

**Albemarle County Planning Commission
October 20, 2015**

The Albemarle County Planning Commission held a regular meeting and public hearing on Tuesday, October 20, 2015, at 6:00 p.m., at the County Office Building, Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Cal Morris, Chair; Richard Randolph, Mac Lafferty, Vice Chair; Thomas Loach, Bruce Dotson, and Tim Keller. Absent was Karen Firehock. Julia Monteith, AICP, Senior Land Use Planner for the University of Virginia was present.

Staff present was Scott Clark, Senior Planner; Claudette Grant, Senior Planner; Francis McCall, Senior Planner; Ron Higgins, Chief of Zoning; J.T. Newberry, Senior Planner; Sharon Taylor, Clerk to Planning Commission; David Benish, Acting Director of Planning; Wayne Cilimberg, Deputy Director of Community Development and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

Mr. Morris, Chair, called the regular meeting to order at 6:00 p.m. and established a quorum.

ZTA-2015-00002 Farm Distilleries

The Planning Commission will hold a public hearing to receive comments on its intent to recommend adoption of an ordinance amending Secs. 18-3.1, Definitions, 18-5.1.25, Farm wineries, 18-5.1.57, Farm breweries, 18-10.2.1, By right (Rural Areas district (RA)), 18-10.2.2, By special use permit (RA), 18-11.3.1, By right uses (Monticello Historic district (MHD)), 18-11.3.2, By special use permit (MHD), and 18-31.5, Zoning clearance, and adding Sec. 18-5.1.59, Farm distilleries, to Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 18-3.1 by amending and adding definitions pertaining to farm distilleries; amend Sec. 18-5.1.25 by requiring a special use permit when there may be 200 visitors' attendance in the aggregate at any time for farm winery events, weddings, wedding receptions, or other similar activities; amend Sec. 18-1.57, by requiring a zoning clearance when farm brewery events or activities may generate more than 50 vehicle trips per day or they are on sites less than 21 acres in size and require a special use permit when there may be 200 visitors' attendance in the aggregate at any time for farm brewery events, weddings, wedding receptions, or other similar activities; add Sec. 18-5.1.59 by establishing regulations applicable to farm distilleries ("limited distilleries" are required to be permitted by Virginia Code § 15.2-2288.3:2, effective July 1, 2015) by delineating the uses, events and activities ("uses") allowed by right and by special use permit, the requirements for establishing those uses, requiring a zoning clearance when farm distillery events or activities may generate more than 50 vehicle trips per day or they are on sites less than 21 acres in size and require a special use permit when there may be 200 visitors' attendance in the aggregate at any time for farm distillery events, weddings, wedding receptions, or other similar activities, sound generation from outdoor amplified music, and minimum yards; and prohibiting restaurants and helicopter rides; amend Secs. 18-10.2.1, 18-10.2.2, 18-11.3.1 and 18-11.3.2 by adding farm distilleries as being allowed by right or by special use permit as provided in Sec. 18-5.1.59; amend Sec. 18-31.5 by requiring a zoning clearance for certain events and activities at farm wineries licensed after the effective date of this ordinance, farm breweries, and farm distilleries that may generate more than 50 vehicle trips per day or they are on sites less than 21 acres in size, and in order to play outdoor amplified music at a farm distillery. A copy of the full text of the ordinance is on file in the office of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia. (Francis McCall)

Mr. McCall presented a PowerPoint presentation regarding ZTA 2015-00002, Farm Distilleries. He handed out a revision to Attachment E. (Attachment E – Available in the Office of the clerk with the written minutes)

As you are aware, from our previous work sessions this ZTA has come about as a result of Senate Bill 1272 at the 2015 General Assembly session. It deals with “limited distilleries” or as we have termed them “farm distilleries”. What a limited distillery is permitted to produce per the ABC regulations is 36,000 gallons/year of distilled spirits on land with agricultural zoning, and must use products grown on the farm. These regulations went into effect statewide on July 1, 2015.

Background

SB 1272 - Limited Distilleries

- Production, harvesting, manufacturing, sales, storage & tasting protected
- Restrictions shall be reasonable & take into account economic impact, the agricultural nature of activities & whether they are usual & customary
- Usual & customary activities must be permitted unless there is a “substantial impact” on public health, safety & welfare

Meetings Held In Past:

- March 17 ROI for farm distilleries
- May 12 PC Work Session
- June 2 Revised ROI to include farm wineries, breweries & distilleries
- July 1 SB 1272 takes effect
- August 11 PC Work Session

The ordinance before the Planning Commission does the following:

First, it adds distilleries as a use in the Rural Areas (RA) zoning district and Monticello Historic District along with some revised definitions. It also addresses the total number of persons attending one or more events at a single operation. This may occur if one licensed operation proposes more than one event or if at one site there were multiple ABC licensed operations where each licensed operation holds an event at the same time.

