

An adjourned meeting of the Board of Supervisors of Albemarle County, Virginia, was held on January 18, 2017, at 4:00 p.m., Lane Auditorium, County Office Building, McIntire Road, Charlottesville, Virginia. The meeting was adjourned from January 17, 2017.

PRESENT: Mr. Norman G. Dill, Ms. Ann Mallek, Ms. Diantha H. McKeel, Ms. Liz A. Palmer, Mr. Rick Randolph, and Mr. Brad L. Sheffield.

ABSENT: None.

OFFICERS PRESENT: County Executive, Thomas C. Foley, County Attorney, Greg Kamptner, Clerk, Claudette Borgersen, and Senior Deputy Clerk, Travis O. Morris.

Agenda Item No. 1. The meeting was called to order at 4:00 p.m. by the Chair, Ms. McKeel.

Ms. McKeel announced that Mr. Sheffield would be arriving late to the meeting.

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Agenda Item No. 2. Joint Work Session with Planning Commission

Planning Commission Members Present: Mr. Bruce Dotson, Mr. Tim Keller, Ms. Jennie More, Mr. Mac Lafferty, Ms. Pam Riley and Ms. Daphne Spain.

Absent: Ms. Karen Firehock.

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At 4:00 p.m., Mr. Keller called the Planning Commission meeting to order.

Item No. 2a. Small Area Plan.

Mr. Andrew Gast-Bray, Director of Planning, addressed the Board and Commission. He introduced Mr. Vlad Gavrilovic and Mr. Mike Callahan of Renaissance Planning Group, who would be presenting.

Mr. Mike Callahan addressed the Board and Commission to present the outcomes of the first phase of the two-phased Places 29 small area planning project, stating that his team would address concepts, application of them, and challenges for the study area. He said they would share findings from the process, including key concepts that were garnered from the public and key stakeholders, as well as identifying what is needed for Phase Two. Mr. Callahan stated that when the Renaissance team was before them in September, they shared some of this information, but he would reiterate some details. He explained that the Route 29 small area study area goes from Branchlands Boulevard at Toys R Us, up to the river, to the west to capture all of Berkmar, and to the east to capture the higher density residential and commercially zoned land. Mr. Callahan noted that it did not include the vast majority of single-family dwellings in the area. He stated that the area is largely a strip-mall retail environment now, and the Places 29 contains an existing vision to transform it into something new.

Mr. Callahan stated that Renaissance would affirm the vision of transformation in the area, but also had to assess the study area, explore data, understand the market conditions, both current and potential for the future, and conduct a lot of outreach, which was a major component of the 10-month effort starting in May 2016. He noted that the outreach included several public meetings, several meetings with property owners and citizen advisory committees for the area, staff-level discussions, and engagement with the Board and Commission.

Mr. Callahan emphasized that the vision for the area is transformational, not a continuation of past trends, and the key concept for making this happen is a 15-minute walkable community, which would organize future development into "nodes," rather than spread thinly throughout the area. He added that one of the benefits of this form is allowing transit to serve successfully in the area, and through this effort they have identified three potential nodes, with help from the public and stakeholders in terms of clear direction on priorities and phasing intent for development. He stated that the second phase would need to address the design of the nodes and form of development, the transportation issue and strategy for developing that, and zoning and implementation strategies to achieve that vision. Mr. Callahan noted that the strategies would need to include a new form of development for the area.

Mr. Gavrilovic addressed the Board and Commission, stating that Renaissance is honored to have been selected as part of the statewide team assigned to this urban development area grant. Mr. Gavrilovic stated that one of the focuses of the project was to refine and clarify Albemarle's policy vision in Places 29 with concepts such as the 15-minute walkable community, which is evident in places like downtown Charlottesville and Arlington. He said this was the preferred form of development prior to the auto-centric era, but communities are returning to a more walkable environment. Mr. Gavrilovic stated that some of the characteristics are that you can walk five to seven minutes from center to edge, so it is a quarter to half-mile radius, with a mix of uses and destinations that provide a diversity of walkable options, and a grid of streets that support multiple modes of travel. He said this contributes to healthy, active transportation lifestyles, and there has been much research that supports the increase in property values from these walkable communities, and both millennial and baby boomer demographic groups have shown preference and need for this model as an alternative to suburban sprawl-type development.

Mr. Gavrilovic stated that the County established a policy framework that recognizes these nodes of mixed-use centers and nodes, and Places 29 calls for quarter to half-mile centers of activity, particularly in this area. He presented a few examples of where this is and is not happening, beginning with Rio/29 and drawing a five to seven minute walk from center to edge, which clearly is not a walkable area now. He noted that one of the study's focuses is making each of the four quadrants into walkable centers and whether there are safe ways to cross these major road facilities, but not looking at making Rio and 29 walkable main streets.

Mr. Gavrilovic stated that the same scale in downtown Charlottesville goes from the Omni Hotel to the Pavilion, with richness and diversity of destinations, economic activity, housing types, open spaces and parks in the area, with 200-250-foot blocks. He mentioned that Shirlington in Arlington County is hemmed in by 395, but within that quadrant has a very successful walkable center with entertainment, restaurants, shops, a walkable main street, apartments and condominiums, and a pedestrian walkway across 395. Mr. Gavrilovic noted that this development is generating two to three times the revenue of the mall, and has a shuttle bus that takes passengers to the Metro.

Mr. Callahan stated that there is a lot of support for this concept coming from many different places, including the existing policy in the County's comprehensive plan, which calls for directing growth into growth areas; the Places 29 Master Plan, which calls for compact development organized around centers, pedestrian orientation and mixed use connected by multi-modal transportation, and parks and open spaces. He said this is what Mr. Gavrilovic is describing. Mr. Callahan stated that many surveys have shown that both millennials and baby boomers have a strong preference for walkability, and in the recent statewide transportation plan, 75% of millennials said they would live in a place that does not require a car, and 77% of baby boomers said that transportation options influence where they chose to live and work. He said that there is a lot of fuel for transformation in the Albemarle area, with continued population growth and limited land for urban intensity development, as well as a softening local and national retail market.

Mr. Callahan presented a slide showing recent population trends, which indicate about 40,000 more people by 2035 that could go as infill in the City or into the County into greenfield sites, so the small area plan for 29 should make this an attractive area to absorb growth in the future. He stated that there has been some kind of threshold reached with retail, with online sales taking over and bricks and mortar shopping declining, including hundreds of big box store closures in 2017. Mr. Callahan said the concept for the small area plan has been bolstered by positive public feedback, especially for the kinds of principles called for in Places 29.

Mr. Callahan pointed out that there are several key caveats and concerns, which would have to be addressed in the small area plan, especially in the second phase. He stated that one of these items is transportation and traffic on 29 and the impact of higher density development; a second is the potential for a canyon effect along 29 and Rio, favoring the node-type development instead; a third is to minimize impact on existing neighborhoods, with height being a significant issue. Mr. Callahan reiterated that there is strong support for the concept of a 15-minute walkable community applied in the study area, and the key question is where the elements should be located.

Mr. Gavrilovic stated that in applying the concept as discussed, their team went through a process of distilling the information received from stakeholder input and the County's policy platform into seven core principles for the plan. He explained that they are: creating a place that is attractive as a destination to both people and employers; having more housing and employment in a mixture of uses, including vertical mixed use in the same building; establishing multi-modal travel choices, such as sidewalks, trails and friendly streets; offering open spaces, parks, plazas, civic areas and river access; balancing the need for concentrating development in the nodes while protecting surrounding neighborhoods; providing an intergenerational community with diverse age groups; and featuring this as the gateway to the development portion of Albemarle County, highlighting it from a design standpoint.

Mr. Gavrilovic said there are solid planning principles for this type of development, and one of the Urban Land Institute's "Reinventing the Suburban Strip" study findings was establishing pulses or nodes of development, which concentrates the available market within these areas, rather than spreading it out and applying the same standards to an entire corridor. He said that one of the big recommendations is to concentrate the development in the quarter to half-mile nodes and having a logical sequence of which nodes should go first. Mr. Gavrilovic stated that the team presented three alternatives to the public for placement of the nodes, and this is one of the big picture conclusions of the work, as they took the approach of establishing the big framework of land use and transportation first, with the next phase getting into the detailed design site by site.

Mr. Gavrilovic stated that the first alternative looked at the primary node at Rio and 29, one mile from edge to edge, consisting of an inner core with a strong mixed-use center with an office focus, surrounded by a mixed-use area with more of a residential focus, and a mixed-use node edge around it that considered employment flex uses, housing and neighborhoods, feathering the density away from the center to be more compatible with the surrounding neighborhood areas. He said a second node would look towards the river to take advantage of the strong hospitality market in the County and surrounding region, to establish more of a hotel/conference center focus to take advantage of a gateway site and protects the river, but also benefits from the views and natural setting of the area. Mr. Gavrilovic stated that a third node would focus on the Gander Drive location area, with a mixed use office center focus and residential around it. He noted that their planning excluded areas that are established residential neighborhoods and is only showing the vision on the existing commercial areas, which is somewhat of a "transformative vision" of the redevelopment of the area over time, probably decades.

Mr. Gavrilovic said the team looked at areas outside of the nodes and proposed mixed-use corridor retail with housing above and flex industrial employment to address high-tech uses that are between light industry and office uses, and developing new residential neighborhoods to be compatible with surrounding areas. He noted that secondary centers are possible in the area outside of the primary nodes, such as in the Berkmar area should it develop as more of a main street served by bus lines. Mr. Gavrilovic stated that this was the framework presented, and the comments from the public meeting led to a phased approach and potential policy platform, with the Rio/29 node having the strongest support, so it seems the best approach is to develop a more detailed plan that transforms those four quadrants into a future "downtown Albemarle." He said the second node at the river also had support, but it was more of a secondary approach that would be later in phasing and would be dependent on the primary mode at Rio and 29. Mr. Gavrilovic stated that the third node at Gander and 29 had mixed support and some concerns, so the next phase of work would help establish whether this was supportable, and it would only proceed if the other two nodes were moving forward.

Mr. Gavrilovic presented information on the two primary nodes, stating that there would be a fairly aggressive mix of uses, more on the office side of the center, and some fairly aggressive densities, with 60 units per acre housing and 1.4 FAR in the center, down to 20 units and 0.5 FAR toward the edge. He stated that both the node center and node edge need to have a complement of green spaces, pocket parks, trails, and a grid of connected streets with traditional blocks. Mr. Gavrilovic emphasized that the design of these areas would be critical, and multi-story centers at the crossroads of the nodes could be designed with streetscape amenities and modulated architecture to provide a very walkable streetscape even with higher densities. He mentioned the Marriott Hotel in downtown Charlottesville across from the Lewis and Clark statue, noting the street front façades at the sidewalk and the bulk of the building stepped back and are somewhat invisible from the sidewalk side. He said the mixed-use residential centers would have more of a traditional feel, with walk-up apartments and condominiums, with crosswalks and bike lanes to make the areas multi-modal.

Mr. Gavrilovic presented renderings of how the Places 29 area might develop over time, creating a framework for investment from the private sector in pedestrian scale, mixed-use, walkable developments. He presented examples of how this has been done in other areas, including Newport News, which has a downtown city center at Oyster Point, with walkable streets, mixed uses, and a lake; and Carlisle in Alexandria, which created a framework of urban walkable blocks in a single neighborhood with stepped-back density and modulated façades to minimize the canyon effect.

Mr. Callahan stated that one of the early things the team did as part of Phase One was a market assessment to explore if the vision was supportable by the marketing demand that recent trends and forecast growth would indicate, as well as what this area has captured in the past in terms of that growth. He pointed out that this is a transformational vision, not a continuation of past trends, and the team feels there is support for transformation, but it is fundamentally transformative. Mr. Callahan said this is a fast-growing regional market that is economically fairly strong, and the County has a policy to encourage development in these areas, which are two key aspects that support the type of transformation proposed. He noted that in this area, it would depend on redevelopment as there is not a lot of vacant greenfield land available, and this was ultimately more complicated.

Mr. Callahan presented a slide showing estimates of development demand in this area, and said this slide shows some of the assumptions, with a moderate capture of the demand in the market for broad categories of development: residential, office, hotel, and retail. He stated that some specific assumptions are that multi-family housing would be the most likely housing type, with vertical mixed-use development possible, and the regional forecast used shows about 2,800 units for the City and County combined over 20 years, and the 29 North corridor has been capturing about 20% of that demand. Mr. Callahan said that a moderate assumption would be 20-30%, with the County being more proactive to help nurture redevelopment in the area. He stated that they also used a 20-year forecast of about 5,800 office-using jobs, which would yield about 1.5 million square feet of office space. Mr. Callahan noted that there is not a lot of higher end office space in the area currently, nor is their space for high-tech industries. He mentioned that historically this area captures about 30% of office growth, and the team assumes a moderate capture rate with a slight increase. Mr. Callahan stated that it is very difficult to predict retail trends at this point, with occupancy rates increasing and rents decreasing, so that would likely not be a driver of change. He stated that the strong hotel market would continue to grow at the rate of the economy, with high occupancy and high rates, and this area would yield a capture rate of 20-30% and about 2,500 new hotel rooms over the next 20 years.

Mr. Callahan reported that in terms of development potential, the working estimate is 550-850 multi-family units, which is about two or three Stonefield Commons-type developments, with about .5 million square feet of office, upgrading or re-tenanting of retail, and 500-750 hotel rooms, either two or three Doubletree-type properties or four to six of the type typically seen in the corridor now. He noted that this amount of development is likely providing the change in the area to be transformational, and the team feels that national and state trends point in that direction. Mr. Callahan said the team feels that phasing would be important with marketing demand so that the nodes are not competing against each other, so the objective is to focus on Route 29 and Rio Road. He stated that there is not a lot of square footage in the area currently for high-tech industries, but there is an economic development strategic plan and potential in that sector, which can be further developed in phase two.

Mr. Gavrilovic stated that challenges and opportunities tend to switch roles when working with these types of developments, particularly in transportation, and increasing intensity of development will generate more trips in the area. He said that two cornerstones are enhanced transit and total capture,

and bus rapid transit system geared towards commuters through dedicated lanes and signal priority is one mechanism by which to address traffic; and getting enough housing and employment within the nodes could create a lot of internal trips and not create a load on the external networks. Mr. Gavrilovic added that walkability and urban design from a walkable standpoint supports both of those cornerstones in the future. He noted that Places 29 looked at bus rapid transit as a spine along 29, with one of the stops shown in the Woodbrook area, and one of the values of this planning process was refining those concepts, perhaps moving that stop to Rio and 29 and the potential for other stops added. Mr. Gavrilovic stated that successful transit-oriented development and design is a characteristic of a successful community, and better travel choices, livability, and property values for the areas are part of the inherent urban design that supports the transit.

Mr. Gavrilovic presented images of developments inside and outside the U.S. with both higher and lower densities, including Broad Street in Richmond, and pointed out a model in which a crosswalk was raised and the potential existed for light rail transit. He stated that walkability and safe crossing of Rio and 29 were key to this development, and Places 29 had a good idea for a crosswalk to Fashion Square, with potential to cross at grade there.

Mr. Callahan stated the challenge is that it is not easy to build the vision, and the opportunity lies in making it easier. He said he did not think the challenges were anything that could not be overcome, and many of the things listed were mentioned directly by people who own property in the area, such as height limits, and ensuring there is enough height to incentivize redevelopment and make it worthwhile. He stated that another issue is zoning, so future zoning would need to be aligned with the future vision to make it the by-right zoning and facilitate development. Mr. Callahan said there is currently not much flexibility in use and there is not perfect knowledge of what the future is going to be and what the uses are going to be, so providing flexibility is important, with more focus on the form of development with the standards in the future. He stated that transportation continues to be a challenge, and public transit is viewed, in the long run, as an opportunity, with the node concept providing an opportunity to make it work, and the transit helps the development concept work, so they depend on each other.

Mr. Callahan stated that incentives to take on the risk of redevelopment typically would address things like blight and other conditions that require effort in order to attract investment, but this is not necessarily a blighted corridor, with most of the property owners having land that is economically productive for them. He said that redevelopment in this case requires taking on some risk, and ways to alleviate or share that risk provide opportunity, such as tax incentives, TIF, to support infrastructure, higher density in the area, and form-based zoning, as well as supporting the transportation aspects, walkable internal streets, trails, and storm water management of the property.

Mr. Callahan stated that some big picture conclusions from the first phase are validation of the land use direction, a 15-minute walkable community and concentrating the development in nodes, including the location and phasing of them with a focus on Rio/29 in the beginning. He said there are a lot of issues left unaddressed, with this being the first phase and the second phase looking into transportation challenges and how to design a system that will make this development concept work. Mr. Callahan stated that there are some unanswered factors, such as how millennials and baby boomers will view this type of development in the future, the increasing income and purchasing power in the area, the economic development strategic plan and how that fits into the ultimate area plan. He noted that there are no data sets that perfectly match this study area, but there has been supportive public feedback in terms of crossing Route 29, building height, impacts on adjacent neighborhoods, and avoiding the canyon effect of buildings.

Mr. Gast-Bray stated that they found from Phase One that a lot of what they have learned has helped inform how Phase Two will go, and if they are going to achieve multi-story complex development, they will also need to look at a process by which to achieve that, because even if the County had the world's best form-based code today, it still would not fully achieve the objectives. He said that staff and the Renaissance design team would be coming back to the Board and Commission in mid-February to present some additional concepts needed in order to be comfortable with endorsing Phase One and moving onto Phase Two, which would be coming to the Board in March.

Ms. Mallek asked what "mid-rise" and "low-rise" buildings were. Mr. Callahan responded that Renaissance purposefully showed a range, but around node cores there would be four to eight stories, with two to four and two to six-story building heights toward the edges. He stated that those details would be contained in the design of the development, and the impacts were as much of a design question as a height issue.

