



Zoning Board of Adjustment

Town of Allenstown

16 School Street
Allenstown, NH 03275
Tel: (603)-485-4276
Fax: (603) 485-8669

APPLICATION FROM AN ADMINISTRATIVE DECISION

The undersigned alleges that an error has been made in the decision, determination, or requirement by the Code Enforcement Officer on (date) 10.5.20 to (name) James Batchelder in relation to Article VI Section 604.C of the Zoning Ordinance or in relation to RSA 21:34 and hereby appeals said decision.

Explanation:

See Attached

Signature: James R. Batchelder

Date: 10/14/20

Application For Variance Of Use Or Area Answers

The under signed hereby requests a variance of *USE* to the terms of *Article VI* Section **604 c.** and asks that said terms be waived to permit:

The building of three sided 24w x 16'd x12'2" at its highest peek structure to store a Kubota L 2501 with loader and various attachments.

1) Only a small portion of the shed will be visible from the road on Mount Delight and only when the leaves are off. I worked as a real estate agent for a little over a year with Century 21 circa 72 in Concord NH. I am aware, as are most people, that a well maintained, clean and organized property inside and out adds more to the value of the property as well as the neighborhood. Not to mention this will undoubtedly increase our property taxes!

2) This structure will not infringe on our neighbors' right to enjoy their property visually, diminish there property value or impact traffic in any way.

3) It would keep me from protecting my investment of \$30,000+ of equipment I need to both maintain and make improvements to my property.

a) Our property is zoned 'open space and farming' and is 3.8 acres. The size and shape of the property isolate it. I raise bee's and will be making maple syrup on the property this spring tapping maple trees both on our property and across the road (Deerfield Rd) on my parent's almost 50 acres of land (in current use). These are all reasonable uses in this zone. I have purchased a compact tractor with a variety of implements to help me in those pursuits. Limiting me to a single 200 sq ft garden shed restricts my ability to protect my equipment and thus my investment.

b) The property is zoned 'open space and farming' and is all most 4 acres (3.8). I think the ordinance was meant to apply to compact environments (in town) where properties are built on 1/4 -1/2 acre lots and are densely populated areas. Adding a structure in that situation would be both noticeable to neighbors and could have negative impact on a neighbor's enjoyment of their own property.

c) The relief by variance will not impact our neighbors' property value, their view or traffic. It is unlikely anyone will even be aware we've added the

building to our property.

- 4) I will be able to house and protect equipment I've purchased for the maintenance and improvement of my property. This structure will allow me to 'tidy' my own property improving our family's enjoyment of our property while not creating any negative issues for our neighbors or the town.

5) I fully understand the ordinance is in place to protect homeowners from having a neighbor put up an unsightly structure that diminishes their enjoyment of their own property. This structure will be minimally visible in winter and will not have any negative impact on either our neighbors or visitors to the town.

X: James R. Bahr III

10/6/20

TITLE I

THE STATE AND ITS GOVERNMENT

CHAPTER 21

STATUTORY CONSTRUCTION

Section 21:34-a

21:34-a Farm, Agriculture, Farming. –

I. The word "farm" means any land, buildings, or structures on or in which agriculture and farming operations or activities are carried out or conducted and shall include the residence or residences of owners, occupants, or employees located on such land. Structures shall include all farm outbuildings used in the care of livestock; in the production and storage of fruit, vegetables, or nursery stock; in the production of maple syrup; greenhouses for the production of annual or perennial plants; and any other structures used in the operations or activities named in paragraph II(a) or (b) of this section or any combination of such individual operations or activities.

II. The words "agriculture" and "farming" mean all operations or activities of a farm, including:

(a)(1) The cultivation, conservation, or tillage of the soil.

(2) The storage and use of or spreading of commercial fertilizer, lime, wood ash, sawdust, compost, animal manure, septage, and, where permitted by municipal and state rules and regulations, other lawful soil amendments.

(3) The use of or application of agricultural chemicals.

