



CRAMER & ANDERSON<sup>LLP</sup>  
Attorneys at Law

46 West Street  
P.O. Box 278  
Litchfield, CT 06759-0278  
(860) 567-8718  
Fax (860) 567-4531

30 Main Street  
Danbury, CT 06810  
14 Old Barn Road  
Kent, CT 06757  
51 Main Street  
New Milford, CT 06776  
6 Bee Brook Road  
Washington Depot, CT 06794

Perley H. Grimes, Jr.  
[pgrimes@cramer-anderson.com](mailto:pgrimes@cramer-anderson.com)

May 1, 2018

Via email [davidcolbert7@gmail.com](mailto:davidcolbert7@gmail.com)

David Colbert, Chairman Planning & Zoning Commission  
Town of Cornwall  
26 Pine Street  
P.O. Box 97  
Cornwall, CT 06753

Re: Proposed Accessory Farming Uses

Dear Chairman Colbert:

I write this letter to address the first question that you raised in your April 4, 2018 email to me. In that question you stated "the major limitation embedded in these proposed regulations is the requirement that the accessory uses are secondary and incidental to the primary use. Can you offer guidance as to how this should be determined....?"

The Cornwall Zoning Regulation's definition of accessory use or structure is found in Sec. 16.3 Definitions of the regulations at page 77. That definition states as follows:

"Accessory Use or Structure. A use or structure which is subordinate to, and is used for purposes customarily incidental to those of the principal use or structure on a lot."

Your regulations require therefore an analysis of two factors, first "subordinate to" and second "customarily and incidental to."

Regarding "subordinate to," Merriam Webster's online dictionary defines subordinate as:

"placed in or occupying a lower class rank or position." Based on that definition, a "subordinate" use is one that is related to but less than the primary use of the dwelling.

Regarding what is "customarily incidental to" has been discussed in Connecticut cases for many years. The case law states as follows:



The word “incidental” as employed in a definition of “accessory use” incorporates two concepts. It means that the use must not be the primary use of the property but rather one which is subordinate and minor in significance . . . But “incidental,” when used to define an accessory use, must also incorporate the concept of reasonable relationship with the primary use. It is not enough that the use be subordinate; it must also be attendant or concomitant. To ignore this latter aspect of “incidental” would be to permit any use which is not primary, no matter how unrelated it is to the primary use. . . . The word “customarily” is even more difficult to apply. Although it is used in this and many other ordinances as a modifier of “incidental,” it should be applied as a separate and distinct test. Courts have often held that use of the word “customarily” places a duty on the board or court to determine whether it is usual to maintain the use in question in connection with the primary use of the land . . . In examining the use in question, it is not enough to determine that it is incidental in the two meanings of that word as discussed above. The use must be further scrutinized to determine whether it has commonly, habitually and by long practice been established as reasonably associated with the primary use . . . In situations where there is no . . . specific provision in the ordinance, the question is the extent to which the principal use as a matter of custom, carries with it an incidental use so that as a matter of law, in the absence of a complete prohibition of the claimed incidental use in the ordinance, it will be deemed that the legislative intent was to include it.

(Internal quotation marks: citations omitted.) *Lawrence v. Zoning Board of Appeals of the Town of North Branford*, 158 Conn. 509, 511-13 (1969).

Please note that while this case is approaching 50 years old, its definition is still a good law and often relied on by today’s courts. See *Clifford v. Planning & Zoning Comm’n.*, 280 Conn. 43 (2006).

The factors that the Commission may consider in exercising its discretion as to what is customarily incidental could be how closely does the proposed use match the size, location, access, traffic, public safety issues, and the like. However, for many reasons, I do not recommend that income be a factor.

I suggest that the above definition of “customarily incidental to” be given to the Commission members to guide the exercise of its discretion in determining whether the proposed use is an accessory use as defined by your regulations.

Should you or other members of the Commission have any questions concerning this approach, please feel free to contact me.



As we discussed, I am in the process of reviewing the regulations and hope to get back to you by May 4, 2018 with my comments on the same.

Very truly yours,

A handwritten signature in blue ink that reads "Perley H. Grimes, Jr." in a cursive script.

Perley H. Grimes, Jr.  
PHG:mcl

cc: Gordon Ridgway, First Selectman  
Thomas McGowan