OFFICE OF THE SELECTMEN
TOWN OF BARNSTEAD
P. O. Box 11
Ctr. Barnstead, New Hampshire 03225
603-269-4071

November 5, 2024

Jared and Erin Hanselman
948 Province Road
Barnstead, NH 03218

Re: Notice of Land Use Violations; Cease and Desist
948 Province Road

Mr. and Ms. Hanselman:

We write to you in our capacity as the administration and enforcement authority under Article 10 of the Barnstead Zoning Ordinance to make you aware of several issues with your property at 948 Province Road (the "Property"). As you know, substitute Building Inspector Peter Rowell visited your Property on October 21, 2024. Based on his report (a copy of which is enclosed with this letter), and on the internet advertisements for rental of cabins on the Property and a review of the Town's land use records for your Property, it appears that the Property may be in violation of several provisions of the Town's zoning ordinance and building code regarding building permits, certificates of occupancy, and the possible need for approvals from the Planning Board. We understand that the specific permitting issue of immediate concern to you has been the plumbing permit for the second barn, and we wish to work with you to resolve that situation. However, we also need to let you know about several other issues that require attention.

I. Agriculture Activities

As an initial matter, we understand that the Property has been used not only as your residence, but also as a small farming operation with a farm store. It is useful, therefore, to understand the interaction between state law regarding agricultural activities and local zoning/building code provisions.

- **Agriculture**: Agriculture is defined in RSA 21:34-a to include (among other things) the land, buildings and structures used for agriculture, including all which are used for the specific activities listed in this definition. Aside from the various traditional farming activities (crops, animals, etc.), 21:34-a, II(b) says that it also includes "any practice or activity on the farm incident to, ancillary to, or in conjunction with, farming activities specifically defined to include farm stands that sell products from the farm, and agritourism." This section goes on to say that this includes "marketing" of the farm's products, and specifically that "marketing" includes "agritourism."

- **Agritourism**: RSA 21:34-b, II(b)(5) defines this as "attracting visitors to a farm to attend activities or events that are accessory uses to the primary farm operation, including but not limited to being provided a meal, overnight stays, enjoyment of the farm environment, education about the farm's operations, or active involvement in the activities of the farm."

- **Farm stands**: 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. RSA 21:34-a, III.

While the law does bar towns from certain kinds of regulations of agricultural activities, there are several important ways in which agricultural activities are subject to local regulation, including:

- Any new establishment, re-establishment, or significant expansion of a farm stand, retail operation, or other use or activity involving on-site transactions with the public, including agritourism, may be made subject to applicable building permit, site plan review, or other local approval, and may be regulated to prevent traffic and parking from adversely impacting adjacent property, streets, sidewalks, and public safety. RSA 674:32-b, II.

- New or expanded agricultural operations and activities are <u>not exempt</u> from generally-applicable building and site requirements, such as dimensional standards, setbacks, driveway and traffic regulations, parking requirements, noise, odor or vibration restrictions and sign regulations. The only limit is that, if those regulations would effectively prohibit the use, or if applying that restriction in the context of an agricultural use would be unreasonable, then the ZBA may be required to grant a waiver from that particular restriction/regulation to the extent necessary to allow the use to proceed (unless it would have a demonstrated adverse effect on public health or safety or the value of adjacent property). RSA 674:32-c, II.

II. <u>Specific Property Issues</u>

1. Short-Term Rental of Cabins:

It appears that both of the cabins on the Property are being advertised as available for rent to be used as overnight accommodations.

Under Section 4-6.01 of the Zoning Ordinance, property owners must obtain a conditional use permit from the Planning Board prior to using any of their property as a short-term rental. As noted above, to the extent such rentals are being categorized as agritourism, the law does not provide that they are exempt from generally-applicable local permitting requirements. However, the Town's records do not show that a conditional use permit was obtained for either cabin on the Property (or for the use of any other space on the Property as a short-term rental).

Therefore, until such time as you have obtained a conditional use permit from the Planning Board for each of the cabins to be used as short-term rentals, neither of them can be used in that manner. In addition, if you plan to use the ADU which will be part of the new second barn as a short-term rental, you must obtain a conditional use permit for that use prior to renting it out or allowing anyone to stay there.

2. **Certificate of Occupancy/Inspection Issues:**

Section 7-1 of the Barnstead Building Code requires property owners to obtain a certificate of occupancy from the building inspector prior to occupying any structure. The building inspector will only issue a C/O after performing an inspection of the structure that was the subject of the building permit to determine whether the structure complies with the permit and with all applicable provisions of the State and Barnstead building codes. To the extent these structures are used for agricultural purposes, as noted above, the law does not exempt agricultural structures from generally-applicable permitting requirements.