(4) The husbandry of livestock which shall include but not be limited to all beef or dairy cattle, steer, oxen, goats, sheep, swine, horses, mules or other equidae, as well as domesticated strains of buffalo, bison, llamas, alpacas, emus, ostriches, poultry, rabbits, yaks, elk (*Cervus canadensis*), fallow deer (*Dama dama*), red deer (*Cervus elephus*), or reindeer (*Rangifer tarandus*).

(5) The husbandry, boarding, training, or riding instruction of equines.

(6) The husbandry and harvesting aquaculture products including fresh or salt water finfish, shellfish, or other aquatic organisms grown for consumption or processing.

(7) The husbandry of poultry or game birds or production of eggs.

(8) The husbandry of bees or production of honey.

(9) The husbandry of domesticated strains of fur-bearing animals.

(10) The production of greenhouse crops.

(11) The production, cultivation, growing, or harvesting of any agricultural, floricultural, viticultural, forestry, or horticultural crops including, but not limited to, berries, herbs, honey, maple syrup, fruit, vegetables, tree fruit, grapes, flowers, seeds, grasses, nursery stock, sod, trees or tree products, Christmas trees grown as part of a commercial Christmas tree operation, trees grown for short rotation tree fiber, compost, or any plant that can be legally grown or harvested extensively for profit or subsistence.

(b) Any practice or activity on the farm incident to, ancillary to, or in conjunction with such farming operations, including, but not necessarily restricted to:

(1) Preparation for market, delivery to storage or to market, or to carriers for transportation to market of any products or materials from the farm.

(2) The transportation to the farm of supplies and materials.

(3) The transportation of farm workers.

(4) Forestry or lumbering operations.

(5) Marketing or selling at wholesale or retail, regardless of the manner or form of the transaction, any livestock or products derived principally from the production of the farm, including, but not limited to items listed in subparagraph (a), whether on-site or off-site, provided that marketing such products is not specifically prohibited by local regulations. For the purposes of this section marketing shall include agritourism, which means attracting visitors to a farm to attend events or activities that are accessory uses to the primary farm operation, including, but not limited to, being provided a meal, making overnight stays, enjoyment of the farm environment,

education which shall be instruction or learning about the farm's operations, or active involvement in the activities of the farm.

(6) Irrigation of growing crops from private water supplies or public water supplies where not prohibited by state or local rule or regulation.

(7) The use of dogs for herding, working, or guarding livestock, as defined in RSA 21:34-a, II(a)(4).

(8) The production and storage of compost and the materials necessary to produce compost, whether such materials originate, in whole or in part, from operations of the farm.

III. A farm roadside stand shall remain an agricultural operation and not be considered commercial, provided that at least 35 percent of the product sales in dollar volume is attributable to products produced on the farm or farms of the stand owner.

IV. Management practices on the farm shall include technologies recommended from time to time by the university of New Hampshire cooperative extension, the New Hampshire department of agriculture, markets, and food, or appropriate agencies of the United States Department of Agriculture.

V. The term "farmers' market" means an event or series of events at which 2 or more vendors of agricultural commodities gather for purposes of offering for sale such commodities to the public. Commodities offered for sale must include, but are not limited to, products of agriculture, as defined in paragraphs I-IV. "Farmers' market" shall not include any event held upon any premises owned, leased, or otherwise controlled by any individual vendor selling therein.

VI. [Repealed.]

Source. 1961, 140:1. 1977, 95:1. 1979, 60:1. 1985, 6:1. 1997, 250:1. 1999, 191:2. 2005, 107:1. 2006, 11:5; 326:1. 2007, 157:1. 2008, 8:1, eff. July 4, 2008. 2014, 97:2, eff. Aug. 10, 2014. 2016, 267:1, 6, eff. June 16, 2016. 2019, 338:1-3, eff. Sept. 5, 2019.

