DEPARTMENT OF
PLANNING & ZONING

PLANNING COMMISSION
BOARD OF ZONING APPEALS

To: Chairman and Members, Nelson County Planning Commission

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

Date: February 20, 2014

Subject: Policy Review of "Wayside Stands" and other direct-to-consumer issues in A-1

In recent months, the Nelson County Planning Commission (and also Central District Supervisor Connie Brennan, who previously served in the former role of Board of Supervisors Liaison) has identified a need to review and possibly amend the Zoning Ordinance policies and regulations pertaining to "wayside stands" and other direct-to-consumer agricultural uses in the Agricultural (A-1) District. These issues were partly brought into focus during the withdrawn Rezoning #2012-02 application process (submitted by Mr. Bland Harvey and Mr. Brady Nicks); and have been discussed at Planning Commission work sessions that took place in 2013.

To date, all involved stakeholders have agreed that the current provisions in the Zoning Ordinance are inadequate; and that they may actually have the unintended effect of hindering most opportunities for on-site, direct-to-consumer sales of agricultural produce. Therefore, the purpose of this policy review is twofold:

- to analyze the existing regulations and identify deficiencies; and
- to provide a framework which can be used to guide the discussion at one or more workshops aimed at developing proposed Zoning Ordinance amendments that would result in better provisions and simple, sensible regulations for such activities and land uses.

Existing Zoning Ordinance Content Relating to "Wayside Stands"

The Zoning Ordinance currently contains the following regulations and provisions relating to wayside stands:

<u>Article 2. Definitions</u>.

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

Article 4. Agricultural District (A-1), Section 11 "*Administrative Approvals*"

The Zoning Administrator may administratively approve a zoning permit for the following uses, provided they are in compliance with the provisions of this Article.

§4-11-2: Wayside Stands.

Analysis of Existing Zoning Ordinance Provisions and Regulations

The Zoning Ordinance content identified above, when interpreted and applied to proposals that have come before the Planning & Zoning Department and the Planning Commission, has proven to be inadequate. The provision for wayside stands provides nothing more than an indication that they are permissible, if they are in compliance with the provisions of Article 4 and if they receive a zoning permit through administrative review and approval process.

However, the provision does not address any of the various issues that are common to wayside stands and other direct-to-consumer uses:

- What are the application requirements and procedures for a wayside stand?
    - Does the standard $25 zoning permit fee apply?
    - Does the applicant need to submit a Site Plan? If so:
        - Would the Site Plan be distributed to the Site Plan Review Committee for review and comment?
        - Would a "sketch" Site Plan be acceptable, or does it need to adhere to the requirements contained in Article 13 (which include, among other things, that a Site Plan be drawn to scale by a certified professional such as an engineer, surveyor, or landscape architect)?
- What criteria does the Agent use in reviewing a wayside stand application?
    - How can the "public safety and welfare" be evaluated?
    - Does such an application and/or Site Plan need to be shared with Virginia Department of Transportation (VDOT), for review of road safety and road mobility issues?
    - Does such an application and/or Site Plan need to be shared with Virginia Department of Health (VDH), for review of public health and safety issues?
- Will signage for such uses be regulated?
- Will hours of operation or frequency of operation be regulated?
- What will be considered eligible or ineligible for sale?
    - Is this only for products produced on-site?
        - What if the wayside stand is proposed off-site from the property where the products originated from, but on property owned by the same producer?
    - Are products produced off-site eligible in any way?
        - If so, should there be any limitations for "off-site" products being produced within a certain radius, or within Nelson County, etc.?
    - What about bees, worms, and similar ag-related resources?
    - What about topsoil, soil amendments, or gardening equipment?
    - What about non-agricultural merchandise, such as art, clothing, or similar products?

Recommendations for Consideration

The list of questions (above) must be reviewed and discussed as part of any process of developing recommendations.

Additionally, the existing "one size fits all" permit system may not be adequate. As such, there needs to be consideration given to the possibility of establishing a permit system with different "types" or "classes" that correlate with various direct-to-consumer uses.

When considering how to develop an organization or classification for different permit types, there are two basic qualities to consider when evaluating a proposed use: what is being sold (i.e. agricultural products, merchandise, or both); and where is it being sold (i.e. on-site of where it was produced, or off site).

