

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: August 20, 2014

**Subject: Planning Commission recommendations for proposed amendments to Zoning Ordinance contained in 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, 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 (restrict) 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**

The original proposed amendments were introduced to the Board of Supervisors (BOS) at the May 13<sup>th</sup> meeting. The Board then resolved to refer those 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 referred the proposed amendments.) The PC's initial review of this referral material occurred at the regularly scheduled May 28<sup>th</sup> meeting, which set the deadline for providing recommendations to the Board of Supervisors at Friday, September 5<sup>th</sup>.

The Planning Commission then conducted a public hearing on June 25<sup>th</sup>. Public comments were received from Mr. Al Weed, a resident of Lovingson and owner and operator of Mountain Cove Vineyards, regarding the proposed new definition of "Agricultural Processing Facility, Major." The recommendations contained in this report incorporate Mr. Weed's suggestion to restrict the criteria for calculating the "amount of enclosed space" only to the enclosed space that is specifically "devoted to agricultural operations." Mr. Weed also provided comments regarding the proposed redefinition of restaurant, which would include "mobile food vendors" in the definition of restaurant, and which would then require a Special Use Permit for food trucks and other mobile food vendors. Mr. Weed's comments about restaurants and mobile food vendors have also been reflected in the recommendations contained in this report. (*See comment #2 on page 5.*)

On July 23<sup>rd</sup>, the Planning Commission again reviewed the referred amendments and continued the discussion. Chair Proulx indicated that the PC would greatly benefit from receiving insight and legal guidance from Mr. Payne, in his roles as author of the referred amendments and as the County Attorney. As such, the PC then conducted a Work Session on August 6<sup>th</sup> to further review the referred amendments with Mr. Payne in attendance, and to refine their recommendations.

This report contains the Planning Commission's recommended amendments, as determined through diligent review, consideration of public comments, and revisions during the Work Session.

## **DRAFT Planning Commission Recommendations**

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### ➤ 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, in connection with an agricultural operation when more than 20% of such crops or animals are not***

produced on an agricultural operation on the same or contiguous parcel(s) 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 devoted to agricultural processing operations or (ii) entails the preparation, processing, or sale of food products, or accumulation for shipment or sale of crops and animals, in connection with an agricultural operation when more than 50% of such crops or animals are not produced on an agricultural operation on the same or contiguous parcel(s) owned or controlled by the operator of the facility.

***Brewery:*** a facility for the production of beer. See also “Farm Brewery, Limited” and “Micro-brewery.”

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

***Farm Brewery, Limited:*** A brewery that manufactures no more than 15,000 barrels of beer per calendar year, provided that (i) the brewery is located on a farm owned or leased by such brewery or its owner and (ii) agricultural products, including barley, other grains, hops, or fruit, used by such brewery in the manufacture of its beer are grown on the farm. The on-premises sale, tasting, or consumption of beer during regular business hours within the normal course of business of such licensed brewery, the direct sale and shipment of beer and the sale and shipment of beer to licensed wholesalers and out-of-state purchasers in accordance with law, the storage and warehousing of beer, and the sale of beer-related items that are incidental to the sale of beer are permitted.

***Micro-brewery:*** a brewery which is housed within and operated in conjunction with a restaurant, and which manufactures no more than 15,000 barrels of beer per calendar year. A micro-brewery is an accessory use to a Restaurant.

***Restaurant.*** (remains unchanged)

➤ 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 and/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.

**4-1-29** Farm Brewery, Limited

➤ 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-1, Uses – Permitted by-right:

##### **8B-1-24 Farm Brewery, Limited**

- 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:

**9-1-6** Manufacture, compounding, processing, packaging or treatment of such products as bakery goods, candy, cosmetics, dairy products, drugs, perfumes, pharmaceuticals, perfumed toilet soap, toiletries, and food products other than a ~~food or~~ meat packing or processing plant