ARTICLE VI - OPEN SPACE AND FARMING

Section 601 Uses

In an Open Space and Farming Zone, land may be used and buildings may be erected for or used for:

- a. Single-family dwellings, provided that no such dwelling shall be located on a lot with less than two hundred (200) feet of frontage along one street with a minimum of five (5) acres in size. Two family dwellings may also be permitted on lots with two hundred (200) feet of frontage along one (1) street with a minimum of ten (10) acres in size.
- b. General purpose farm, forestry, agriculture or nurseries, or the selling of produce provided such uses are located and conducted in a manner not injurious, offensive and/or obnoxious to the general neighborhood and traffic.
- c. Municipal Recreation (Outdoor)
- e. Golf courses
- f. Family child care home
- g. Accessory Small-Scale Solar
- h. Accessory Small-Scale Wind
- i. Cluster Housing - Refer to Supplemental Regulations Section 1125.
- j. Carports that do not encroach on setbacks.

Section 602 Special Exceptions and Conditional Uses

I. Exceptions. In an Open Space and Farming Zone, the following exception may be permitted upon approval of the Board of Adjustment, subject to such conditions as may be imposed by the Board of Adjustment:

- a. Motels, hotels or lodging houses
- b. Campgrounds or overnight camps
- c. Airports
- d. Cemeteries
- e. Governmental Uses
- f. Removal of fill, gravel, stone or loam from the premises

- g. Warehouses
- h. Carports that would encroach on setback requirements
- i. Telecommunication Towers
- j. Private Recreation (Outdoor)
- k. Commercial Stable
- l. Assisted Living Facility
-
- o. Group Child Care Home
- p. Retail Sales, Unobtrusive to the neighborhood.

II. Conditional Uses. In an Open Space and Farming Zone, the following may be permitted upon the Planning Board granting a Conditional Use Permit:

- a. Manufactured Housing Parks. Parcel must also be located entirely within the Manufactured Housing Park Overlay District.

Section 603 Repealed 3/98

Section 604 Dimensional Restrictions

No structure shall be closer than *twenty (20) feet from any street, and thirty (30) feet from any rear or side lot line.*

- a. A swimming pool may be installed not closer than fifteen (15) feet from the rear lot line.
- b. A garage accessory to a one or two-family need not be set back more than ten (10) feet from the rear lot line; and
- c. A maximum of One (1) utility shed or greenhouse not larger than two hundred (200) square feet of floor area with a height not greater than seven (7) feet to the eaves and ten (10) feet from the floor to the ridge, need not be set back more than five (5) foot from any side or rear lot line and be no closer than six (6) feet from any residence.
- d. The driveway shall be located on the portion of the property which has road frontage conforming with the dimension and requirements for frontage in this zone. In the case of non-conforming buildable lots the driveway shall be located on the portion of the property which has the most road frontage conforming with the dimensional requirements of this zone.
Effective March 13, 2007

Sent from James

As further provided in RSA 21:34-a, the words "agriculture" and "farming" mean all operations of a farm, including: (1) the cultivation, conservation, and tillage of the soil; (2) the storage, use, and spreading fertilizer; (3) the use of agricultural chemicals; (4) raising and sale of livestock; (5) breeding, boarding, raising, training, riding instruction, and selling of equines; (6) commercial raising, harvesting, and sale of fresh water fish or other aquaculture products; (7) raising, breeding, or sale of poultry or game birds; (8) raising bees; (9) raising and breeding of domesticated strains of fur-bearing animals; (10) production of greenhouse crops; (11) production, cultivation, growing, harvesting, and sale of any agricultural, floricultural, viticultural, forestry, or horticultural crops and any practice on the farm incident to, or in conjunction with, such farming operations.

On 09/29/2020 8:18 AM Dawna Baxter <dbaxter@allenstownnh.gov> wrote:

Hi James

The Building Inspector reviewed this and stated it will have to go to Zoning. This is because it is not an active farm. I am attaching the paperwork for Zoning. Once I received the filled out paperwork I will get you a date to hear your case. The board meets the 2nd and 4th Wednesday of the month as needed. The cost will be around \$300. This will be for the newspaper and abutters notices. Let me know if you have any questions.

Dawna Baxter

Sent from my iPhone

Begin forwarded message:

From: JAMES BATCHELDER <james.batchelder@comcast.net>
Date: September 28, 2020 at 1:25:35 PM EDT

From: Matt Monahan
To: Dawna Baxter
Subject: Re: FW: FW: FW: [Allenstown NH] Building permit for shed (Sent by James Batchelder (1 Mt. Delight rd), james.batchelder@comcast.net)
Date: Wednesday, October 7, 2020 9:24:40 AM
Attachments: image001.png

Dawna,

Does he feel the bees make it ag? If so, then it might be a reasonable argument. That said, he will still need to meet height and setback requirements....