The 200 person limitation is a longstanding limitation (2009) in the County regulations, on the total number of persons/guests at a site at one time. As discussed previously with the Commission staff has now revised this ordinance to clarify that this limitation is to a total of 200 persons onsite regardless of the number of events or ABC licenses.

Lastly, the ordinance proposes to add the requirement to obtain a zoning clearance for all new farm distilleries, any new farm brewery or new farm winery established after the date of the adoption of the ordinance amendment by the Board Of Supervisors if a licensed operation will be on a site that is less than 21 acres in size and wants to hold events or activities or if an event or activity generates more than 50 vehicle trips per day. This requirement is already a standard that VDOT uses when requiring commercial entrance improvements, and both of these requirements are what the County has already adopted for events and activities at Agri operations. The handout provided was an update to Attachment E that lays out changes to those particular uses, the farm winery and farm brewery and adding farm distilleries.

Mr. MacCall said he would be happy to answer any questions and Mr. Kamptner would be able to assist in that.

Mr. Morris invited questions for staff.

Mr. Randolph said his reading of the regulation changes here addresses the multiple same owner operations contiguous to each other. However, does it also successfully address different multiple owners having contiguous operations.

Mr. McCall replied that he did not believe it does right at the moment as far as the cumulative impact of those because the ordinance does not specifically address that at this time. He believed staff is going to try to evaluate that in a second stage, which was discussed at the previous work session.

Mr. Kamptner noted that is one of the phase 2 ZTA's as they continue to look at this. This is something that the Board is also interested in, which will be discussed at a November meetings when they are going over the Community Development work plan.

Mr. Randolph said it is very easy for parties on the outside to look at Albemarle County and say Albemarle County overregulates. But, in point of fact if we don't address this there is a loophole in here large enough to drive the titanic through sideways. That is a concern that we've all talked about. So he was happy it was going to be addressed in a second phase

Mr. Keller added that from an economic development standpoint some of this piggybacking that they are seeing is actually positive. He was thinking of Carter's Mountain that now has added Bold Rock along with Prince Michel and the orchard part. He thinks that there are many positives to be viewed from that. However, they need to think about how we deal with contiguous events from multiple owners at one local. He thinks if this is a successful business model they will see more of it.

Mr. Morris opened the public hearing for public comment. He invited public comment.

Neil Williamson, with the Free Enterprise Forum, said when they get to the cumulative impacts and property owners who happen to be next to each other and are pursuing economic development of their property you can anticipate that we all be very involved with that discussion. In this case he would like to draw the Commission's attention to Attachment A, page 3. Perhaps this has already been addressed by staff. The bottom of the page does not make any sense or there is a tense or something missing. At the last meeting he made a point to say the core element of this is about the events. This is totally and separate and apart from state permitted and required by-right uses including making the wine. He completely understands the idea. But, in the past it said are in attendance at any time. Now it says, "In the aggregate or attend one of more uses allowed. He was kind of lost by that. It is repeated again on page 6. When you get to page 7, for the purposes of this section the phrase in the aggregate refers to one or more events authorized under this section or section 5.1.2.5 or 5.1.5.9, which is the brewery section and the distillery section. He knows the intent is to one event. Quite honestly most of the wineries that he deals with only one has one event. Frankly, some of them are kind of tired of having events. But, the reality is that he did not think this language is as clear as it could be. He was hopeful as they move it forward it can be cleaned up so that it truly does what the intent is.

Mr. Kamptner replied that it will be. He realized this past week that all of the aggregating language that appears in all three main sections is not as clear as it could be. So he is going to work with that before it goes on to the Board.

There being no further public comment, Mr. Morris closed the public hearing to bring the matter back before the Planning Commission for discussion and action.

Mr. Dotson said he thinks this is as good a job as we could do. But, he comes back to the introductory paragraph that says must be located on a farm. Have we defined that? How would he know whether it

was on a farm and must use agricultural products? It is probably in there, but he could not find it in the ordinance.

Mr. Kamptner pointed out that farm is a defined term in Section 3.1 that has existed in the zoning ordinance for a number of years. It is a fairly broad term that mirrors the state definition, which is land under the same ownership within the Commonwealth. Farm wineries are a kind of beast. It is the same thing with farm breweries and farm distilleries in that the state enabling authority refers to the agricultural products being grown on the farm. The state definition is as equally broad.

