

MEMO

Date: March 7, 2022

To: Rep. Carolyn Partridge, Chair, House Committee on Agriculture and Forestry

Re: Comment on AOFB legislation

From: Kevin Geiger, Director of Planning

CC: Peter Gregory, Chris Campany

Dear Chair Partridge:

As I heard in the committee the other day, and understood from previous history, the clause enabling an accessory on-farm business (AOFB) to avoid prohibition in local zoning was enacted in 2018 to bolster the economics of existing farms so that they remain viable farms. In crafting these comments to the Committee, I have kept this purpose in mind, since the Regional Commission also supports that purpose.

Location

The current law in 24 VSA 4412(11) allowing AOFBs in all local zoning does not make any distinction based on location. The essence of zoning is that it has zones, commonly called districts, where different uses are allowed. Farms are ubiquitous in Vermont, located along most roads outside of our denser settlements, and up many valleys, often only served by gravel roads. Commercial development of most kinds above small operations is often prohibited in these areas under local zoning bylaws for two reasons – commercial development along highways would create sprawl and violate what is often considered as the primary state planning goal of maintaining a “pattern of compact village and urban centers separated by rural countryside” (24 VSA 4302(c)(1)); and zoning commonly limits many commercial operations along backroads to avoid the potential impacts of traffic and trucking, and harm to what is perceived as the ‘rural character’ of these areas (that is of course partly created by farms).

The law should be changed to require that updates to local zoning must include a provision for allowing AOFBs in at least one district covering rural areas, and until they do so allow AOFBs along paved roads outside of designated centers (villages, downtowns, etc.). This way, towns would have to develop their regulation of AOFBs, and these uses would not automatically be possible in more remote areas.

Accessory nature

The current AOFB provision is not meant to create an avenue for a new business to locate in heretofore prohibited areas simply by somehow attaching a new farm on the side. And, the AOFB term itself implies that the business must be ‘accessory’ to the farm, not the other way around, and that it is on the farm, not simply associated with a farm.

To that end, the current law’s provision that, “No bylaw shall have the effect of prohibiting an accessory on-farm business at the same location as a farm (my emphasis)” is right on target. The law does not define “accessory”, but it should. To that end, H. 581 has taken a stab at the issue, but measuring things like gross sales or other ephemeral aspects not easily visible would be a burden on local administrators. On its face, accessory would seem to mean that the AOFB does not dominate the farm. Ways that this could be done would be to amend 24 VSA 4412(11)(C) to read:

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(C) Use of structures or land. An accessory on-farm business may take place inside of farm structures that existed as of July 1, 2018, or new or existing structures, provided that new structures shall not exceed the dimensions of existing structures on the farm parcel, and in no case shall exceed twenty feet in height or 3,000 square feet of footprint, or on the land.

These are easily measurable and would ensure that buildings are smaller than the average barn, and that someone does not build a 'farm structure' just for the business but without going through zoning.

I also suggest that the existing statute be modified to be more easily understood and enforceable, as follows:

(i) "Accessory on-farm business" means an on-site activity that is accessory to a farm and comprises one or both of the following:

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

(II) Educational, recreational, or social events that predominantly feature agricultural practices or qualifying products from the farm, or both. Such events may include tours of the farm, farm stays, tastings and meals featuring qualifying products from the farm, and classes or exhibits in the preparation, processing, or harvesting of qualifying products from the farm. As used in this subdivision (II), "farm stay" means a paid, overnight guest accommodation on a farm for the purpose of participating in educational, recreational, or social activities on the farm that feature agricultural practices or qualifying products from the farm, or both. A farm stay includes the option for guests to participate in such activities.

(III) For purposes of this section, accessory on-farm business does not include restaurants with indoor seating, or permanent wedding venues.

Towns would still be enabled to make their regulations looser, but the state preemption would thus let only so many cows out of the barn, so to speak.

Jurisdiction

To support agriculture, Vermont has long exempted farms and farming (which includes the construction of farm structures) from local zoning under 24 VSA 4413(d), and from Act 250 under 24 VSA 6001(D) as "construction of improvements for farming" are defined as non-jurisdictional. Act 143, however, did not exempt an AOFB from review under zoning through site plan review if a town so chooses, nor from Act 250.

in order to more easily enable small AOFB operations, in towns that have enacted bylaw provisions specifically regulating AOFBs these should be exempted from Act 250 provided that their construction does not disturb more than one-half acre of land. One acre of improvements as suggested in H. 581 is simply too large an area to fit within most rural areas in terms of scale, and is a commercial development worthy of Act 250.

To close, such changes would more clearly enable envisioned accessory on-farm businesses, minimize regulation but also respect local zoning where applicable, and increase predictability and consistency in enforcement.