##### **9-1-30 Distillery**

##### **9-1-31 Brewery**

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

##### **18-1-6 Distillery**

##### **18-1-7 Brewery**

#### **Staff Comments on Proposed Recommendations**

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1. Please note that the existing definition of “Agricultural” would be deleted and replaced with three different definitions and uses:
  - *Agricultural Operation*, which allows for the “preparation, processing, or sale of food products in compliance with [applicable state laws and regulations], as long as 20% or less of those products for sale are not produced “on an agricultural operation on the same or adjacent parcel(s) owned or operated by the operator of the facility.”
    - This is a “traditional” agricultural operation / facility, such as a packing shed or on-farm market, which provides for the “direct-to-consumer” sale of agricultural products that were produced on the farm (with up to 20% of the agricultural products for sale being sourced from off the farm).

- In other words, this allows for on-site sales of agricultural products that are primarily produced on-site.
- *Agricultural Processing Facility*, which allows for the “preparation, processing, or sale of food products, or accumulation for shipment or sale of crops and animals, when more than 20% but less than 50% of such crops or animals are not produced on an agricultural operation on the same or contiguous parcel(s) owned or controlled by the operator of the facility.”
  - This is an agricultural operation / facility which provides for the “direct-to-consumer” sale of agricultural products that were partially produced on the farm (with more than 20% but less than 50% of the agricultural products for sale being sourced from off the farm).
  - In other words, this allows for on-site sales of agricultural products only partially produced on-site.
- *Major Agricultural Processing Facility*, which allows for 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 on an agricultural operation on the same or contiguous parcel(s) owned or controlled by the operator of the facility.”
  - This is an agricultural operation / facility which provides for the “direct-to-consumer” sale of agricultural products that were primarily produced off the farm (with more than 50% of the agricultural products for sale being sourced from off the farm).
  - In other words, this allows for on-site sales of agricultural products, the majority of which are produced off-site.

Please note that these 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 regulations would affect related definitions and uses currently contained in the Zoning Ordinance such as “Abattoir,” “Agricultural Equipment,” and “Dairy Plant.”

The PC also recommended that “Agricultural Processing Facility” and “Agricultural Processing Facility, Major” be removed from Industrial (M-2) and Limited Industrial (M-1), since those uses are by definition associated with an on-site (or contiguous) agricultural operation, which is not likely to occur in either of the Industrial zoning districts; and because the Industrial (M-2) District currently provides for food processing in Article 9, Section 1-6 as a by-right use and for abattoir / meat processing as a Special Use in Article 9, Section 1-1a.

Additionally, retail sales are not typically considered to be a compatible or appropriate use in industrial zoning districts, which is another reason to not provide for APF or Major APF in those districts.

2. Regarding the issue of “restaurants” and “mobile food vendors,” the Planning Commission felt that mobile food vendors should not be regulated in the same way as restaurants, which require a Special Use Permit in the Agricultural (A-1) District. After proposing to strike the clause about restaurants “including mobile points of service” from the referred amendments, the PC did not find any remaining purpose for redefining the “restaurant” use.

The PC then discussed the potential to separately recommend an administrative permitting process for mobile food vendors or “food trucks,” but decided not to identify any recommendations at this time that would establish new regulations specifically for food trucks or other mobile food vendors.

Therefore, the PC's recommended amendments do not contain any revisions to the restaurant definition or use.

3. Regarding various types of "brewery" land uses, the PC included in their recommendations the Code of Virginia language about "Limited Farm Breweries," which are facilities in the Agricultural (A-1) District that include an agricultural operation and which brew a maximum limit of 15,000 barrels per year. The PC recommendations also suggest placing the same 15,000 barrels per year limit on "Micro-breweries," which would only be permitted as an accessory use to permitted restaurants (in any zoning district). "Breweries" would not have any production limits, and would not be permissible in the Agricultural (A-1) District. "Breweries" would be permissible by-right in the Industrial (M-2) and Limited Industrial (M-1) Districts, and would be permissible with a Special Use Permit in the Business (B-1) and Service Enterprise (SE-1) Districts.
4. The PC recommendations do not include any proposed new definitions regarding the phrase "bona fide agricultural production," which is contained in the proposed "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.