The following table depicts a matrix of (generalized) land use possibilities, relative to the two basic qualities identified above:

What is being sold – and where?	A.) ON-SITE SALES	B.) OFF-SITE SALES
1. Ag products produced entirely on-site	*(least amount of need for regulation?)*	(N/A)
2. Ag products produced on-site and/or off-site		
3. Ag products and other merchandise produced entirely on-site		(N/A)
4. Ag products and other merchandise produced on-site and/or off-site		*(most amount of need for regulation?)*

With respect to those various criteria, I recommend consideration of the following permit types:

- <u>Farm Stall (administrative zoning permit):</u>
- On-site sales of agricultural or horticultural products, livestock, or merchandise produced by the owner or his family on their farm
- (Corresponds with sale of items described in A1 and A3, above)
- *Application requirements:* none

- <u>Wayside Stand (administrative zoning permit):</u>
- On-site sales of agricultural or horticultural products, livestock, or merchandise produced by the owner or his family on their farm, and/or produced off-site by other producers
- (Corresponds with sale of items described in A1, A2, A3, and A4, above)
- *Application requirements:*
    - Completed zoning permit application and $25 fee payment
    - Sketch site plan (showing property, location of wayside stand, and parking)
    - Brief narrative (describing frequency of operation, type of products for sale, and signage)

- Farm Market (Special Use Permit):
- Off-site sales of agricultural or horticultural products, livestock, or merchandise
- Does not allow for "flea market," which is a Special Use in (B-1) Business District [per §8-1-21].
    - *Flea Market*: "Any outdoor commercial offering of items for sale at any location. Merchandise offered may include items purchased specifically for resale at a profit."
- Does not allow for "antique, craft, or gift shops," which is a Special Use in (A-1) Agricultural District [per §4-1-2a].
    - *Antique, craft, or gift shops*: (undefined)
- (Corresponds with sale of items described in B2 and B4, above)
- *Application requirements:*
    - Completed Special Use Permit application and $200 fee payment
    - Minor Site Plan (pursuant to §13-1-1) and $100 fee payment
    - Brief narrative (describing frequency of operation, approximate number and type(s) of vendors, signage, and parking)
        - *Note: A "Farm Market Permit" 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.*

General Assembly's "Senate Bill 51" Requires Careful Consideration

In the most recent session of the General Assembly, legislation was passed by both the Senate and the House that effectively renders localities without any authority to locally regulate land uses and events in an agricultural district that are traditionally or customarily related to agricultural activity. This legislation (Senate Bill 51 / SB51) must be a primary factor when considering how to address the direct-to-consumer issues contained in this memo.

Specifically, SB51 (attached) states:

A. "A. No locality shall regulate the carrying out of any of the following activities at an agricultural operation, as defined in §3.2-200, 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 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." ... (continued)

Please note that SB51 contains references to the following existing laws:

§3.2-200 “Right to Farm” – Definitions:

"*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.

§3.2-6400 “Agritourism Activity Liability” – Definitions:

"*Agritourism activity*" means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, wineries, ranching, historical, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity.

As contained in SB51, a locality shall not require a Special Use Permit or an administrative permit for property(s) within the Agricultural (A-1) District in relationships with the referenced land uses, unless, “there is a substantial impact on the health, safety, or general welfare of the public.”

For the purposes of agricultural land uses in the A-1 District, the primary consideration relating to public health and safety would involve transportation and parking. It could be argued that it is reasonable for the County to act on concerns about the potential for such wayside stands (and related uses) to have a substantial impact on the public road system, as it relates to vehicular access to the use or structure, parking, and roadway mobility and safety. However, it appears that SB51 would essentially prohibit any local regulations for virtually all other aspects of agricultural operations in the A-1 District, as defined above (and in the attached page which contains SB51 verbatim).

On February 14th, the House voted for passage of SB51 (75-Y 19-N); and on February 18th, the Senate voted for passage of SB51 (40-Y 0-N). The bill currently awaits action by the Governor.

I would advise that detailed attention be given to SB51 subsection A.4, which includes language about, “Other activities or events that are usual and customary at Virginia agricultural operations.”

Please contact with me with any questions you may have about this report or the issues contained within it. Thank you very much.

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend the Code of Virginia by adding a section numbered 15.2-2288.6, relating to local regulation of activities at agricultural operations.

[S 51]

Approved

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 15.2-2288.6 as follows:

§ 15.2-2288.6. Agricultural operations; local regulation of certain activities.

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 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.