Ms. Mallek stated that there was a significant amount of development approval from 2004 to 2008 and asked if they had taken into account the thousands of units that have been approved but have not been built yet. Mr. Callahan responded that a classic market study is done by looking at absorption rate and how much the market absorbs from time to time, and sometimes that can be constrained by approvals, but you can assume that is the logic of the market. He said they did not look at these as being the unbuilt approved ones, but the idea is that if the market is supporting it, they are going to get built and that is a sign that policies are not holding the market back.

Ms. Mallek stated that when too many are approved, none of them can actually finish, which is what is happening now, with three developments trying to finish but not having quite enough demand.

Ms. Palmer asked if there was value in making the nodes with different centers so they might be able to build out faster, since the center point is a major highway, which is a barrier. Mr. Callahan

responded that as they get into the urban design of this, each quadrant would have its own center, either a park or plaza, etc., and there are some technical issues in terms of where to place the bus rapid transit station. He stated that there is a grade-separated interchange there, so it may be able to be put on Rio, but depending on the engineering, they may put it north or south of it. He emphasized that they need to get the main composition put in first, prior to filling in the detail of the stations, streets, etc.

Mr. Sheffield stated that it would be hoped to have the node facing the corridors that are not the congested state highways, building instead on Berkmar and Hillsdale. He noted that Albemarle Square is probably the only quadrant that does not have a secondary road to assist it, and he would like to see the secondary corridor enhanced to take the brunt of the transportation impacts as well as the multi-modal walkability and transit aspects. He stated that he is concerned about seeing lines on the map for things that VDOT may not endorse, and he did not know at what point they needed to be sure these were things they would back up, such as the light at Greenbrier and Hillsdale, which VDOT mentioned at the last minute they would not support. Mr. Sheffield said he would prefer not to leave a legacy behind of roads that would never be created, adding that VDOT has mentioned the Carter Myers Road can no longer exist because of the separation of the grades at that point. He said that at Berkmar, there was enough space to build the extension, but it could have meant tearing down several homes otherwise.

Mr. Gast-Bray stated this is why it is important to be design specific in Phase Two, because with every piece of transportation investigation there are alternative analyses, but part of Phase Two has to be a concrete modeling of what it really will perform like, with assumptions of true modality and other elements. He said that while Route 29 is currently a barrier, it does not necessarily have to stay a barrier, and other places have done innovative things to get across that. Mr. Gast-Bray stated that they cannot answer that question at this point, but they need to think flexibly to come up with the best solution.

Mr. Gavrilovic stated that they have been very careful to put the nodes where there are signalized intersections or grade-separated interchanges, and it would be very difficult to get them in between that. Mr. Sheffield responded that he was just hoping not to have any surprises, even if he is just a resident at that point.

Mr. Randolph stated that he appreciates a higher level view, stating that there is a fourth node south of Rio and east of Route 29 that is also a concern, with fragile markets for stores like JC Penney and Sears. He said he hopes the mall area would be considered another node, which gets into how that would interact to the north roundabout. Mr. Randolph noted that he was struck by the lack of any discussion of cultural institutions playing a role in this corridor, and there is the potential to attract them through a partnership with the County. He said this could function as a public space during the week and/or a performance space, which would attract another level of people wanting to live in that community. Mr. Randolph said that regarding hotels, the planning group is proposing a transformational view, but is falling back into the old mode of putting hotels on 29, which is a distance from the attractions people come into the area for. He commented that if the vehicles are EV, there would not be a pollution problem, but if that is not the case then there will be carbon pollution generated as people drive their cars to sites like Monticello and surrounding vineyards. Mr. Randolph stated that there is a missed opportunity by not capturing the Rivanna River's economic development potential for restaurants and cafés, with an ambiance that would make it inviting for people to use, and just looking at it as a hotel corridor, they would lose some circulation effect from other economic engines.

Mr. Gavrilovic stated that he appreciates those thoughts, as they start to fill in some of the details that they did not have time to get into as they discussed the big picture nodal concept. He said that regarding Fashion Square, RPG did look at the mall redevelopment market and had just done a mall redevelopment project for the City of Norfolk, and the node edges probably need to be modified to deal with Albemarle Square and Fashion Square.

Mr. Sheffield suggested that they leave time to hear from staff on the small-scale neighborhood investment items, as the RFP is now out, and it would be good to have Commissioners weigh in since they all serve on CACs.

Mr. Lafferty commented that in looking at node one and Albemarle Square, it would be good to come up with a view of what it would look like to put buildings there instead of just the asphalt stadium that is there now. Mr. Gavrilovic responded that this is a primary opportunity, and Places 29 did some visualizations of Albemarle Square redevelopment, and the property manager, who was in the business stakeholders group, was very receptive to this concept and talked about some of the challenges in terms of managing risk. He stated that another issue discussed was how to take care of existing tenants without breaking their leases, if you want to redevelop, and RPG's Norfolk plan shows areas around the periphery where new development can be created in place of existing excess parking.

Ms. Spain asked if he saw a role for UVA in this type of development in terms of collaboration with transportation, such as another incubator system like their Center for Innovation, and whether these nodes would be in competition with the research park. Mr. Gavrilovic responded that there was a UVA Research Park representative on the business group, who said they were looking at the same market trends as a "rising tide to lift all boats." He stated that he did not think they would be in competition so much as in collaboration, providing they can partner with UVA and the City in terms of implementation of a regional approach for things like bus rapid transit. Mr. Gavrilovic said that if a market study was to be done, it would be good to have UVA and other major partners to share what they have had in their research and how it might contribute.

Ms. McKeel commented that the City may be very interested in partnering on this endeavor, as they were struggling to find land.

Mr. Callahan added that RPG's mission in the first phase was to identify the nodes, and their location and phasing, but in the market potential discussion they did not talk about the possibility of including the public sector for entities like UVA.

Ms. McKeel said it would be good to include them sooner rather than later.

Mr. Lafferty stated that in his experience with people looking for a place to put their business, UVA wants some affiliation with those locating in the research park, which is very expensive. He added that he thinks they should be included, just as good neighbors.

Mr. Dotson said that there has been a lot of emphasis on Route 29, but they could also benefit from more focus on Berkmar. He also asked if RPG could offer some thoughts on "soft implementation," or people-based elements in the final report, as he feels they need to be proactive and flexible, and would like to discuss how the County can act as facilitator and identify champions within the business community for the plan. Mr. Gavrilovic responded that RPG could certainly incorporate some of those in the final report, and hopefully create a better platform for Phase Two, including a branding for this area in the public consciousness.

Ms. More asked about the statistic given of 2,800 residential units over the next 20 years, and whether that was for the City and the County. She also asked if the statistic of 29 North area capturing 20% of predicted development was for just the small area plan area or 29 North in the larger sense. Mr. Callahan responded that it was for the entire 29 North area, and the residential units were both City and County. He also confirmed that existing developments, such as Springhill, were not factored into those totals.

Ms. Firehock stated that as she was standing at Stonefield earlier that day, it occurred to her that the "commons" were not particularly noticeable, and she echoed Mr. Randolph's comments about using the river and natural areas. She said that she had just located a tech-type company in the 29 North corridor and hired millennials to work there, and while they would like to take a walk and see some greenspace, those options are not currently available. Ms. Firehock stated that RPG's renderings show a flat area, but it really has more changes in elevation, so she would like to see more of a 3-D image. She said that tech companies want to provide greenspace for their employees, so the County is going to need to be creative and intentional in their design, going beyond just having a beautiful building.

Mr. Gavrilovic stated that if you want to go for a walk today on Route 29, you are restricted to the four feet of sidewalk, and agreed that Ms. Firehock's point was valid, but said the design plan would focus on the areas off of 29, because creating greenspace would require breaking up existing asphalt.

Ms. Firehock stated that there are a lot of stormwater management facilities along Route 29 that are not working properly, so in the redesign they could create some creative, beautiful space, such as playground space, that also functions in this capacity.

Mr. Keller complimented the Supervisors, staff, and consultants for being willing to provide an opportunity to think about a vision for this, adding that it has been frustrating for him as a Commissioner to not have this point sooner. He commented that he did not hear anything about bicycles and wonders if that needs to be part of their multi-modal discussion. Mr. Keller also said that they need to add information regarding challenges, because these "dream schemes" of low, mid, and high-range heights are somewhat unrealistic in this market, due to the lack of economic viability for the mid-range buildings.

Mr. Gavrilovic responded that there are limitations in terms of elevators and other costs, but Albemarle has more land area than the typical Charlottesville site, so there is more opportunity to create a stepping down of densities. He stated that the development community strongly encouraged risk mitigation through increasing the height limits and densities to make redevelopment worthwhile and competitive against greenfield development.

Mr. Keller stated that this challenge needs to be put forth, as the Supervisors need to understand there is an economic impact to that. He commented that Stonefield was caught in somewhat of an "economic press," but he also knows from the Urban Land Institute's discussions and forums on form-based code, there is tremendous difficulty in the banking community to accept vertical mixed use. Mr. Keller said this needs to be in the forefront as a challenge, because there may be ways for local government to mitigate it with offsetting certain requirements, but they have been in the mode of wanting money from developers to assist with infrastructure, but in this world order, it may actually be the opposite. Mr. Gavrilovic responded that it was key to find out where the market is and what can be done to support it, noting that the public sector put \$80 million into the Hampton Coliseum Mall redevelopment, and it did not go well because they day lighted it and focused on retail, when the market was for residential. He said that in contrast, in Belmar, Colorado, \$6 million was put in by the public sector, with the remainder from the private sector, and it was enormously successful. Mr. Gavrilovic emphasized that providing flexibility to see where the market is going would help ensure the success of these developments.

Mr. Dill commented that he would like to see the investment of County staff and consultants and the effect of putting more resources into this to accelerate the process, perhaps using a "celebrity architect" and publicizing that this is an area of focus. He stated that it needs to be determined whether

there would be an onsite building where people can come to have questions answered and other logistics, as all of that seems vague to him at this point. Mr. Gavrilovic responded that other localities have the economic development arms of the municipality take a strong role, aligning economic development vision and energies to attract industry with local policy. He said that in Norfolk, they have taken one of the anchor stores in the mall and turned it into a mortgage banking business that has brought several hundred jobs to a dying mall. He added that the locality knows exactly what is needed to make its vision a reality, and is looking to those developers or industries.

Mr. Dill commented that those resources exist in town and asked if they have the kind of dynamic real estate investors needed.

Mr. Gavrilovic stated that a lot of the complex redevelopment schemes have brought in developers from the outside, but property and business owners have said they are very interested in this if they can make the economics work and bring in partners from the outside, so some input from them in that regard may be very useful in the next phase.

Mr. Doug Walker addressed the Board, stating that the Board would receive two updates at their February 1 meeting related to the item Mr. Sheffield had mentioned, including a follow-up report to a conversation the Board had in December on a neighborhood improvement funding initiative. He stated that more information and a detailed process model, as well as a funding formula, would be presented to them to address funding distribution for neighborhood-level improvements, with direct involvement by the CACs, and that should inform the Board's direction in moving forward. Mr. Walker said there is also an RFP for a development advisor to work specifically with the County on a public/private partnership, and staff would update the Board in February on that effort as well.

**(Note:** The Planning Commission adjourned its meeting at 5:27 p.m.)

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Agenda Item No. 3. Closed Meeting.

At 5:28 p.m., Mr. Randolph **moved** that the Board go into a closed meeting pursuant to Section 2.2-3711(A) of the Code of Virginia under Subsection (1) to consider appointments to boards, committees and commissions in which there are pending vacancies or requests for reappointments. Mr. Sheffield **seconded** the motion. Roll was called and the motion passed by the following recorded vote:

AYES: Mr. Dill, Ms. Mallek, Ms. McKeel, Ms. Palmer, Mr. Randolph, and Mr. Sheffield.  
NAYS: None.

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Agenda Item No. 4. Certify Closed Meeting.

At 6:08 p.m., Mr. Randolph **moved** that the Board certify by a recorded vote that to the best of each Board member's knowledge, only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the closed meeting were heard, discussed, or considered in the closed meeting. Ms. Mallek **seconded** the motion. Roll was called and the motion passed by the following recorded vote:

AYES: Mr. Dill, Ms. Mallek, Ms. McKeel, Ms. Palmer, Mr. Randolph, and Mr. Sheffield.  
NAYS: None.

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Agenda Item No. 5. Call Back to Order. At 6:07 p.m., Ms. McKeel called the meeting back to order and introduced the presiding Security Officer, Officer Pete O'Malley, and County staff around the dais.

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Non-Agenda Item. Approval of Final Agenda.

Ms. Palmer **moved** to adopt the final agenda as presented. Ms. Mallek **seconded** the motion. Roll was called and the motion passed by the following recorded vote:

AYES: Mr. Dill, Ms. Mallek, Ms. McKeel, Ms. Palmer, Mr. Randolph, and Mr. Sheffield.  
NAYS: None.

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Agenda Item No. 6. Consent Agenda.

Ms. Palmer **moved** to approve the Consent Agenda as presented. Mr. Sheffield **seconded** the motion. Roll was called and the motion passed by the following recorded vote:

AYES: Mr. Dill, Ms. Mallek, Ms. McKeel, Ms. Palmer, Mr. Randolph, and Mr. Sheffield.  
NAYS: None.

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Item No. 6a. Residential Impact Work Group Revised Charter.

The Executive Summary forwarded to the Board states that at its October 5, 2016 meeting, the Board approved the charter for the Residential Development Impact Work Group, to understand recent State Code amendments regarding proffers and to develop and analyze alternative means for determining and addressing the fiscal impact of residential development allowed either by - right or subsequent to a rezoning. After receiving applications for Work Group members, the Board requested the adopted charter be revised to expand the group's membership to allow 2 members representing the environmental community.

Development Areas: Attract quality employment, commercial, and high density residential uses into development areas by providing services and infrastructure that encourage redevelopment and private investment while protecting the quality of neighborhoods.

Critical Infrastructure: Prioritize, plan and invest in critical infrastructure that responds to past and future changes and improves the capacity to serve community needs.

The revised charter attached reflects the Board's request to expand the Work Group's membership to include one additional member representing the environmental community, for a new total of two members.

There is no budget impact associated with the addition of another member.

Staff recommends that the Board approve the attached Charter (Charge, Membership and Organization) for the Residential Development Impact Work Group as presented.

**By the above recorded vote, the Board approved the Residential Impact Work Group Revised Charter as presented:**

**County Of Albemarle  
Residential Development Impact Work Group  
Charge Statement, Membership, and Organization**

**Background**

Effective July 1, 2016, proffer authority in the Code of Virginia was amended to change the way that the impacts associated with residential rezonings are evaluated and how proffers may be accepted. In order to be in compliance with State law, Albemarle County's Cash Proffer Policy was repealed on June 8, 2016. The amendment also invalidates the use of the Cost Revenue Impact Model (CRIM) to determine impacts of residential development. To explore how to best achieve Albemarle County's land use and growth management goals in this new regulatory environment, a work group representing a cross-section of stakeholders is recommended.

**Charge**

The Residential Development Impact Work Group is formed by the Albemarle County Board of Supervisors to understand recent State Code amendments regarding proffers and to develop and analyze alternative means for determining and addressing the fiscal impact of residential development allowed either by-right or subsequent to a rezoning. The Work Group will also provide a recommendation on how to proceed with addressing fiscal impacts of residential development.

**General Timeframe**

The Residential Development Impact Work Group will present to the Board of Supervisors within 4 to 6 months of appointment to share final recommendations, including next steps.

**Goals**

The goals of this Work Group are to:

1. Understand the recent change in State law regarding proffers and what is now allowable
2. Identify and evaluate alternatives for aligning land use and growth management goals by means of by-right and re-zoned residential development
3. Develop a recommendation for how to best achieve alignment of goals and implementation strategies as indicated in Goal #2 above
4. Develop a recommendation for how best to address fiscal impacts associated with all future residential development

**Membership**

The committee shall consist of approximately seven voting members appointed by the Board of Supervisors. Appointments will be based on Board and staff recommendations, nominations from community and business groups, and individual applications.

**Membership Selection Criteria**

The Work Group will be composed, at a minimum, of the following representatives:



- Chair of Fiscal Impact Advisory Committee
- One rezoning applicant representative (professional planner strongly preferred)
- One previous rezoning applicant involving residential development within last 3 years
- One representative of the development community
- Two representatives of Community Advisory Committees (residents)
- Two representatives of the environmental community

In addition, the Work Group will have liaisons from the Board of Supervisors, the Planning Commission, and County staff as outlined below.

- Two members of the Board of Supervisors
- Two members of the Planning Commission
- County Attorney
- Director of Planning and/or designee
- Director of Economic Development
- The Superintendent of Schools or designee

The Board of Supervisors will appoint members based on their qualifications and interest in serving on the Committee. An individual may be appointed to represent more than one of the above referenced groups. The Board will strive to appoint an overall membership that is diverse in age, abilities, experiences, professions, interests, etc.

**Member qualifications include:**

- Experience working within a consensus-driven decision-making process, and a commitment to such a process in fulfilling the Committee's responsibilities as outlined in the charge statement;
- Willingness to work within established County procedures and processes;
- Ability to be open-minded; to listen and be respectful of the values, views and opinions of other representatives;
- Ability to share information with, and receive information from the community at large;
- Ability to meet not less than monthly over the next 4 to 6 months; and
- Status as a resident of Albemarle County; preferred but not required

**Work Group Organization**

The Work Group shall elect a Chair and Vice-Chair, County staff shall serve as technical representatives and will support the group by assembling and compiling all information and reports necessary for the Work Group's work to progress, including meeting notes.