Thanks,

Matt

On Wed, Oct 7, 2020 at 8:41 AM Dawna Baxter <dbaxter@allenstownnh.gov> wrote:

Matt

Well there are bees, which are in the RSA 21:30a. Steve was not on board with a barn until the bees came into play. See his emails below. He stated I should reach out to you.

Dawna

From: Matt Monahan [mailto:mmonahan@cnhrpc.org]
Sent: Wednesday, October 7, 2020 8:35 AM
To: Dawna Baxter <dbaxter@allenstownnh.gov>
Subject: Re: FW: FW: FW: [Allenstown NH] Building permit for shed (Sent by James Batchelder (1 Mt. Delight rd), james.batchelder@comcast.net)

Dawna,

With the 1 side open and the dirt floor, I don't know. Are there other agricultural uses on the site?

Also, does Steve see it as a barn? That would be the official decision and he could then appeal that decision to the ZBA if he wanted to...

Thanks,

Matt

On Tue, Oct 6, 2020 at 9:29 AM Dawna Baxter <dbaxter@allenstownnh.gov> wrote:

Matt,

I called him and he did the change before he wanted to go to the board. So we are back to the shed being too large. Attached is the application. He wants a 24 x16 with a 15ft height, also with a 3 sided lean-to style tractor shed, dirt floor. What do you think? Could it be a barn.

Let me know what you think,

Dawna

Building Permits -- Town of ALLENSTOWN

File Utilities Reports Help

Log In Previous Next Details Add Edit Print Exit

Query PID Address Map Legend Owner Recent Projects

All Parcels With Projects

MOUNT DELIGHT ROAD

n/a
4
8
10
16
20
24
28
32
36
37
42
45
50


Find:

Parcel: 000402 000150 000000 Parcel 1 of 1
Owner: **BATCHELDER III., JAMES R.**
Location: **1 MOUNT DELIGHT ROAD** Size: **3.7 Ac.**

Assessment Attributes Projects Actions Map

BATCHELDER III., JAMES R. BATCHELDER, JULIA S.
1 MOUNT DELIGHT ROAD
ALLENSTOWN NH 03275-

Building:	\$ 185,700
Features:	\$ 6,000
Taxable Land:	\$ 90,100
Card Total:	\$ 281,800
Parcel Total:	\$281,800



Size: 3.7 Ac. Building: 2.50 STORY COLONIAL
Zone: OSF - OPN Year Built: 2002
Neighborhood: AVG +10 Bed/Bathrooms: 4 / 2.5
Land Use: 1F RES Gross Living Area: 2,424

GRY; CORNER LOT; OUTDOOR PELLET FURNACE; HOME IN AVG COND;
CORNER LOT MT DELIGHT/DEERFIELD ROAD; 10/16; ALL ORIG; LAMINATE
C'TOPS; BMF EST; CORR 2.0 STY TO 2.5; P/U ENT, INT DATA; PDS
ATTIC-DNPU;

From: Matt Monahan [mailto:mmonahan@cnhrpc.org]

Sent: Tuesday, October 6, 2020 9:18 AM

To: Dawna Baxter <dbaxter@allenstownnh.gov>

Subject: Re: FW: FW: [Allenstown NH] Building permit for shed (Sent by James Batchelder (1 Mt. Delight rd), james.batchelder@comcast.net)

Dawna,

Thanks for letting me know...

Thanks,

Matt

On Mon, Oct 5, 2020 at 11:50 AM Dawna Baxter <dbaxter@allentownnh.gov> wrote:

Hi Matt

Looks like he changed it to match the requirements.

Thanks for your input.

