

**CLARKE COUNTY PLANNING COMMISSION
TABLE OF CONTENTS
May 30, 2023 Work Session Packet**

<u>Item #</u>	<u>Description</u>	<u>Pages</u>
1	Meeting Agenda – May 30, 2023 Work Session	1
4A	Component plan five-year review resolutions	2-4
	-- Staff memo	2
	-- Historic Resources Plan draft review resolution	3
	-- Water Resources Plan draft review resolution	4
4B	<u>Discussion</u>, Maximum lot size exception regulations text amendment (TA-23-02)	5-13
	-- Staff Memo	5-13
4C	<u>Discussion</u>, Farm winery/farm brewery/farm distillery regulations text amendment (TA-23-03)	14-24
	-- Staff Memo	14-24



Clarke County Planning Commission

AGENDA – Work Session

Tuesday, May 30, 2023 – 3:00PM

Berryville/Clarke County Government Center – Main Meeting Room

1. **Approval of Agenda**
2. **Review of June 2 Business Meeting Agenda Items**
 - A. Agenda Review
 - B. Status of Deferred Applications
3. **Old Business -- None scheduled**
4. **New Business**
 - A. Component plan five-year review resolutions
 - (1) Historic Resources Plan
 - (2) Water Resources Plan
 - B. Discussion, Maximum lot size exception regulations text amendment (TA-23-02)
 - C. Discussion, Farm winery/farm brewery/farm distillery regulations text amendment (TA-23-03)

Adjourn



Clarke County Planning Department

101 Chalmers Court, Suite B

Berryville, Virginia 22611

(540) 955-5132

www.clarkecounty.gov

TO: Planning Commission

FROM: Brandon Stidham, Planning Director

RE: Component plan five-year review resolutions

DATE: May 19, 2023

As you may remember from the annual project priority list, the five-year reviews of the Historic Resources Plan and Water Resources Plan are due this year – June 19 for the Historic Resources Plan and September 18 for the Water Resources Plan. Code of Virginia §15.2-2230 requires planning commissions to review their comprehensive plans at least once every five years in order to determine whether it is advisable to make changes to the plan. This requirement also applies to the each of the component plans as they are also considered to be part of the County's Comprehensive Plan. The Commission has worked extensively for the past several years to update the Comprehensive Plan and component plans as well as to begin reviewing each plan consistently on a five-year schedule.

Unlike recent five-year reviews, Staff does not recommend initiating a review and update of either the Historic Resources Plan or the Water Resources Plan. Both component plans underwent significant updates in 2018 and each plan's guidance and recommendations remain current, applicable, and consistent with the recently-adopted 2022 Comprehensive Plan. The Historic Preservation Commission (HPC) was consulted about the status of the Historic Resources Plan and members concurred with Staff that the plan does not need to be updated.

Instead of recommending adoption of resolutions to initiate the review of each component plan, Staff recommends adopting resolutions for the continuation of each plan for an additional five years. Copies of draft resolutions are enclosed for your consideration. Both resolutions state that the Commission will conduct a future review no later than June 10, 2028 to determine whether it is advisable to review and update each plan. Adoption of each resolution will allow both plans to be compliant with Code of Virginia requirements. The Comprehensive Plan Committee reviewed these resolutions at their May 15 meeting and concur with Staff's recommendation to adopt them.

If the Committee is comfortable with this approach, Staff recommends the Commission to adopt the resolutions at the June 2 Business Meeting. Please let me know if you have questions in advance of the Work Session.

**RESOLUTION FOR THE CONTINUATION OF
THE 2018 HISTORIC RESOURCES PLAN FOR FIVE YEARS**

WHEREAS, the 2018 Historic Resources Plan was adopted by the Board of Supervisors on June 19, 2018, and

WHEREAS, Code of Virginia §15.2-2230 requires that at least once every five years, a locality’s planning commission shall review the comprehensive plan “to determine whether it is advisable to amend the plan,” and

WHEREAS, the Historic Resources Plan is an implementing component plan of the 2022 Clarke County Comprehensive Plan,

WHEREAS, June 19, 2023 marks the five-year anniversary of the Plan’s adoption, and

AND WHEREAS, the Clarke County Historic Preservation Commission with the assistance of Department of Planning Staff recently reviewed the current Plan and determined that a comprehensive review and update of the Plan is not necessary as its guidance and recommendations remain current, applicable, and consistent with the 2022 Comprehensive Plan.