Meetings will be held approximately once a month or more often as agreed to by the Committee. The date and time of Work Group meetings shall be established at the first meeting; additional meetings may be called by the Chair. All meetings will be open work sessions, where the general public is invited to attend, listen, and observe, unless public participation is deemed appropriate by the Chair.

No quorum shall be necessary to conduct business, but no vote will be taken unless a quorum is present. A majority of the voting members of the Committee shall constitute a quorum. Decisions shall be made, if possible, by an indication of general consensus among the Committee members present. Staff (other than appointed members) will not participate as decision makers. When this method does not serve to establish a clear direction, the Chair shall call for a roll-call vote. When an agreement cannot be achieved on an issue, business shall proceed and minority positions will be noted and presented for future Board of Supervisors' consideration.

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Agenda Item No. 7. **PUBLIC HEARING:** ZTA-2016-00003. Farm Winery, Brewery & Distillery Events.

To receive comments on its intent to recommend adoption of an ordinance amending Secs. 18-3.1, Definitions, 18-5.1.25, Farm wineries, 18-5.1.57, Farm breweries, 18-5.1.59, Farm distilleries, 18-10.2.1, By right (Rural Areas district (RA)), 18-10.2.2, By special use permit (RA), 18-11.3.1, By right uses (Monticello Historic district (MHD)), 18-11.3.2, By special use permit (MHD), of Chapter 18, Zoning, of the Albemarle County Code. This ordinance would amend Sec. 18-3.1 by amending cross-references in the definitions of farm winery event, farm brewery event, and farm distillery event, and in the use classifications in Secs. 18-10.2.1, 18-10.2.2, 18-11.3.1, and 18-11.3.2; amend Secs. 18-5.1.25, 18-5.1.57, and 18-5.1.59 as follows in each respective section: (1) amend sub. (b) by moving farm winery, farm brewery, and farm distillery ("FWBD") events, weddings, wedding receptions, and "other uses" to sub. (c); (2) amend sub. (c) to require that FWBD uses established on and after the effective date of the ordinance have at least the minimum agriculture production and use, along with beverage-related uses on-site in order to hold FWBD events, weddings, wedding receptions, and "other uses" on-site; allow by right FWBD events, weddings, wedding receptions, "other uses," and up to 4 education events related to agriculture or beverage making, if attendance at one time is 200 persons or less, and by special use permit if attendance at one time is more than 200 persons; establish method for calculating attendance; define "other uses"; and require notification to abutting owners and an on-site point of contact if a zoning clearance is required; (3) amend sub. (d) to require a traffic management plan to be submitted with an application for a special use permit; (4) amend sub. (e) to prohibit outdoor

amplified music between 10 p.m. Sunday thru Thursday nights and 7 a.m. the following mornings, and between 11 p.m. on Friday and Saturday nights thru 7 a.m. the following mornings; (5) amend sub. (f) to establish 125 foot setbacks for tents, off-street parking areas, and toilets, with a grandfathering provision and provision for special exceptions; and (6) delete sub. (h), which is addressed in amended sub. (c).  
(Advertised in the Daily Progress on January 2 and January 9, 2017)

The Executive Summary as presented by staff states that 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 farm wineries, breweries, and distilleries (FWBDs) and their agricultural nature. The Resolution of Intent also directed staff to further evaluate impacts associated with these events (Attachment B). In April and May, the County hosted four stakeholder roundtables to gather input regarding issues associated with FWBD events.

On June 14, the Planning Commission and the Board of Supervisors held a joint work session to provide direction to staff on issues identified at the stakeholder roundtables (Attachment C). On September 13, the Commission held a second work session to discuss a draft ordinance (Attachment D). On December 6, the Commission held a public hearing on the draft ordinance (Attachment E) and recommended approval with two revisions noted in the action memo (Attachment F): to allow the tasting room with regular hours requirement to be modified by a special exception and to clarify that the 200 person threshold does not include FWBD employees or event staff or other individuals participating in other by-right activities.

Attachment A is the proposed draft ordinance that includes the changes requested by the Planning Commission. The changes are summarized in the following table:

	CURRENT	PROPOSED			
	FWBDs	Farm Wineries	Farm Breweries	Farm Distilleries	Grandfather Existing
To Establish Events* Eligibility:					
Minimum On-site Planted Acreage**	None	5 acres	5 acres	5 acres	Yes
On-site Fermenting & Bottling	None	Yes	Fermenting only	Yes	Yes
Tasting Room with Regular Hours	None	Yes***	Yes***	Yes***	Yes
Setbacks for Parking, Tents & Portable Toilets	75' front/ 25' side/ 35' rear***	125' from property line***	125' from property line***	125' from property line***	Existing parking areas exempt from increased setback
Traffic Management Plan for Events over 200	None	Yes	Yes	Yes	No
Curfew for Outdoor Amplified Music	None	10 pm - 7 am Sun - Thu 11 pm - 7 am Fri & Sat****	10 pm - 7 am Sun - Thu 11 pm - 7 am Fri & Sat****	10 pm - 7 am Sun - Thu 11 pm - 7 am Fri & Sat****	No
Neighbor Notification with Zoning Clearance	None	Yes	Yes	Yes	Existing FWBDs exempt

\* For the purpose of the proposed regulations, tastings and other by right activities are not considered "events."  
\*\* Planted acreage must be crops used in beverage production and may include adjoining parcels under same ownership  
\*\*\* Can be modified by special exception  
\*\*\*\* The periods when outdoor amplified music is prohibited for one or more days can be modified by special exception

Staff does not anticipate this ordinance will result in the need for additional staff or funding.

Staff recommends that the Board adopt the proposed ordinance (Attachment A).

Ms. Mandy Burbage, Senior Planner, addressed the Board and stated that she would begin by reiterating the policy foundations of the ordinance before them. She stated that the Comprehensive Plan includes goals of supporting agricultural uses in the rural area, which includes farm wineries, breweries and distilleries, and allows special events to occur as a means to support those uses, providing those events are subordinate to a primary onsite agricultural use. She stated that the current zoning ordinance allows by-right events associated with wineries, breweries and distilleries to occur, and ties those privileges with holding an ABC license, but because there is no minimum amount of onsite agriculture required for acquiring an ABC license, or under the current zoning ordinance, the potential exists for abuse of the license to hold by-right events in the rural area. Ms. Burbage said it is evident that there is a clear demand for rural area event space, and it is the County's intent to address this gap in the ordinance to ensure that the events that do occur are supporting a true agricultural use.

Ms. Burbage stated that at the outset of the process, they established five goals in the zoning ordinance amendment process, as reflected in the resolution of intent adopted by the Planning Commission. She said they boiled down to strengthening the tie between events at wineries, breweries and distilleries and onsite agriculture, and also addressing impacts associated with events on neighboring properties and the rural area at large. Ms. Burbage said that stakeholder engagement has been a key element of this ZTA process, and over the course of the 10 months has involved four roundtable discussions with over 65 attendees, a resident survey receiving over 280 responses, and regular communication with a list of more than 150 stakeholders. She stated that the ordinance before them tonight is the product of input received over the course of that 10-month process.

Ms. Burbage reported that they began the process in March of 2016, when the Commission adopted a resolution of intent; staff held the four roundtables in April and May to better understand issues associated with events, with attendees representing wineries, cideries, breweries and distilleries in Albemarle, as well as rural area residents. She stated that input from roundtables was shared at a joint

work session with the Commission and Board in June, to inform the development of provisions for establishing a primary agriculture use for events, and also for addressing event impacts. Ms. Burbage noted that the Commission requested further input from rural area residents, so staff circulated a survey over the summer, and based on feedback from the roundtables and the survey, staff drafted an ordinance and brought it to the Commission in September for discussion. She said that based on feedback at the work session, staff revised the ordinance again and held a public hearing with the Planning Commission on December 6.

Ms. Burbage stated that at the public hearing, there was extensive discussion of the Sunday curfew and whether or not it should be 11 p.m. or 10 p.m., and there was interest on behalf of residents in keeping it at 10 p.m., and interest on the part of wineries in moving it to 11 p.m. because Sundays are days on which wineries have events. She said the Commission ultimately decided to keep it at 10 p.m. with the ability to modify the hours by special exception. Ms. Burbage said the Commission also requested at their meeting that tasting room hours, by appointment only, be allowed to satisfy the event eligibility requirement with a special exception, as the proposed provision had originally stated that it be regular business hours open to the public. She said the Commission also asked that the County clarify the 200-person threshold that triggers the need for a special use permit does not include winery, brewery, or distillery, or event staff, or visitors engaged in by-right activities; it is solely event attendees that count toward the 200. Ms. Burbage stated that with these changes, the Commission unanimously recommended approval of the draft ordinance.

Ms. Burbage stated that she would discuss the provisions of the proposed ordinance, and mentioned that when existing wineries, breweries, or distilleries are proposed to be grandfathered, she would point that out. She said that in the absence of a grandfathering provision, some may be eligible to establish nonconforming status, based on their particular situation, which may be more limited than grandfathering, but does establish some protective rights on the property, and this would have to be evaluated on a case-by-case basis.

Ms. Burbage said that she would discuss the provisions for establishing a primary onsite agricultural use as a prerequisite for event eligibility, and pointed out that these eligibility requirements only apply to events and do not apply to by-right activities, such as production, harvesting, and tasting. Ms. Burbage reported that the first eligibility requirement would be a minimum of five planted acres onsite to be used in beverage production, which may include production on adjoining properties that are under same ownership that are part of the farm. She noted that while it is acknowledged that many, if not most, wineries, breweries, and distilleries rely to some extent on outside product, this requirement ensures that there is some minimum amount of onsite agricultural activity that provides an agricultural basis for events that are occurring on the property. Ms. Burbage reported that onsite fermenting and bottling is an eligibility requirement that is consistent with ABC license requirements for wineries, and reflects a significant investment in establishing the use beyond planted acreage. She said that while it is already an ABC requirement for wineries, including it in the ordinance gives the County greater ability to enforce the regulation as a basis for allowing events.

Ms. Burbage stated that the tasting room with regular hours can have flexible hours, but they must be open to the public on a regular basis, and the rationale for this is that it is an indicator that they have enough product available to sell and market through events, which is the purpose for allowing events to occur. She noted that this provision may be modified by special exception to allow for hours by appointment only, which is the change she mentioned that the Commission requested. Ms. Burbage stated that there is an allowance for up to four educational events per year without meeting the eligibility requirement, and this mirrors the County's provisions for agricultural operations. She said they want to provide some level of activity that was not generating significant impact on neighbors, to accommodate those who could not meet the eligibility criteria. Ms. Burbage stated that existing wineries, breweries and distilleries would be grandfathered from the eligibility requirements.

Ms. Burbage reported that regarding provisions that address event impacts, the first is increasing setbacks for parking areas, tents, and portable toilets to 125 feet from the property line, and current standards stipulate that they can be as close as 25 feet to the property line, the same as the County's primary structure setbacks. She stated that this is intended to address traffic and noise impacts on adjoining properties, as top concerns of residents were traffic and noise, and staff felt that moving these activities that tend to generate noise, dust and light pollution away from the property lines would help to mitigate those impacts. Ms. Burbage noted that there is no grandfathering provision for this increased setback, but existing parking areas would be exempt. There is the ability to modify the setback with a special exception and the consent of the abutting property owner. She stated that this would not need to go to the Commission if it is supported by staff, it would just come to the Board and could be placed on the consent agenda.

Mr. Kamptner pointed out that the written consent is not a prerequisite, it is just a factor for the Board to consider when they are looking at the special exception. He explained that it is an element to be considered but is not a prerequisite in order for the applicant, the farm winery, brewery, or distillery, to be eligible to obtain the special exception; that must come from the Board. Mr. Kamptner added that a neighbor cannot prevent the Board from considering a special exception by withholding consent, it is merely a factor to consider.

Ms. Mallek commented that if the neighbor agrees, it is very much a supporting factor.

Ms. Burbage reported that to address traffic safety concerns associated with larger events with over 200 attendees, staff is recommending that a traffic management plan be submitted in conjunction

with the special use permit application, which is already required for events over 200. She said the plan would outline how traffic would access the site, whether or not traffic control personnel or transportation vendors would be used to manage traffic impacts. She noted that this is a condition that is often applied to other special use permits at wineries, and would simply codify the requirement and give applicants advanced notice of what is expected of them. Ms. Burbage stated that staff used this provision as a means of addressing traffic safety associated with larger events, in the absence of the County's ability to impose a minimum road standard. She said there would be no grandfathering provision for this requirement, and it would only apply to those seeking a new special use permit for events over 200.

Ms. Burbage stated that noise from outdoor amplified music has been and continues to be a concern associated with events at wineries, breweries and distilleries, and zoning, as well as police, receive complaints, which places additional burden on their already limited weekend staffing. She said that currently, they have to comply with noise limits of 55 dB during daytime hours and 60 dB at night, but the noise can go all night long. Ms. Burbage said that a curfew for outdoor amplified music, which was suggested by a number of survey respondents, would create quiet hours during which music would either have to cease, go indoors, or become acoustic. She stated that staff has proposed an 11 p.m. curfew on Friday and Saturday nights when the majority of events occur, and 10 p.m. on Sunday through Thursday nights, to respect residents' desire for quiet during nighttime hours. Ms. Burbage said there is no grandfathering provision, but the hours could be modified by special exception.

Mr. Sheffield asked if she knew how many of those complaints have been filed for violating the 55-60 dB limits. Ms. Burbage responded that she did not know that. She said that when staff has gone out to take meter readings, often when a neighbor thinks there has been a violation, the noise can be found to be in compliance and still be very audible from the property line.

Ms. Burbage reported that the final provision, neighbor notification, also came up a number of times in the survey as a solution to the problem of neighbors not being able to reach someone when there is an issue during an event, instead, having to wait until Monday morning to file a complaint with the County. She stated that this is something the County currently requires for major home occupations and family day homes, but it is not a current requirement of the zoning clearance application for farm winery, brewery, or distillery events. She said that as proposed, they would be required to notify their neighbors in advance of beginning to hold events, and would be required to provide an onsite point of contact who can be reached during an event; this would be a one-time process, not prior to each event. Ms. Burbage mentioned that this creates a direct line of communication between the establishment and their neighbors, taking the County out of the process. She noted that wineries, breweries, and distilleries existing prior to November 2014 are grandfathered from the zoning clearance requirement, so notification for them would be voluntary, but for new establishments, this would be required.

Ms. Burbage said she has summarized everything in a table for reference, and staff's recommendation is to adopt the proposed ordinance found in Attachment A, following the public hearing. She offered to answer questions.

Mr. Sheffield asked if staff has determined how much additional work adoption of this ordinance would generate for the zoning office, based on the complaints and information they have on hand. Ms. Burbage responded that they do not necessarily feel it will generate additional burden beyond the level they already deal with, because there is not a significant number of these, although a number of these coming forward at once could potentially increase staff workload. She said there are currently 39 such establishments in the County, and in the past year they have added three or four, and having the regulations up front would likely increase the number of complaints because they are intended to address the things for which the County is getting complaints.

Ms. Palmer said the difference between special use permits and special exceptions can be confusing, and asked staff to clarify what the processes entail. Ms. Burbage explained that the only special use permit is for the events over 200, and that process is a longer, six-month process with an application fee of more than \$2,000. She stated that it is a legislative decision, so it first goes to the Planning Commission for recommendation, then to the Board of Supervisors, with the Board acting on it. Ms. Burbage explained that a special exception supported by staff is much less expensive and can go straight to the Board, so as soon as the request is made, if staff supports it, it goes on a consent agenda. She said the process would entail only the amount of time it takes to get on a Board agenda, which is one to three months.

Ms. McKeel expressed surprise that it was still one to three months. Ms. Amelia McCulley, Zoning Administrator, stated that they try to get them on the agendas as quickly as possible.

Ms. Burbage said that with the Granicus process, there are some weeks of getting the staff report together.

Ms. Palmer asked about the cost of the special exception, for the 11 p.m. curfew, for example. Mr. Kamptner responded that the fee is \$457.00.

Ms. Palmer asked if a winery, brewery, or distillery wanted to have amplified music at 11 p.m. on a Sunday, what criteria staff would use to evaluate that. Ms. Burbage responded that the location of the events and any kind of sound attenuation measures would be primary factors, in terms of efforts to buffer the sound going outside of the tent. She stated that the County has sound equipment that staff can use to do a test to see if the establishment can comply with the ordinance at the property line. Ms. McCulley stated that sometimes there is at least one, and probably more, wineries that have established an entire

system to restrict the sound level, and they know that live bands will be louder than DJs, so it really matters what they have figured out and how to mitigate impacts on neighbors, and staff would consider all of that.

Ms. Dill asked how long the permit is valid for, and whether it needs to be reapplied for. Ms. McCulley and Mr. Kamptner responded that it runs with the land.

Ms. Burbage noted that it would not be per event, it would be across the board.

Mr. Dill asked what the process would be for taking it away. Mr. Kamptner responded that it would be repeated violations that go unresolved, and it would be a zoning violation of any conditions or of the noise standards, and there would be civil penalties as the remedy, and ultimately revocation of the special exception.

Ms. McCulley noted that special exceptions can be conditioned, so if the approval is based on an understanding of certain operational aspects, that can be part of the conditions of that approval.

Ms. Palmer stated that when she first read what staff suggested, it was a 10 p.m. curfew for all those nights with this special exception to go to 11 p.m. on Friday or Saturday, and asked why staff did that instead of just keeping it at 10 p.m.

