

January 20, 2021

Via E-mail ONLY – (landuse@warner.nh.us)

Warner Planning Board
P.O. Box 265
Warner, NH 03278

Re: Proposed amendment to Warner zoning ordinance regarding agritourism

Dear Planning Board Members:

I am writing as legal counsel to Mike and Missy Biagiotti of 393 Pumpkin Hill Road, who as you may know own and operate the Pumpkin Blossom Farm. Mr. and Mrs. Biagiotti are greatly concerned about the proposed change to the zoning ordinance relating to agritourism. Therefore, I am writing to share with you their request that the Planning Board not move forward with the proposed amendment and not have it placed on the ballot for the upcoming Town Meeting.

**The Proposed Amendment Makes It More Difficult for Warner’s Farmers
To Attract Visitors to Experience Warner’s Agricultural and Cultural Heritage**

The proposed change to the ordinance would require Town approval, something that is currently allowed as a matter of right – agritourism related farming and agriculture in Warner. By its express terms, the proposed change to the zoning ordinance would force every farmer to seek special approval of the zoning board of adjustment (a special exception) any time that farmer takes steps to “attract[] visitors to a farm to attend events or activities” even if those events or activities are “accessory . . . to the primary farm operation.” Thus, if the ordinance is changed as proposed one would first be required to (a) apply to the zoning board for a special exception, (b) participate in a public hearing after notice to all abutters and neighbors on their application and (c) obtain board approval if, by way of example, one wished to invite guests to walk through a corn maze on their farm, or to have customers observe or help boiling maple syrup in their sugar shack.

In short, this proposed amendment to the ordinance creates a new and substantial obstacle for farmers who are merely attempting to ply their trade, share their rural agricultural experiences with others, and invite folks to join in Warner’s agricultural heritage, if even for a day. This proposed ordinance change would discourage farmers from sharing with others the agricultural way of life ingrained in Warner’s history. It would require farmers to jump through Town hoops to share their farming experience with others. The Town should be

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encouraging, not discouraging agritourism. In fact, agritourism is precisely the type of activity that should be fostered and nourished to allow the Town’s farms to survive in these modern times.

Agritourism Currently Allowed
and The Legislature Has Deemed It Important to the State

As it now stands, the Warner Zoning Ordinance allows for “agriculture” uses (other than greenhouses and stands for retail sale) as a matter of right and without town pre-approval in the R-2 (Medium Density Residential District), R-3 (Low Density Residential District), OC-1 (Open Conservation District), and OR (Open Recreation District) districts. (*See* Table I, Use Regulations, Zoning Ordinance, p. 38.)¹ Since March 2019, the ordinance has incorporated the definition of “Agriculture” from New Hampshire statute, RSA 21:34-a, II. (*See* Definitions, Article III, Zoning Ordinance, p. 2.) The statutory definition is expansive, and importantly, the statute deems agritourism to be included within the meaning of “agriculture.” Thus, agritourism, like agriculture itself, is currently permitted without the need to seek Town approval.²

“Agritourism” is defined by New Hampshire statute to mean “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.” (*See* RSA 21:34-a, II (b)(5).) The New Hampshire Legislature specifically amended its definition of “agriculture” to include “agritourism” to emphasize agritourism’s importance in the State and in Towns such as Warner with a rich agricultural heritage. Specifically, the Legislature stated that “[a]gritourism, as defined in RSA 21:34-a, is undertaken by farmers to contribute to both the economic viability and the long-term sustainability of the primary agricultural activities of New Hampshire farms.” *See* RSA 672:1, III-b. The Planning Board and the Town of Warner should recognize, as did the New Hampshire Legislature, that agritourism is vital to keeping Warner’s farms economically feasible. If the Town appreciates farms and farming as a vital and important historical and cultural resource, the last thing it should do is make it more difficult for them to operate. That is exactly what the Planning Board will be doing if it adopts the ordinance change and requires special exceptions for agritourism activities and events in Warner.

