

**Albemarle County Planning Commission
July 15, 2009**

The Albemarle County Planning Commission participated in a roundtable meeting on Wednesday, July 15, 2009, at 4:00 p.m., at the County Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Marcia Joseph, Bill Edgerton, Linda Porterfield and Thomas Loach, Vice Chairman. Absent were Don Franco, Calvin Morris and Eric Strucko, Chairman. Julia Monteith, AICP, non-voting representative for the University of Virginia was absent.

Other officials present were Amelia McCulley, Director of Zoning/Zoning Administrator; Wayne Cilimberg, Director of Planning; Ron Higgins, Chief of Zoning and Jay Schlothauer, Building Official.

Call to Order and Establish Quorum:

Mr. Loach called the special roundtable meeting to order at 4:00 p.m. and established a quorum.

Roundtable Discussion:

ZTA-2009-00003 Farm Wineries – Resolution of Intent (Wayne Cilimberg/Amelia McCulley)

PROPOSAL: Amend the Albemarle County Zoning Ordinance so that its current farm winery regulations are consistent with Virginia Code Section 15.2-2288.3, and in order to promote the efficient and effective administration of the County's zoning regulations and meet the intent of the County's Rural Area Plan and Rural Areas Zoning District.

Mr. Cilimberg noted that staff is seeking roundtable feedback and input on the changes identified in the report. The Planning Commission adopted a resolution of intent to start this process so that the current farm winery regulations are in line with the Virginia Code, more specifically for administration of the ordinance. Staff asked that those in attendance ask questions and provide input. Legal questions will need to be deferred since someone from the County Attorney's office is not present. Following the roundtable and with consideration of feedback and input provided, staff will finalize the zoning text amendment and schedule a public hearing with the Albemarle County Planning Commission.

Those attending (approximately 16) introduced themselves and a sign up sheet was circulated to those in attendance to obtain individual names and email addresses for future notification.

Matt Conrad, with the Virginia Wine Counsel, noted that in 2006 it began with a list of usual and customary uses. They came back in 2007 and put in place the framework of legislation which instructed counties what they could and could not regulate. Further in 2009 they came back and clarified that these events and activities all by their very nature were agricultural. That is the foundation where they come at this from today. It is that agriculture and wineries intertwine and that wineries or agricultural uses should not be subjected to any regulation greater than is given to other agricultural uses in Albemarle County.

Mr. Cilimberg presented a PowerPoint presentation and summarized the changes to winery regulations being considered (as also distributed via email). As Mr. Conrad mentioned they are trying to make sure they are reflecting the Code stipulations that have evolved over the last three years in the state of Virginia, which says local restrictions shall take into account the economic impact on the farm winery and such restriction for the agricultural nature of such activities and events and whether such activities and events are usual and customary for farm wineries throughout the Commonwealth. The agricultural nature of such activities and events were highlighted because it was new as of July 1 of this year in the State Code and was not reflected in the report.

- He reviewed selected relevant sections of the Virginia Code pertaining to farm wineries as outlined in Attachment C of the staff report, which included the definitions, wine licenses, and

limitations on Class A and Class B farm wineries. He reviewed proposed changes to winery regulations in the zoning ordinance as outlined in Attachment D of the staff report. (See Staff Report and Attachments)

- There are eight uses specified in the zoning ordinance to be allowed by right at a farm winery. Then there are what staff would consider to be by-right uses with a zoning clearance, which would be for uses that will not exceed 200 persons in attendance at any given time and a determination that the use will not have a substantial impact on the public health, safety or general welfare. That determination ultimately would be based on a zoning clearance issued by the zoning administrator.
- There are a number of uses related to agritourism that they define. In actuality these uses were pulled from the study that was done in 2006 that lead to the legislation of 2007 although that study in and of itself did not get legislated as the result of the uses in that study. These were identified in that study as being usual and customary uses at farm wineries. Many of the uses already have been occurring in Albemarle County.
- Some uses would be evaluated by the zoning administrator with a zoning clearance on a case by case basis. In all of these cases they are talking about by-right through a zoning clearance. The zoning clearance would be an application accompanied by a sketch plan. The zoning administrator may impose reasonable conditions to reduce the impacts from a use so that they are not substantial. The zoning clearance is a determination that the use conducted at a farm winery are usual and customary and do not create substantial impacts.
- There are other uses that are agritourism or sales related to the farm winery and which are determined by the zoning administrator to be usual and customary uses at farm wineries throughout the Commonwealth.
- It would be left up to the individual winery whether to define the uses up front to submit for one blanket clearance for a number of activities and then come in for subsequent clearances for additional uses. Over the 200 persons in attendance at any given time, staff recommends a special use permit. Up to that point it is clearly through the zoning clearance process.
- Staff believes an outdoor simplified sound system, which is proposed to be changed to outdoor amplified music, should not be allowed due to the potential for noise impacts. In addition hot air balloons and hot air balloon rides should not be permitted. A definition of restaurant is proposed to be added for clarify.
- Questions and comments from the public were invited.

Mr. Werner talked about the Code definition of restaurant and its traffic impact.

