

FARMING AND LOCAL ZONING

(updated 10/11/2013)

Section 4413(d) of Title 24 (Municipal and County Government) of Vermont Statutes Annotated (V.S.A.) places limitations on municipal bylaws and prohibits the regulation of accepted agricultural practices, including the construction of farm structures, through municipal zoning. The Agency is frequently requested, either by the town or the farmer, to provide an opinion on whether a party is engaged in “farming” and if a proposed structure is a “farm structure” in order to determine the applicability of local zoning requirements. That opinion will be based on a written submission to the Agency that provides information regarding the current or proposed operation. This document is designed to help you develop that written submission to request an Agency opinion.

The information contained in this document will help you to determine:

- ▶ Are you engaged in farming and accepted agricultural practices? (Step 1)
- ▶ Is the structure you are proposing to build a farm structure? (Step 2)
- ▶ How do you request a variance from the Secretary when your proposed farm structure cannot meet local setbacks? (Step 5).
- ▶ What do you need to do if you are proposing to construct a farm structure in a designated flood hazard area? (Step 8)

Everyone engaged in farming is required to follow the land use and water quality regulations contained in the Accepted Agricultural Practices (AAPs) Rules. [The Accepted Agricultural Practices Regulations can be found on the internet at <http://agriculture.vermont.gov/sites/ag/files/ACCEPTED%20AGRICULTURAL%20PRACTICE%20REGULATIONS.pdf>

NOTE: If the property on which you propose to construct a farm structure is currently covered under an Act 250 permit, you will need to contact your local Act 250 District Commission and seek a Jurisdictional Opinion on whether written permission from the Commission is required before the proposed work or any change in land use can move forward.

NOTE: If you are intending to construct a farm structure in a mapped flood hazard area, please see Step 8 below for additional information that must be included in your submission. If you are not sure if you are proposing to build in a flood hazard area/floodplain, please check with your Town Clerk or Zoning Administrator.

NOTE: If you are intending to construct a farm structure in or near a wetland, please contact the Vermont Department of Environmental Conservation, Wetlands Program, at 802-490-6179, to determine if the Vermont Wetland Rule restrictions will apply to your project. The Rule can be found at: <http://www.nrb.state.vt.us/wrp/rules.htm>.

Step 1. Is Your Operation a Farm? To qualify for the exemption from local zoning or to build a farm structure without following local zoning setbacks, you must first demonstrate that your operation is a “farm” as defined by Section 2.05 of the AAPs and that you are engaged in accepted agricultural practices as defined in Section 3.2 of the AAPs. Your submission should provide information on how your operation meets the definition of “farming” and “accepted agricultural practices”.

Section 2.05 of the AAPs states that:

“Farming means:

- (a) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; or
- (b) the raising, feeding or management of livestock, poultry, fish or bees; or
- (c) the operation of greenhouses; or
- (d) the production of maple syrup; or
- (e) the on-site storage, preparation and sale of agricultural products ***principally produced*** on the farm (emphasis added); or,
- (f) the on-site production of fuel or power from agricultural products or wastes produced on the farm; or
- (g) the raising, feeding, or management of four or more equines owned or boarded by the farmer, including training, showing, and providing instruction and lessons in riding, training, and the management of equines.”

Please note: “Principally produced” means that more than 50% by weight or volume of the agricultural products, which result from the activities stated in (a) through (g) above, and which are stored, prepared or sold at the farm, are grown or produced on the farm.

Section 3.2 of the AAPs states

“Agricultural practices that are governed by these regulations include, but are not limited to, the following:

- (a) The confinement, feeding, fencing, and watering of livestock.
- (b) The storage and handling of livestock wastes and by-products.

- (c) The collection of maple sap and production of maple syrup.
- (d) The preparation, tilling, fertilization, planting, protection, irrigation and harvesting of crops.
- (e) The ditching and subsurface drainage of farm fields and the construction of farm ponds.
- (f) The stabilization of farm field streambanks.
- (g) The construction and maintenance of farm structures and farm roads.
- (h) The on-site production of fuel or power from agricultural products or wastes produced on the farm.
- (i) The on-site storage, preparation and sale of agricultural products principally produced on the farm.
- (j) The on-site storage of agricultural inputs including, but not limited to, lime, fertilizer and pesticides.
- (k) The handling of livestock mortalities.