Ms. Burbage explained that the original recommendation by staff was 10 p.m. to 7 a.m. all days of the week, which came from the ordinance definition of "nighttime hours" and when the decibel level has to drop. She stated that when staff brought it to the Commission, there was significant opposition from the winery constituency because events typically run until 11 p.m., and they felt like having an absolute cutoff would be detrimental to their business. Ms. Burbage said that the compromise solution was to allow for it on the nights that are typically event-generating nights, and Sunday got the most debate because there are Sunday events, but that is also a work night for many people.

Ms. Palmer asked if the establishments objected to going through the special exception process. Ms. Burbage responded that it was seen as more burdensome than just being able to do it, as is the case on Fridays and Saturdays.

Ms. McCulley added that it is also viewed as being somewhat unpredictable, because applicants do not necessarily know that it will be approved. She pointed out that the 11 p.m. on Friday and Saturday does not require a special exception, that would only be for additional nights going to 11 p.m.

Ms. McKeel asked for clarification that an establishment applies just once and is done if they get permission, as long as they do not violate the conditions, so it is not a per-event permit. Ms. McCulley confirmed that this was correct.

Mr. Sheffield asked how this compared to the current noise ordinance in the rural area. Ms. Burbage explained that right now, it is a decibel limit that drops at 10 p.m. from 60 dB to 55 dB, but you could be at 55 dB all night, although it is doubtful they would be playing it all night.

Ms. McKeel said the setbacks are only for parking, tents and portable toilets, not buildings, and an establishment would apply if they recognized there might be an issue. She added that the approval would follow the property, unless there were violations.

Mr. Sheffield stated that his wife used to help organize the pink ribbon polo at King Family Vineyard, and one year had to get a special use permit for traffic because it was over 200 attendees. Ms. Burbage responded that King Family Vineyard now has a special use permit for their Sunday polo event, and there is a condition that deals with traffic management.

Ms. Sheffield said that he thought they had been doing polo much longer than the timeframe during which his wife went through that process.

Ms. Mallek stated that it was 10 years from when Christie King first did that and last year when they came in for a new permit to establish it.

Mr. Sheffield said that he thought there was still a requirement for traffic mitigation if there were more than 200 people.

Ms. McCulley clarified that a special use permit is required for events that go over 200 attendees at one time, and King Polo did get a special use permit for that event, but was already doing traffic management. She stated that there was also a special use permit for over 200 attendees at Castle Hill Cidery, and the traffic management plan was part of that approval. Ms. McCulley pointed out that the special use permit and special exception are both one-time, run-with-the-land approvals for multiple events, and the applicant just complies with the conditions.

Ms. Palmer stated that amplified music has to go down to 55 dB and can be played all night, or if it has to stop at 10 or 11 p.m. Ms. Burbage responded that the current ordinance is just a change in decibel level and the curfew is imposing a cutoff time, saying that after a certain time the music has to go off, become acoustic, or be moved inside.

Mr. Randolph said that he had expressed concern in June because “one size really does not fit all,” and he wants to reiterate his concern, as they are attempting to impose really thick standards, where topographically there are huge variations. He said that he hopes when they come back, they can talk about facilitating a way in which wineries can get a special exception in dealing with setbacks and potentially with noise. Mr. Randolph stated that he wants to focus on the summary of the rural area stakeholder findings, as there was one crucial dimension when he went through the comments and patterns that emerged, but what is missing is for the people who had concerns about noise, traffic, and light is their proximity to the vineyard. He said that if you move away from the vineyard, an intervening elevation blocked noise and traffic may reduce the impact of some of those factors, but if you are in an echo chamber below, they become major factors. Mr. Randolph pointed out that the stakeholder survey results show that there is clearly a defined group of people experiencing a disproportionate amount of effect as a result of the vineyards proximity to them, or the topographical effect of where the vineyard is located and where the neighbor is located. He said it is not surprising that the letters were primarily from Crozet and centered on a couple of vineyards there where noise can travel. Mr. Randolph said that perhaps they need to look at something that factors in proximity, and he feels the Board has an obligation to be responsive to the interests of the affected minority.

Ms. Mallek asked if staff is able to use the record of previous operations, such as the cases where an establishment has had a constant stream of complaints for years. She stated that she would personally be much more interested in giving flexibility to someone who has good management and good relationships with neighbors, as the vast majority of wineries and breweries do. Ms. Mallek said that to not be able to do anything because of the “bad actors” out there and not be able to hold them accountable for their history really removes the ability to hold anyone accountable, which in her mind is just a race to the bottom.

Mr. Kamptner responded that one of the factors the Board considers with the special exception is substantial detriment to adjacent properties, so if the special exception is related to extending the hours of outdoor amplified music, and there is a history of neighbor complaints when music is being played between 10 and 11 p.m. on a particular night, that is evidence that the noise may be causing a detriment on adjoining properties.

Ms. Mallek commented that the reverse of that is to be able to have support for the people who are doing a great job and are helping the community. She said the onsite point of contact is a positive measure, but they need to have an expectation that as personnel changes, the new number is forthcoming, because there is nothing more infuriating when problems happen than having no one answer the phone where the event is taking place. Ms. Mallek stated that part of the problem they have been talking about for years is the County’s inability to respond when there are problems, because police are responding to higher priority calls. She said she would also like to hear from Mr. Kamptner about Bryan Slaughter’s email regarding road conditions. Ms. Mallek said she is also looking for any kind of criteria that could improve the ability of an administrative special exception, within those parameters.

Mr. Kamptner stated that the County can develop performance standards, so the approval applies generally, and anyone who satisfies the performance standards gets whatever the ordinance allows. He said they do not have the case-by-case review that is done with the special exception, but it gives the industry certainty going forward.

Ms. Mallek said it also conveys responsibility that it is up to the establishment owner to live up to the performance bar, and then the certainty comes. She said the alternative is when there is an extended civil process, the County struggles to bring closure to anything.

Mr. Foley stated that the length of time they reacted to earlier has to do with the legislative approval rather than legislatively establishing performance standards and then expecting staff to carry it out. He said that over the years, the County has tended to have everything come back to the Board for legislative approval, when a lot of times it could have been ministerial and done by staff.

Ms. Mallek said it depends on how detailed they can make the list, so that staff has all the information they need to make a bona fide, predictable, consistent decision for whoever comes in the door.

Mr. Foley stated that this would be the Board’s decision legislatively but turns it over to be administered, and that is the thing that saves all the time when someone comes in with a different standard than what is in the ordinance.

Ms. Mallek stated that one other question that probably would not be addressed today is for the five acres of fruit planted, which is a great idea, and the production that comes from grape vines over five acres is whether it is different for apples being made into cider, which she understood from several different cideries that the planting grid is much closer, with very high production for those acres. She asked if there might be a better way to do that for the cideries or the different fruit that is more appropriate to the individual product they are growing.

Mr. Randolph noted that they had received several emails from people asking who they should call and why there is not a piece of equipment available to measure noise, and they contemplated this on the Planning Commission several years ago. He urged constituents to call their Supervisors with a recording of the offending sound in the background, as he feels there is a “pretty high likelihood” that there would be some investigation on Monday morning. Mr. Randolph said that in a sense, they have

been putting the responsibility on the wrong party, and if neighbors feel the noise is excessive, they should record it and send it to Supervisors, rather than having zoning be the bad guys.

Ms. Mallek said that would work as long as they have process to make it stick, otherwise it is an exercise in futility.

Ms. Palmer asked how an establishment would apply for nonconforming status, and what those terms would be. Ms. Burbage replied that it would be a case-by-case basis, so it is hard to give examples.

Ms. Palmer asked for an example of what someone would apply for. Ms. Burbage responded that it could potentially be the curfew, so if you have a winery that currently is having events regularly on Sunday evenings that go to 11 p.m., and they can also demonstrate that they have made a significant investment in measures to address sound associated with outdoor amplified music, they could potentially achieve a nonconforming status for music on Sundays at 11 p.m.

Ms. Palmer asked why a special exception would not cover that. Ms. Burbage said it would be an alternative for those who are doing it already on a regular basis, it would not be for every one, and if someone had one event in the past year that went until 11 p.m., that would not rise to the level of achieving a nonconforming status. She stated that if it was something they were doing on a regular basis, they may have that alternative avenue for being allowed to have events with outdoor amplified music that go to 11 p.m.

Ms. Palmer asked if the process was less involved and/or less expensive. Ms. Burbage explained that it is a determination made by the Zoning Administrator, and it is less expensive; it is not a legislative action, but it does have an appeal process and stands legally as final after the appeal period is over.

Ms. Mallek noted that it also precludes any changes. Ms. Burbage stated that it is much more limited than a grandfathering clause, which would allow expansion, and it would be fixed at whatever they were doing before.

Ms. Palmer asked how staff would make suggestions as to which was more appropriate, if someone came to the County and requested that their music go until 11 p.m. on Sundays. Ms. Burbage responded that the special exception process is the avenue for adjusting the curfew, and if someone were to come to the County with a demonstrated history of having these events for a number of years and had made a significant investment in sound attenuation measures that they could document, then staff would present the alternative of the nonconforming use determination. She added that this is not something that would apply in that many cases.

Ms. Mallek thanked staff and the public for the many months spent on this process.

Ms. Palmer and other Board members agreed.

The Chair opened the public hearing.

Mr. Tim Edmond of Potter's Craft Cider addressed the Board and stated that he has made hard cider in Free Union for five and one-half years, and his business does not have a public tasting room. He stated that they have been investing in agriculture but because they lease their property, they have been looking to plant trees elsewhere, where agricultural leases are available and land is cheaper, such as what they do now near Winchester. Mr. Edmond said that if they were to move, they would have to reapply and would not be grandfathered because they would have moved to a new piece of property. He requested that the Board take a closer look at the farm winery event definition language more closely, particularly some of the provisions that are usual and customary and do not create an impact to the County. Mr. Edmond said that things like wine clubs, meetings and pickups, educational wine tastings and seminars that have not created an impact whatsoever would be affected if his business were to move and be required to meet eligibility. He stated that he is focused on the event definition being simplified to what the industry agrees is the event definition, which is taking the facility and leasing it out to a third party, and that third party is running an event there. Mr. Edmond asked the Board to take a look at the "farm winery event" definition and simplify it.

Mr. Daniel Potter of Potter's Craft Cider in Free Union addressed the Board and stated that Potter's is on leased land and has been operating in the County for five years, and would not be grandfathered under any of the new rules if they move. He stated that they are not an event-driven business and are an agricultural production, they make cider and distribute cider. Mr. Potter said they are concerned with the definition of "farm winery event" in Section 3.1, and the definition of "other events" or "other uses" in Section 5.1.25.C5. He stated that these sections have language that previously referred to by-right activities, but now those sections are being used to trigger the eligibility requirements that everyone is familiar with at this point. He stated that those definitions currently include a lot of language about agri-tourism, sales, and the normal course of business activities that do not have substantial impacts on health and safety, and the way it is written is confusing as to what constitutes an "event." Mr. Potter said his request is that the Board look at the language closely and look for unintended consequences, with a possible way to clean that up to define events as something that involves a third-party rental of the winery facility, that would catch weddings and corporate types of events, rather than catching the normal course of business sales and agri-tourism uses that should not trigger eligibility requirements.

Ms. Sandra Hodge addressed the Board, stating that she lives in Whitehall near a vineyard located on a hill. Ms. Hodge stated that she was pleased to hear the Board mention the shortcoming of the survey in terms of where people live in location to the events taking place, and have concerns about the noise. She said that she has owned her farm since 1976 and has seen a lot of growth with vineyards around the area. Ms. Hodge stated that her particular concern is the noise at night, and she is in opposition to anything extending beyond 10 p.m. because sometimes it is so loud the windows in her house vibrate with an announcer yelling "happy birthday," or hip-hop music, and one night she could hear every Creedence Clearwater Revival song played. She said it is frustrating because it is every weekend from mid-spring to mid-fall, and she and her husband cannot go out on their deck or have friends over outside. Ms. Hodge stated that they have a short-term vacation rental on their property, so negative reviews can affect the rental potential. She said that while the music may end at 11 p.m., the noise from cars coming down Whitehall Road lasts another 30-45 minutes.

Mr. Aaron Hark of the Rio District addressed the Board and said that he had met with several Supervisors over the past few weeks regarding concerns with his particular property. He stated that he and his wife own a 70-acre parcel in Earlysville and have lived here for 11 years, with the intent of creating a farm winery on that land. Mr. Hark said they set aside the northeastern corner of the property for a building and a parking lot, and they already have planted 8½ acres of grapes in the ground, with several more acres going in this spring. He stated that the site is designed at this point, but they do not yet have an ABC license so they are not grandfathered, and said that they tried to do this the way a farm winery would legitimately do, putting crops in the ground first. Mr. Hark said that overall, the staff and Commission and Board have done a good job on this ordinance, and it is well intended in terms of preventing token use; however, he and his wife are particularly bothered by the blanket and arbitrary setbacks. He stated that if this is about noise, there is a sound ordinance in the County; if this is about visual issues, they should talk about natural barriers or things properties can do to prevent light pollution. Mr. Hark said this is especially a problem for them because these setbacks take the land where they plan to develop and change it from three and one-half acres to 11 acres set aside for setbacks, and this creates a parking lot problem for him. He encouraged the Board to strike the setback provision and go back to the ordinance for the rural area that is already on the books, with 75/35/25 setbacks. Mr. Hark stated that while special exemption options exist, nothing in this ordinance is going to make that a less costly or time-consuming process.

Ms. Candice Hark of the Rio District addressed the Board and said she would expand on some of the points her husband made, and they have owned this property for three years and planted in the spring, and the setbacks are now changing their plan. Ms. Hark stated that they should be regulating and focusing attention on the things that create the biggest impacts, such as sound, and they should be regulating the sound with the sound ordinance and not the setbacks. She said that some of the examples given referred to properties that had parties well into the night, and the setbacks would not have changed that as the noise was well beyond 125 feet, but it does impinge on her establishment's ability to make use of their land in the way they have planned it. Ms. Hark stated that they are also happy to put in barrier vegetation to help with light screening, but she did not think 125 feet would take care of that issue on its own. She said that some of the standards are ambiguous, and that is a problem as it can kill a business before it even begins. Ms. Hark said that if people cannot make agricultural use of their land, they would probably do what is more profitable and put in neighborhoods, which would affect the rural character of the land more than farm wineries would. She noted that she agrees with the minimum acreage requirement, but the setbacks seem arbitrary and do not address the issues they are intended to address.

Mr. Al Schornberg of the Rivanna District and owner of Keswick Vineyards addressed the Board and commended staff for the work they have done, particularly putting in proposals that will keep event companies from using the farm winery ordinance from doing events. Mr. Schornberg stated that he does have a problem with the 10 p.m. curfew on Sunday through Thursday, as 20-25% of the events his vineyard does are on Sundays, and a lot of those are weddings. He said that a lot of them run until 11 p.m., and putting a 10 p.m. curfew shoves that business to other venues that are not affected by the curfew. Mr. Schornberg stated that there are 17 outdoor venues in the County, and only 4 of them are farm wineries, so the other venues would not be affected by this curfew. He stated that Keswick Vineyards does not allow outdoor live music because it cannot be controlled, and they have prerecorded, controlled music that goes through directional speakers and sound limiters, using sound abatement. Mr. Schornberg said that if they are going to do a curfew, perhaps a curfew on outdoor live band music for 10 p.m. makes more sense than a curfew on a very controlled and monitored environment. He stated that if they do institute a curfew, he hopes the County will honor the contracts that are already in place, because they were executed under the current ordinance.

Ms. Cindy Schornberg of the Rivanna District and owner of Keswick Vineyards addressed the Board and stated that the data she got from the County showed that since 2010, only 9 complaints had been filed up to September 12, 2016. She stated that their vineyard was one of those getting complaints, but since then there have been no more complaints because they did a lot to alleviate those problems. Ms. Schornberg stated that one of those changes was to no longer allow live bands, only DJs, which allows them to control the volume. She said this is a much better way to handle the situation than setting a curfew that can affect all the wineries when it may not be necessary. She said they are only doing events April through October, which is 7 months or 28 Sundays, and not all of their Sundays are booked; in 2016, Keswick Vineyards had 10 weddings on Sundays. She stated that for four months out of the year, they are not doing events at all, so the neighbors get substantial relief because there is nothing going on at that time. Ms. Schornberg said that applying this curfew only to farm wineries and not all of Albemarle County puts them at a real disadvantage, noting that five miles from them is a bed and breakfast that hosts outdoor events in a tent, and they would not be affected by this, so she would like it



applied to the whole County. She added that she would also like the County to honor contracts that were already executed prior to this ordinance.

Mr. Jeff Sanders, owner of Glass House Winery and representing the Monticello Wine Trail, addressed the Board and thanked all of them for the process, which he said has been very positive. Mr. Sanders said that this is an issue statewide, and they are creating a model here for how they can work together, and while there are issues, there is a very informed discussion taking place that is reflecting both sides. He stated that his business is in support of all the things that establish eligibility for events; they understood the potential problem identified and worked with staff and others to come up with the best possible solution regulatorily. Mr. Sanders said that he does have concerns about the provisions regarding music, and the one he is most concerned about is the setback provision, primarily the front setback and its impact on parking. He stated that buildings are attached to parking lots, and they need to be next to buildings, so this ordinance basically pushes tasting rooms back into the property, which could cause problems by forcing driveways to crest hills and affecting how light is cast off of a site. Mr. Sanders said that they need to consider this a bit more or have a really clear exception process, and planning is really important for them, and relying on possibilities is problematic. He thanked everyone for the process.

Mr. Al Schornberg of the Rivanna District and Keswick Vineyards addressed the Board, stating that many events take place on Sundays, and as the Charlottesville wedding industry grows, it becomes more of a destination location, with destination weddings typically taking place on Sundays because guests are coming from out of town and have the weekend to travel. He said that to shut off that atmosphere for their business would be detrimental, and the 10 p.m. curfew would severely restrict the weddings they do, because it does not get dark until 9:15 or 9:20 p.m. in the summertime, which would limit the number of bookings for Sundays.

