produced on the farm
- Boarding or owning 4+horses including training, showing, or lessons



WHO REGULATES WHAT FARM?

- When a farm meets these thresholds, their operation, and their farm structures, are regulated by the Agency of Agriculture, Food & Markets, instead of being regulated by the municipality.
- This means that zoning bylaws and ordinances do not apply to farm operations under Agency jurisdiction.
- For Certified Small Farms, Medium and Large Farms, permits or certifications already exist indicating the jurisdiction of the farm's regulation, however, for smaller operations – many of the farms that are interested in operating an Accessory on Farm Business (AOFB), are below this threshold – these farms are called Small Farm Operations or SFOs.
- For these situations, the Agency can issue Farm Operation Determinations, and Farm Structure Determinations to determine where regulatory jurisdiction lies, and to determine eligibility for AOFBs.

FARMS OPERATIONS MUST FOLLOW THE REQUIRED AGRICULTURAL PRACTICES

- Siting requirements for farm structures
- Erosion standards
- Floodplain management
- Streamside and Ditch Buffers and manure setbacks
 - 25' all surface water, 10' all ditches
- Livestock exclusion from surface waters
- Nutrient management (including seasonal manure application)
- EDUCATION: Farmers, Custom Operators, Technical Service Providers
- Tile drainage requirements



WHAT ARE ACTIVITIES COVERED UNDER THE RAPs?

- Section 3.2 of the RAPs lists activities that are covered under the RAPs, which do not require any municipal permit.
- Sale of ONLY principally produced produce on the site where farming is taking place, does not need AOFB – covered under the RAPs
- When selling both their products, and products from a different producer – AOFB becomes applicable.



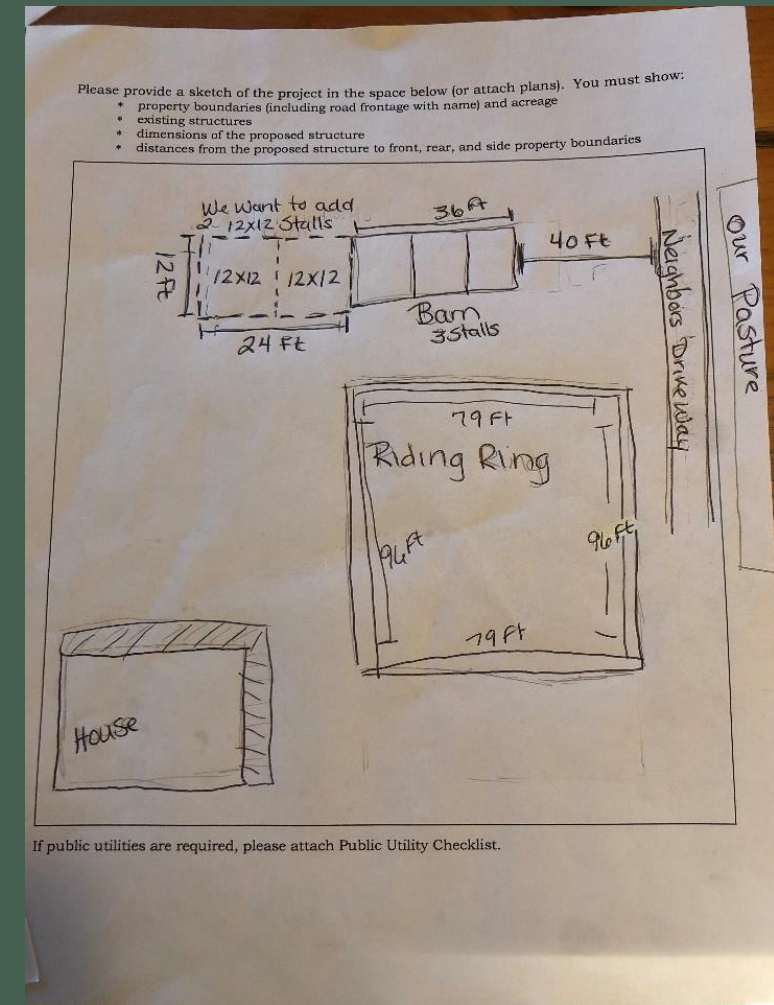
FARM STRUCTURE CONSTRUCTION

- Must be farm regulated by VAAFM
- Farms must notify the Town
- Must follow local setbacks unless otherwise approved
- Need to comply with Other State permit Requirements
- Must be used for farming activities