Mr. Dotson said what he is saying is it is a very vague definition, but we are stuck with it.

Mr. Kamptner replied that we are stuck with it. However, he won't say it is a vague definition, it is a broad definition. It is not what we necessarily think of as the farm. It is not the commonly understood meaning of the term when we are talking about it.

Mr. Dotson asked what about the use of agricultural products.

Mr. Kamptner noted that we also define agricultural products. He thinks all the farm wineries in Albemarle County are Class A license. Therefore, 51 percent of the grapes have to be grown on the farm. Farm breweries and farm distilleries are required in order for them to obtain a license they have to use agricultural products grown on the farm. But, there is nothing that establishes a floor amount of agricultural products that have to be used. Staff met with an ABC agent two weeks ago and they found no regulations. He did not recall there even being any guidance as to what the minimum threshold is. So it may be a single row of hops or something for a brewery. They will consider that in their overall evaluation. When they are considering a license application they will look at the legitimacy of the operation, but recognize there is no minimum amount of agricultural product that has to be used in the alcohol.

Mr. Dotson asked does the State Code for breweries and distilleries allow for a local definition of a use threshold paralleling the winery threshold.

Mr. Kamptner replied the licensing requirements are established by the state, and we have no latitude to tweak those licensing requirements in any way. When you look at the events and activities that we have discretion to allow we allow those and it has to be either for the purposes of agri-tourism or towards marketing the product. So if there is very little or no product actually being produced, if there is no real agriculture going on and if it is just a single vine then we are going to look at whether or not they are actually entitled to engage in those types of activities. For example, to host wedding events. If it is not promoting agri-tourism or marketing the sale of their product, then they really are not eligible to engage in these other events and activities.

Mr. Dotson asked how that would come to our attention.

Mr. Kamptner replied it would be by complaint.

Mr. Morris invited other discussion.

Mr. Loach said in 2 respects, one is just to follow up on Mr. Blaine's comments and what Mr. Dotson just talked about what the definition is of farm. He wanted the definition of bonafide primary agricultural activity. It is mentioned a couple times in the ordinance. He thinks it goes across the board be it wineries, distilleries or breweries. He can't believe they couldn't come up with some objective definition on what the underlying agricultural activity is that you are supporting. In the case that was brought up tonight the operator of the property basically said I don't want to run a wedding chapel and I couldn't do

that. So in order to do that he would put in one-half an acre of wines and that is my farm. He was not sure under what he would see as the definition that is a primary agricultural activity for the property. The other thing is the sentence that any regulation of usual and customary events is allowed only when there is substantial impact on health, safety or general welfare. He thinks tonight what they saw is a perfect example of a concern of health, safety and the general welfare. It does not matter whether that road belongs to the state or the county, and it does not matter if the state is responsible. It is the condition of that road that you have to deal with in its context to where the farm or the applicant is going to be. It seems they have to recognize there is a big difference between, as an example, the King Family Farm that is on an asphalt road contiguous to the growth area that has a double yellow line, and you can get traffic in and out. He would be amazed if they went to the police, fire or rescue and said to them do you not see a problem with this road. The fact is that when you add to it buses with multiple persons you compound the potential accident injuries that you are going to have. Imagine trying to get up on that road in a fire truck or trucks, heavy rescue squad, multiple ambulances and police vehicles. If you think that road is bad now try it at night. It is even worse at night with dust. He was lucky coming home if there was not another car on that road because like was said you have to slow down and stop. He saw six deer and one fox, and thankfully did not hit any of them. He would like to suggest though when we look at substantial impact the sentence reads, "an impact that may arise from an event or activity." Well my question is when they talked about this in a cumulative nature his problem is what happens if the situation is that even before that the infrastructure would not support it whether or not there is one of more. So this is a situation with the one they are talking about. What he thinks we need to do two things, particularly because this is a work session. One, go back and have the county attorney review Mr. Blaine's definitions and what he wants to do. Second, he would like to see since the only thing the county can do is deal with health and safety is that we come up with parameters that define whether there are objective reasons why something should not be done and not wait until somebody complains about it or there is an accident. He believes there are conditions like the one they saw tonight that are contraindicated by their very nature to having large 200 person events on them. Those are the two things he really would like to see. He would suggest that this does involve the health and welfare of our citizens and has to be looked at.

Mr. Dotson pointed out this is not a study session tonight, though, this is for action.

Mr. Morris agreed.