Mr. David King of King Family Vineyards in Crozet addressed the Board and stated that he is currently Chairman of the Virginia Wine Board and congratulated this Board, the Planning Commission, and staff for the collaborative approach. He stated that in 2005, the General Assembly passed a bill requiring a study group, which did its work in 2006, resulting in Virginia Code Section 15.2-2288.3, and this is about to happen again. Mr. King said that last week, legislation was filed in the General Assembly to appoint yet another study group to study these same issues. He stated that he would hope the County would agree to send someone to be a part of that study, and assured them that what they have done so far will be "Exhibit #1" on the table as a way for the wine industry and localities to solve these issues. Mr. King thanked them for all the work over the last 10 years, and said he hopes they will agree to spend some of the County Attorney's time or staff's time to deal with this in the future.

Ms. Tammy Moses of the Jack Jouett District addressed the Board and expressed concern over the current and proposed ordinances and the venues that follow them. Ms. Moses said that she and her husband live in the urban ring just off of Hydraulic Road, and a nearby farm has expressed interest in becoming a wedding factory/winery, with the current ordinance providing an avenue for this to happen as "agri-tourism." She stated that she and her husband are concerned that the proposed ordinance does not go far enough, but they do support it. Ms. Moses said the proposed ordinance talks about restrictions on events of 200 or more guests, and her question is what about events of less than 200. She stated they believe that any venue with 100 or more should require a special use permit and a traffic plan, as well as a curfew. Ms. Moses said that these events will produce a lot of noise, amplified or otherwise, and will disrupt the peace and tranquility of everyday life, as well as degrade property values. She stated that this was not what they signed up for when they purchased their property and built their lifelong home in 2008. Ms. Moses said the new setbacks and parking lots of 125 feet seem okay, but they would like them to be more and do not want headlights shining in their house, as their quality of life will be diminished by the farm winery. She stated that one primary issue is that these farms decided they would do these things and plopped them in the middle of a neighborhood, emphasizing that neighbors did not make these choices and it is not right for them to have to put up with this kind of thing. Ms. Moses said they are already surrounded by schools, churches, and traffic already, and this would just be an increase in that. She stated that the Board needs to protect neighbors and consider each case individually when issuing the special use permits. Ms. Moses added that there is a difference between having a wedding in a rural area versus in the urban ring, which has to be considered.

Mr. Stephen Barnard of Keswick Vineyards in the Rivanna District addressed the Board and thanked the County for all of the work that has gone into this. Mr. Barnard said that as a farm winery, Keswick is committed to working with neighbors, and it is in their best interest as business owners to be good neighbors. He stated that it would be remiss if this is pitted against neighbors and business owners, and there are concerns over penalties on time and curfews, and as a business they have tried to do everything in the best interest of neighbors in terms of noise abatement. Mr. Barnard said they factor in the safety of their patrons and customers and try to do it in a responsible way, so this is something that may need to be looked at on a case-by-case basis.

Mr. Bryan Slaughter of Michie Hamlet Law Firm addressed the Board and said that he represents a group of landowners along Ballard's Mill Road. He thanked the Board for the process and the way it has transpired. Mr. Slaughter stated that initially, they were looking at minimum road standards, and because there was insufficient evidence to show a substantial impact with safety, those standards were tabled. He said that he has written to Ms. Mallek and copied other Board members on it, with another solution: to reserve to the County the ability to come in if there is a substantial impact to safety, health or welfare. Mr. Slaughter stated that they can only act if there is an ordinance that allows them to act, by the State statute. He said that if someone wants to open up Pippin Hill II on Ridge Road, with 180 cars twice per weekend, there would be no way to stop that, even if the County determined there was a danger to safety and welfare. Mr. Slaughter said that they would have to pave the road because of that hazard, and they

have decided they want the ability to look at that regardless of whether they do it. He stated that he is not wed to the language proposed, but he hopes it is something they would consider so the County can look at these on a case-by-case basis.

Ms. Charlotte Shelton of Albemarle Ciderworks in the Samuel Miller District addressed the Board and stated that she recognizes the amount of thought and work that has gone into this process, but the problem is that these are mostly small businesses that contribute substantially to the County's economic health. Ms. Shelton said that special use permits and special exceptions are expensive and difficult processes, and it took her eight months longer to get her business established because she had to seek waivers for it, even though her business was by right. She stated that putting these regulations in, even if they are well intended and have good people trying to enforce them, it interferes with the basic ability to establish and run a business. Ms. Shelton said the reason these small businesses do events is because it is usually the difference between losing money, breaking even, or having a modest profit.

There being no further speakers, the Chair closed the public hearing.

Ms. Mallek asked Mr. Kamptner to explain "case by case," because her understanding is that the County has to operate from a set of standards, to which exceptions may be made, as opposed to having no standards and being able to pounce on someone when there is a problem. She added that she wants to know, in order to have accountability to any of these issues, if they are allowed to have case-by-case reactions, or if they need to have a set of standards to which they can adjudicate and maybe make an exception when it is warranted. Mr. Kamptner responded that they want to have a set of standards, as it provides certainty for the County, for the industry, and for the residents.

Ms. Mallek commented that consistency from one to another is really important. Mr. Kamptner said this also ensures that everybody knows what the rules are, and they can build in the flexibility to address individual needs, but overall, they have a set of standards. He said that under State law, and in the County's regulations, there are a number of uses allowed by right, and everything that is occurring at farm wineries, breweries, and distilleries, up to the 200 people in attendance at any one time, are allowed by right. He stated that when the threshold is exceeded, the Board's discretion kicks in and a special use permit is required.

Ms. McKeel stated that Mr. Slaughter was referencing health and safety regarding roads, and she thought he was asking something entirely different in terms of danger and the County's need to have something to point to in terms of impact on the roads.

Mr. Kamptner explained that if they have large-scale events for which the special use permit is required, the Board can look at the nature of the roads in evaluating the impacts that this particular application would have, as SPs are in their discretion to grant or not. He stated that for the larger events that exceed the 200-person threshold, the Board has the discretion to look at the impacts on roads, but below that level, all of the uses are allowed by right and the Board can no longer consider the roads and the impacts on roads. Mr. Kamptner said that once the zoning is established, they are done with the roads and are only looking at what is happening onsite, which is a fundamental principle of Virginia zoning law.

Ms. Palmer said the events mentioned by Mr. Potter and his associate were smaller events and were thus by right. Mr. Kamptner stated that if they have less than 200 people, they are allowed by right, and if a particular proposed activity does not fit into the definition that has been in place for several years, the ordinance gives the Zoning Administrator the authority to look at them under the "other events" provision, which allows her to expand the range because they cannot envision every single activity that might take place, and there may be slight variations with different terminology, but in effect, their impacts are the same and the use is essentially the same, and the regulations have that built in.

Ms. Palmer commented that the category of "other events" is a catch-all. Mr. Kamptner agreed, stating that it is intended to catch those events other than the defined farm winery events, weddings, receptions, etc., and the winery needs to make the case that this particular activity is "usual and customary" in Virginia; but that is always changing, which is one reason why the catch-all is happening.

Ms. Palmer asked if he could envision the rules changing midstream because of the definition issue with respect to events. Mr. Kamptner responded that he cannot provide a guarantee, but the regulations have that kind of flexibility built in if they are one of the Subsection C type activities; under A and B are the agri-tourism uses or wine sales uses, such as hayrides, picnics, and tours. He stated that if there is a new activity that really belongs in there, there are a few solutions; build back in the discretion for the Zoning Administrator to look at this range of uses, with seven uses articulated under Subsection B. He said the Zoning Administrator has the ability to look at and allow types of uses that are not listed here, and they can just be put back into the ordinance; the other alternative is that once that now undefined activity does arise, the ordinance can be amended to include it.

Mr. Randolph asked if they establish a set of performance standards and there was an offsite road associated with a farm winery, if the offsite road dimension could be waived with a special exception. He clarified that he is not talking about by-right uses. Mr. Kamptner responded that with performance standards, it would facilitate the special use permit review, because the applicants, staff, Commission and Board would be able to evaluate that under a set of performance standards.

Mr. Randolph said it would currently take up to three months to get a special exception taken care of, and his thought is to try to reduce the regulatory delay and costs for people like the Harks, who want to

get a vineyard established, because it is not their fault that they purchased a piece of property that topographically does not lend itself to the use established in the ordinance. He asked if there is some way to expedite it and get it done within a reasonable time period, such as no more than 45 days, with the Board and Commission working jointly on it. Ms. McCulley responded that it would take more than 45 days, but if he is asking if there can be a concerted, expedited process to achieve performance standards to create administrative reviews instead of special exceptions, or even clarity for the guidelines by which a special exception would be reviewed, that makes a lot of sense.

Mr. Foley said if they take the time to do that, everything after that would be expedited.

Ms. McKeel stated that they would have the first one figured out.

Ms. McCulley noted that once you get prescriptive about it, if you miss something then the business owner is out of luck because it is not on the list, and maybe what they need is the experience of several of these reviews to know what is relevant that should be in the performance standards, and they need to be very clear in order to be administrative.

Mr. Randolph said that Mr. Kamptner's suggestion to allow the Zoning Administrator to have one last category, which gives some discretion, provides some flexibility. He stated that one size does not fit all, and they want to find a way to accommodate someone and not constrict that person's ability to operate a bona fide wine operation on their site.

Ms. McCulley stated that there are several options available to the Board: they can drop the setback proposal out of the draft ordinance; it can be deferred until they can do some work on specific criteria; and they can drop the setback regulation as it applies to front setback and parking.

Mr. Randolph said that if there is adequate foliage to block lighting and noise, it might be appropriate.

Ms. Mallek asked Mr. Kamptner to reiterate what he said about adding something back in to what is permitted. Mr. Kamptner responded that in Subsection B regarding "agri-tourism uses or wine sales," there is a strikethrough of Subsection 10 that could be reinstated, although it would need to be revised to match Subsection B, and it would give the Zoning Administrator the flexibility to consider and allow similar uses.

Ms. Mallek said this is exactly what recent conversations have focused on, because including it instead in the eligibility section implied that it was at risk of interpretation, and while it might provide flexibility, it might create uncertainty.

Mr. Foley stated that they would have to do one or the other.

Ms. Mallek stated that they cannot solve that problem tonight, but could go with what Mr. Kamptner suggested. She said that regarding setbacks, having the parking setback equal to the front setback would also be very helpful. Ms. Mallek added that there have also been a lot of good comments made by speakers regarding topography and natural features, which will be part of staff's list building. She stated that they need criteria for everyone to use in the decision, no matter who makes it. She noted that they have had consequences on residents with small houses on small lots, and the setback suggestion helps to address that.

Ms. Palmer asked for clarification as to what they are doing with the setbacks. Ms. Mallek responded that one of the suggestions to consider is to make the front setback the same for parking and for buildings, so that the parking can be next to the building, especially for handicapped individuals.

Mr. Dill commented that it also saves a lot of land because people do not have to do a driveway that is hundreds of yards long.

Ms. Mallek said this is why the topography and variation creates such a problem for staff, because every site is different, and for the enjoyment of the guests, it is really important to use the views and breezes where things like the tasting room will be.

Mr. Dill added that it is also constrained by where they want to grow the grapes and where there is sun and shade.

Ms. Mallek agreed, stating that they need to be planted where the soil is right, and some of these properties are constrained by utility easements and other underground amenities. She said that she is trying hard to have a very high performance bar for everyone, which almost all wineries and breweries already live up to.

Ms. Palmer noted that she had not received Mr. Slaughter's email about roads, and asked Ms. Mallek to discuss what he had asked for.

Mr. Dill asked if they need to have something in the code that says if a road is determined to be dangerous, then they can do something about it.

Ms. McKeel said that her impression was that they had to have something in the code.

Mr. Kamptner clarified that every special use permit is evaluated for its impacts on surrounding roads, so that is already part of the process, and they cannot do anything with the by-right uses, so they are really just focused on the events that would trigger the need for a special use permit.

Mr. Dill said that Mr. Slaughter seemed to be talking about a totally separate thing, not these regulations. Mr. Kamptner responded that once the zoning is in place, the County is past the point of being able to control offsite issues.

Ms. Mallek said that from a practical point of view, the County needs to figure all of that out ahead of what the investment people make to create the winery and acreage, and there is also a buyer's responsibility to look at things like road width when they are buying their property. She pointed out that people who decide later to have events find themselves in that predicament.

Mr. Kamptner stated that it is important to recognize that this would be the only three use classifications in the County for which they would be considering traffic impacts on a by-right use. He said that if he could invite 200 friends over every weekend, and nothing could be done about it, as churches on the rural roads and other assemblies do, so this is where they want to make sure their regulations are fair and uniform throughout. Mr. Kamptner emphasized that the County just does not look at traffic impacts from the by-right uses under the zoning that is in place at that time. He said the zoning could always be changed, but existing operators would have nonconforming status.

Ms. McKeel said that Keswick Vineyards had some questions about contracts already in place, and she asked staff to address that. Mr. Kamptner explained that there are a few options by which to deal with that, stating that zoning regulations exist independently and the Board does not concern itself with that; they could adopt the regulations with a delayed effective date for those pertaining to outdoor amplified music; and they could apply the 10 p.m. curfew only to outdoor live bands, or the decibel level for outdoor amplified music could be reduced after 10 p.m. He said that staff would have to research that, and this would be a unique standard for outdoor amplified music at these three types of facilities because otherwise in the rural area, the 55 dB standard applies. Mr. Kamptner noted that based on what he was hearing, the 55 dB threshold may be a little too high.

Ms. Mallek said the threshold is much too high.

Ms. Palmer stated that she had asked about nonconforming status, and asked if they could consider it for an establishment like Keswick Vineyards that came to the County and said they had been having outdoor amplified music on Sunday nights for a long time and had sound abatements in place. Ms. Burbage responded that this was a good example, and confirmed that his would be less onerous than a special exception.

Mr. Kamptner stated that part of the reason for the principles of nonconforming uses and structures is to prevent losing the financial investment of the landowner when the rules change, and when there is a landowner who has made an investment in their outdoor sound system as opposed to another farm winery that does not do anything and has a band that puts up their equipment and then leaves. He said those would result in two different types of analysis.

Mr. Dill said that Keswick would have the option to get nonconforming status, and if they get a special exception they could go until 11:00 p.m. into perpetuity, but it does not seem clear to everyone that a special exception goes beyond one event. Ms. Burbage confirmed that this is accurate.

Mr. Randolph stated an advantage to that is that nonconforming status does not run with the land, so the terms of it can always be changed. He said that if in the future that status was found to be inconsistent with what neighbors and the community felt should be occurring, then it could potentially change in the future.

Mr. Kamptner clarified that ownership can change with nonconforming status, and a lot of rules are in place so it can be lost at any time if the use discontinues, or if it involves structures that are altered in any way.

Mr. Dill stated that with a special exception, if there are a lot of complaints they could use that too because it violates regulations. Mr. Kamptner responded that if they are violating the conditions repeatedly, the special exception can be revoked.

Mr. Dill stated that this would be true no matter what, and has nothing to do with the special exception.

Ms. Palmer asked what the other venues are that have wedding events that do not have the noise ordinance issues. Mr. Dill responded that the Clifton Inn has outdoor parties and events.

Ms. McCulley said that she was not sure how many do not have buildings, but have something that would qualify as outdoor amplified music.

Ms. Palmer added that the question is for those that would not be subject to the noise ordinance beyond 10 p.m.

Ms. McCulley stated that Mr. Schornberg had done a study before the Commission meeting and found four wineries and others that are not wineries that have outdoor amplified music limitations because they were not within buildings, but she has not looked into this herself.

Ms. McKeel said that she appreciates the work staff has done, and this issue is challenging for her because she is concerned about some of the measures being so restrictive. She stated that in looking at her district on Hydraulic Road in the middle of the urban ring, she is trying to balance how those residents embrace things like music from Albemarle High School with events that bring in the kind of noise and traffic associated with the farm winery events. Ms. McKeel said it is an unusual rural area pocket, with the development area right across the street, and it contains a road that has gridlock at many times. She stated that she feels much more comfortable about those establishments that are playing by the rules, and asked if staff considered restrictions based on the amount of property.

Ms. Burbage stated that staff did consider this as part of the prior ZTA process, and had talked about minimum acreage, and what they heard from stakeholders was that it was very challenging to decide what the appropriate minimum acreage should be because there are a lot of smaller parcels that are legitimate. She said that in this ZTA phase, they landed on the five acres because that is what qualifies under land use taxation, and between that and the setbacks, they start to get at a minimum parcel size that can achieve five planted acres and 125-foot setbacks on all sides, so it is tracked that way instead of a minimum parcel size.

Mr. Randolph said the Planning Commission had talked about this two years ago, and one of the anomalies he identified was that there was property east of Carroll Creek Road that was the old eastern boundary of Glenmore that is zoned RA, and across the street is the new section going in, the Leake property, which is in the development area. He stated that some of the properties in the Glen Oaks section are greater than 20 acres, so someone could legally buy one of the 21-acre sites in the RA and establish a winery directly across the street from the development area. Mr. Randolph said that perhaps one of the performance standards is to assure that none of the edges of the winery are outside of the rural area.

Ms. Mallek and Ms. McKeel commented that they did not think that would work.

Ms. Mallek stated there are plenty of them that back up successfully right now.

Mr. Kamptner said if it is in an agricultural zoning district, it is allowed.

Ms. Palmer stated that there are a lot of people in the rural area that live very close to these establishments also.

Ms. McKeel noted that she was not discounting that.