FARM AND FARM STRUCTURE DETERMINATIONS

- When are these needed?
 - Local zoning wouldn't allow for activity otherwise
 - Building a farm structure
 - Accessory on Farm Business
 - MS4 – Moving fill
 - Applying for financial assistance from VAAFM
- NOT needed to engage in farming activities covered under the Required Agricultural Practices (RAPs)
- Accessed through an online submittal form:
<https://agriculture.vermont.gov/form/farm-determination-form>



WHAT IS A FARM AND WHAT IS A FARMING ACTIVITY: WHY ARE THESE QUESTIONS SO TRICKY?

- Farmers are finding new and innovative ways to sustain their operations
 - Value added – AOFB and Hemp
- These value added projects or increased diversification are a change for operators, the Agency, Municipalities, and the public
- Regulations and policy are playing catch up
- Operations vary GREATLY
- Increasing number of small operations popping up with the hemp industry



ACCESSORY ON-FARM BUSINESSES: ACT 143

AN ACT RELATING TO MUNICIPAL REGULATION OF ACCESSORY ON-FARM BUSINESSES



AGENCY OF AGRICULTURE, FOOD & MARKETS

ACCESSORY ON-FARM BUSINESS ACTIVITIES

(I) The storage, preparation, processing, and sale of qualifying products, provided that more than 50 percent of the total annual sales are from qualifying products that are principally produced on the farm at which the business is located.

(II) Educational, recreational, or social events that feature agricultural practices or qualifying products, or both. Such events may include tours of the farm, farm stays, tastings and meals featuring qualifying products, and classes or exhibits in the preparation, processing, or harvesting of qualifying products.

WHEN DOES AOFB LAW COME INTO PLAY?

NO ZONING/ZONING ADMINISTER REVIEW



- Only in communities with land use regulations
- No regulations, no permit necessary
- Does the municipality have site plan review? If not and the applicant has met its burden showing it is a farm and conducting allowed activities, ZA must issue a permit.

ACCESSORY ON-FARM BUSINESS ANALYSIS: SALES



- Is this a “farm”? And is “farming” happening on the site?
- How much is the sales from products principally produced (PPP) on the site?
- What is the sales from qualifying products (QP)?

QP sales must not exceed 49% of the total sales of PPP at the site of the business.

ACCESSORY ON-FARM BUSINESS ANALYSIS: EVENTS



- Is this a farm? And Is “farming” happening on the site?
- Does the farm host educational, recreational or social events on the farm?
- Does it include tours of the farm, farm stays, tastings and meals featuring qualifying products, and classes or exhibits in the preparation, processing, or harvesting of qualifying products ?

WHO IS RESPONSIBLE FOR WHAT TASK?



- AAFM
- Operator
- Municipality

VAAFM RESPONSIBILITIES

- AAFM continues to protect and maintain water quality by requiring farm operators to meet standards outlined in the Required Agricultural Practices rule
- AAFM maintains **responsibility for determining whether it is a farm** and Required Agricultural Practices rule apply to the operation
- AAFM approves alternative setbacks from those required by a municipal bylaw, as outlined in the Required Agricultural Practices rule
- Provide periodic written notification and training sessions to farms covered by the Required Agricultural Practices rule on the existence and requirements of this law
- Alert farms that in order to operate an accessory on-farm business other state permits may be necessary
- Help farmers seeking to expand their businesses navigate AOFB and other permit requirements

FARM OPERATOR RESPONSIBILITIES

Apply for municipal and other permits, as necessary and provide evidence used in site plan review process

- Is it a “farm” covered by Required Agricultural Practices rule?
- Is it a business that is accessory to the primary farm use?
- Is the business operated by farm owner, one or more persons living on the farm, or a lessee of a portion of the farm?
- Is it an educational, social or recreational event that features agricultural practices or qualifying products, or is a business that sells qualifying products?



MUNICIPAL RESPONSIBILITIES

Determines eligibility of the proposal to qualify as an Accessory On-Farm Business

- Is it a farm owner, resident, or lessee?
- Does it meet the definition of an accessory on-farm business?
- Applies municipal site plan review and performance standards and issues decisions

***Municipalities can adopt more permissive land use regulations**



ACCESSORY ON-FARM BUSINESS: LAWS AND SITE PLAN REVIEW

TITLE 24 VERMONT STATUTES ANNOTATED, SECTION 4412(11) 24V.S.A. 4412(11)

- (11) Accessory on-farm businesses. No bylaw shall have the effect of prohibiting an accessory on-farm business at the same location as a farm.

