

Albemarle County Planning Commission
April 9, 2019

The Albemarle County Planning Commission held a public hearing on Tuesday, April 9, 2019, at 6:00 p.m., at the county Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Tim Keller, Chair; Julian Bivins; Jennie More; Daphne Spain; Bruce Dotson; Pam Riley, Vice-Chair; Karen Firehock; and Luis Carrazana, UVA representative.

Other officials present were Leah Brumfield, Senior Planner; Amelia McCulley, Director of Zoning/Zoning Administrator; David Benish, Interim Director of Planning; Rebecca Ragsdale, Senior Planner; Kevin McCollum, Planner; Carolyn Shaffer, Clerk to Planning Commission and Andy Herrick, Deputy county Attorney; Stephanie Banton,

Call to Order and Establish Quorum

Mr. Keller, Chair, called the regular meeting to order at 6:00 p.m. and established a quorum.

The meeting moved to the next agenda item.

ZTA201900002 Agricultural Operations Amendment – Phase I

Ms. Ragsdale reported that this was a public hearing for updates to Section 18-5.1.58 (Events and Activities at Agricultural Operations), and these regulations have been crafted in accordance with the Comp Plan, in which the county is supportive of agricultural and forestal activities – with events intended to be secondary in support of agricultural production. She said that state code provisions limited them in some ways in terms of what they can regulate with regard to agricultural activities, and the production, harvesting, manufacturing, storage, and tasting was not regulated and subject to the supplemental regulations in this section – but they could regulate the usual and customary supportive activities, which may involve “substantial impacts” such as traffic and noise.

Ms. Ragsdale reported that the county adopted the provisions of this section in 2014 and has had some experience and additional input from rural area groups on these types of regulations that address the impacts to neighbors with farm winery, brewery, and distillery work – and now would like to align those sections of the ordinance. She noted that staff had a work session in March with the Board and was scheduled for a public hearing with the Board in May for the phase one, which was the alignment of the regulations. She stated that the ordinance includes adding a curfew – an additional regulation outside definitions to supplemental regulations for outdoor amplified music, adding the neighbor notification requirement, updating setbacks to align the regulations, and adding a five-acre minimum onsite production requirement to be eligible to host events.

Ms. Ragsdale said this requirement would not pertain to sales-related activities or agritourism-related activities for marketing of what was produced on the property, such as farm tours, which would not be subject to the five-acre requirement. She stated that it would pertain to events such as farm-to-table dinners or an agricultural festival that might bring in other producers or some other agriculture-related outside activities.

Ms. Ragsdale stated that the definitions were not changing and would come into play with decibel level limits for outdoor amplified music, and they were adding a curfew and additional regulation that stipulated hours in which music could be played. She said that the public has been supportive of adding the neighbor notification requirement, which staff had added to farm wineries, breweries, and distilleries to be included with this ordinance update. She noted that aligning the regulations with setbacks, staff wanted to provide consistency with regard to how they were administering setbacks; the current regulations have a building separation requirement, and staff wanted to clarify what it applied to with this update.

Ms. Ragsdale mentioned that they had talked at the previous work session about what the review criteria would be for the special exception, and there were some questions about that so staff added it to the draft ordinance to be consistent with Section 5.1.58, consistency with the Comp Plan, and any modification to the five-acre requirement not causing substantial detriment to abutting properties.

Ms. Firehock noted that some constituents had asked about a requirement for notification when an agricultural operation was going to have an event, and she asked if that was possible.

Ms. Ragsdale responded that those operations required to get a zoning clearance generated one notification that provided a general description of the anticipated activities and a point of contact for the farm so neighbors could find out about any upcoming events. She stated that it did not require notice for every single type of event, it just let neighbors know the general parameters and regulations – i.e., the types of events allowed and accompanying stipulations in the supplemental regulations so they were informed of the ordinance and what the farm might be planning.

Mr. Keller asked about the event eligibility and why some of the provisions were included for agricultural events, and it would be helpful for staff to clarify what they can put controls on and what they can't.

Mr. Herrick explained that there had been significant state legislation in the realm of farm wineries, breweries, and distilleries – and in addition, agricultural operations, which would also be considered “farms.” He said that staff’s overriding concern here was to be compliant with state law but also to the extent reasonably possible to make the regulations similar and consistent across all kinds of agricultural operations within those parameters.

Ms. Ragsdale pointed out that they could regulate the usual and customary activities like

events, and that was where they could add supplemental regulations intended to address those activities.

Mr. Keller said that given state legislation, the county could not preclude them from having those events.

Mr. Herrick confirmed that the county as limited in the amount of regulation it could impose on what was considered agricultural operations under state law.

Mr. Keller said that his sense was that a number of the letters were getting at that, and he wanted staff to explain those limitations.