Step 2. Are you proposing to build a “Farm Structure”? Variance requests from local setback requirements are only entertained for the construction of farm structures and not for other structures such as those used for human habitation. Once you have demonstrated that your operation is a “farm” and you are engaged in “accepted agricultural practices”, you must then provide information regarding the proposed structure to demonstrate how that structure meets the definition of a “farm structure”.

First, determine if your proposed structure meets the definition of “Structure” in the AAPs. **Section 2.18 of the AAPs states: “Structure means a silo, a building for housing livestock, raising horticultural or agronomic plants, or for carrying out other accepted agricultural practices as defined in Section 3.2 of these rules. It also means a barnyard or waste management system, either of which is created from an assembly of materials, but excludes a dwelling for human habitation.”**

If your proposed structure meets the AAP definition of “Structure”, it must then meet the AAP definition of “Farm Structure”.

Section 2.06 of the AAPs states:

Farm Structure means a structure or structures as defined herein that is used by a person for agricultural production that meets one or more of the following:

(a) is used in connection with the sale of \$1000 or more of agricultural products in a normal year; or

(b) is used in connection with the raising, feeding, and management of at least the following number of adult animals: four equines; five cattle or American bison; fifteen swine; fifteen goats; fifteen sheep; fifteen fallow deer; fifteen red deer; fifty turkeys; fifty geese; one-hundred laying hens; two-hundred and fifty broilers, pheasant, Chukar partridge, or Coturnix quail; three camelids; four ratites (ostriches, rheas, and emus); thirty rabbits; one hundred ducks; or one-thousand pounds of cultured trout; or

(c) is used by a farmer filing with the Internal Revenue Service a 1040 (F) income tax statement in at least one of the past two years; or

(d) is on a farm with a business and farm management plan approved by the Secretary.

Step 3. Can You Meet Local Setbacks When Constructing your Farm Structure? Although Vermont law exempts “farm structures” from municipal regulation under zoning and any local requirement to obtain a building permit, the Secretary, as a matter of policy, has determined that the setbacks established in the municipal zoning ordinance of the town in which the structure will be built shall be the setbacks adopted and approved by the Secretary pursuant to 24 V.S.A. §4413(d) and section 4.07 of the AAPs. A person proposing to build a farm structure that will meet the local setbacks only needs to notify the municipality of the intent to build. [Vermont law requires any person proposing to build a farm structure to notify the municipality prior to commencing construction. [See 24 V.S.A. §4413(d) and AAP Section 4.07(c)]. There is no need to notify the Secretary of the intent to build a farm structure as long as it will meet the local ordinance setbacks.

Step 4. If You Cannot Meet Local Setbacks and still want to build, you Must Request a Variance from the Secretary of Agriculture. If a farmer believes that the proposed farm structure cannot meet the local ordinance setbacks due to site-specific limitations or hardship, the Secretary will entertain a request for a variance from the local set back requirements. If you demonstrate satisfactorily that other setback distances are reasonable under the specific facts and circumstances of your case, the Secretary may approve alternative setbacks for the proposed farm structure. Variance requests may be denied if the Secretary does not believe the alternative setbacks are reasonable

or if the location of the proposed structure would violate other state or federal laws, such as those related to floodways.

If, however, the person wishes to use less restrictive setbacks, he or she must request a variance in writing to the Secretary.

NOTE: Variances cannot be granted by the Secretary for farm structures proposed for construction in a road right-of-way (ROW). This approval must be granted by the Town. You should check with your Town to ensure you know exactly where the ROW is located.

Step 5. How to Request a Variance from the Secretary. A request for a variance must be made in writing and contain all of the following information:

1. A description of the farming operation. (See Step 1 above.)
2. An explanation of how the proposed building meets the definition of a “farm structure”. (See step 2 above.)
3. A statement of the reason(s) less restrictive setbacks are necessary. (See Step 4 above.)
4. A copy of the zoning ordinance governing the tract on which the structure will be built showing the setback requirements or a letter from the municipality with the required set back information.
5. The name and contact information for your Town’s Zoning Administrator or Town Clerk.
6. An informal sketch plan of the proposed structure(s) showing the distance from all property lines.
7. A description of each adjoining land use. You may also include letter(s) from adjoining landowners where applicable.
8. Contact information where you can be reached for additional information or clarification. Please provide the physical location of the parcel in question if different from the mailing address.