Ms. Palmer said that she likes the idea of the special exceptions because it gets staff out to look at the properties and help the new owners understand what the issues are, and it is a great service when they go out and talk about these different issues in terms of keeping their businesses in harmony with their neighbors. She stated that most wineries would do a great job with an 11 p.m. deadline, but some establishments are located in areas where sound travels, or they may not have installed sufficient abatement measures.

Ms. Mallek asked where in the process discussed would staff's ability to issue a determination come in as a helpful step, and if there are circumstances, such as a setback issue, in which a determination would be helpful and would solve some dilemmas. Ms. McCulley explained that staff envisions several types of determinations that may be relevant to this proposed ordinance, one is related to nonconformity, which would be a very limited and fact-specific situation relating mostly to the curfew, because everything else is grandfathered; the second would be related to someone who is doing specific activities and asks if they are under the other uses related to the by-right sales and tasting in the normal course of business, or if they qualify as events. She stated that staff envisions doing that with businesses like Potter's, since they are moving from one property to another.

Ms. Mallek said it would also help them understand that farm table dinners are operational, and if there is a different view, they need to get that sorted out well in advance.

Mr. Dill stated that they have emphasized how important the wine industry is to the economy, and it seems they should do "carrot and stick" type approach to address some of these issues. He said the County has equipment and expertise to go out with sound equipment, which has an associated fee, and there are ways to attenuate sound that travels. Mr. Dill stated that perhaps they do need to have someone who goes out on the weekends to enforce this, and if someone is playing music loud at 11 p.m., there should be response to any complaints about it. He said there are a few wineries that create more of the problems, and some have put considerable effort into controlling the sound.

Ms. Burbage said that she would summarize the changes discussed, stating that she heard interest in reinstating Subsection B10 to clarify the Zoning Administrator's ability to consider "usual and customary" by-right uses, leaving that section in instead of striking it. She stated that regarding the setbacks discussion, there are a few alternatives besides the recommendation for 125 feet from the property line, and one alternative would be to leave them alone as is, so they would remain at 75 front, 25 side, and 35 rear. She noted that there was discussion about lowering the front setback to 75 feet to allow

for parking areas to be adjacent to tasting rooms, since they can be as close as 75 feet, or 25 feet if it is a private road. Ms. Burbage asked if the Board wanted to give direction on a preference.

Ms. Palmer responded that she preferred the second alternative.

Ms. Burbage stated that the first alternative is leaving them as they are, and the second alternative would be the proposed 125 feet all around, and the third alternative is 75 feet front but 125 side and rear.

Mr. Kamptner stated that he has an additional tweak to the second alternative, which is 125 feet or a reduced amount if performance standards are met, and they can borrow the screening and buffering standards from the County's industrial regulations, or special exceptions are approved with adequate buffering to residential. He said that he thought he understood the Board wanting to reduce the front setback.

Ms. Mallek clarified that they want the parking setback to equal the building setback.

Mr. Kamptner said that for the side and rear setbacks, it is either 125 feet or reduced to the RA standards of up to 25 and 35 feet if they meet screening and buffering performance standards.

Ms. Palmer stated that she is a little bit worried about the lighting, but noted that staff would develop that.

Ms. Burbage said that what she heard with respect to performance standards is that they would want to address that as a separate phase so they could take the time to investigate the different kinds of performance standards they might want to use. She noted that they did have standards that exist in the ordinance, but in order to impose them on what is being proposed tonight, the Board would have to defer action.

Mr. Kamptner stated that he was expecting that anyway in order to accommodate the other fixes.

Ms. Mallek said that she would not want to defer all the other good work that has been done, although they could amend as necessary, and asked if they could just do the second option alone to lower the front parking setback to equal the building. Ms. Burbage responded that it could be done since it is less restriction, but developing the performance standards would have to be handled as a separate phase.

Ms. McKeel commented that she would be happy to agree to the first part tonight, but she really wants to get to the further flexibility.

Ms. Mallek agreed.

Ms. Burbage said they would still include the special exception process, and stated that there was discussion about the curfew, but she did not hear consensus on recommended changes to the 11 p.m. curfew on Friday and Saturday nights and 10 p.m. Sunday through Thursday.

Ms. Palmer stated that she was the only one who suggested 10 p.m. across the board with 11 p.m. as a special exception, because there are many other ways to achieve Friday, Saturday, and Sunday night later curfews.

Ms. Mallek noted that it would affect 25 current establishments, which is her only concern.

Ms. Burbage mentioned that it also would necessitate deferring action, because it is more restrictive than what was advertised.

Mr. Kamptner said it would have to be readvertised.

Ms. Mallek stated that she feels establishments would be able to achieve either a special exemption or nonconformity and keep right on going, and the County could find a way to not interfere with their existing contracts. She added that she is happy to leave the curfew as proposed, assuming the other opportunities are readily available for people who have proven themselves.

Mr. Dill agreed, stating that it does not make sense to worry about it for establishments that do not need the Sundays anyway.

Ms. Palmer asked how they can deal with the incidents where neighbors can hear music all the time. Ms. Mallek responded that it would need to be a separate amendment to come back before the Board.

Mr. Kamptner said that if they know the problems are being created by live bands, they can narrow the scope of the curfew on Sundays to those who have outdoor live music.

Ms. Palmer stated that it would not impact Friday and Saturday nights though. Mr. Kamptner agreed, but said that if this is an ongoing issue, the nighttime decibel standard in the rural area may be too high, and that would require staff research to find what works.

Ms. Mallek said that would be incredibly helpful for everyone across the board in terms of the noise ordinance, but as a special assignment outside of this decision.

Ms. Palmer agreed that she would like to pursue that.

Mr. Dill suggested that it be broader than just the 55 or 60 dB standard, as there are a lot of other issues besides that pertaining to sound.

Ms. McCulley said that staff would need to talk with the Board about where this fits into the County staff's work program, so they can really do it right.

Ms. Mallek emphasized that they heard from some neighbors whose misery is real, with very loud sound audible from within their homes, and for the small number of operators who do not care about their neighbors and are already complying with state legislation, the County has limited options except for noise enforcement. She stated that there may be other ways to use ticketing in an effort to speed up that civil process, which goes on for years and causes stress among the parties.

Ms. Burbage asked if the front setback recommendation is to reduce it to 75 feet in the front to match the primary structure setback, and the private road standard is 25 in the front.

Ms. Mallek agreed that this was reasonable, in keeping with the secondary road standard of 75 feet.

Mr. Kamptner suggested that they take a brief recess while he revises the ordinance and brings it back for vote.

Ms. Mallek reminded constituents that they have worked really hard to try to accommodate this, but under state law they have the alternative to not have any outdoor amplified music, and the County is trying hard to accommodate wineries and entertainment for people.

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**Recess.** At 8:17 p.m., the Board recessed its meeting, and reconvened at 8:42 p.m.

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Mr. Kamptner stated that Mr. Blair is handing out the pages showing the changes to the three sections: 5.1.25, 57, and 59. He said the changes to all three sets of regulations for wineries, breweries and distilleries are the same, with the only difference being the reference to the particular use. He said that on the bottom of Page 3, this restores the language that was proposed to be eliminated, and the revised language inserted states, "Other uses, which are determined by the Zoning Administrator to be similar in kind to other uses permitted by right in this subsection." Mr. Kamptner noted that the key determination for the Zoning Administrator for this authority will be for her to look at the uses allowed in Subsection D, such as hayrides, providing finger foods, and a determination as to whether the proposed use is similar in kind, which allows the additional flexibility.

Mr. Kamptner said the other change was to the yard requirements, and said that it was easier to break out tents and portable toilets from off-street parking areas, so what used to be three subsections is now four. Mr. Kamptner said that tents and portable toilets have the 125-foot setback, and off-street parking areas will have the existing front yard standards that apply to all structures in the rural areas: 25 feet in the front if they are on a private road in the RA, and 125 feet retained with the understanding that staff will be looking at performance standards to bring back to the Board, which would further amend the regulations.

Ms. McKeel stated that they would need a motion to approve the ordinance with these changes.

Mr. Kamptner said that it would adopt the proposed ordinance, which was included as Attachment A, with the further revisions made January 18, 2017.

Ms. Mallek **moved** to adopt the proposed ordinance ZTA 2016-0003, with the further revisions made January 18, 2017. Ms. Palmer **seconded** the motion.

Mr. Sheffield stated that he would be voting against the ordinance, as he feels the industry does a fairly good job in their peer-to-peer monitoring and policing of issues. He quoted the late Justice Anton Scalia: "It's a missile to kill a mouse" situation, with more regulation than he can support, although he does understand the issues.

Ms. Palmer commented that she does have concerns going forward, and there are a lot of wineries doing good work, cooperating with the County, and trying to be good neighbors. She said that they may see a proliferation of these, which is what they are trying to protect against.

Ms. Mallek stated that she sees this as protection for existing businesses from a lot of outside ones that will erode the industry.

Mr. Dill emphasized that part of this is enforcing the rules they have now and guard against some of the businesses that are not really wineries, but are having events and are slipping down the slope to becoming restaurants, etc.

Ms. McKeel commented that they also need to make sure they have staff to do that in a better way.

Mr. Dill added that there are other places that have outdoor events that are associated with existing restaurants, and no one is checking on their decibel levels, so he agrees with Mr. Sheffield that they do not necessarily want a lot more regulations, but the ones they do have need to be enforced.

Ms. Mallek said that part of the reality is that people have given up on calling because the County has not solved the issue of how to deal with it when they call, and she is looking forward to having that solution.

Mr. Randolph commended Ms. Burbage and Ms. McCulley on the significant amount of work they have put into this, with significant public input, and they have kept their equanimity throughout the process.

Ms. Palmer stated that she attended the North Garden public meeting, and Ms. Burbage handled the questions very professionally.

Roll was called and the motion passed by the following:

AYES: Mr. Dill, Ms. Mallek, Ms. McKeel, Ms. Palmer and Mr. Randolph.  
NAYS: Mr. Sheffield.

Ms. McKeel encouraged staff to come back as quickly as possible with revised standards, as this is a high priority.

**ORDINANCE NO. 17-18(1)**

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE I, GENERAL PROVISIONS, ARTICLE II, BASIC REGULATIONS, AND ARTICLE III, DISTRICT REGULATIONS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article I, General Regulations, Article II, Basic Regulations, and Article III, District Regulations, are hereby amended and reordained as follows:

**By Amending:**

Sec. 3.1	Definitions
Sec. 5.1.25	Farm wineries
Sec. 5.1.57	Farm breweries
Sec. 5.1.59	Farm distilleries
Sec. 10.2.1	By right
Sec. 10.2.2	By special use permit
Sec. 11.3.1	By right
Sec. 11.3.2	By special use permit

**Article I. General Provisions**

**Sec. 3.1 Definitions.**

. . .

*Farm brewery:* An establishment located on one or more lots in Albemarle County licensed as a limited brewery under Virginia Code § 4.1-208.

*Farm brewery event:* An event that is not a wedding, a wedding reception, or “other events” as that term is defined in section 5.1.57(c)(5), conducted at a farm brewery on one or more days, where the purpose is agritourism or to promote beer sales, and which may be, but is not limited to, beer festivals; receptions where beer is sold or served; beer club meetings and activities; beer tasting educational seminars; beer tasting luncheons, business meetings, and corporate luncheons with a focus on selling beer; gatherings with the purpose of promoting sales to the trade, such as restaurants, distributors, and local chamber of commerce activities; brewmasters’ dinners where beer is paired with food; agritourism promotions; and fundraisers and charity events. (Added 11-12-14)

. . .

*Farm distillery:* An establishment located on one or more lots in Albemarle County to which a limited distiller’s license is issued under Virginia Code § 4.1-206.

*Farm distillery event:* An event that is not a wedding, a wedding reception, or “other events” as that term is defined in section 5.1.59(c)(5), conducted at a farm distillery on one or more days, where the purpose is agritourism or to promote the sale of distilled spirits, and which may be, but is not limited to, distilled spirits festivals; receptions where distilled spirits are sold or served; distilled spirits club meetings and activities; distilled spirits tasting educational seminars; distilled spirits tasting luncheons, business meetings, and corporate luncheons with a focus on selling distilled spirits; gatherings with the purpose of promoting sales to the trade, such as restaurants, distributors, and local chamber of commerce activities; distillers’ dinners where distilled spirits are paired with food; agritourism promotions; and fundraisers and charity events. (Added 12-9-15)



...

*Farm winery:* An establishment located on one or more lots in Albemarle County licensed as a farm winery under Virginia Code § 4.1-207.

...

*Farm winery event:* An event that is not a wedding, a wedding reception, or “other events” as that term is defined in section 5.1.25(c)(5), conducted at a farm winery on one or more days where the purpose is agritourism or to promote wine sales, and which may be, but is not limited to wine fairs; receptions where wine is sold or served; wine club meetings and activities; wine tasting educational seminars; wine tasting luncheons, business meetings, and corporate luncheons with a focus on selling wines; gatherings with the purpose of promoting sales to the trade, such as restaurants, distributors, and local chamber of commerce activities; winemakers’ dinners where wine is paired with food; agritourism promotions; and fundraisers and charity events. (Added 5-5-10; Amended 11-12-14)

...

(§ 20-3.1, 12-10-80, 7-1-81, 12-16-81, 2-10-82, 6-2-82, 1-1-83, 7-6-83, 11-7-84, 7-17-85, 3-5-86, 1-1-87, 6-10-87, 12-2-87, 7-20-88, 12-7-88, 11-1-89, 6-10-92, 7-8-92, 9-15-93, 8-10-94, 10-11-95, 11-15-95, 10-9-96, 12-10-97; § 18-3.1, Ord. 98-A(1), 8-5-98; Ord. 01-18(6), 10-3-01; Ord. 01-18(9), 10-17-01; Ord. 02-18(2), 2-6-02; Ord. 02-18(5), 7-3-02; Ord. 02-18(7), 10-9-02; Ord. 03-18(1), 2-5-03; Ord. 03-18(2), 3-19-03; Ord. 04-18(2), 10-13-04; Ord. 05-18(2), 2-2-05; Ord. 05-18(7), 6-8-05; Ord. 05-18(8), 7-13-05; Ord. 06-18(2), 12-13-06; Ord. 07-18(1), 7-11-07; Ord. 07-18(2), 10-3-07; Ord. 08-18(3), 6-11-08; Ord. 08-18(4), 6-11-08; Ord. 08-18(6), 11-12-08; Ord. 08-18(7), 11-12-08; Ord. 09-18(3), 7-1-09; Ord. 09-18(5), 7-1-09; Ord. 09-18(8), 8-5-09; Ord. 09-18(9), 10-14-09; Ord. 09-18(10), 12-2-09; Ord. 09-18(11), 12-10-09; Ord. 10-18(3), 5-5-10; Ord. 10-18(4), 5-5-10; Ord. 10-18(5), 5-12-10; Ord. 11-18(1), 1-12-11; Ord. 11-18(5), 6-1-11; Ord. 11-18(6), 6-1-11; Ord. 12-18(3), 6-6-12; Ord. 12-18(4), 7-11-12; Ord. 12-18(6), 10-3-12, effective 1-1-13; Ord. 12-18(7), 12-5-12, effective 4-1-13; Ord. 13-18(1), 4-3-13; Ord. 13-18(2), 4-3-13; Ord. 13-18(3), 5-8-13; Ord. 13-18(5), 9-11-13; Ord. 13-18(6), 11-13-13, effective 1-1-14; Ord. 13-18(7), 12-4-13, effective 1-1-14; Ord. 14-18(2), 3-5-14; Ord. 14-18(4), 11-12-14; Ord. 15-18(1), 2-11-15; Ord. 15-18(2), 4-8-15; Ord. 15-18(4), 6-3-15; Ord. 15-18(5), 7-8-15; Ord. 15-18(10), 12-9-15; Ord. 16-18(1), 3-2-16)

**State law reference** – Va. Code § 15.2-2286(A)(4).

## **Article II. Basic Regulations**

### **Sec. 5.1.25 Farm wineries**

Each farm winery shall be subject to the following:

- a. *Operational uses permitted by right.* The following operational uses, events and activities (hereinafter, collectively, “uses”) are permitted at a farm winery:
  1. The production and harvesting of fruit and other agricultural products and the manufacturing of wine including, but not limited to, activities related to the production of the agricultural products used in wine, including but not limited to, growing, planting and harvesting the agricultural products and the use of equipment for those activities.
  2. The sale, tasting, including barrel tastings, or consumption of wine within the normal course of business of the farm winery.
  3. The direct sale and shipment of wine by common carrier to consumers in accordance with Title 4.1 of the Virginia Code and the regulations of the Alcoholic Beverage Control Board.
  4. The sale and shipment of wine to the Alcoholic Beverage Control Board, licensed wholesalers, and out-of-state purchasers in accordance with Title 4.1 of the Virginia Code, regulations of the Alcoholic Beverage Control Board, and federal law.
  5. The storage, warehousing, and wholesaling of wine in accordance with Title 4.1 of the Virginia Code, regulations of the Alcoholic Beverage Control Board, and federal law.
  6. The sale of wine-related items that are incidental to the sale of wine including, but not limited to, the sale of incidental gifts such as cork screws, wine glasses and t-shirts.
  7. Private personal gatherings of a farm winery owner who resides at the farm winery or on property adjacent thereto that is owned or controlled by the owner, provided that wine is not sold or marketed and for which no consideration is received by the farm winery or its agents.
- b. *Agritourism uses or wine sales related uses permitted by right.* The following uses are permitted at a farm winery by right, provided they are related to agritourism or wine sales:
  1. Exhibits, museums, and historical segments related to wine or to the farm winery.

