

DEPARTMENT OF  
PLANNING & ZONING



PLANNING COMMISSION  
BOARD OF ZONING APPEALS

To: Chair and Members, Nelson County Planning Commission

From: Tim Padalino | Director | Department of Planning & Zoning

Date: May 21, 2014

**Subject: Proposed Zoning Amendments Referred to Planning Commission by Board of Supervisors (Resolution R2014-31 – Agricultural Operations)**

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The Department of Planning & Zoning recently assisted Mr. Phillip D. Payne IV, County Attorney, on the development of several proposed amendments to the Nelson County Zoning Ordinance, Article 4, "Agricultural District (A-1)."

These proposed amendments were initiated by the County Attorney and County Administrator primarily in response to two factors:

1. Recently adopted provisions in the Code of Virginia that directly affect the ability of localities to regulate agricultural operations and agri-tourism uses and activities; and
2. The absence of sufficient Zoning Ordinance provisions and/or regulations regarding existing and proposed agri-business and agri-tourism land uses and activities in Nelson County, which continue to proliferate and expand.

These proposed amendments were introduced to the Board of Supervisors (BOS) at the May 13<sup>th</sup> meeting. The Board then resolved to refer these proposed amendments to the Planning Commission (PC) for the Commission's review and eventual recommendations, in compliance with Code of Virginia §15.2-2285 (which requires the PC to conduct a public hearing and provide recommendations back to the BOS within 100 days of the first PC meeting after the Board has resolved to make the referral.)

Please see the referral of Resolution R2014-31 (Agricultural Operations), dated May 13, 2014, as well as the attached proposed amendments for further detailed information. Please note that the actual proposed amendments are embedded within a larger staff memo, which includes an informational overview of pertinent Code of Virginia definitions and laws (pp. 1-2); comments from the County Attorney (p. 3); and the actual proposed amendments (pp. 3-5).

Thank you for your attention to this important referral; and please contact me with any questions you may have regarding these proposed amendments.



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**RESOLUTION R2014-31  
NELSON COUNTY BOARD OF SUPERVISORS  
REFERRAL OF AMENDMENT TO NELSON COUNTY ZONING ORDINANCE  
TO NELSON COUNTY PLANNING COMMISSION  
(AGRICULTURAL OPERATIONS)**

**WHEREAS**, the Nelson County Board of Supervisors wishes to refer proposed amendments to Appendix A-Zoning (Nelson County Zoning Ordinance) of the Code of the County of Nelson, Virginia regarding land uses associated with Agricultural Operations;

**NOW, THEREFORE, BE IT RESOLVED** by the Nelson County Board of Supervisors, pursuant to the applicable provisions of Title 15.2 (Counties, Cities, and Towns) Chapter 22 (Planning, Subdivision of Land and Zoning) of the Code of Virginia, 1950 that the draft amendments attached be referred to the Nelson County Planning Commission for review and public hearing and subsequent report of the Commission's findings and recommendations to the Board, in accordance with Chapter 22 of the Code of Virginia.

**BE IT FURTHER RESOLVED**, that the Planning Commission is directed to complete its review and conduct of a public hearing and submit its recommendation(s) to the Board; pursuant to §15.2-2285 (B).

Adopted: May 13, 2014

Attest: STEPHEN A. CARTER, Clerk  
Nelson County Board of Supervisors

STAFF MEMORANDUM

In re: ZONING, distillery, food processing, etc.

Date: May 14, 2014

**State definitions and limitations:**

*Va. Code § 3.2-300:*

"Agricultural operation" means any operation devoted to the bona fide production of crops, or animals, or fowl including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silviculture activity.

"Production agriculture and silviculture" means the bona fide production or harvesting of agricultural or silvicultural products but shall not include the processing of agricultural or silvicultural products or the above ground application or storage of sewage sludge.

*Va. Code § 3.2-301:*

Right to farm; restrictive ordinances. — In order to limit the circumstances under which agricultural operations may be deemed to be a nuisance, especially when nonagricultural land uses are initiated near existing agricultural operations, no county shall adopt any ordinance that requires that a special exception or special use permit be obtained for any production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification. Counties may adopt setback requirements, minimum area requirements, and other requirements that apply to land on which agriculture and silviculture activity is occurring within the locality that is zoned as an agricultural district or classification. No locality shall enact zoning ordinances that would unreasonably restrict or regulate farm structures or farming and forestry practices in an agricultural district or classification unless such restrictions bear a relationship to the health, safety, and general welfare of its citizens. This section shall become effective on April 1, 1995, and from and after that date all land zoned to an agricultural district or classification shall be in conformity with this section.