The Town has no record of Certificates of Occupancy being issued for either of the cabins on the property, or for the rabbit shed or greenhouse.

Therefore, neither of the cabins or the shed or greenhouse can be used or occupied until such time as you have inspections performed and C/Os issued for each.

3. **Building Permits:**

Section 3-2.01 of the Barnstead Building Code provides, "A building permit is required to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, unless specifically exempt in the International Building Code." The definition of "structure" in Section 2-1 of the Zoning Ordinance is "anything constructed or erected, except a boundary wall or fence, the use of which requires location on the ground or attachment to something on the ground. For the purposes of this ordinance, buildings are structures." As noted above, structures that are used for agricultural purposes are not exempt from generally-applicable permitting requirements.

Our records show that a building permit was issued for one of the cabins on the Property (Permit #2022000482, 11/15/2022). However, Mr. Rowell's inspection report states that Mr. Hanselman told him that the second cabin, the wood-frame greenhouse and rabbit shed were all built without building permits. In addition, while you did obtain a building permit for the second barn and a renewed/amended building permit, the portions of the structure which have been built thus far do not appear to conform to the plans that were approved.

Therefore, to bring these structures into compliance, you will need to apply for and obtain building permits for all structures which were not permitted when built, and an amended building permit for any work that has been performed or is planned on the second barn which does not conform to the permits already issued. Please note that if building plans change after any

permits are issued, it is the property owner's responsibility to come back to the Town to obtain updated permit before doing any of that work.

4. **Site Plan Approval:**

Under Section 8-1 of the Zoning Ordinance, site plan review is required for all business uses in all zoning districts. Section 8-1.03 also requires that "any significant change in size and/or the nature" of an existing business undergo additional site plan review. Section 1 of the Planning Board's Site Plan Review Regulations require site plan approval for all uses other than development as a single-family residential use, which approval is to be obtained before any building permit is issued. And as noted above, agricultural uses (including agritourism) are not exempt from generally-applicable permitting requirements, including site plan review.

The pending plumbing permit that was applied for in connection with the second barn has raised a variety of questions about the structure that will be built and the use to which it will be put. The new plumbing application that was filed indicated that a commercial kitchen was being installed in the barn. In addition, we received from the State DES a copy of the septic permit application that you filed with them for the second barn. (DES routinely sends copies of all such permit applications to the municipality.) That application reflects not only a commercial kitchen, but also that the barn is intended to be used as a function hall and food processing location.

The addition or significant expansion of an agritourism activity on the property that involves transactions with the public is not exempt from generally-applicable site plan review requirements. RSA 674:32-b, II. The construction of a commercial kitchen and function hall suitable for event hosting on a property that has previously been used only as a residence, a farm, and a farm store (and unpermitted short-term rentals) falls within this provision. Site plan review is required in Barnstead for any business use (Section 8-1 of Zoning Ordinance). Nothing in the state laws regarding agriculture say that agritourism is not "business" (other than farm stands that meet the 35% minimum of farm products sales), and the use of a farm for paying customers to hold events seems quite reasonably to be both agritourism and business.

Prior to obtaining any building permits to construct a building suitable for the operation of a business on the Property, you must obtain site plan approval from the Planning Board under Section 8-1 of the Zoning Ordinance. It does not matter whether the plan is to build the structure today but not use it to host functions until some unspecified point in the future; Section 8-1 requires site plan approval to be obtained before the building permit is issued to construct the facilities. The building permits that were issued to you for this barn do not authorize the construction of commercial/business structures.

In addition, it has been brought to our attention that the farm stand on the Property may have expanded, and it is unclear how much of what is sold comes from the farming operations on the Property. So long as at least 35% by dollar volume of the merchandise sold at your shop is produced on the property, it would not be considered commercial under RSA 21:34-a, III. However, if your sales do not meet that threshold, it would also be considered a "business" under the Zoning Ordinance and would require site plan review. *See* RSA 674:32-b and 674:32-c.

III. Required Actions

- Until you have obtained all required approvals for the two cabins (building permit for one, final inspections as built and Certificates of Occupancy for both), neither cabin should be used or occupied.
- Until you have obtained a conditional use permit for each cabin to be used as a short-term rental, such use should cease.
- You should obtain building permits, final inspections and C/Os for both sheds (and any other outbuildings that were not constructed with the benefit of a permit)
- Until you have obtained an updated building permit for the second barn which accurately reflects the structure that will be built, no further construction on that barn should occur.
- You should also apply for and obtain site plan approval for the commercial agritourism activities that are or will be occurring on the Property. Please note that building permits for the commercial activities may not be issued until site plan approval has been obtained.