2. Guest winemakers and trade accommodations of invited guests at a farm winery owner's private residence at the farm winery.
  3. Hayrides.
  4. Kitchen and catering activities related to a use at the farm winery.
  5. Picnics, either self-provided or available to be purchased at the farm winery.
  6. Providing finger foods, soups and appetizers for visitors.
  7. Tours of the farm winery, including the vineyard.
  8. Other uses not expressly authorized that are agritourism uses or are wine sales related uses, which are determined by the zoning administrator to be similar in kind to other uses permitted by right in this subsection, which do not create a substantial impact on the public health, safety, or welfare, and at which not more than two hundred (200) persons are in attendance at any time for this use.
- c. *Farm winery events, weddings, wedding receptions, and other events permitted by right and by special use permit.* Farm winery events, weddings, wedding receptions, and other events are permitted by right or by special use permit at a farm winery, provided that they are related to agritourism or wine sales, as follows:
1. *Eligibility.* Any farm winery use established in the county before January 18, 2017, is eligible to hold the events authorized in subsections (c)(2) and (c)(3). Any farm winery use established in the county on and after January 18, 2017, is eligible to hold the events authorized by subsections (c)(2) and (c)(3) if it has: (i) on-site fermentation and bottling processes; (ii) an on-site tasting room with regular hours in which it is open to the public; and (iii) a minimum of five (5) acres of fruits, grains, or other agricultural products planted on-site, or on any abutting lot under the same ownership, at least one growing season each calendar year and used or to be used in the production of the establishment's beverages, provided that the five (5) acre threshold shall not apply during periods of widespread crop damage due to pest damage, disease, frost damage, or storm damage, and further provided that none of these eligibility requirements shall apply where the sole events under this subsection (c) are holding up to four (4) educational programs related to agriculture per calendar year at which not more than two hundred (200) persons are in attendance at any time. The eligibility requirements of this subsection (c)(1)(i) and (iii) may not be waived, modified, or varied by special exception. A special exception to subsection (c)(1)(ii) may be granted to permit tasting room hours by appointment instead of regular hours in which the tasting room is open to the public.
  2. *By right.* Farm winery events, weddings, wedding receptions, and other events are permitted by right at a farm winery provided that not more than two hundred (200) persons are in attendance at the farm winery at any time and the events are related to agritourism or wine sales, subject to the following:
    - (a) *Zoning clearance.* For each farm winery licensed on and after December 9, 2015, the owner shall obtain a zoning clearance under section 31.5 prior to holding any events if either the lot or the abutting lots on which the events allowed in this subsection occur is less than twenty-one (21) acres in size or the use will generate more than fifty (50) visitor vehicle trips per day; and
    - (b) *Notice.* The farm winery shall provide written notice that an application for a zoning clearance for one or more events allowed by this subsection has been submitted to the owner of each abutting lot under different ownership than the lot on which the proposed event would be located. The notice shall identify the proposed type, size, and frequency of events, and provide the name and telephone number of a contact person who will be on-site at the farm winery during each event or activity. The notice shall be mailed at least ten (10) days prior to the action on the zoning clearance.
  3. *By special use permit.* Farm winery events, weddings, wedding receptions, and other events at which more than two hundred (200) persons will be in attendance at the farm winery at any time are permitted by special use permit at a farm winery, provided that they are related to agritourism or wine sales.
  4. *Determining attendance at the farm winery at any time.* The attendance at the farm winery at any time under subsections (c)(2) and (c)(3) shall be the aggregate of the actual or allowed attendance at any time for any farm winery event, farm brewery event, farm distillery event, wedding, wedding reception, and other events. Attendance shall not include any owner or employee of the farm winery or any employee or owner of a vendor providing goods or services to the farm winery event, wedding, wedding reception, or other event pursuant to subsections (c)(2) and (c)(3). Attendance shall not include any individual engaging or participating in activities under subsections (a) and (b).

5. *Other events.* For the purposes of this subsection, the term “other events” means events that are agritourism events or are wine sales related events, which are determined by the zoning administrator to be usual and customary at farm wineries throughout the Commonwealth, which do not create a substantial impact on the public health, safety, or welfare, and which are not expressly authorized under subsection (c) as farm winery events, weddings, or wedding receptions.
- d. *Information and sketch plan to be submitted with application for a special use permit.* In addition to any information required to be submitted with an application for a special use permit under section 33.4, each application for one or more events authorized under section 5.1.25(c)(3) shall include the following:
  1. *Information.* Information pertaining to the following: (i) the proposed events; (ii) the maximum number of persons who will attend each event at any given time; (iii) the frequency and duration of the events; (iv) the provision of on-site parking; (v) the location, height and lumens of outdoor lighting for each event; (vi) the location of any stage, structure or other place where music will be performed; and (vii) a traffic management plan, which demonstrates how traffic entering and exiting the farm winery for an event will be managed to ensure safe and convenient access to and from the site, and includes planned routes of vehicular access to the farm winery, on-site circulation, the use of shuttles or other transportation services, and traffic control personnel.
  2. *Sketch plan.* A sketch plan, which shall be a schematic drawing of the site with notes in a form and of a scale approved by the director of planning depicting: (i) all structures that would be used for the events; (ii) how access, on-site parking, outdoor lighting, signage and minimum yards will be provided in compliance with this chapter; and (iii) how potential adverse impacts to abutting lots will be mitigated so they are not substantial.
- e. *Sound from outdoor amplified music.* Sound generated by outdoor amplified music shall be subject to the following:
  1. *Zoning clearance.* Each farm winery licensed on and after November 12, 2014 shall obtain approval of a zoning clearance under section 31.5 prior to generating any outdoor amplified music at the farm winery. The purpose of the zoning clearance shall be to verify that the sound amplification equipment at the farm winery will comply with the applicable standards in section 4.18 or that the owner has and will use a sound level meter as that term is defined in section 4.18.02 prior to and while outdoor amplified music is being played, to monitor compliance with the applicable standards in section 4.18, or both.
  2. *Maximum sound level.* Sound generated by outdoor amplified music shall not exceed the applicable maximum sound levels in section 4.18.04.
  3. *Outdoor amplified music not an exempt sound.* Outdoor amplified music shall not be deemed to be an exempt sound under section 4.18.05(A).
  4. *Times of day when outdoor amplified music prohibited.* Sound generated by outdoor amplified music is prohibited between 10:00 p.m. each Sunday through Thursday night and 7:00 a.m. the following morning, and between 11:00 p.m. each Friday and Saturday night and 7:00 a.m. the following morning.
- f. *Yards.* Notwithstanding any other provisions of this chapter, the following shall apply to each farm winery in the Rural Areas (RA) district:
  1. *Permanent structures.* The minimum front, side, and rear yard requirements in section 10.4 shall apply to all primary and accessory structures established after May 5, 2010.
  2. *Tents and portable toilets.* The minimum front, side, and rear yard shall be one hundred twenty-five (125) feet from any abutting lot not under the same ownership as the farm winery for tents and portable toilets used in whole or in part to serve any permitted use at a farm winery.
  3. *Off-street parking areas.* Off-street parking areas established on or after January 18, 2017 shall comply with the minimum front yard requirements in section 10.4 and the minimum side and rear yards shall be one hundred twenty-five (125) feet from any abutting lot not under the same ownership as the farm winery.
  4. *Special exception.* Any minimum yard may be reduced by special exception upon consideration of the following: (i) there is no detriment to any abutting lot; (ii) there is no harm to the public health, safety, or welfare; and (iii) written consent to the proposed reduction has been provided by the owner of any lot abutting the proposed reduced setback.
- g. *Uses prohibited.* The following uses are prohibited:
  1. Restaurants.

2. Helicopter rides.

(§ 5.1.25, 12-16-81, 1-1-84; Ord. 98-20(1), 4-1-98; Ord. 01-18(6), 10-3-01; Ord. 10-18(3), 5-5-10; Ord. 11-18(3), 3-9-11; Ord. 14-18(4), 11-12-14; Ord. 15-18(10), 12-9-15)

**Sec. 5.1.57 Farm breweries**

Each farm brewery shall be subject to the following:

- a. *Operational uses permitted by right.* The following operational uses, events and activities (hereinafter, collectively, “uses”) are permitted at a farm brewery:
  1. The production and harvesting of barley and other grains, hops, fruit, and other agricultural products, and the manufacturing of beer including, but not limited to, activities related to the production of the agricultural products used in beer including, but not limited to, growing, planting, and harvesting the agricultural products and the use of equipment for those activities.
  2. The sale, tasting, or consumption of beer within the normal course of business of the farm brewery.
  3. The direct sale and shipment of beer in accordance with Title 4.1 of the Virginia Code and the regulations of the Alcoholic Beverage Control Board.
  4. The sale and shipment of beer to licensed wholesalers and out-of-state purchasers in accordance with Title 4.1 of the Virginia Code, regulations of the Alcoholic Beverage Control Board, and federal law.
  5. The storage and warehousing of beer in accordance with Title 4.1 of the Virginia Code, regulations of the Alcoholic Beverage Control Board, and federal law.
  6. The sale of beer-related items that are incidental to the sale of beer including, but not limited to, the sale of incidental gifts such as bottle openers, beer glasses, and t-shirts.
  7. Private personal gatherings of a farm brewery owner who resides at the farm brewery or on property adjacent thereto that is owned or controlled by the owner, provided that beer is not sold or marketed and for which no consideration is received by the farm brewery or its agents.
- b. *Agritourism uses or beer sales related uses permitted by right.* The following uses are permitted by right at a farm brewery, provided they are related to agritourism or beer sales:
  1. Exhibits, museums, and historical segments related to beer or to the farm brewery.
  2. Guest brewmasters and trade accommodations of invited guests at a farm brewery owner’s private residence at the farm winery.
  3. Hayrides.
  4. Kitchen and catering activities related to a use at the farm brewery.
  5. Picnics, either self-provided or available to be purchased at the farm brewery.
  6. Providing finger foods, soups, and appetizers for visitors.
  7. Tours of the farm brewery, including the areas where agricultural products are grown.
  8. Other uses not expressly authorized that are agritourism uses or are wine sales related uses, which are determined by the zoning administrator to be similar in kind to other uses permitted by right in this subsection, which do not create a substantial impact on the public health, safety, or welfare, and at which not more than two hundred (200) persons are in attendance at any time for this use.
- c. *Farm brewery events, weddings, wedding receptions, and other events permitted by right and by special use permit.* Farm brewery events, weddings, wedding receptions, and other events are permitted by right or by special use permit at a farm brewery, provided that they are related to agritourism or beer sales, as follows:
  1. *Eligibility.* Any farm brewery use established in the county before January 18, 2017, is eligible to hold the events authorized in subsections (c)(2) and (c)(3). Any farm brewery use established in the county on and after January 18, 2017, is eligible to hold the events authorized by subsections (c)(2) and (c)(3) if it has: (i) an on-site fermentation process; (ii) an on-site tasting room with regular hours in which it is open to the public; and (iii) a

minimum of five (5) acres of fruits, grains, or other agricultural products planted on-site, or on any abutting lot under the same ownership, at least one growing season each calendar year and used or to be used in the production of the establishment's beverages, provided that the five (5) acre threshold shall not apply during periods of widespread crop damage due to pest damage, disease, frost damage, or storm damage, and further provided that none of these eligibility requirements shall apply where the sole events under this subsection (c) are holding up to four (4) educational programs related to agriculture per calendar year at which not more than two hundred (200) persons are in attendance at any time. Notwithstanding any other provision of this chapter, the eligibility requirements of this subsection (c)(1)(i) and (iii) may not be waived, modified, or varied by special exception. A special exception to subsection (c)(1)(ii) may be granted to permit tasting room hours by appointment instead of regular hours in which the tasting room is open to the public.

2. *By right.* Farm brewery events, weddings, wedding receptions, and other events are permitted by right at a farm brewery provided that not more than two hundred (200) persons are in attendance at the farm brewery at any time and the events are related to agritourism or beer sales, subject to the following:
    - (a) *Zoning clearance.* For each farm brewery licensed on and after December 9, 2015, the owner shall obtain a zoning clearance under section 31.5 prior to holding any events if either the lot or the abutting lots on which the events allowed in this subsection occur is less than twenty-one (21) acres in size or the use will generate more than fifty (50) visitor vehicle trips per day; and
    - (b) *Notice.* The farm brewery shall provide written notice that an application for a zoning clearance for one or more events allowed by this subsection has been submitted to the owner of each abutting lot under different ownership than the lot on which the proposed event would be located. The notice shall identify the proposed type, size, and frequency of events, and provide the name and telephone number of a contact person who will be on-site at the farm brewery during each event. The notice shall be mailed at least ten (10) days prior to the action on the zoning clearance.
  3. *By special use permit.* Farm brewery events, weddings, wedding receptions, and other events at which more than two hundred (200) persons will be in attendance at the farm brewery at any time are permitted by special use permit at a farm brewery, provided that they are related to agritourism or beer sales.
  4. *Determining attendance at the farm brewery at any time.* The attendance at the farm brewery at any time under subsections (c)(2) and (c)(3) shall be the aggregate of the actual or allowed attendance at any time for any farm winery event, farm brewery event, farm distillery event, wedding, wedding reception, and other events. Attendance shall not include any owner or employee of the farm winery or any employee or owner of a vendor providing goods or services to the farm winery event, wedding, wedding reception, or other event pursuant to subsections (c)(2) and (c)(3). Attendance shall not include any individual engaging or participating in activities under subsections (a) and (b).
  5. *Other events.* For the purposes of this subsection, the term "other events" means events that are agritourism events or are beer sales related events, which are determined by the zoning administrator to be usual and customary at farm breweries, which do not create a substantial impact on the public health, safety, or welfare, and which are not expressly authorized under subsection (c) as farm brewery events, weddings, or wedding receptions.
- d. *Information and sketch plan to be submitted with application for a special use permit.* In addition to any information required to be submitted with an application for a special use permit under section 33.4, each application for one or more events authorized under section 5.1.57(c)(3) shall include the following:
1. *Information.* Information pertaining to the following: (i) the proposed events; (ii) the maximum number of persons who will attend each event at any given time; (iii) the frequency and duration of the events; (iv) the provision of on-site parking; (v) the location, height, and lumens of outdoor lighting for each event; (vi) the location of any stage, structure or other place where music will be performed; and (vii) a traffic management plan, which demonstrates how traffic entering and exiting the farm brewery for an event will be managed to ensure safe and convenient access to and from the site, and includes planned routes of vehicular access to the farm brewery, on-site circulation, the use of shuttles or other transportation services, and traffic control personnel.
  2. *Sketch plan.* A sketch plan, which shall be a schematic drawing of the site with notes in a form and of a scale approved by the director of planning depicting: (i) all structures that would be used for the events; (ii) how access, on-site parking, outdoor lighting, signage, and minimum yards will be provided in compliance with this chapter; and (iii) how potential adverse impacts to abutting lots will be mitigated so they are not substantial.

- e. *Sound from outdoor amplified music.* Sound generated by outdoor amplified music shall be subject to the following:
1. *Zoning clearance.* Each farm brewery shall obtain approval of a zoning clearance under section 31.5 prior to generating any outdoor amplified music at the farm brewery. The purpose of the zoning clearance shall be to verify that the sound amplification equipment at the farm brewery will comply with the applicable standards in section 4.18 or that the owner has and will use a sound level meter as that term is defined in section 4.18.02 prior to and while outdoor amplified music is being played, to monitor compliance with the applicable standards in section 4.18, or both.
  2. *Maximum sound level.* Sound generated by outdoor amplified music shall not exceed the applicable maximum sound levels in section 4.18.04.
  3. *Outdoor amplified music not an exempt sound.* Outdoor amplified music shall not be deemed to be an exempt sound under section 4.18.05(A).
  4. *Times of day when outdoor amplified music prohibited.* Sound generated by outdoor amplified music is prohibited between 10:00 p.m. each Sunday through Thursday night and 7:00 a.m. the following morning, and between 11:00 p.m. each Friday and Saturday night and 7:00 a.m. the following morning.
- f. *Yards.* Notwithstanding any other provisions of this chapter, the following shall apply to each farm brewery in the Rural Areas (RA) district:
1. *Permanent structures.* The minimum front, side, and rear yard requirements in section 10.4 shall apply to all primary and accessory structures established after May 5, 2010.
  2. *Tents and portable toilets.* The minimum front, side, and rear yard shall be one hundred twenty-five (125) feet from any abutting lot not under the same ownership as the farm brewery for tents and portable toilets used in whole or in part to serve any permitted use at a farm brewery.
  3. *Off-street parking areas.* Off-street parking areas established on or after January 18, 2017 shall comply with the minimum front yard requirements in section 10.4 and the minimum side and rear yards shall be one hundred twenty-five (125) feet from any abutting lot not under the same ownership as the farm brewery.
  4. *Special exception.* Any minimum yard may be reduced by special exception upon consideration of the following: (i) there is no detriment to any abutting lot; (ii) there is no harm to the public health, safety, or welfare; and (iii) written consent to the proposed reduction has been provided by the owner of any lot abutting the proposed reduced setback.
- g. *Uses prohibited.* The following uses are prohibited:
1. Restaurants.
  2. Helicopter rides.

(Ord. 14-18(4), 11-12-14; Ord. 15-18(10), 12-9-15)

#### **Sec. 5.1.59 Farm distilleries.**

Each farm distillery shall be subject to the following:

- a. *Operational uses permitted by right.* The following operational uses, events and activities (hereinafter, collectively, "uses") are permitted at a farm distillery:
1. The production and harvesting of agricultural products and the manufacturing of alcoholic beverages other than wine or beer.
  2. The on-premises sale, tasting, or consumption of alcoholic beverages other than wine or beer during regular business hours in accordance with a contract between a distillery and the Alcoholic Beverage Control Board pursuant to the provisions of Virginia Code § 4.1-119(D).
  3. The sale and shipment of alcoholic beverages other than wine or beer to licensed wholesalers and out-of-state purchasers in accordance with Title 4.1 of the Virginia Code, regulations of the Alcoholic Beverage Control Board, and federal law.
  4. The storage and warehousing of alcoholic beverages other than wine or beer in accordance with Title 4.1 of the Virginia Code, regulations of the Alcoholic Beverage Control Board, and federal law.

