

Background

The Code of Virginia requires localities to allow agritourism by-right and without limits provided it does not have a substantial impact:

§ 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](#);

The County has determined what level of activity results in a substantial impact and has amended the Zoning Ordinance so that it is consistent with the provisions of the Code of Virginia. Two zoning districts (RA, Rural Areas and MHD, Monticello Historic District) permit the following uses by-right:

- Farm winery uses, events, and activities authorized by section 5.1.25(a), (b), and (c)(2)
- Farm brewery uses, events, and activities authorized by section 5.1.57(a), (b), and (c)(2)
- Events and activities at agricultural operations authorized by section 5.1.58(d).
- Farm distillery uses, events, and activities authorized by section 5.1.59(a), (b), and (c)(2)

The Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA") is a federal law that impacts how localities may regulate religious land uses. One provision of RLUIPA states:

"No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with nonreligious assembly or institution."

The impact of this is that Albemarle County may regulate religious assembly and institutions only as much as the least regulated non-religious assembly or institutions.

Possible regulations

The Zoning Ordinance includes supplemental regulations for all the uses listed above. Staff has analyzed the regulations to determine the maximum regulations that may be applied to by-right religious assembly. Based on the analysis of the existing ordinance the County may regulate by-right religious assembly:

- Attendance limited to not more than 200 people
- Require 5 acres under the same ownership
- Establishing a parking setback of 125 feet from dwellings on abutting lots not under the same ownership
- Establishing a portable toilet setback of 75 feet from the property line
- Establishing a temporary structures and tents setback equal to the minimum yard requirements of the district and 35 feet from a public street
- Establishing a permanent structures setback equal to the minimum yard requirements of the district
- Require a zoning clearance if the lot is less than 21 acres. This Includes notice to abutting lots.
- Establish regulations for sound subject to 4.18.04

The County is not required to regulate religious assembly or institutions. The above list is only the maximum extent the County may regulate religious assembly or institutions.

Discussion

Staff has reviewed most of the special use permits that have been issued in the Rural Areas for religious assembly uses. Below is comment on each of the possible regulations based on how they have been historically addressed.

Attendance limited to not more than 200 people

Many of the approved special use permits were for assembly areas of less than 200. Some special use permits were for expansions to allow fellowship halls, classrooms, bathrooms, cemetery, picnic shelters, parking, storage, office and other types of structures or features that did not increase attendance. The County has also approved special use permits where attendance would exceed 200.

Require 5 acres under the same ownership

No clear pattern of acreage can be determined. Generally historic churches where expansions were proposed were on lots of 2 acres or less.

Establishing a parking setback of 125 feet from dwellings on abutting lots not under the same ownership

Parking has been approved in closer than 125 feet from dwellings on abutting lots not under the same ownership.

Establishing a portable toilet setback of 75 feet from the property line

Staff could find no discussion of portable toilets in previous special use permits.

Establishing a temporary structures and tents setback equal to the minimum yard requirements of the district and 35 feet from a public street

Staff could find no discussion of temporary structures and tents in previous special use permits.

Establishing a permanent structures setback equal to the minimum yard requirements of the district

All proposals met the setbacks for the district.

Require a zoning clearance if the lot is less than 21 acres. This Includes notice to abutting lots.

Special use permits required notice to abutting owners regardless of lot size.

Establish regulations for sound subject to 4.18.04

Staff could find no discussion of sound regulations in previous special use permits.

Recommendation

The Code of Virginia limits the County's authority to regulate agricultural operations and this in turn limits the ability to regulate religious assembly uses. After extensive public discussion the zoning ordinance has been amended to include provisions to address substantial impacts on the health, safety, or general welfare of the public generated by agricultural operations.

Staff requests that the Board of Supervisors, direct staff to prepare a zoning text amendment that will regulate religious assembly uses in the same manner as agricultural operations.

Staff further requests that the Board of Supervisors direct staff to prepare a zoning text amendment that will permit minor expansions to existing non-conforming religious assembly uses by-right. These expansions should be limited to picnic shelters, storage, and office space.