After extensive review and discussion, all Work Session participants agreed that it would be virtually impossible to define the term "bona fide agricultural production" in a way that properly accounts for all the different production scenarios that are possible. Rather, it may simply need to be interpreted on a case-by-case basis. Leaving the term open to interpretation 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 meant to circumvent the rules and conditions found elsewhere in the Zoning Ordinance.

### **Additional Staff Comments**

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Please note that one major category of "direct-to-consumer" sale of agricultural products are not accounted for in the referred amendments or the PC recommendations: off-site sales of agricultural products. That category can further be divided into two broad uses:

1. Off-site sales of agricultural products produced on agricultural operations controlled or owned by the operator of the facility; and
2. Off-site sales of agricultural products produced on agricultural operations not controlled or owned by the operator of the facility.

Regarding the first use, the Zoning Ordinance currently attempts to address this issue by providing for "wayside stands," 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 a permissible use in the A-1 District that requires an administratively-approved zoning permit, pursuant to Article 4, "Agricultural A-1," Section §4-11, "Administrative Approvals," subsection 2. However, 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.

The Planning Director recommends the following application requirements for a “Wayside Stand Permit”:

- Completed Zoning Permit application and \$25 fee (*remains unchanged*)
- Sketch Site Plan (showing property, location of wayside stand, and parking; does not have to be prepared by a licensed professional)
- Brief project narrative (describing access and safety, frequency of operation, signage, type of products for sale and the location(s) of the “agricultural operation” owned or controlled by the operator that is the source(s) of the ag products for sale)

Regarding the second use, the Zoning Ordinance does not contemplate or provide for off-site, direct-to-consumer sale of agricultural products that originate from various sources. To remedy this, the Planning Director recommends that the County adopt a definition and provide for a new use of “Farmers Market.” The following definition could be used as a starting point for further review, discussion, and recommendation:

*Farmers Market:* Any structure, assembly of structures, or land used for the sale of agricultural or horticultural products, and agriculture-related goods and services, that have been produced off-site.

The Planning Director recommends that “Farmers Market” be adopted as a Special Use permissible in the (A-1) Agricultural District and (SE-1) Service Enterprise District, and as a permissible by-right use in the (B-1) and (B-2) Business Districts. The following application requirements are also recommended:

- Completed Special Use Permit application and \$200 fee payment (*for A-1 and SE-1 zoning only*)
- Minor Site Plan (pursuant to §13-1-1) and \$100 fee payment
- Brief project narrative (describing frequency of operation; approximate number and type(s) of vendors; signage; and access, parking, and safety)
- Note: A “Farmers Market” may be subject to subsequent requirements for submission/approval of a Major Site Plan, depending on the physical details of any such project (pursuant to §13-1-1)

Please note that this proposed “Farmers Market” definition and use would not allow for “Flea Market,” which is a Special Use permitted in the (B-1) Business District [per §8-1-21]. “Flea Market” is defined as, “Any outdoor commercial offering of items for sale at any location. Merchandise offered may include items purchased specifically for resale at a profit.”

Please also note that this definition and use would not allow for “Antique, craft, or gift shops,” which is a Special Use permitted in the (A-1) Agricultural District [per §4-1-2a]. “Antique, craft, or gift shops” is undefined in the Zoning Ordinance.

## **Conclusion**

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The Planning Director recommends that the Planning Commissioners finalize their official recommendations for the BOS Referral R2014-31 “Ag Operations,” based on the drafts contained in this report; and cause those final recommendations to be formally submitted to the Clerk of the Nelson County Board of Supervisors as soon as possible after the August 27<sup>th</sup> meeting. (Please recall that the 100-day deadline for providing the recommendations falls on September 5.)

The Planning Director also recommends that the Planning Commission, by the authority contained in Zoning Ordinance Article 16, Section 1-3, initiate a separate (but related) proposal to amend the Zoning Ordinance to accommodate the “Farmers Market” use detailed on pages 6 and 7 of this report, subject to further review and discussion by the Commission.

Thank you for your ongoing attention and efforts with this important set of proposed amendments; and please contact me with any questions you may have regarding the information contained in this report.

