



To: Chair and Members, Nelson County Planning Commission; and Mr. Phil Payne, County Attorney

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

Date: July 31, 2014

Subject: Unresolved questions and other topics identified at the July 23rd Planning Commission meeting regarding the proposed Zoning Ordinance amendments contained in Board of Supervisors Resolution R2014-31 – “Agricultural Operations”

The Department of Planning & Zoning has recently received numerous questions and comments from Planning Commission (PC) members, regarding the ongoing review of the proposed Zoning Ordinance amendments contained in Board of Supervisors Resolution R2014-31 – “Agricultural Operations.” I have compiled the questions and comments into the following two lists, attempting to consolidate the content into topics and themes. The first list (page 1) is specifically addressed to County Attorney Phil Payne for his review and comment at the upcoming August 6th PC Work Session. The second list (page 4) contains content that is slightly more policy-oriented, and slightly less law-oriented; and which is primarily for additional review and discussion by the PC (in addition to general review by Mr. Payne).

Questions submitted for Mr. Payne for review and comment:

1. Which definition of “restaurant” from the Code of Virginia should be used?

As noted by Chairwoman Phil Proulx, the Code of Virginia utilizes two definitions for “Restaurant:”

- **§15.2-2820. Definitions.**
- "Restaurant" means 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. "Restaurant" shall not include (i) places where packaged or canned foods are manufactured and then distributed to grocery stores or other similar food retailers for sale to the public, (ii) mobile points of service to the

- general public that are outdoors, or (iii) mobile points of service where such service and consumption occur in a private residence or in any location that is not a public place. "Restaurant" shall include any bar or lounge area that is part of such restaurant.
- Please note the "not" in the 3rd sentence and "mobile points of service" in item (ii).
 - **§35.1-1. Definitions.**
 - 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.

As noted by Chairwoman Proulx, Title 15.2 deals with Counties, Cities and Towns, and their structure and authorities. Title 35.1 deals with Hotels, Restaurants, Summer Camps, and Campgrounds and regulations governing their operation (inspections, licensing, etc.) In consideration of the two different definitions and their application couldn't we use the first (from 15.2), excluding mobile points of service? If so, what are the possible ways the County might regulate "mobile food vendors," food trucks, etc.?

Please note that, at the July 23rd PC meeting, the Director of Planning & Zoning recommended that the County separately consider a new provision for an administratively-approved "Mobile Food Vendor Permit," which would require the following:

- Nelson County Business License
- documentation of Virginia Department of Health approval
- a small permit fee (possibly \$25 or \$50)

It was recommended that any such new type of zoning permit should not be tied to any one Zoning District. Regardless, the following questions remain and require further effort:

- Would the Zoning Ordinance limit this use/permit to specific zoning districts, or would the permit holder would be permitted to operate their mobile facility countywide?
- Would such a permit would be required for each vendor operating at an event being conducted under an approved Special Events Permit?
- Should such a permit have the ability to include a time limit (or other time-based condition such as frequency, duration, etc.)?

2. *If we are to use the phrase "bona fide production," should we define it?*

If so, please suggest a starting point toward a definition. (Please see Item 15 under "Additional items for further discussion" on page 4).

3. *Agricultural Processing Facility:* is it acceptable for the proposed definition to be modified to read as follows:

“The preparation, processing, or sale of food products, or accumulation for shipment or sale of crops and animals, when when 80% or more of such crops or animals are produced ~~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.”

4. *Agricultural Processing Facility, Major*: is it acceptable for the proposed definition to be modified to read as follows:

“...(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, when less than 50% of such crops or animals are produced in a co-located agricultural operation ~~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.”

5. *Regarding “Agricultural Processing Facilities” – must there be “onsite” production?*

If not, then the facility essentially becomes just a factory.

6. *Regarding “Agricultural Processing Facilities” – can and should the County limit locations of these facilities in proximity to residential subdivisions in A-1?*

7. *Regarding “Agricultural Processing Facilities” – what is the meaning and intent of “co-located agricultural operation”?*

8. *Regarding “Agricultural Processing Facilities” – what do 20% and 50% refer to (the percentage of what exactly)? Is it the percentage of land use area, raw value, market value, or some other quantification(s)?*

9. *Regarding “Agricultural Processing Facilities” under the proposed Article 4, Section 1-28 – how does this work in connection with “Agricultural Exemptions”?*

This is a Building Code reference whereby David Thompson doesn’t regulate any farming building under this exemption, unless a restaurant is included. In the past, previous Director of Planning & Zoning Fred Boger has not required for the Zoning Ordinance setback requirements to be met in this situation. If the proposed Sec 4-1-28 is adopted with larger setbacks than what is currently required, would an Agricultural Exemption negate the proposed setbacks? Would the presence of a restaurant negate the Agricultural Exemption, or any Zoning Ordinance setback requirement(s)?

10. *Should the definitions of “Brewery” and “Distillery” be expanded to incorporate issues such as retail sales, distribution, tastings, and/or other activities? Is this something that should be included, or not – and if so, should it be dealt with in the definition or district by district? What are the definitions of brewery and microbrewery, and should there be clearer distinction between the two?*

11. *How does the Code of Virginia definition of “limited brewery” (as a brewery that produces 15,000 barrels of beer or less per year) affect these proposed amendments?*

Should this state definition be somehow incorporated into the proposed definition of “micro-brewery”? Should this be added as a separate definition and/or separate use?

A recent article in the Nelson County Times talked about SB430 which would create a “limited brewery license” if agricultural products are grown on the site. This “license” would be subject to limited local regulations of certain activities. What affect does this have on the proposed amendments, and do the amendments currently reflect the requirements and limitations set forth in SB430?

12. *Under proposed definitions, could a brewery qualify as a “Major Agricultural Processing Facility” by growing all of its raw materials offsite?*

13. *Why do proposed changes to Article 18 specifically refer to Section 18-4?*

Doesn't this imply that the other restrictions in Sec 18 may be waived?

14. *Has or will the County address the new legislation as it affects “farm events”?*

Additional items for further discussion:

15. *What is the definition of a “bona fide production”?*

As noted in the June 18th staff report prepared for the June 25th public hearing, 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, Southside, Eastern Shore, or Shenandoah Valley. Defining and interpreting “bona fide production” 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.

Please also note that “bona fide” is defined by Merriam-Webster as “real or genuine” or “made with earnest intent;” and, when used in legal context, “made or done in an honest and sincere way.”

16. *Regarding setback requirements, should these proposed amendments take into consideration the variation between minimum setbacks required in different zoning districts which may abut one another?*

There are currently a number of parcels zoned Business (B-1) that are located within areas more broadly zoned Agricultural (A-1). The B-1 zoning allows for zero front yard setback.

With the probable increase of commercial activity in the A-1 District, should new setback requirements be established, perhaps in a new “rural” B-1 sub-category?

17. *Regarding “Agricultural Processing Facilities” under the proposed Article 4, Section 1-28 – should the language be modified to include the phrase “fencing and/or vegetation”?*
18. *Does SB430 prevent local regulation of the required number of parking spaces, road access, and private road standards for breweries unless there is “substantial impact”?*

No. It allows for localities to exempt breweries in the Agricultural District from such requirements, if it chooses to do so; but it does not require localities to make any such exemption.