NOW THEREFORE, BE IT RESOLVED that the Planning Commission has determined that it is not currently necessary to conduct a review of the 2018 Historic Resources Plan as the guidance and recommendations remain current, applicable, and consistent with the 2022 Comprehensive Plan.

BE IT FURTHER RESOLVED that the Planning Commission shall conduct a future review and determine whether it is advisable to amend the 2018 Historic Resources Plan no later than **June 10, 2028**.

Adopted this **2nd day of June, 2023**.

George L. Ohrstrom, II. (Chair)

**RESOLUTION FOR THE CONTINUATION OF
THE 2018 WATER RESOURCES PLAN FOR FIVE YEARS**

WHEREAS, the 2018 Water Resources Plan was adopted by the Board of Supervisors on September 18, 2018, and

WHEREAS, Code of Virginia §15.2-2230 requires that at least once every five years, a locality’s planning commission shall review the comprehensive plan “to determine whether it is advisable to amend the plan,” and

WHEREAS, the Water Resources Plan is an implementing component plan of the 2022 Clarke County Comprehensive Plan,

WHEREAS, September 18, 2023 marks the five-year anniversary of the Plan’s adoption, and

AND WHEREAS, Department of Planning Staff recently reviewed the current Plan and determined that a comprehensive review and update of the Plan is not necessary as its guidance and recommendations remain current, applicable, and consistent with the 2022 Comprehensive Plan.

NOW THEREFORE, BE IT RESOLVED that the Planning Commission has determined that it is not currently necessary to conduct a review of the 2018 Water Resources Plan as the guidance and recommendations remain current, applicable, and consistent with the 2022 Comprehensive Plan.

BE IT FURTHER RESOLVED that the Planning Commission shall conduct a future review and determine whether it is advisable to amend the 2018 Water Resources Plan no later than **June 10, 2028**.

Adopted this **2nd day of June, 2023**.

George L. Ohrstrom, II. (Chair)



Clarke County Planning Department

101 Chalmers Court, Suite B

Berryville, Virginia 22611

(540) 955-5132

www.clarkecounty.gov

TO: Planning Commission

FROM: Brandon Stidham, Planning Director

RE: Discussion, Maximum lot size exception regulations text amendment (TA-23-02)

DATE: May 19, 2023

Item #4B is a discussion of new proposed changes to the maximum lot size exception (MLSE) review criteria and regulations found in Section 6.2.6C of the Zoning Ordinance. At the Commission's October 4, 2022 work session, Staff requested policy direction regarding MLSEs granted for having a dwelling existing prior to October 17, 1980 on the property. Specifically, Staff asked whether an MLSE can be granted for such a dwelling if it had previously been demolished and whether the lot size exception can be applied to any lot in a proposed subdivision. Commissioners answered yes to both policy questions.

The primary purpose of the proposed text amendment is to incorporate this interpretation into Zoning Ordinance Section 6.2.6C. A secondary purpose is to clean up the text in this section to make the regulations clearer and more straightforward to apply. The Ordinances Committee reviewed this proposed text amendment at their May 15 meeting and agreed by consensus to forward it to the full Commission for consideration.

Below is a breakdown of the changes to Section 6.2.6C including explanations for the edits.