We encourage you to address these issues at your earliest convenience. Although we would prefer to work through this with you to a resolution, we are required to note that the law authorizes the Town to seek injunctive relief, fines and penalties for violations of the Zoning Ordinance, Building Code, and Site Plan Review regulations, including civil penalties of $275 for the first offense and $550 for each subsequent offense for each day that each such violation continues after your receipt of this Notice, as well as the recovery of the Town's attorney's fees and costs. *See* RSA 676:15 and RSA 676:17.

Sincerely,

Diane Beijer, Chairman

Gary Madden, Vice Chairman

Robb Ellis

Abstain - abutter
Edward Tasker

Priscilla Tiede

Barnstead Board of Selectmen

Date, October 21, 2024

Inspection Report, 948 Province Road, Barnstead NH

11:45 Entered the property introduced myself to the owner, Jared Hanselman.

I pointed to the main house and asked if it was a two family home. The owner stated that it was when he purchased it, but they had remodeled it into a single family a few years ago. I recommend that he get this straightened out because the tax card appears to have it listed as a two-family.

We then looked at the existing barn. It appeared to have a a few horse stalls with a small office in one corner. It also had a covered area attached to the front and right side. This area had a table with chairs in it. I did not enter the office or the covered area.

I then observed a large storage shed, at the far side of the property, which appeared to be used for wood storage and such. There was a large pile of cord wood in front of it. I only viewed from a distance.

Also observed a couple of buildings, behind the main house, the owner stated that one was used to raise rabbits and the other was a wood-frame greenhouse. The owned did not believe that he had received building permits for either of the buildings.

We talked about the hunting cabin that had been permitted but with no inspections performed by the town. I stated that it was the owners responsibility to schedule the inspections and this needs to be done.

We then talked about the other cabin, for rent that is shown on their Webb page. The town does not have any record of this building. The owner stated that they did not have a permit for this construction. I stated that it was the owners responsibility to apply for and receive a permit before any construction begins.

Both cabins were located in the back area not visible from where we were. Both cabins should be inspected by the town to insure that they are safe and to verify their use.

I stated that the owner should apply for a permit for any and all buildings that are being built or altered before any work begins.

We then moved on the the building permitted by Building Permit #2022000276, issued 08/03/2022 it said "To construct a 2 story 36' x 48' barn with a 12' x 48' enclose lean-to and a 26' x 26' office/in-law".
What I observed was quite a bit different than what the permit was issued for.
There was no detailed plan presented at time of permitting. I observed a main barn with two lean-to addition on both sides. One of the lean-to's extended beyond the front of the barn. The "in-law" was attached to the rear of the barn. The main barn had a second

floor with dormers and a third floor loft. The stairs to the second floor were not constructed.

The owner stated that the plans for the use for this building had changed since permitting. These changes should have been brought to the town before they were done. Permit #2022000276 has expired.

The owners now appear to be building some type of function center with a large commercial kitchen and an attached accessory dwelling unit. The owner needs to apply for a new permit, at which time a detailed plan needs be submitted showing what has been constructed. The plan needs to be labeled showing the use of every space. When the Town gets a detailed plan showing what is being built. The town can then make a decision on how to proceed. In my opinion what has been constructed is not a simple "Barn", but appears to be better suited for use as a "Function Center" with a large commercial kitchen, as described on the approved septic plan.

I was at the site to inspect some under-ground DWV plumbing. This plumbing work did not have an approved permit in place with the Town. While what was installed appears to be correct, without a plan its hard to tell. There also was not a leakage test applied to the piping. Without a permit in place no approval can be issued.

The owner was told that to move forward new permits need to be applied for and issued by the Town. The owner was told that he will need to submit detained plans of the building showing all proposed uses, fixture layout, and construction details. A site plan should also be submitted. He was also told not to cover the piping until it has been inspected at which time a leakage test will need to be viewed.

The owner also needs to insure that all existing buildings have received permits and have been inspected for compliance with all codes.

At 3:05 PM I spoke with the owner by phone and again went over what he needs to do to move forward. Submit a new application with plans. Once they are approved there will need to be another plumbing inspection done with the leakage test applied. I told him that I see no reason why this can not be done by the Town Building Inspector.

Submitted by,

Peter E. Rowell

October 22, 2024