Dawna

From: Matt Monahan [mailto:mmonahan@cnhrpc.org]

Sent: Friday, October 2, 2020 9:27 AM

To: Dawna Baxter <dbaxter@allentownnh.gov>

Subject: Re: FW: FW: FW: [Allentown NH] Building permit for shed (Sent by James Batchelder (1 Mt. Delight rd), james.batchelder@comcast.net)

Dawna,

I'd say that he could apply for an appeal of an administrative decision and, if that doesn't go through, a variance. How much bigger over 200 feet is it?

Thanks,

Matt

On Thu, Oct 1, 2020 at 8:10 AM Dawna Baxter <dbaxter@allentownnh.gov> wrote:

Hi Matt

I need your input. A quick review, this homeowner sent in a request for a Shed which exceed the size in the ordinance 200 sq ft. So I could not approve. I was not sure if because his home is in OSF, if he could apply for a barn permit instead. He currently is on a 3.7 acres which makes him non-conforming to current standards of 5 acres in this Zone. Steve stated if not an active farm that he could not have the barn permit. Now the homeowner is stating he has bee hives How do you think we should handle this? Steve stated I should send it to you. See the change of emails below.

Let me know

Dawna

From: SJP Inspections [mailto:steven@sjpinspect.com]

Sent: Wednesday, September 30, 2020 10:11 PM

To: Dawna Baxter <dbaxter@allentownnh.gov>

Subject: Re: FW: FW: [Allentown NH] Building permit for shed (Sent by James Batchelder (1 Mt. Delight rd), james.batchelder@comcast.net)

Hi Dawna,

Time to get Mat or legal involved, agriculture is a touchy subject in this state. I personally believe he will still need ZBA approval because of the nonconformity.

The fact that this information is just now coming out I would make him fill out an application stating exactly what he is doing and intends to do on the property and we can go from there.

Thanks,

Steven

On Tue, Sep 29, 2020 at 9:48 AM Dawna Baxter <dbaxter@allentownnh.gov> wrote:

Hi Steve

A quick review this homeowner sent in a request for a Shed which exceed the size in the ordinance 200 sq ft. So I could not approve. I was not sure if because his home is in OSF, if he could apply for a barn permit instead. He currently is on a 3.7 acres which makes him non-conforming to current standards of 5 acres in this Zone. Not sure if this would be an issue or not. Steve below is your answer. Now he is stating he has bee hives. Does this change anything?

Dawna

1. What is his intended use of the building. A barn is a "structure used to house agricultural equipment or live stock. A shed is used to store household equipment.

2. Does he have an active farm? This is an accessory structure that could be looked at in many was.

In my mind and interpretation i would say no to calling it a barn. This really should go before the zoning board. I see legal issues down the road

From: JAMES BATCHELDER [mailto:james.batchelder@comcast.net]

Sent: Tuesday, September 29, 2020 9:18 AM

To: Dawna Baxter <dbaxter@allentownnh.gov>

Subject: Re: FW: [Allentown NH] Building permit for shed (Sent by James Batchelder (1 Mt. Delight rd), james.batchelder@comcast.net)

Dawna,

Also,:

The Bee Hives I have had for over a year and have sold several hundred of dollars is Registered with the state as a Apiary DBA Mount Delight Honey LLC. Is classified by the state as a farm :

RSA 21:34-a defines farm as "any land, buildings, or structures on or in which agriculture and farming activities are carried out or conducted and shall include the residence or residences of owners, occupants, or employees located on such land. Structures shall include all farm outbuildings used in the care of livestock, and in the production and storage of fruit, vegetables, or nursery stock; in the production of maple syrup; greenhouses for the production of annual or perennial plants."

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To: Dawna Baxter <dbaxter@allentownnh.gov>
Subject: RE: [Allentown NH] Building permit for shed (Sent by James Batchelder (1 Mt. Delight rd), james.batchelder@comcast.net)

Hello ?

On 09/24/2020 12:12 PM Dawna Baxter
<dbaxter@allentownnh.gov> wrote:

Still waiting for him to reply. Sometimes it takes a few days to get an answer. Sent it out again this morning.

-----Original Message-----

From: JAMES BATCHELDER
[mailto:james.batchelder@comcast.net]
Sent: Thursday, September 24, 2020 12:11 PM
To: Dawna Baxter
<dbaxter@allentownnh.gov>