Subsections 1 and 2

1. Procedures for maximum **average** lot size exceptions. A lot ~~or lots~~ may qualify for a maximum **average** lot size exception by meeting one of the following criteria **described in subsections 2-4 below.**÷
2. ***Exception for dwelling existing prior to October 17, 1980. A lot with a dwelling that existed prior to October 17, 1980 and is recognized as a farmstead or tenant house per Section 3.4 may be subdivided with a maximum lot size exception. Dwellings in existence and taxed as such or with a building permit issued before October 17, 1980 may be located on a lot that exceeds the maximum area requirements.*** Such lots may be created so long as:
 - a. ***Their size and location does not create low quality land characteristics as described in subsection 4 below*** on any other lots created as a result of the

division, or

- b.** If the lots created ~~has~~ **have** zero dwelling unit rights remaining ~~(excluding any lots for residential dwelling units that do not exceed the maximum area requirements).~~

This exception shall not be applied more than once per lot existing on March 20, 2001 containing one or more such pre-1980 dwellings. ~~or;~~ ***The maximum lot size exception may be applied to any lot created in the subdivision.***

Staff Discussion:

The new first sentence added to Subsection 2 addresses the first policy question reviewed by the Commission:

A lot with a dwelling that existed prior to October 17, 1980 and is recognized as a farmstead or tenant house per Section 3.4 may be subdivided with a maximum lot size exception.

The new language clearly describes a qualifying dwelling as one that existed prior to October 17, 1980 and for sliding-scale zoning purposes is a dwelling that received an exception to the original dwelling unit right (DUR) allocation. This replaces current language, “Dwellings in existence and taxed as such or with a building permit issued before October 17, 1980,” which can be interpreted as requiring the qualifying dwelling to be intact in order to be eligible for a MLSE. Under the new language, Staff can determine whether a dwelling meets this requirement by verifying it against the DUR allocation records and such dwelling would not be required to be intact.

There is one policy question that was not previously discussed with the Commission -- should a lot be eligible for a MLSE if the qualifying dwelling was demolished at any time after October 17, 1980 and a new home was later constructed using the allocation exception? It is not known whether this situation has ever happened before and the current language could be interpreted to prohibit a MLSE if the qualifying dwelling were replaced. The proposed language would allow the MLSE because there only needs to be evidence that a qualifying dwelling once existed on the lot in the DUR records. The Ordinances Committee did not have concerns with allowing a lot to remain MLSE-eligible if the qualifying dwelling was demolished and a new dwelling constructed to replace it.

The new sentence added to the end of Subsection 2b addresses the second policy question reviewed by the Commission. It states that a MLSE may be applied to any lot created in the subdivision and is not required to be used on the lot where the qualifying is or was located. Staff recommends that the current language in parentheses be deleted. It appears to reference a major subdivision in which multiple residential-size lots are created in addition to a MLSE lot. It is proposed for deletion as it is not necessary and potentially confusing.

Additional edits in Subsections 1 and 2 are included for clarification purposes.

Subsection 3

3. ~~*Exception for lot in permanent conservation easement. A lot may be created with a maximum lot size exception if the parent parcel*~~ *The lot being divided, including without limitation any residual lot irrespective of area,* has been placed under ~~an~~ *permanent conservation* easement granted to the Clarke County Conservation Easement Authority, the Virginia Board of Historic Resources, the Virginia Outdoors Foundation, and/or any other entity authorized to hold an open-space easement pursuant to the [Code of Virginia Open-Space Land Act \(Va. Code §10.1-1700 et seq.\)](#) ~~and approved by the Clarke County Board of Supervisors,~~ *and that Additional requirements include:*
 - a. ~~All the~~ lots in the *proposed subdivision shall be* ~~are~~ located in a manner consistent with the physiographic and/or historic characteristics of the property *as recommended by the primary holder of the conservation easement.*
 - b. ~~As to requests for a maximum lot size exception based upon the land having been~~ *For lots that were* placed in an easement held or co-held by the Clarke County Conservation Easement Authority (recorded after November 19, 2013), said easement must have included the termination of at least one (1) dwelling unit right in order for the property to qualify for a maximum lot size exception under this paragraph. ~~or;~~

Staff Discussion:

New language added throughout subsection 3 is included for clarification purposes. The current first two sentences are confusing to read and would be replaced with language clearly stating that a lot may be created with a MLSE if the parent parcel is in permanent conservation easement. The word “permanent” is added to avoid extending the MLSE provisions to lots in conservation easement for a fixed term of years. The language “and approved by the Clarke County Board of Supervisors” would be deleted. This language is in reference to “any other entity authorized to hold an open-space easement pursuant to the Virginia Open-Space Land Act” – the Board does not have authority under State law to approve holders of conservation easements in the County.

