

From: Aaron Brown
To: Town of Charlotte Selectboard
Re: Clarifications on Act 143

This memo follows my presentation on Act 143 to the Selectboard February 11th and a meeting with representatives from Hinesburg, Shelburne, and the Agency of Agriculture February 14th. As a reminder, Act 143 exempts accessory on-farm businesses from zoning; it also allows farms to hold events and overnight stays if they serve agricultural products or feature agricultural practices (ex: beekeeping class). Towns are limited to (or permitted to use, depending on one's perspective) site plan and performance standard reviews for accessory on-farm businesses. Charlotte, however, currently exempts agriculture from site plan and performance standard reviews. In order to regulate such uses, the town would need to amend the Land Use Regulations to add these forms of review.

Events and Overnight Stays

The events and overnight stays portion of the law is fairly clear. A farm can hold an event if it features agricultural products or practices. The law does not specify the frequency or size of events or overnight stays. Thus, it is up to a zoning administrator or town body to determine when an event or overnight stay operation is so large that the farm is accessory to it. There is no percentage of revenue that must be derived from agricultural products at an event. Events featuring agricultural practices should be fairly straightforward – imagine classes on horticultural topics, raising livestock, maple sugaring, etc. – but they could be broadly interpreted to include lectures on agricultural history, a discussion of farming economics, or even a showcase of farming in visual arts.

Other Accessory Businesses

A majority of revenue from non-events business must be derived from qualifying products principally produced on the farm, and *“the operation must be subordinate to the farming operation to be considered accessory.”*¹ 49% of revenue can come from products that are agricultural commodities from one or more farms; in other words, products produced at other farms do not count toward the 51% requirement. The Agency of Agriculture originally interpreted the law to mean agricultural commodities from Vermont farms, but it now says such products can come from anywhere. Agency representatives said that lawmakers did not envision accessory businesses selling non-agricultural products.

Options to Consider

Besides events and overnight stays, the law doesn't address property use. In other words, it does not specify what types of operations might sell qualifying products. Municipalities can write regulations that are more permissive than Act 143, and it might behoove Charlotte to identify a list of types of businesses in an “included, but not limited to” phrase within the Land Use Regulations. I provide a list of potential uses at the end of this memo. The list is not an endorsement of any particular use, nor is it necessarily exhaustive.

Additionally, the Town might consider (1) at what size different types of accessory businesses must go through site plan and performance standard reviews and (2) at what size an accessory business is no

¹ [“Q & A, Act 143, Accessory On-Farm Businesses”](#), State of Vermont, Agency of Agriculture, Food and Markets, Montpelier, Vermont, October 3, 2018.

longer accessory to the farm. To use an extreme example, if a site featured a 200-room hotel and conference center and a five-acre carrot farm, what is the principal use of the site? The Town might also consider whether it wants to grant the zoning administrator responsibility for determining accessory status case-by-case.

Current Town Regulations

The Land Use Regulations (2016) provide a starting point to consider thresholds for accessory businesses. The following uses are potential accessory enterprises already defined in the regulations. In districts where uses are currently allowed, P equals a permitted use and CU indicates conditional use, which requires zoning board approval.

Bed and Breakfast: a single-family dwelling occupied by the owner or operator, in which not more than four rooms accommodating up to ten guests...are rented out to provide overnight accommodations.

Allowed Districts: West Charlotte Village (P), East Charlotte Village (P), Village Commercial (P), Rural (CU), Shoreland (CU)

Considerations: it seems on-farm bed and breakfasts are likely exempt from zoning under Act 143, but could still be required to go through site plan review. The Agency says there is no limit on the frequency or size of overnight stay operations.

Inn: a building or group of buildings containing a maximum of 10 guest rooms for occupancy and use by transients on a short-term basis (less than one month on average), and providing such services as maid service, a central switchboard, or dining facilities for guests. Owner occupancy is required.

Allowed Districts: West Charlotte Village, East Charlotte Village, Village Commercial, and Shoreland (all CU)

Considerations: it seems unlikely that most farmhouses would have ten rooms available, but it is conceivable that an operation could renovate a barn to bring the number of lodging spaces up to ten. Again, the law allows towns to be more permissive, but not more restrictive. What is a reasonable number of rooms for an operation to still be considered accessory?

Farm Café: a use that is auxiliary to the agricultural use of the parcel of which the primary function is to serve to the public, for consumption primarily on the premises, food and/or beverages that include but are not exclusively created from agricultural products grown on the parcel.

Allowed District: Rural (CU)

Additional Specific Use Standards: the total square footage, including food preparation area, of the enclosed area is limited to 1,000 square gross floor area. Outdoor seating can comprise an additional 1,000 square feet. The farm must have at least 10 acres or, if it is located on Route 7, have 20 acres. The minimum sales requirement is \$10,000 from agricultural products produced on the farm (compared to \$2,000 under state law), and the farm itself must generate at least 33% of its income from outside the café.

Considerations: It might not be possible to limit floor area size through zoning because of Act 143. Can the town still require farms to meet a certain sales requirement from wholesale, CSA, and other types of sales? Is it lawful to require acreage greater than what the state requires (4 acres) or more revenue (\$2,000) to qualify as an agricultural operation? It seems the restrictions on farm cafés could easily be challenged because of Act 143.

Potential Accessory Business Types

Bakery

Bar or tasting room serving qualifying alcoholic products²

Bed and Breakfast

Café

Campground

Caterer

Corn maze

Creemee stand

Deli

Food processing facility

Florist (something beyond a flower stand)

Grocery/market

Pet breeder³

Restaurant

Slaughterhouse⁴

Smoothie stand

Store selling clothing and/or housewares made from local fibers

Store selling beauty and personal care products made from local farm products

Wedding facility

Possible Next Steps

- Determine whether to extend site plan and performance standard reviews to accessory businesses
- Consider recognizing certain size activities as thresholds for accessory vs. non-accessory
- Codify a more permissive stance
- Consider authorizing the zoning administrator to determine whether an activity is truly accessory

² Qualifying products would likely be limited to cider or wine. Beer and almost all spirits do not qualify due to the high percentage of water introduced as an ingredient. See [In Re Whistlepig, LLC Act 250 Jurisdiction Opinion](#). However, Act 143 allows municipalities to be more permissive, and the town could identify breweries as a permitted accessory business.

³ Here, I imagine not cats and dogs, but rabbits, ducks, llamas, sheep, and other “livestock” that people might keep as pets.

⁴ Note that slaughterhouses still require extensive review from the state and USDA.