¹ The ordinance also allows farmers to use temporary greenhouses and farm stands for periods of 6 months or less each year in all Districts, except for the INT (Intervale Overlay) District. (*See* Table I, Use Regulations, Zoning Ordinance, p. 38.)

² The pertinent part of RSA 21:34-a is attached at the end of this letter, with emphasis on the provisions at issue here.

“If it Ain’t Broke, Don’t Fix It”

Based on the available public record, the Town does not appear to be experiencing any demonstrable problems with agritourism that would justify a change to the zoning ordinance to impose Zoning Board regulation of it. The November 2020 Planning Board (draft) minutes discussing this proposal indicate that requiring a review of agritourism activities and events was considered a couple years ago “but it was not determined that action needed to be taken on it.” (See Planning Board Minutes of Nov. 16, 2020, p. 1.) Nothing in the minutes identify problems with agritourism that have occurred since Town oversight of agritourism was last considered and rejected.

The Planning Board’s November 2020 minutes suggest that there was a concern raised by a single participant, Barbara Marty, about Mr. and Mrs. Biagiottis’ property because it was “growing lavender,” and concern by Ms. Marty about a second property on Pumpkin Hill Road that was apparently previously denied a special exception to host weddings. Ms. Marty’s purported concerns are misplaced, and they certainly do not justify town-wide restrictions being imposed, as proposed.

First, my clients’ growing of lavender on their farm clearly falls within the definition of “agriculture” and is, in and of itself, irrelevant to the issue of whether the Town should impose Zoning Board review of “agritourism.” However, even assuming my clients invite others onto their property to share in the harvesting of lavender, to walk in and enjoy the lavender fields or to purchase lavender from their farm, there is nothing to suggest that the public’s participation in these agritourism activities caused problems with respect to parking, traffic or public safety that would justify the need for zoning board review. Absent clear problems with members of the public visiting my client’s farm, there is no public interest that justifies the Town meddling in their farming activities by requiring them to make a case before the Zoning Board. Of note, Ms. Marty also suggested that she was concerned about noise and signs related to the agritourism uses (see Planning Board Minutes of Nov. 16th, p. 2), but signage is already regulated under Section XII of the Ordinance (see Zoning Ordinance, pp. 16-20) and noise is already regulated under Section IV of the Ordinance (see Zoning Ordinance, pp. 5-6). Thus, if one is concerned about signage and noise, the Zoning Ordinance already provides a mechanism to address those concerns without the adoption of the proposed changes regulating agritourism specifically.

Second, with respect to the other Pumpkin Hill Road property referenced by Ms. Marty that had apparently sought approval as a wedding venue, the November Planning Board minutes state that it was already subject to special exception requirements and Zoning Board consideration under the current ordinance. Thus, that is another example of why the change to the ordinance is unnecessary. It appears from the minutes that Ms. Marty is concerned that this

second Pumpkin Hill Road property will claim that hosting weddings is permitted as “agritourism.” That might be the case, but under the current statutory definition, such a use is permitted so long as it is accessory to the primary farm operation, and such events should be welcomed as a means for farmers to support themselves and for others to enjoy Warner’s scenic and bucolic farms.

In summary, the proposal to regulate agritourism in Warner through the Zoning Board’s special exception process is simply unnecessary. There is no pressing need to single out and regulate agritourism for additional Town review and oversight. The burden the proposal imposes on farmers outweighs any minimal potential benefit.

Conclusion

The Town of Warner, like the State, should embrace and nurture agritourism as a way to preserve and protect the Town’s agricultural heritage. The proposed change to the zoning ordinance imposing Zoning Board review and special exception approval on every activity and event related to farming would undermine the Town’s farmers and their ability to carry one of the Town’s agricultural traditions, and it should be rejected.

Mr. and Mrs. Biagiotti respectfully request that the Planning Board reject the proposed change to the zoning ordinance that would require farmers to obtain special exception approval from the Zoning Board for agritourism-related events and activities.

Sincerely,

/s/ Derek D. Lick

Derek D. Lick

DDL:kmd

RSA 21:34-a Farm, Agriculture, Farming.

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
 - (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.