*Va. Code § 35.1-1. Definitions:*

9. "Restaurant" means any one of the following:

- a. Any place where food is prepared for service to the public on or off the premises, or any place where food is served. Examples of such places include but are not limited to lunchrooms, short order places, cafeterias, coffee shops, cafes, taverns, delicatessens, dining accommodations of public or private clubs, kitchen facilities of hospitals and nursing homes, dining accommodations of public and private schools and colleges, and kitchen areas of local correctional facilities subject to standards adopted under § 53.1-68. Excluded from the definition are places manufacturing packaged or canned foods which are distributed to grocery stores or other similar food retailers for sale to the public.

- b. Any place or operation which prepares or stores food for distribution to persons of the same business operation or of a related business operation for service to the public. Examples of such places or operations include but are not limited to operations preparing or storing food for catering services, push cart operations, hotdog stands, and other mobile points of service. Such mobile points of service are also deemed to be restaurants unless the point of service and of consumption is in a private residence.

§ 15.2-2288.6. *Agricultural operations; local regulation of certain activities.* (“SB 51” passed by General Assembly in 2014):

*A. No locality shall regulate the carrying out of any of the following activities at an agricultural operation, as defined in § 3.2-300, unless there is a substantial impact on the health, safety, or general welfare of the public:*

*1. Agritourism activities as defined in § 3.2-6400;*

*2. The sale of agricultural or silvicultural products, or the sale of agricultural-related or silvicultural-related items incidental to the agricultural operation;*

*3. The preparation, processing, or sale of food products in compliance with subdivisions A 3, 4, and 5 of § 3.2-5130 [note: inspections to operate food establishments] or related state laws and regulations; or*

*4. Other activities or events that are usual and customary at Virginia agricultural operations.*

*Any local restriction placed on an activity listed in this subsection shall be reasonable and shall take into account the economic impact of the restriction on the agricultural operation and the agricultural nature of the activity.*

*B. No locality shall require a special exception, administrative permit not required by state law, or special use permit for any activity listed in subsection A on property that is zoned as an agricultural district or classification unless there is a substantial impact on the health, safety, or general welfare of the public.*

*C. Except regarding the sound generated by outdoor amplified music, no local ordinance regulating the sound generated by any activity listed in subsection A shall be more restrictive than the general noise ordinance of the locality. In permitting outdoor amplified music at an agricultural operation, the locality shall consider the effect on adjoining property owners and nearby residents.*

*D. The provisions of this section shall not affect any entity licensed in accordance with Chapter 2 (§ 4.1-200 et seq.) of Title 4.1. Nothing in this section shall be construed to affect the provisions of Chapter 3 (§ 3.2-300 et seq.) of Title 3.2, to alter the provisions of § 15.2-2288.3, or to restrict the authority of any locality under Title 58.1.*

2. That the Virginia Department of Agriculture and Consumer Services shall continue the On-Farm Activities Working Group.

### Comments

Senate Bill 51, above, makes this clear: The sale of agricultural products and the sale or processing of food products is permitted by-right on a bona fide farm (“agricultural operation”) *unless there is a substantial impact on the health, safety, or general welfare of the public.* This is no real change for how Nelson operates in A-1.

On the edges, however, two problems exist. First, alcohol, which has an obvious agricultural component, but which is not “food.” Two, the sale and processing of food which can “impact ... the health, safety, or general welfare of the public.”

The present dilemma is that the Zoning Ordinance has no provision (i) for breweries, distilleries, cideries, etc. which have an agricultural component, and, (ii) does not address the food sale and processing conducted in connection with limited or token farming. In order to have the tools and resources necessary for doing a better job at interpreting these types of proposed uses, and in order to review and process these types of projects more consistently, the ordinance needs some new language and rules.