How to access AOFB Language:

1. Go online to the Vermont Legislature Website
2. Click Vermont Laws, and then Vermont Statutes Online
3. Find Title 24, click on it, and then find Chapter 117, click on it
4. Find Section 4412, click on it and scroll down to number 11 Accessory on farm businesses.

**We have included links at the end of the presentation.

INCORPORATING ON-FARM ACCESSORY BUSINESSES INTO YOUR LOCAL ZONING REGULATIONS

1. Introductory Statement
2. Definitions
3. Qualifying features
 - Is it a Farm?
 - Is it an accessory on-farm business?
4. Site Plan Review

INTRODUCTORY STATEMENT

- Accessory On-farm Businesses are hybrids. They are an attempt at compromise by the legislature to allow farming to evolve and survive without too much regulatory oversight. They are also an attempt by the legislature to allow municipalities to regulate types of uses they already do.
- That requires a succinct explanation for both the Applicants and the DRB. What are your rights (Applicants) What are your powers?(ZA and ZBA/DRB).

At the end of the presentation I have included model zoning that attempts to strike the balance required to implement the compromise intended.

DEFINITIONS

- “Farm”
- “Farming”
- “Farming, Required Agricultural Practices” (“RAPs”)
- “Farming, Qualifying Products”
- Add these definitions to your regulations if you do not already have them. I labeled them as all starting with Farm, to get them all in the same place so one can find them. You may need some cross references.
- Definitions are necessary to make a decision

QUALIFYING FEATURES

- Is it a Farm? Use the definition of farming. Get a letter from the Agency of Agriculture. They will issue an opinion regarding whether an operation is a farm.
- Is it an accessory on-farm business? Use the definition. Do the activities/uses proposed qualify as those allowed under the statute?
- Again, I would urge the applicant to Speak with the Agency of Agriculture. Vet your proposed activity with AAFM. AAFM does not have statutory authority like they do to define a farm, but can provide guidance on what activities would be covered under the RAPs, and what would not.



SITE PLAN REVIEW

If a municipality has regulations and conducts site plan review. The ZA will forward the application to the appropriate municipal Panel (ZBA/DRB) for Site Plan Review

WHAT IS SITE PLAN REVIEW?(CONTINUED)

- Site Plan Review is enabled by 24 V.S.A. 4416
- In reviewing site plans, the appropriate municipal panel may impose, in accordance with the bylaws, appropriate conditions and safeguards with respect to: the adequacy of parking, traffic access, and circulation for pedestrians and vehicles; landscaping and screening; the protection of the utilization of renewable energy resources; exterior lighting; the size, location, and design of signs; and other matters specified in the bylaws.

All Site Plan review Criteria should be internal to the Farm or its access to the highway.

AND OTHER MATTERS SPECIFIED IN THE BYLAWS

What does this mean? Performance Standards
Odor, noise, hours of operation

Generally, Site plan review for Accessory on-farm businesses should be the same as for other commercial businesses.

However, statute allows Site plan review for farms to be less stringent than other businesses. Parking is a good example. If someone holds events on the farm, generally they expect people to park in a well drained field. If a municipality required paved parking with spaces and lines, they could economically kill the business. That is not supposed to happen.

AOFB DOES NOT CHANGE THE APPLICABILITY OF OTHER REGULATIONS OR THE REQUIREMENTS FOR OTHER NECESSARY PERMITS

Act 250

Fire safety

Wastewater/
Potable Water

Wetlands

Health

Department

On-farm
slaughter

Stormwater

ACT 143 DOES NOT CHANGE ENROLLMENT REQUIREMENTS
FOR LAND AND BUILDINGS IN THE CURRENT USE PROGRAM

LINKS AND ATTACHMENTS

- 24 V.S.A. 4413 Exemptions for Agriculture
- 24 V.S.A. 4412(11) Accessory On Farm Businesses
- 24 V.S.A. 4416 Site Plan Review
- 24 V.S.A. 4414(5) Performance Standards
- Proposed Model Bylaws including definitions and Site plan review procedures
- AAFM FAQs and Factsheet
- Other

QUESTIONS?