Mr. Loach said if that is the case then he do not think this is by any nature complete. He knows what Mr. Dotson is saying that a lot of time has gone into it, but he did not think it is the best we can do. He thinks they have an obligation to the citizens to protect their health and safety. If that is the case, then he would vote no because it needs another looking at if only for those reasons. It was interesting when they looked at the picture that most of the properties in this area were under conservation easement. That says that the residents of that area have put their time, effort and money in what they want to do into defining the character of that community. He thinks that has to be taken into consideration when they make those decisions. If it is not, then he thinks it is incomplete.

Mr. Keller noted when they had the agritourism round tables there were several people who had been quite involved with the advisory or spin off committee to the state legislator in trying to think through a definition of what bonafide agriculture was. As he remembered we could never come up with a definition of bonafide agriculture. So he wanted to remind the Commission that something that seems so simple has not been able to come to a definition at the state level where they actually gave us the legislation that we are having to deal with. As a side, Augusta County has in their efforts come up with a definition of what bonafide agriculture is. But, again, they are a different kind of agricultural community and county than we are.

Mr. Kamptner pointed out we have a definition that clarifies the term agricultural operation.

On the screen there is the definition of agricultural operation. The zoning ordinance also defines what the phrase devoted to the bonafide production of crops, animals or fowl. It is a very lengthy definition.

Mr. MacCall noted it applies particularly to agricultural operations.

Mr. Keller said the second point is on these rural roads that we all are concerned with he raised the same issues on Glendower Church and the daycare center. Because there was not the video the same kind of concerns of people driving fast on the gravel road and the issues then when they had the presentation by the TJPDC about the rural roads and the issues of could gravel roads go away because the upgrading through the state's rural road program if they begin to have a high traffic count. There are a lots of interesting things that come together that are under our preview that interact and they need to think holistically about all of those. It is not necessarily this evening, but when they have these different related issues he encourages us all to think broadly about how they interact. He supports Mr. Loach's concerns on those rural roads.

Mr. Loach noted the difference is the amount of traffic that they are talking about with that being a daycare center versus 150 people going to a wedding where alcohol would be consumed. The second thing is there are rural roads and rural roads. Tonight they could see visually that maybe one of the rules that we put into place is that if you have a road that is only a lane and a half wide that by itself is a reason for not approving farm wineries with 200 people on these roads. He was not saying all of them will be, but he was saying there is a difference in the roads. That is why he is saying to go back and look at and see if you can define parameters to find what would not be safe. It is what road conditions in the rural area would be contraindicated to having large events being held in their proximate location. That is what he is saying.

Mr. Morris asked Mr. Kamptner if the county has the capability of putting that into our ordinance as far as what the state has mandated.

Mr. Kamptner replied we have the ability to protect public health, safety and welfare. If the events and activities were determined to be usual and customary. He was not sure that any in the list that applies to breweries and distilleries are usual and customary. He thinks those two classes are different from the farm wineries. We can regulate the usual and customary events and activities only if we first determine there is a substantial impact on public, health, safety or welfare. That is part of the phase 2 analysis that we will be doing. He would imagine that will be one that will start pretty quickly to deal with these types of issues. The one reason why this ordinance is a little easier simpler is because we have this legislation that became effective July 1 and we feel that we do need to get something in place.

Mr. MacCall noted that to some extent they are addressing some substantial impact by doing the zoning clearance for 50 vehicle trips and the acreage at least for right now. One thing they are not considering is the number of events. He believes that Loudon is one that does limit a certain number of events per licensed operation. That is one thing that is not in the consideration. That would definitely would limit things as far as certain impacts if that was a limitation.

Mr. Morris said he must agree with Mr. Loach on this that the health, safety and welfare of our citizens has to be paramount in our minds. My question is this as well as the number of contiguous events and so on going to be addressed in phase 2 and when will phase 2 hit the street roughly.

Mr. McCall noted that Mr. Cilimberg would be able to speak to that.

Mr. Cilimberg replied that is to be decided by the Board as part of the work program. In fact, several of us have been working with Mr. Graham just today on the information going back to the Board for their

November meeting to really flush out the final work program particulars and the resources necessary. He cannot give the Commission a timeline right now, but our understanding has been this is pretty important to the Board as well as we know it is for you.

Mr. Loach asked if these are approved then they go to phase 2, everything done before this is then by right under those rules and they are not affected by that.

Mr. Kamptner replied generally that is going to be the case. But, if we hold off this ordinance that is also going to be the case so that any distilleries that come in will not be subject to any other regulations other than what they are authorized to do under state law. It is the nature of zoning. Part of it would be based on whether they have any vested rights associated with any particular regulatory change.

