

COUNTY OF ALBEMARLE

STAFF REPORT

AGENDA TITLE: ZTA 2016-3 Farm Winery, Brewery and Distillery Events	AGENDA DATE: June 14, 2016
SUBJECT/PROPOSAL/REQUEST: Work Session on Farm Winery, Brewery and Distillery Events Zoning Text Amendment	ACTION: X INFORMATION:
STAFF CONTACT(S): Amanda Burbage, Amelia McCulley, Greg Kampthner, Francis McCall	CONSENT AGENDA: ACTION: INFORMATION:
	ATTACHMENTS: Yes

BACKGROUND:

Under State law, farm wineries, breweries, and distilleries (“FWBDs”) are allowed to hold activities and events to market and sell their products. These activities and events may range from inviting the public to participate in a harvest to holding weddings and wedding receptions. Under State zoning laws, the County’s authority to regulate activities and events at FWBDs requires that the County consider the “economic impact” of any regulation, the “agricultural nature” of the activities and events, and whether the activities and events are “usual and customary.” County regulation of usual and customary activities and events is permitted only if their impacts are substantial. A summary of how the County may regulate these events and activities under State law can be found in Attachment A.

Over the past three years, changes to the Virginia State Code have prompted the Board to amend the County’s regulation of activities and events at FWBDs, most recently amending the Zoning Ordinance on December 9, 2015 to add regulations for farm distilleries that parallel those for farm wineries and farm breweries. While the County’s regulations attempt to strike a balance between fostering the economic success of these agricultural enterprises and safeguarding the property rights of surrounding neighbors, a growing interest in holding events in the Rural Areas coupled with the lack of a minimum agricultural product requirement to obtain a State Alcoholic Beverage Control (“ABC”) license for FWBDs has raised concern about the potential for FWBDs to be established on sites with no connection to agriculture, contrary to the underlying purposes of the State’s zoning laws, the Rural Area chapter of the County’s Comprehensive Plan, and the express purpose of the Rural Areas zoning district.

On March 2, 2016, the Board adopted a Resolution of Intent directing staff to work on a zoning text amendment to strengthen the requisite relationship between activities and events at FWBDs and their agricultural nature and to further evaluate the potential impacts associated with these events (Attachment B). In April and May, the County hosted a series of four stakeholder roundtables with farm breweries, farm distilleries, farm wineries and cideries, and Rural Area neighbors to gather input related to issues associated with FWBD events. Notes and a summary of the issues identified during the roundtables can be found in Attachments C & D.

STRATEGIC PLAN:

Economic Prosperity: Foster an environment that stimulates diversified job creation, capital investments, and tax revenues that support community goals.

Rural Areas: Preserve the character of rural life with thriving farms and forests, traditional crossroad communities, and protected scenic areas, historic sites, and biodiversity.

DISCUSSION:

Taking into consideration feedback on three key issues discussed at the roundtable, staff has prepared recommendations (in italics) for discussion and direction from the Commission and Board to help guide staff in the development of a draft ordinance.

1. Establishing a Primary Agricultural Use for Event Eligibility

A central focus of the roundtable discussions was how to establish a primary on site agricultural use in order to determine eligibility for hosting activities and events. A number of approaches were discussed, including requiring some amount of minimum on site production, evaluating farm income relative to event income, or establishing an

alternative minimum standard that requires on-site agricultural production in addition to fermenting facilities and a tasting room with regular business hours.

Although easy to administer, a minimum on-site production requirement alone, whether acreage based or percentage based, is problematic as it may disadvantage smaller producers, start-ups, or farm breweries and farm distilleries that lack adequate area on a single parcel to produce a majority of their own agricultural product. A number of producers stated that they obtained product from multiple owned or leased properties in order to achieve the quantities needed for production and that this was especially critical when crops were compromised due to frost or pest damage. Some thought that the County should consider planted acreage instead of producing acreage since a typical vineyard or orchard may take 3-5 years before it bears any usable fruit.

An income based standard is challenging to administer since farm income varies from year to year and can include income from multiple properties. Some stakeholders pointed out that it is not unusual for event income to exceed farm income in the first few years, so capping event income based on farm income may inadvertently handicap legitimate producers who struggle to break even during their start-up years. Even if farm income was averaged over multiple years to account for annual fluctuations, industry stakeholders commented that many farms would be reluctant to share their income information.

