

Q & A, Act 143, Accessory On-Farm Businesses

It is increasingly common for Vermont farms to open their doors to the public, share their intimate relationship with the land and animals, and to direct market their agricultural products and products from neighboring farms to consumers. These ancillary businesses are, in many instances, necessary to sustain a working farm. They are commonly collocated where farm infrastructure exists - making use of existing and sometimes historic buildings while not interrupting farm operations, and provide the opportunity for farmers to share their knowledge and experience about farming. The passage of Act 143 allows operators to diversify operations and revenue streams and increase their ability to market agricultural products and the agricultural experience by welcoming the public to their farms, despite local land use regulations that may prohibit these businesses in rural areas.

As of July 1, 2018, a farmer, farm resident, or farm lessee interested in operating an accessory on-farm business may do so in the same location as a “farm” regulated by the Agency of Agriculture, Food & Markets (AAFM) under the Required Agricultural Practices (RAPs) rule. Accessory on-farm businesses are limited to the following types of businesses:

- the storage, preparation and sale of qualifying products, provided that more than half of the sales are from qualifying agricultural products principally produced on the farm; and
- educational, recreational, and social events that feature agricultural practices and /or qualifying agricultural products.

A municipality may review the accessory business under site plan review and adopted performance standards; however, a municipality cannot prohibit an accessory on-farm businesses in the same location as a farm.

Where does this law apply?

In all Vermont municipalities that adopted zoning bylaws and conduct site plan review. Act 143 created a statewide land use review category, the “accessory on-farm business”, which is defined in statute. While this same broad language will be applied across all municipalities with site plan review it may be interpreted and applied differently. The administration of the law depends on local application requirements, the standards in the bylaws and even could depend on the culture of the community.

What is site plan review?

Site plan review is part of local land use review permitting process. It provides an opportunity for the municipality to evaluate how the site will operate with public use, focusing on the suitability access, internal circulation and parking for vehicles; landscaping and screening; exterior lighting and sign design. The review may also include other matters as specified in the local land use bylaws, including performance standards.

What is the process to get site plan review approval?

The process begins with an application to the municipality where the farm is located. It may require the submission of maps, fees, and other materials that the regulatory body may need to review. The meeting at which the application is considered is publicly noticed as a hearing, including notice to surrounding property owners and/or occupants. The applicants may be required to present their case, and answer questions posed by the regulatory body at that hearing. Others in attendance may make statements or provide their own evidence. After the close of the hearing, the regulatory body has 45

days to issue a decision. The decision may include conditions to ensure the safety and welfare of the public using the site, and neighboring properties.

Do existing accessory on-farm business need to go through site plan review?

Whether site plan review is necessary to continue an existing accessory on-farm business will depend on the specific circumstances, such as

- is the business already permitted, or was a determination made that no permits were required, also known as “grandfathered”?
- will or has the operation or land use changed since initial review/decision by the municipality?
- does the municipality have less restrictive land use bylaws addressing accessory on-farm businesses than what is outlined in Act 143?

A decision to require site plan review is made by the municipality in consideration of these and other factors.

Who determines whether a business is an accessory on-farm business?

The municipality applies the definition of “accessory on-farm business” either as a precursor to the site plan review process or within the site plan review process. An example of an accessory business could include tastings of qualifying products, on-farm dinners featuring qualifying products at a smaller scale than a restaurant, on-farm farmers markets that aggregate products from other area farmers. The accessory business must, at the time of the review and permitting, be located on a farm regulated by the AAFM under its RAPs and the operation must be subordinate to the farming operation to be considered accessory.

Who determines if the product is a “qualifying product”?

The municipality determines if the products meet the definition of qualifying product. Qualifying products are products that are wholly:

- I. An agricultural, horticultural, viticultural, or dairy commodity, or maple syrup;
- II. Livestock, or cultured fish or a product thereof;
- III. A product of poultry, bees, an orchard, or fiber crops;
- IV. A commodity otherwise grown or raised on a farm; or
- V. A product manufactured on one or more farms from commodities wholly grown or raised on one or more farms.

What is the role of the AAFM?

- AAFM continues to apply the RAPs to farms that meet the minimum threshold criteria for the applicability of the rule [RAP Section 3.1]. If the farm is using required agricultural practices, including but not limited to the on-site storage, preparation, and sale of agricultural products principally produced on the farm from raw agricultural commodities principally produced on the farm, no site plan review is necessary. This is one of many agricultural practices outlined in RAP Section 3.2 defined by the Secretary of Agriculture, Food and Markets, and is exempt from municipal regulation.
- AAFM provides periodic notification and training, including alerting farmers

- to the existence and requirements of the accessory on-farm business law, as provided here; and
- that other permits maybe necessary to construct or operate an accessory on-farm business.
- AAFM may educate famers with accessory on-farm businesses on EPA’s “worker protection standard”. When an operator receives a local permit for an accessory on-farm business and applies agricultural pesticides, she/he is required to meet the worker protection standard and post signs in the areas of pesticide application if the accessory on-farm business takes place in the same area.

Farmer Resources

- Act 143, An act relating to municipal regulation of accessory on-farm businesses and to hemp cultivation, <https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT143/ACT143%20As%20Enacted.pdf>
- Understanding Land Use Regulations for Farm Businesses, https://nofavt.org/sites/default/files/files/resources/understanding_land_use_regulations_for_farm_businesses.pdf
- Regional Permit Specialist, Department of Environmental Conservation, <http://dec.vermont.gov/environmental-assistance/permits/specialists>
- Vermont Permit Handbook, <http://dec.vermont.gov/environmental-assistance/permits/handbook>
- Worker Protection Program at the Vermont Agency of Agriculture Food and Markets, http://agriculture.vermont.gov/pesticide_regulation/WPS