Ms. McCulley replied that if a winery were situated on a road and there were peak times of release when an event is over and everybody leaves a site the Police Department would require that somebody be at the entrance, for example, making sure that traffic is being directed or whatever they may want to be assured that there is not a substantial negative impact to public health and safety. That is far as it would go to the traffic question.

Mr. Williamson asked what reasonable conditions are. He noted that a lot of people present are wondering how this would be administered and the organization of - What is by-right versus what requires a zoning clearance. He asked what if 200 people show up at the tasting. Is this ok? If yes or no, then what is the number limit for tasting? He referenced page 4 - I & J and asked are these allowed by right and if there are additional uses.

Ms. McCulley replied that the conditions will be limited and will be based on what they are proposing in terms of the use and the intensity of the use. Also, to some degree, particularly when dealing with something like traffic the access. When is traffic assistance warranted? It would include things like that. The conditions will be limited to whatever state agencies are going to require as part of their approval. The Water Protection Ordinance for any earth disturbance. Generally they want to make sure for events up to 200 people that they have area that is available to park those people, which does not have to be paved or graveled. It is hard to be specific about conditions. At some point a VDOT entrance may be required or traffic assistance for peak events is required. It is hard to know what kind of conditions might come up.

Mr. Cilimberg said that in the spirit of the State Code, the zoning clearance is appropriate to make a determination that it is not a substantial impact.

Mr. Werner mentioned the items on page 3-b and asked do all or any apply to uses permitted by-right without a zoning clearance? What is left out?

Mr. Williamson said it was ridiculous to require a zoning clearance for some of the by-right uses, such as a picnic.

Mr. Cilimberg noted the question is does a zoning clearance constitute further local regulation when they also have to make sure it was permitted through the State Code and not a substantial impact on public health, safety and welfare. There are two ways to do that - either judge through the submittal of a zoning clearance, which is a strictly administrative process and does not go through a separate body; or, basically make everything by-right and then deal with it afterwards when people start complaining that it is impacting them. Staff believes that in the spirit of the State Code in order to make sure there is no substantial impact on health, safety and welfare that having a zoning clearance for the uses they identified was appropriate to make that determination. It was not to approve or deny the use, but to make sure there was not a substantial impact. From today's input, staff will go back to see what uses can fit in by-right categories.

Mr. Williamson suggested that they focus on the Rural Area and the commerce conflict. An example is the lighting in parking lots. He felt this takes a broader brush than is necessary. They need to talk about the large items and a reasonable way to mitigate the impacts. They need to make sure that the use is really directly related to the sale of wine. The large list really scares people.

Mr. Pollock said having just built a winery that he had been through the process. Almost everything was on the list permitted by right with a zoning clearance. He did not think that he should need a clearance to do all of this.

Ms. Shelton noted that she had just been through the building process, too. There are unintended consequences of putting these uses in line by line that can't be applied across the county. There might be one instance where there is an issue, but another where it would not. This would require expense and time. She had to go to the ARB to build an addition to a barn. The County has a reputation for making it difficult to sustain agriculture. Now making it sustainable is what is driving what they are doing right now. Two or three weddings on her property would not be a huge impact on her neighbors due to the long distance away. There is an assumption there that might apply in a couple of instances, but not across the board.

Ms. Porterfield said that four or five weddings at 200 people on the same day could be a real impact to the people around the property. But a couple of weddings spread apart could be handled as long as there were places to park with the ability to get them in and out without any problems.

Ms. Shelton suggested that they make specific regulations to address those issues.

Mr. Cilimberg pointed out that the number of weddings was not limited, but the zoning clearance would contain the numbers they planned to have.

Ms. Joseph asked about a blanket zoning clearance.

Amelia McCulley said that a blanket zoning clearance sounds fine. What is missing in the list is that everything is just listed out A – N and some of these involve large numbers of people and some don't. The things they care about the most in terms of impact to the surrounding property and roads and so forth are the ones that are peak events with large numbers of people. There is really not reason to limit the smaller number of attendee type of events. Staff may need to separate it out a little better and only limit the larger events.

Mr. Cilimberg reiterated that the request was that staff needs to shorten the list of uses and focus on those uses with the most potential for impact. He was hearing that staff needs to look at items l, m and a.

Ms. Shelton asked what the cost of the zoning clearance was.

Ms. McCulley replied that the current fee was \$35, which was currently being reviewed and may go up to \$50.

Mr. Edgerton said that he likes separating out non-impacts versus major impact. Noise, traffic and lighting are things that could have a significant or potential impact on the public health, safety and welfare. He suggested that they concentrate on those on all agricultural activities. .

Mr. Loach asked how to determine substantial impact on traffic. For example, Byrom Park was a 50 acre park and only had 50 parking spaces and the community around it complained. The County actually lowered the parking spaces to 29 because of concerns of traffic.

Ms. McCulley said that the substantial impact language refers to public health, safety and welfare. For health staff would use the State Health Department as the agency to guide us on that. For safety with regards to traffic staff relies on VDOT. The welfare is where it gets really gray and very difficult. There is not a lot of guidance in the legislation about where the demarcation is. For traffic concerns under the zoning clearance VDOT would have to be consulted and if a commercial entrance approval is required, then that would be part of the approval.