Mr. Herrick noted that the county ordinance was subject to state law constraints, and many items some citizens may want the community to regulate were preempted under state law.

Mr. Keller opened the public hearing.

Ms. Nora Seilheimer addressed the Commission, stating that she is a resident of 1864 Farm Vista Road, Charlottesville. She stated that her family was very concerned about the rapid and negative impact that agritourism and large outdoor parties and weddings were having on the fabric of the rural community. She said that while agriculture was essential to preserving the rural heritage and open spaces, a lot of the activity they were noticing were not part of traditional agricultural operations and were taking advantage of current zoning laws to operate sophisticated commercial enterprises where the primary focus wasn't agriculture. She said she had chosen to raise her children in a rural setting because of the values that life instilled in future generations and their impact on the larger community.

Ms. Seilheimer acknowledged that many of the decisions were made at the state level, but localities had some abilities in this regard – and as the county moved forward in this discussion, she hoped everyone was considering the negative impacts, especially on the neighbors and communities – not just the business owners making money from the activities.

Mr. Travis Pietila of the Southern Environmental Law Center offered their support for a number of the changes being proposed, stating that many of the events held at agricultural operations were similar to those held at wineries, breweries, and distilleries – so it made sense to carry over the protections established for those uses such as setbacks and neighbor notification requirements. He said that the SELC also appreciated the introduction of a minimum acreage standard for eligibility to hold events, as it was a helpful staff towards better ensuring that agriculture remained the primary use of the parcels, as intended by the ordinance.

Mr. Tubbs stated that the PEC also supported adoption of the ZTA, which would give necessary protections to neighbors of properties that qualified under state law to hold events. He said that bona fide ag operations and their owners had property rights, but neighbors also had

rights. Mr. Tubbs commented that the provision was in the spirit of the state's 2014 legislation that reduced the ability for localities to regulate events. He said that residents who lived next to ag operations would argue that there was a substantial impact to the health, safety, or general welfare to events that generated noise, traffic, and other outcomes.

He said that the PEC had written to the Commission in December to point out that the county's zoning ordinance had other provisions that required neighbors to be notified if there was a zoning clearance – the category for up to 24 events – and the PEC was glad it was embodied in the request, as it allowed for more transparency and provided a necessary point of contact between neighbors and event operators. He said they also supported the curfew for outdoor amplified music and greater setbacks, and they were also glad that minimum acreage standards in this phase made progress towards better answering the question of whether a property qualified under the code as a bona fide agricultural operation.

Mr. Tubbs stated that the PEC felt that what was being recommended for the first phase was a reasonable first step in closing potential loopholes, but the real work would come with the second phase. He said they were glad the Board of Supervisors had directed this work, and he wanted to clarify the timeframe for phase two – which had changed from Amelia McCulley's email to the staff report – as people wanted to know when it would start. He stated that it was important that the regulations made it clear that events only occurred on properties where the primary use was agriculture, and it was important to do this in a way that kept local discretion intact so that Albemarle could decide for itself what happened in its rural areas.

He noted that in working catering events in Albemarle, he observed that most events were good stewards – due in part to the regulations that were in place – but he also worked in two sites that were not in compliance, and those establishments were no longer operating. He added that he did not feel those places had agriculture as the primary use, which must be the standard.

Ms. Monique Richard of Ballard's Mill Road in Free Union stated that she had received a newsletter indicating there were 300 wineries in Virginia – which was approaching the 430 Starbucks in the state, an indication that wineries were popping up everywhere. She expressed concern that there were people setting up wineries just so they could hold weddings, which impacted the entire neighborhood. She said that she had recently been to Madison, and a widow had sold off 250 of her 300 acres to a winery, and every weekend they had a wedding there – making it difficult for this woman to hay her fields because there was always an event on the property. Ms. Richard noted that this affected everyone in the future, as there were a lot of farmers who worked on weekends, and the wineries popping up were setting up conflict. She said that it was important to notify neighbors of events so that people could plan what they were doing on their farms that day.

There being no further public comment, Mr. Keller closed the public hearing.

Ms. Ragsdale said that regarding the phase two work, the staff report indicated that it was “to be determined.” She said that the work program went to the Board of Supervisors, and this item was in the plan for phase two so that staff would go back to the Board to discuss the public engagement piece and revisit it, as it was a substantial effort that would take more time. She noted that this was slated for a fall timeframe.

Mr. Dotson asked if this was addressing events at agricultural operations or addressing something called an “agricultural operation event.”