Incomplete requests may be returned and will certainly slow down how quickly the Secretary can render a final determination on the request.

Step 6. If the Secretary Intends to Consider the Variance Request:

The Secretary will notify the municipality in writing by certified mail of his or her intent to consider a variance. The Secretary will request that the notice be posted in a public place in the municipal office. Any comments resulting from this posting or from the municipality must be received in writing at the Agency by 4:30 p.m. on the seventh (7th) business day following receipt of the notice.

Comments should be sent to:

Vermont Agency of Agriculture, Food and Markets
Attention: Wendy Anderson
116 State Street
Montpelier, Vermont 05620-2901
TELEPHONE: (802) 828-3475 FAX: (802) 828-1410

Step 7. The Secretary Approves or Denies the Variance Request:

The Secretary will notify the farmer applicant in writing of his or her decision to grant or deny the variance request and will send a copy of the decision to the municipality. This copy may be electronic.

NOTE: In the event the Secretary approves the variance request, the applicant must still notify the municipality of the intent to build this farm structure.

Please contact Wendy Anderson at 802-828-3475, or wendy.houston-anderson@state.vt.us for more information.

Step 8. The Construction of Farm Structures in Designated Flood Hazard Areas

The following checklist is meant to help you determine whether your farm structure project is subject to the requirements of the National Flood Insurance Program (NFIP) restrictions, restrictions of Vermont's Accepted Agricultural Practices Regulations (AAPs) or other municipal restrictions that may apply to construction of farm structures within the Designated Flood Hazard Area.

1. Prior to construction, the zoning administrator or town clerk must be notified in writing of the proposed construction activity. The notification must contain a sketch of the proposed structure including setbacks from property lines and road rights of way.

2. The following information may be obtained from your local zoning or town clerk's office:
 - a. Is the proposed construction located in the Fluvial Erosion Hazard Zone as designated by municipal ordinance? Farm structures are prohibited from being constructed in this zone [AAP Section 4.07(a)]
 - b. Is the proposed construction in the floodway as designated on National Flood Insurance Maps? Farm structures are prohibited from being constructed in this zone [AAP Section 4.07(a)]
 - c. Is the proposed construction located within the Designated Flood Hazard Area as depicted on National Flood Insurance Program maps and as adopted by the municipality?

If the answer to c. above is "yes", proceed to #3;

If "no", the proposed construction is not subject to National Flood Insurance Program restrictions and you need not proceed further with the checklist.

NOTE: Fences through which flood waters may flow are generally exempt from Flood Hazard Area requirements.

3. The following additional information must be submitted to the Secretary of Agriculture, Food and Markets if the proposed construction is within the Designated Flood Hazard Area:
 - Site plan showing elevations, project location, extent of any proposed fill
 - Location of the regulatory floodway
 - Roads, landmarks, existing buildings etc.
 - Indicate map scale and elevation conversions as appropriate
 - Certification by a licensed surveyor or professional engineer
 - Base Flood Elevation
 - Elevation of the lowest floor of the structure. Note: the lowest floor elevation must be equal to or above the base flood elevation (a.k.a. the 100-year flood elevation)
4. If the proposed construction is located in Zone A of the Designated Flood Hazard Area then base flood elevation data must be submitted. If this information is not available from a state or federal source the base flood elevation data must be certified by a licensed professional engineer.
5. If the proposed construction is located in Zones A1-30 or AE and a regulatory floodway has not been designated then the following must be provided:

- hydraulic calculations (certified by a licensed professional engineer) demonstrating the proposed construction (in combination with any other anticipated development) will not increase the base flood elevations by more than one foot.

6. Submit all required information, along with information required by Steps 1 through 5 above, as appropriate, to:

Vermont Agency of Agriculture, Food and Markets
116 State St.
Montpelier, VT 05620-2901
Attn: Stephanie Ann Smith