Below is the current County definition for agriculture:

*Agricultural:* The tilling of the soil, the raising of crops, horticulture, and forestry, including the keeping of animals and fowl, and including any agricultural industry or business, such as fruit packing plants, dairies, or similar use associated with an active farming operation, unless otherwise specifically provided for in this ordinance.

The recommendation below is that the County simply use the state definition with an additional phrase from Senate Bill 51.

(As an aside, for purposes of the USDA agricultural census, a farm is any place from which \$1,000.00 or more of agricultural products were annually produced and sold, or normally sold.)

### Amendment Recommendations

#### Definitions:

Delete: *Agricultural*

Add:

*Agricultural operation:* any operation devoted to the bona fide production of crops, or animals, or fowl including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silviculture activity. The preparation, processing, or sale of food products in compliance with subdivisions A 3, 4, and 5 of Virginia Code § [3.2-5130](#) or related state laws and regulations

are accessory uses to an agricultural operation unless otherwise specifically provided for in this ordinance. When used in this ordinance, the words *agricultural* or *agriculture* shall be construed to encompass the foregoing definition.

*Agricultural Processing Facility*: the preparation, processing, or sale of food products, or accumulation for shipment or sale of crops and animals, when more than 20% of such crops or animals are not produced in a co-located agricultural operation owned or controlled by the operator of the facility.

*Agricultural Processing Facility, Major*: an agricultural processing facility that, by virtue of its size, shipping requirements, noise, or other characteristics, will have a substantial impact on the health, safety, or general welfare of the public or adjoining landowners. A major agricultural processing facility is one that either (i) has more than 10,000 square feet of enclosed space or (ii) entails the preparation, processing, or sale of food products, or accumulation for shipment or sale of crops and animals, when more than 50% of such crops or animals are not produced in a co-located agricultural operation owned or controlled by the operator of the facility.

*Brewery*: a facility for the production of beer.

*Distillery*: a facility for the production of distilled spirits.

*Micro-brewery*: a brewery which is housed within and operated in connection with a restaurant. A micro-brewery is an accessory use to a restaurant. [note: “Restaurant” is currently a permissible use in the Agricultural (A-1) District which requires a Special Use Permit]

*Restaurant*: Any place where food is prepared for service to the public on or off the premises, or any place where food is served. Mobile points of service are also deemed to be restaurants, unless the point of service and of consumption is in a private residence. ~~Any building in which for compensation, food or beverages are dispensed for consumption on the premises, including among other establishments cafes, tea rooms, confectionery shops, or refreshment stands. Dancing by patrons shall be considered as entertainment accessory to a restaurant, provided the space made available for such dancing shall not be more than one eighth of that part of the floor area available for dining. Provisions for dancing made available under this definition shall be subject to the permit requirements of Nelson County.~~

“Restaurant” is currently a permissible use as follows:

Permissible with Special Use Permit:	Agricultural (A-1), Business (B-2), Industrial (M-2)
Permissible By-Right:	Business (B-1), Service Enterprise (SE-1), Res. Plan. Comm. (RPC)

**Agricultural (A-1):**

Permitted by right

4-1-28 Agricultural Processing Facility, provided that (i) all components of the facility shall be located 250 feet or more from any boundary line or street, or located 125 feet or more from any boundary line or street if screened by fencing or vegetation, and (ii) no noise, unshielded lights, odors, dust, or other nuisance may be perceptible beyond the property upon which the facility is located

**Special Use Permit**

4-1-7a          Agricultural Processing Facility, Major

4-1-45a        Distillery

[note: "Restaurant" is currently provided as a permissible use requiring a Special Use Permit pursuant to § 4-1-34a]

**Business (B-1):**

**Special Use Permit**

8-1-11a        Distillery

8-1-12a        Brewery

**Service Enterprise (SE-1):**

**Special Use Permit**

8B-1-11a      Distillery

8B-1-12a      Brewery

**Industrial (M-1):**

**Permitted by right**

Distillery, when the use complies with Section 18-4

Brewery, when the use complies with Section 18-4

Agricultural Processing Facility, when the use complies with Section 18-4

Agricultural Processing Facility, Major, when the use complies with Section 18-4

**Limited Industrial (M-2):**

**Permitted by right**

Distillery

Brewery

Agricultural Processing Facility

Agricultural Processing Facility, Major