An alternative minimum standard which considers agricultural production both on-site and on owned or leased properties in addition to facilities for on-site beverage production and sales is more easily administered and provides flexibility for farms operating on more than one property. Class A Virginia ABC farm winery licenses require that a farm winery have a producing orchard or vineyard and grow a minimum of 51% of their own fruit in addition to having facilities for fermenting and bottling. Limited brewery and limited distillery licenses lack an equivalent agricultural standard. Investment in facilities for fermenting show a financial commitment to the business above and beyond the expense of planting a field, vineyard, or orchard and obtaining an ABC license. The ability to hold regular tasting room hours is a metric of producing enough of one's own product to sell to the public on a regular basis.

Staff recommends that a minimum standard be applied in establishing a primary agricultural use in order to determine eligibility for hosting events at a farm winery, farm brewery or farm distillery:

1. 51% of own product used in beverage production (including owned or leased properties within the Commonwealth) with a minimum of 1 producing acre on-site (for use in beverage production)*; and
2. On-site facilities for fermenting; and
3. On-site facilities for tasting/ sales with regular hours

** Exemption from production standard may be granted:*

- a) In the event of large scale crop damage due to frost, pest damage, etc.
- b) For farm wineries & cideries only, during first 5 years of operation provided that a minimum of one acre of vineyard/ orchard has been planted on site

2. Mitigating Event Impacts

The most common concerns associated with activities and events identified at all of the roundtables included noise, traffic and roadway safety. While current regulations attempt to address these concerns with the requirement of a zoning clearance for outdoor amplified music and for activities generating more than 50 vehicle trips per day, there is still potential for events to impact neighbors, particularly when it comes to allowing an unlimited number of by right events of up to 200 attendees. Measures to address these concerns could include further restricting the use of outdoor amplified music, increasing setbacks for parking and outdoor activity areas, and capping the total number of by right events permitted per year. The County's regulation of events and activities at agricultural operations, a similar but distinct use in the zoning ordinance, provides for increased setbacks for parking, portable toilets and outdoor activity areas (75' / 125' from nearest residence) as well as capping the total number of events per year at 24, regardless of size, with ability to exceed that number by special use permit.

To address concerns about roadway safety, the County may choose to impose a minimum road standard to allow events at farm wineries, farm breweries, and farm distilleries. Staff has requested accident data from Police to evaluate whether the conditions of roadways serving these uses appear to be a safety factor.

The State Code requires a finding of substantial impact in order to regulate usual and customary activities of a farm winery, farm brewery or farm distillery. Provided that a finding of substantial impact can be made, staff recommends that the following changes be made to the regulation of events and activities at farm wineries, breweries and distilleries:

- *Outdoor amplified music by special use permit*
- *Increase setbacks for parking, portable toilets and outdoor activity areas (75' / 125' from nearest residence)*
- *Cap total number of events at 24/ year with ability to exceed by special use permit*
- *Apply a minimum road standard for event eligibility (i.e. paved surface, minimum width for two cars to pass)*

3. Grandfathering

At the roundtables, industry stakeholders repeatedly emphasized the importance of grandfathering existing establishments from any change in regulation of events and activities, consistent with the County's practice in prior zoning text amendments affecting these uses. While most of these establishments would be entitled to vested rights to continue their operations as they were prior to adoption of new regulations, grandfathering more explicitly entitles these establishments to the privileges associated with the County's current regulations. Grandfathering of a use remains with the property and not with a property owner or an ABC license holder.

Staff recommends grandfathering farm wineries, cideries, breweries & distilleries in existence prior to the adoption of the ordinance.

BUDGET IMPACT: Staff does not anticipate that the proposed ordinance amendment will result in the need for additional staff or funding.

RECOMMENDATION: Staff recommends that the Commission and Board provide feedback to staff to be used in the development of a draft ordinance and to schedule the draft ordinance for work session.

ATTACHMENTS:

- Attachment A: How Localities May Regulate Activities and Events at Farm Wineries, Breweries, and Distilleries
- Attachment B: Resolution of Intent
- Attachment C: Stakeholder Roundtable Notes
- Attachment D: Summary of Stakeholder Engagement Findings