Mr. Cilimberg said it was worth keeping in mind that with these amendments we are clarifying the whole question of cumulative events on site in one location either because of multiple events or because of multiple operations, say a brewery and a distillery together which could operate on the same site. It is not addressed right now in the ordinance and is one area that is getting some new attention by the amendments being proposed. It also includes the zoning clearance for new wineries as well as distilleries and breweries, which had been only attached to agri-operations in the prior amendments. So there is some level of additional regulation relating to health/safety that is a part of these amendments. The larger question may be the more cumulative multi parcel issue that would be addressed as part of phase 2 along with location. One of the big issues actually is the question of bonafide agriculture. There is a pretty extensive definition right now that is tied to agri-operations, which we will also be looking at in terms of wineries, breweries and distilleries and how it could be tied into those.

Mr. Loach pointed out his opinion would be if they can get an operation with a half an acre of grapes as a bonafide farm, then you got beat.

Mr. Lafferty asked how we currently judge health, safety and welfare without being subjective.

Mr. Kamptner noted that part of it is related to the definition of substantial impact. So as we evaluate impacts we will look at the effects on abutting lots for the neighborhood, any rural road, natural resource, cultural resource, or historic resource. We will also look at the generation of traffic, noise, dust, artificial outdoor light, trash, storm water runoff, excessive soil compaction, the failure to provide adequate traffic controls and sanitation facilities, cumulative effects of large number of events and activities occurring simultaneously, and events and activities that are incompatible with existing production of agriculture. So those are the types of impacts that we have identified that affect public health, safety and welfare.

Mr. Lafferty thanked Mr. Kamptner.

Mr. Keller said he was prepared to support this, but just wants to say that the definition can be tested. It is a series of conditions that would be relatively easy to meet without necessarily having a bonafide agricultural operation.

Mr. Morris asked if there was a motion.

Motion: Mr. Randolph moved and Mr. Keller seconded to recommend approval of the draft ordinance found in Attachment A for ZTA 2015-00002, Farm Distilleries.

Mr. Dotson asked is there a way in sending that forward that we can also summarize two or three residual concerns to be addressed in the phase 2 study.

Mr. Loach said he would just like to make sure that Mr. Blaine's documentation is included with the minutes and goes forward to the Board.

Mr. Morris asked if this can be done to ensure that.

Mr. Kamptner suggested if the Commission wants to take action on the ordinance itself, then by a separate motion they can articulate the additional issues that you wish the Board direct staff to examine as part of the next related phase 2 study.

Mr. Morris noted the first motion was to recommend approval and it had been seconded. He asked for a roll call.

The motion passed by a vote of 5:1. (Loach nay) (Firehock absent)

Mr. Morris noted that the Commission by a vote of (5:1) is forwarding a recommendation for approval of the draft ordinance to the Board at a time to be determined.

Mr. Morris asked if there was an additional motion.

Mr. Dotson said he had a question of the content of this phase 2 study. He asked does that get at the concerns that Mr. Loach expressed.

Mr. Morris asked Mr. McCall if the phase 2 study gets to the issues that Mr. Loach was bringing up.

Mr. Loach said that was basically to define any parameters that by their very nature would be contraindicated to having a winery, brewery or distillery in the same local proximity. It would be like the road that we saw today with those kind of conditions.

Mr. McCall replied that he believed that would be the definition of substantial impact and they should be able to roll that into it.

Mr. Loach said it seemed to indicate substantial impact from the activity and what if the condition exists prior to even initiating activity that would have an event.

Mr. McCall said that would probably take a change in the definition, but that could be evaluated.

Mr. Loach agreed that was what he was trying to get at.

Mr. Dotson suggested maybe nothing is needed or maybe a second motion would be to convey to the Board of Supervisors the importance of proceeding as rapidly as possible with the phase 2 study.

Mr. Loach agreed.

Motion: Mr. Dotson moved and Mr. Loach seconded to convey to the Board of Supervisors the importance of proceeding as rapidly as possible with the Phase 2 Study for ZTA 2015-2, Farm Distilleries

Mr. Keller said there are two areas that they have really highlighted, the one that Mr. Loach brought up about the transportation safety and the second one that Mr. Blaine brought up which is getting at this issue of what constitutes a bonafide operation. Maybe they can't get there, but it would be worth a bit more exploration on that one.

Mr. Morris invited further discussion. There being none, he asked for a roll call.

The motion passed by a vote of 6:0. (Firehock absent)

Mr. Morris noted that ZTA 2015-2, Farm Distilleries would be forwarded to the Board of Supervisors with a recommendation for approval to be heard at a time to be determined.

(Recorded and transcribed by Sharon C. Taylor, Clerk to Planning Commission & Planning Boards)