

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: June 18, 2014

Subject: Public Hearing on proposed amendments to Zoning Ordinance contained in Board of Supervisors Resolution R2014-31 – “Agricultural Operations”

The Department of Planning & Zoning recently assisted Mr. Phillip D. Payne IV, County Attorney, with his development of several proposed amendments to the Nelson County Zoning Ordinance, regarding the definitions and regulations of agricultural operations, breweries, distilleries, and restaurants. The proposed amendments would affect the following zoning districts: Agricultural (A-1), Business (B-1), Service Enterprise (SE-1), Industrial (M-2), and Limited Industrial (M-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 land uses and activities; and
2. The absence of sufficient Zoning Ordinance provisions and/or regulations regarding agritourism and agribusiness land uses and activities in Nelson County, which are currently a substantial and important sector of overall land use, and which are expected to continue to increase and expand throughout the County.

As Mr. Payne noted in his earlier memo (dated May 14, 2014), “The present dilemma is that the Zoning Ordinance (i) has no provision 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.”

Review of Amendment Process To-Date

These proposed amendments were introduced to the Board of Supervisors (BOS) at the May 13th 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 recall that the Planning Commission initially reviewed this referral material at the regularly scheduled May 28th meeting. As such, and per Code of Virginia §15.2-2285-B, the final possible date for providing recommendations to the Board of Supervisors is Friday, September 5th.

Contents of Proposed Amendments

The full text of the proposed Ordinance amendments is as follows:

➤ **Article 2. Definitions:**

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.

Agricultural operations: 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 silvicultural 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 conjunction with a restaurant.

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.

➤ Article 4, Agricultural District A-1, Section §4-1, Uses – 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.

➤ Article 4, Agricultural District A-1, Section §4-1a, Uses – Permitted by Special Use Permit only:

4-1-7a Agricultural Processing Facility, Major

4-1-45a Distillery

➤ Article 8, Business District B-1, Section §8-1a, Uses – Permitted by Special Use Permit only:

8-1-11a Distillery

8-1-12a Brewery

➤ Article 8B, Service Enterprise District SE-1, Section §8B-1a, Uses – Permitted by Special Use Permit only:

8B-1-12a Distillery

8B-1-13a Brewery

➤ Article 9, Industrial District M-2, Section §9-1, Uses – Permitted by-right:

9-1-30 Distillery

9-1-31 Brewery

9-1-32 Agricultural Processing Facility

9-1-33 Agricultural Processing Facility, Major

➤ Article 18, Limited Industrial M-1, Section §18-1, Uses – Permitted by-right:

18-1-6 Distillery, when the use complies with Section 18-4

18-1-7 Brewery, when the use complies with Section 18-4

18-1-8 Agricultural Processing Facility, when the use complies with Section 18-4

18-1-9 Agricultural Processing Facility, Major, when the use complies with Section 18-4

Staff Comments on Proposed Amendments

The existing definition of “Agricultural” would be deleted and replaced with three different definitions and uses: Agricultural Operation; Agricultural Processing Facility, and Major Agricultural Processing Facility. These amendments would borrow from the language in Code of

Virginia §3.2-300 “Right to Farm” and from §15.2-2288.6 “Agricultural Operations” for the definition of “agricultural operation.”

The proposed amendments would also establish two new uses and associated definitions for regulating agricultural operations that include both production and processing.

Please note that these proposed amendments would not affect the definitions or regulations for farm wineries (including cideries). Separately, the proposed amendments create questions about how these proposed redefinitions and new provisions / regulations would affect related existing uses (and the associated existing definitions) such as Abbatoir, Agricultural Equipment, and Dairy Plant.

Please also note that these proposed amendments related to agricultural operations do not address the issue of “Wayside Stands.” The Planning Commission has recently attempted to review that topic and develop recommendations for suggested text amendments to the existing provision, which is currently defined in Article 2., “Definitions” as follows:

Wayside stand, roadside stand, wayside market: Any structure or land used for the sale of agricultural or horticultural produce; livestock, or merchandise produced by the owner or his family on their farm.

“Wayside stand” is currently provided as a permissible use requiring an administratively-approved zoning permit, pursuant to Article 4., Agricultural A-1, Section §4-11, “Administrative Approvals,” subsection 2. That provision (§4-11-2) provides no explanation as to how this use should be regulated or what procedures are required for review and approval of such a proposed use.

With respect to the insufficient existing provisions for “Wayside stand,” staff recommend that the Planning Commission consider if and/or how the existing provisions could be reviewed, in conjunction with the referred amendments pertaining to agricultural operations. If this topic is reviewed, consideration must be given as to how the provision(s) for “wayside stand” (existing or proposed) would work in conjunction with the following sentence in the proposed definition for “Agricultural Operation,” which is taken from Code of Virginia §3.2-300 “Right to Farm” language:

“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.”

Additionally, County staff urges the Commission to review the sentence in the proposed replacement definition of “Restaurant” that would include “mobile points of service” as a restaurant. That policy would be difficult to enforce, and it may not be the most appropriate way to regulate food trucks and other “mobile points of service.” Staff recommends the Commission to consider if it would more appropriate for the County to regulate “food trucks” separately than, and independent of, other “Restaurant” uses.

Finally, the Commission inquired about the meaning of the term “bona fide production,” which is contained in the “agricultural operations” definition (which itself is found in the Code of Virginia §3.2-300 “Right to Farm” language). This term does not seem to be defined by the State; it appears that the act of defining (or interpreting) that phrase is left to the County. The term “bona fide production” will likely need to be defined and/or interpreted with respect to what type of agricultural operations have traditionally been practiced locally, which would allow for local variations among Virginia localities located in regions as diverse as the Piedmont, Tidewater, or Southside. Defining and interpreting that term locally also allows for the consideration of scale to be a factor when determining whether or not an agricultural operation should be considered “bona fide production,” or if it is simply a novel display.

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