5. The sale of items related to alcoholic beverages other than wine or beer that are incidental to the sale of the alcoholic beverages.
- b. *Agritourism uses or sales related uses permitted by right.* The following uses are permitted by right at a farm distillery, provided they are related to agritourism or the sale of alcoholic beverages other than wine or beer:
1. Exhibits, museums, and historical segments related to alcoholic beverages other than wine or beer or to the farm distillery.
  2. Guest distillers and trade accommodations of invited guests at a farm distillery owner's private residence at the farm distillery.
  3. Hayrides.
  4. Kitchen and catering activities related to a use at the farm distillery.
  5. Picnics, either self-provided or available to be purchased, at the farm distillery.
  6. Providing finger foods, soups, and appetizers for visitors.
  7. Tours of the farm distillery, including the areas where agricultural products are grown.
  8. Other uses not expressly authorized that are agritourism uses or are wine sales related uses, which are determined by the zoning administrator to be similar in kind to other uses permitted by right in this subsection, which do not create a substantial impact on the public health, safety, or welfare, and at which not more than two hundred (200) persons are in attendance at any time for this use.
- c. *Farm distillery events, weddings, wedding receptions, and other events permitted by right and by special use permit.* Farm distillery events, weddings, wedding receptions, and other events are permitted by right or by special use permit at a farm distillery, provided that they are related to agritourism or the sale of distilled spirits, as follows:
1. *Eligibility.* Any farm distillery use established in the county before January 18, 2017 is eligible to hold the events authorized in subsections (c)(2) and (c)(3). Any farm distillery use established in the county on and after January 18, 2017 or which had not submitted an application to the United States Bureau of Alcohol, Tobacco, and Firearms for licensure in the county before January 18, 2017, is eligible to hold the events authorized by subsections (c)(2) and (c)(3) if it has: (i) on-site distillation and bottling processes; (ii) an on-site tasting room with regular hours in which it is open to the public; and (iii) a minimum of five (5) acres of fruits, grains, or other agricultural products planted on-site, or on any abutting lot under the same ownership, at least one growing season each calendar year and used or to be used in the production of the establishment's beverages, provided that the five (5) acre threshold shall not apply during periods of widespread crop damage due to pest damage, disease, frost damage, or storm damage, and further provided that none of these eligibility requirements shall apply where the sole events under this subsection (c) are holding up to four (4) educational programs related to agriculture per calendar year at which not more than two hundred (200) persons are in attendance at any time. Notwithstanding any other provision of this chapter, the eligibility requirements of this subsection (c)(1)(i) and (iii) may not be waived, modified, or varied by special exception. A special exception to subsection (c)(1)(ii) may be granted to permit tasting room hours by appointment instead of regular hours in which the tasting room is open to the public.
  2. *By right.* Farm distillery events, weddings, wedding receptions, and other events are permitted by right at a farm distillery provided that not more than two hundred (200) persons are in attendance at the farm distillery at any time and the events are related to agritourism or the sale of distilled spirits, subject to the following:
    - (a) *Zoning clearance.* For each farm distillery licensed on and after December 9, 2015, the owner shall obtain a zoning clearance under section 31.5 prior to holding any events if either the lot or the abutting lots on which the events allowed in this subsection occur is less than twenty-one (21) acres in size or the event will generate more than fifty (50) visitor vehicle trips per day; and
    - (b) *Notice.* The farm distillery shall provide written notice that an application for a zoning clearance for one or more events allowed by this subsection has been submitted to the owner of each abutting lot under different ownership than the lot on which the proposed event would be located. The notice shall identify the proposed type, size, and frequency of events, and provide the name and telephone number of a contact person who will be on-site at the farm distillery during each event. The notice shall be mailed at least ten (10) days prior to the action on the zoning clearance.

3. *By special use permit.* Farm distillery events, weddings, wedding receptions, and other events at which more than two hundred (200) persons will be in attendance at the farm distillery at any time are permitted by special use permit at a farm distillery, provided that they are related to agritourism or the sale of distilled spirits.
  4. *Determining attendance at the farm distillery at any time.* The attendance at the farm distillery at any time under subsections (c)(2) and (c)(3) shall be the aggregate of the actual or allowed attendance at any time for any farm winery event, farm brewery event, farm distillery event, wedding, wedding reception, and other events. Attendance shall not include any owner or employee of the farm winery or any employee or owner of a vendor providing goods or services to the farm winery event, wedding, wedding reception, or other event pursuant to subsections (c)(2) and (c)(3). Attendance shall not include any individual engaging or participating in activities under subsections (a) and (b).
  5. *Other events.* For the purposes of this subsection, the term “other events” means events that are agritourism events or are distilled spirits sales related events, which are determined by the zoning administrator to be usual and customary at farm distilleries, which do not create a substantial impact on the public health, safety, or welfare, and which are not expressly authorized under subsection (c) as farm distillery events, weddings, or wedding receptions.
- d. *Information and sketch plan to be submitted with application for a special use permit.* In addition to any information required to be submitted with an application for a special use permit under section 33.4, each application for one or more events authorized under section 5.1.59(c)(3) shall include the following:
1. *Information.* Information pertaining to the following: (i) the proposed events; (ii) the maximum number of persons who will attend each event at any given time; (iii) the frequency and duration of the events; (iv) the provision of on-site parking; (v) the location, height, and lumens of outdoor lighting for each event; (vi) the location of any stage, structure or other place where music will be performed; and (vii) a traffic management plan, which demonstrates how traffic entering and exiting the farm distillery for an event will be managed to ensure safe and convenient access to and from the site, and includes planned routes of vehicular access to the farm distillery, on-site circulation, the use of shuttles or other transportation services, and traffic control personnel.
  2. *Sketch plan.* A sketch plan, which shall be a schematic drawing of the site with notes in a form and of a scale approved by the director of planning depicting: (i) all structures that would be used for the events; (ii) how access, on-site parking, outdoor lighting, signage, and minimum yards will be provided in compliance with this chapter; and (iii) how potential adverse impacts to abutting lots will be mitigated so they are not substantial.
- e. *Sound from outdoor amplified music.* Sound generated by outdoor amplified music shall be subject to the following:
1. *Zoning clearance.* Each farm distillery shall obtain approval of a zoning clearance under section 31.5 prior to generating any outdoor amplified music at the farm distillery. The purpose of the zoning clearance shall be to verify that the sound amplification equipment at the farm distillery will comply with the applicable standards in section 4.18 or that the owner has and will use a sound level meter as that term is defined in section 4.18.02 prior to and while outdoor amplified music is being played, to monitor compliance with the applicable standards in section 4.18, or both.
  2. *Maximum sound level.* Sound generated by outdoor amplified music shall not exceed the applicable maximum sound levels in section 4.18.04.
  3. *Outdoor amplified music not an exempt sound.* Outdoor amplified music shall not be deemed to be an exempt sound under section 4.18.05(A).
  4. *Times of day when outdoor amplified music prohibited.* Sound generated by outdoor amplified music is prohibited between 10:00 p.m. each Sunday through Thursday night and 7:00 a.m. the following morning, and between 11:00 p.m. each Friday and Saturday night and 7:00 a.m. the following morning.
- f. *Yards.* Notwithstanding any other provisions of this chapter, the following shall apply to each farm distillery in the Rural Areas (RA) district:
1. *Permanent structures.* The minimum front, side, and rear yard requirements in section 10.4 shall apply to all primary and accessory structures established after May 5, 2010.
  2. *Tents and portable toilets.* The minimum front, side, and rear yard shall be one hundred twenty-five (125) feet from any abutting lot not under the same ownership as the farm distillery for tents and portable toilets used in whole or in part to serve any permitted use at a farm distillery.



- 3.     *Off-street parking areas.* Off-street parking areas established on or after January 18, 2017 shall comply with the minimum front yard requirements in section 10.4 and the minimum side and rear yards shall be one hundred twenty-five (125) feet from any abutting lot not under the same ownership as the farm distillery.
  - 4.     *Special exception.* Any minimum yard may be reduced by special exception upon consideration of the following: (i) there is no detriment to any abutting lot; (ii) there is no harm to the public health, safety, or welfare; and (iii) written consent to the proposed reduction has been provided by the owner of any lot abutting the proposed reduced setback.
- g.     *Uses prohibited.* The following uses are prohibited:
- 1.     Restaurants.
  - 2.     Helicopter rides.

(Ord. 15-18(10), 12-9-15)

**Article III. District Regulations**

**Section 10  
Rural Areas**

**Sec. 10.2.1 By right**

The following uses shall be permitted by right in the RA district, subject to the applicable requirements of this chapter:

...

17.     Farm winery uses, events, and activities authorized by section 5.1.25(a), (b), and (c)(2).

...

29.     Farm brewery uses, events, and activities authorized by section 5.1.57(a), (b), and (c)(2).

...

31.     Farm distillery uses, events, and activities authorized by section 5.1.59(a), (b), and (c)(2).

(§ 20-10.2.1, 12-10-80; 12-16-81; 7-6-83; 11-1-89; 11-8-89; 11-11-92; 5-12-93; Ord. 95-20(5), 11-15-95; Ord. 98-A(1), § 18-10.2.1, 8-5-98; Ord. 02-18(6), 10-9-02; Ord 04-18(2), 10-13-04; Ord. 06-18(2), 12-13-06; Ord. 08-18(7), 11-12-08; Ord. 09-18(11), 12-10-09; Ord. 10-18(3), 5-5-10; Ord. 10-18(4), 5-5-10; Ord. 11-18(1), 1-12-11; Ord. 12-18(3), 6-6-12; Ord. 13-18(5), 9-11-13; Ord. 14-18(4), 11-12-14; Ord. 15-18(10), 12-9-15)

**Sec. 10.2.2 By special use permit**

The following uses shall be permitted by special use permit in the RA district, subject to the applicable requirements of this chapter:

...

53.     Farm winery uses, events, and activities authorized by section 5.1.25(c)(3).

...

55.     Farm brewery uses, events, and activities authorized by section 5.1.57(c)(3).

...

57.     Farm distillery uses, events, and activities authorized by section 5.1.59(c)(3).

(§ 20-10.2.2, 12-10-80; 3-18-81; 2-10-82; 4-28-82; 7-6-83; 3-5-86; 1-1-87; 12-2-87; 11-8-89; 6-10-92; 11-11-92; Ord. 95-20(1), 3-15-95; Ord. 95-20(3), 10-11-95; Ord. 95-20(5), 11-15-95; Ord. 98-A(1), § 18-10.2.2, 8-5-98; Ord. 99-18(4), 6-16-99; Ord. 00-18(6), 10-18-00; Ord. 01-18(2), 3-21-01; Ord. 02-18(6), 10-9-02; Ord. 04-18(1), 5-5-04 effective 7-1-04; Ord.04-18(2), 10-13-04; Ord. 05-18(7), 6-8-05; Ord. 05-18(8), 7-13-05; Ord. 06-18(2), 12-13-06; Ord. 08-18(7), 11-12-08; Ord. 10-18(3), 5-5-10; Ord. 10-18(4), 5-5-10; Ord. 11-18(1), 1-12-11; Ord. 14-18(4), 11-12-14; Ord. 15-18(10), 12-9-15)

**Section 11**

**Monticello Historic District, MHD**

**Sec. 11.3.1 By right**

The following uses shall be permitted by right in the MHD:

...

19. Farm winery uses, events, and activities authorized by section 5.1.25(a), (b), and (c)(2).

...

28. Farm brewery uses, events, and activities authorized by section 5.1.57(a), (b), and (c)(2).

...

30. Farm distillery uses, events, and activities authorized by section 5.1.59(a), (b), and (c)(2).

(Ord. 05-18(5), 6-8-05; Ord. 08-18(2), 5-7-08; Ord. 10-18(4), 5-5-10; Ord. 11-18(4), 4-6-11; Ord. 14-18(4), 11-12-14; Ord. 15-18(10), 12-9-15)

### **Sec. 11.3.2 By special use permit**

The following uses shall be permitted by special use permit in the MHD:

...

8. Farm winery uses, events, and activities authorized by section 5.1.25(c)(3), provided, however, that no special use permit shall be required for any use that is otherwise permitted pursuant to section 11.3.1.
9. Farm brewery uses, events, and activities authorized by section 5.1.57(c)(3), provided, however, that no special use permit shall be required for any use that is otherwise permitted pursuant to section 11.3.1.

...

11. Farm distillery uses, events, and activities authorized by section 5.1.59(c)(3), provided, however, that no special use permit shall be required for any use that is otherwise permitted pursuant to section 11.3.1.

(Ord. 05-18(5), 6-8-05; Ord. 10-18(4), 5-5-10; Ord. 11-18(4), 4-6-11; Ord. 14-18(4), 11-12-14; Ord. 15-18(10), 12-9-15)

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### **Non-Agenda Item. Committee Appointments.**

Mr. Dill **moved** to make the following appointments:

- **appoint** Louis Lopez to the Residential Development Impact Work Group, as a rezoning applicant representative, of with said term to expire September 30, 2017.
- **appoint** Vito Cetta to the Residential Development Impact Work Group, as a previous rezoning applicant involving residential development within the last three years, with said term to expire September 30, 2017.
- **appoint** Charlie Armstrong to the Residential Development Impact Work Group, as a representative of the development community, with said term to expire September 30, 2017.
- **appoint** Jason Inofuentes to the Residential Development Impact Work Group, as a representative of the Community Advisory Councils, with said term to expire September 30, 2017.
- **appoint** Nancy Hunt to the Residential Development Impact Work Group, as a representative of the Community Advisory Councils, with said term to expire September 30, 2017.
- **appoint** Jeff Werner to the Residential Development Impact Work Group, as a representative of the environmental community, with said term to expire September 30, 2017.
- **appoint** Morgan Butler to the Residential Development Impact Work Group, as a representative of the environmental community, with said term to expire September 30, 2017.

Ms. Mallek **seconded** the motion. Roll was called and the motion passed by the following:

AYES: Mr. Dill, Ms. Mallek, Ms. McKeel, Ms. Palmer, Mr. Randolph and Mr. Sheffield.  
NAYS: None.

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### **Agenda Item No. 8. From the Board: Committee Reports and Matters Not Listed on the Agenda.**

Mr. Randolph reported that Rep. Kathy Byron of the 22nd District has introduced into the General Assembly House Bill 2108, which will effectively stop a County-funded broadband authority, raise a service standard for such an authority in rural areas that is excessively high and expensive, prohibit the authority from possessing proprietary information, and restrict the operating capacity and efficacy of the authority. He said the bill was undoubtedly written by the big players in the telecommunications industry to restrict the creation of new broadband authorities and to eliminate existing authorities, such as the Roanoke Valley Broadband Authority. He said that if passed, the bill will most likely make it, barring

federal underwriting subsidies and tax incentives afforded to the telecommunication industry, that the provision of affordable, accessible broadband will not occur in the near future unless an alternative technology, such as affordable private satellite communications intercedes. Mr. Randolph stated that he attended the press announcement in Roanoke today, and Friends of Municipal Broadband have stated that HB2018 will restrict funding for municipal broadband entities from all public bodies and political subdivisions, meaning Albemarle's effort would be dead in the water. He said it would also ensure that municipal broadband entities do not build anywhere that is currently being serviced, and unserved areas as defined by a 10MBS-shared connection makes providing an open-access network virtually impossible. He said that 10MBS is not even a high enough threshold to be defined as low-level broadband.

Mr. Randolph stated that the bill also removes all protections around proprietary information and trade secrets, so it would turn the fate of Virginia's future economic position to unregulated private internet service providers. He said it would require rigid, arduous, and unnecessary processes to restrict operating capacity and efficacy, and it would require state-level approvals from the Virginia Broadband Advisory Committee, with members including lobbying and private sector executives looking to protect their organization or their own bottom line. Mr. Randolph stated that there were numerous broadband authority representatives present who spoke at this event, and Republican Senator Frank Wagner from Virginia Beach came out and said that he sees broadband as essential as any utility and essential for economic development, and he would be running for Governor with broadband as a significant part of his platform. He noted that he did see David Blount there and would be getting in touch with Chip Boyles of the TJPDC.

Ms. Mallek asked if Mr. David Blount, Legislative Liaison, Thomas Jefferson Planning District Commission, would be putting together some bullet points on this. Mr. Randolph responded that he assumed he would be.

Ms. Mallek stated that Mr. David King told her on the break that Delegate Steve Landes has put in a bill to promote the study of the winery and brewery industry to circumvent the Fairfax bill, which would put everyone in the wrong direction. She said that they have asked that Albemarle County consider participating in the study group, and she would volunteer to serve in that capacity, as she has been working on this issue for a long time.

Mr. Kamptner asked that Ms. Mallek keep his office and the Zoning Administrator's office informed.

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Agenda Item No. 9. From the County Executive: Report on Matters Not Listed on the Agenda.

Mr. Foley stated that this was his last meeting, and it had been a privilege to serve the Board and the citizens of this County for the last 17 years. He said that he is leaving a good staff behind, and the Board has an ambitious agenda, but he believes it is the right one.

Ms. Mallek commented that he has guided them through a fascinating evolution over the past 10 years.

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Agenda Item No. 10. Adjourn to February 1, 2017, 1:00 p.m., Lane Auditorium.

With no further business to come before the Board, the meeting was adjourned at 9:04 p.m.

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Chairman

Approved by Board
Date: 07/12/2017
Initials: CKB