Ms. Ragsdale responded that there were several different terms in the ordinance: a specific term called an “agricultural operation event” that was defined, so the eligibility requirement would apply just to that – but the way the table was set up in the ordinance, there were certain supplemental regulations that applied to sale and agritourism-type activities. She said that this meant that the curfew, music, neighbor notification, etc. would require a clearance for activities, which would trigger the neighborhood notification, and the setbacks would apply to all types of structures and uses. She noted that the events did not include weddings but could be fundraisers, agricultural festivals, livestock shows, etc. that had outside things coming in to promote agriculture versus activities on the property itself that featured ag products.

Mr. Dotson asked if the language should be clarified so that it stated, “agricultural operation event.”

Ms. Ragsdale replied that it could have been clearer on the slide.

Mr. Dotson said this was really about farm tours, agricultural festivals, and similar events.

Ms. Ragsdale noted that a farm wanting to have weddings would have to go through the special use permit process for special events.

Ms. Firehock asked if it was possible for the farm to have a calendar where they posted events, as she was very sympathetic to the neighbors and scheduling their own activities – but she was also aware of the state’s legislative bounds.

Ms. Ragsdale explained that they were mirroring the language vetted during the more involved farm winery and brewery process, but the process was that it wasn’t just one-time notice but also required contact and communication with neighbors. She stated that the ordinance required that the notice identify the proposed type, size, and frequency of events – with limits in the table of regulations, such as 24 times per year and an inclusion of a contact person with the notice. She said that the county was proposing new or additional regulations that weren’t already in the ordinance for the phase one work.

Mr. Bivins commented that he was glad they were aligning farm operations with breweries, wineries, and distilleries – but the question was whether events were accessory activities to the

venue versus the primary use. He said that his concern was seeing an emerging venue that featured farm use but really was a “garter farm” that primarily featured weddings. He also asked for clarification of the timeframe for phase two.

Ms. McCulley explained that the report said “TBD” for phase two, but the work program did call for this schedule and the third quarter would be for a scoping to figure out how to go with this, along with a public engagement process. She stated that it was such an involved issue, it could take a year depending on the scope of it. She said they would know then, but it could potentially wrap up at the end of 2020 – sooner if it were a more limited scope – and they would want to be very clear about what they wanted to take on in phase two.

Mr. Keller said that some of the larger operations of this sort had big events such as apple or pumpkin-picking, but they also had smaller events such as music nights – and all of the events were available online for the individual operations. He asked if they could ask that anything be notified in advance in this way, such as a Facebook page.

Mr. Herrick responded that he was concerned about this in terms of state law, which stated that “no locality shall regulate the carrying out of any of the following activities at an agricultural operation unless there was a substantial impact on the health, safety, or general welfare of the public. He said that one of them was agritourism activities as defined elsewhere in the state code, but that definition was very broad – essentially any activity that’s held on a farm and is open to the public. He said that unless the county was able to show that there was a substantial impact on the health, safety, or general welfare of the public, they were limited in their ability to regulate it.

Mr. Herrick said that the secondary concern was enforceability, and he would be concerned about being the county’s code compliance officers to keep tabs on what notice had been sent out for what activities to what people – and this would be much more difficult to enforce from the zoning administrator’s perspective.

Mr. Keller commented that anyone trying to get from Route 20 to Route 795 on certain days would encounter issues, which compromised safety for residents in the event of emergencies. He stated that when constituents come to the Commission with their concerns, there is a duty to explain where the challenges lie.

Ms. Firehock asked if there was a fact sheet or something that covered the issues.

Ms. Ragsdale responded that there was a fact sheet available that reviewed the regulations, and staff tried to put fact sheets together for more complex regulations.

Ms. Firehock asked if it explained what the county’s purview was in terms of regulations, as she would like to have that so they were not always in the position of re-explaining it.

Mr. Herrick stated that the county's website "Albemarle County Agricultural Operations FAQs," a four-page summary in Q&A format. He said that regarding the question of what the county was enabled to do, it can only be done if the relation is made to having a substantial impact on health, safety, or general welfare of the public. He said that the next question is should they do something like that, which would be more the administrative issues – and those were best discussed under phase two and in the context of the balance between ag operations' permitted activities and constituent safety.

Ms. Firehock said that they did talk about that in a work session regarding zoning clearances and asked how they could measure a cumulative impact if several were having events at one time, as many rural areas had just one access point.

Mr. Herrick stated that in terms of phase one, they needed to make agricultural operations consistent with farm wineries, breweries, and distilleries – which require a one-time zoning clearance, as they were attempting to do here. He said that having event-by-event notification would be inconsistent with what was required for those operations.

Mr. Keller clarified with staff that they were seeking a recommendation for the Board of Supervisors on an updated ordinance.

Ms. Spain **moved** to recommend approval of ZTA 2019-02, Attachment Z, last revised, and dated April 9, 2019. Mr. Bivins **seconded** the motion, which passed by a vote of 7:0.