Mr. Cilimberg said that a presumption was that up to 200 people at one time at any particular winery is an acceptable number. There may need to be provisions to accommodate that number depending on where that winery is located, the roads that lead to it and the condition of the site regarding parking. In each case it may be different.

Ms. King asked where the 200 people come in especially if they already have an approved entrance that can accommodate more.

Mr. Conrad replied that the 200 people limitation was for the special events.

Mr. Cilimberg said the uses in the by-right list are not subject to the 200 people.

Mr. Werner questioned how to distinguish a large wedding and tasting at the same time.

Ms. Shelton suggested that they use common sense in the regulations since wineries are good for the general welfare in supporting the economy. She suggested that the process not be made too onerous and time consuming. They already have reasonable guidelines and regulations and adding too much will be cumbersome. This needs to be positive and not negative.

Jay Schlothauer, Building Official, pointed out that a zoning clearance was a mechanism that applied to all businesses in the county. Every business in the county has to have a zoning clearance in which all these things are being checked for every single one. The zoning clearance is a standard thing. It is not an onerous problem.

Ms. McCulley noted that it was the easiest tool to process this. Staff has heard that they should address existing wineries in terms of considering grandfathering. That is something staff will take back and work on as part of this.

A concern was expressed about future interpretations of gray areas regarding events. When does a promotional activity become an event and what would happen on a beautiful day if more than 200 people arrived for tasting.

Mr. Cilimberg noted that as long as it was one of the by-right uses they could have 4,000 people.

Mr. Cilimberg noted that staff needs to provide a little more clarity about that.

Ms. Porterfield suggested that the wineries send staff their normal operating hours, which would show them those areas.

Mr. Cilimberg said that if staff gets the clearance list down to a few items, then it would distinguish between what needs to be 200 or less and what can be whatever number it is based on a nice weekend. The 200 people limitation is for those items that require a zoning clearance. The 200 is not the maximum number for uses not subject to a clearance.

Ms. McCulley pointed out that it would be for tastings and on-site sales and things like that.

Ms. Joseph noted that it talks about the selling of wine related items. She asked if there was a way to open up to sell produce, preserves and baked bread. She also wanted to make sure that this applies to distilleries and breweries.

Ms. McCulley replied that she did not know the answer to that question, but thought that the State Code was very specific to the farm winery.

Ms. Joseph was opposed to the third thing on the sketch plan. She was all for the Water Protection Ordinance for protecting water quality, but thought that sometimes some of the techniques they were asking people to do in the rural areas are over-the-top. She asked if there was some way to modify that.

Mr. Cilimberg invited other public comments.

Mr. Schoenberg asked if anyone had looked into what Orange County is doing. They are living a couple of miles from wineries and they can do a whole range of things such as having restaurants and holding all kinds of special events and things, but they can't.

Ms. Pollock noted that three wineries within a few miles in other counties have no limitations, which gives them an unfair competitive advantage of their winery.

Ms. Shelton questioned why they need the 200 limit when they already have an approved egress/ingress. The 200 person limit seems to be arbitrary.

Mr. Cilimberg replied that staff can relook at the 200, but that there is always the question of whether it is the right number. Staff uses the 200 because it came out of the General Assembly study. The 200 only applies to those uses that apply to the zoning clearance. Staff can look at that.

Mr. Conrad noted that what is considered usual and customary can change overtime.

Ms. Shelton said that they want to provide some food sales with the alcohol.

Jake raised a question about the sound and why amplified sound is regulated more than the current Noise Ordinance db level.

Mr. Cilimberg noted that was a good point. He reiterated that the point was that there is a Noise Ordinance and it can regulate whatever the noise is produced from.

There being no further comments or questions, Mr. Cilimberg indicated it would consider the input received and make changes to the text to bring back for Planning Commission review at a future work session. Staff will notify those attending when the Commission work session is scheduled. The request was made by winery interests that the work session not be held between late August and early October

as this is a very busy period for wineries. Mr. Cilimberg acknowledged that it would be best to hold the work session before or after that time. He noted that it would probably be afterwards.

Staff requested those attending to e-mail any additional comments to Mr. Cilimberg at wcilimb@albemarle.org by the end of July.

No formal action was taken by the Planning Commission.

Mr. Edgerton left the meeting at 5:34 p.m.

Ms. Porterfield left the meeting at 5:43 p.m.

Mr. Cilimberg noted that staff appreciates all who attended and the comments they provided, and looks forward to working with them.

Adjournment:

With no further discussion, the meeting adjourned at 5:51 p.m. to the Tuesday, July 21, 2009 meeting at 6:00 p.m. at the County Office Building, Second Floor, Auditorium, 401 McIntire Road, Charlottesville, Virginia.

V. Wayne Cilimberg, Secretary

(Recorded and transcribed by Sharon C. Taylor, Clerk to Planning Commission & Planning Boards)