Edits to subsections a and b are mainly editorial. New language is added to the end of subsection a to state that lot arrangement would be based on comments and recommendations from the easement holder. As a matter of practice, MLSE applications would be forwarded by Staff to the easement holder and any comments received regarding lot arrangement would be incorporated into Staff’s recommendation to the Commission. As it is currently written, the Commission would be responsible for reviewing the lot arrangement per this subsection without specific guidelines or standards to support a determination.

Subsection 4

4. *Exception for low quality land.* *A lot may be created with a maximum lot size exception if it is determined by the Planning Commission, prior to subdivision approval, that the lot to be subdivided is of sufficiently low quality as described below to justify using more than the maximum lot area of low quality land for a proposed lot.*

a. Low quality land characteristics. ~~Low quality land contains one or more of the following characteristics: The following are considered characteristics of low quality land that would permit maximum lot sizes for dwelling purposes in excess of the maximum lot size allowed by this section:~~

- Physical features or small size or irregular shape of potential residual lot such that efficient use of farm machinery would not be possible or that said land would be left to no useful purpose; or
- Combination of physical features and setting such that the maximum lot size allowed in this section for a lot proposed in a minor or major subdivision is too small to accommodate a dwelling, drainfield, and well so as to meet the minimal applicable health standards and provided that no lot may be created or increased in area so as to exceed a maximum area of four acres. An application for a maximum lot size exception, submitted under this section, shall be accompanied by a written statement prepared by ~~the~~ a Virginia ~~Health~~ Department ~~of Health environmental specialist~~ or ~~an onsite soil evaluator (OSE) a professional soil scientist~~ (as defined in County Code Chapter 143, Septic Systems) stating why the proposed lot could not accommodate a dwelling, drainfield, and well meeting Virginia and Clarke County health standards within the maximum lot size allowed in this section. Lots proposed in a major subdivision are not eligible for a Maximum Lot Size Exception under this section; or
- Land that is part of a lot where such land has been determined by the Zoning Administrator ~~not~~ to be ~~not~~ important farmland.

b. Important farmland determination. ~~For the purpose of granting maximum lot size exceptions under this section, the dominant decision-making tool shall be The Clarke County Land Evaluation and Site Assessment (LESA) System, edition dated March 24, 1992, shall be used as the primary decision-making tool to evaluate maximum lot size exception requests under this subsection. This tool which~~ is maintained for public use, inspection and information in the Clarke County ~~Department of Planning Administrative Offices in Berryville, Virginia,~~ and is hereby incorporated into and made a part of this Ordinance as if fully set out herein. ~~The Zoning Administrator shall use the aforementioned LESA System to evaluate a maximum lot size exception.~~ A report on the result shall be forwarded to the Commission. The Commission shall designate as Important Farmland any lands with the following characteristics:

Lot Size	LESA Rating
Under 40 Acres	72% or More
40-129.99 Acres	68% or More
130 Acres or More	64% or More

In instances where the LESA score of a lot is within four points above or below the minimum LESA rating that qualifies a lot as Important Farmland, the Commission may grant or deny a maximum lot size exception, depending on the evidence presented indicating whether the subject land is important farmland. In these instances, the Commission may consider:

- The extent that the proposed lot exceeds the maximum lot size allowed in this section;
- Whether the LESA System accurately reflects the suitability of the subject lot for continuing agricultural use; and
- Factors reasonably related to agricultural suitability of the subject lot that are not appropriately addressed by the LESA System, such as physical features.

~~In instances where the lot being subdivided is 20 acres or larger, The maximum allowable lot size shall be determined using the following chart however, in any instance, the Commission may set a maximum lot size less than specified in the chart:~~

<i>LESA rating for important farmland</i>	<i>Maximum lot size</i>
<i>Within 4 points above or below minimum LESA rating, lot is 20 acres or larger</i>	<i>4 acres</i>
<i>Between 5 and 12 points below the minimum LESA rating, lot is 20 acres or larger</i>	<i>6 acres</i>
<i>12 or more points below the minimum LESA rating OR the lot is less than 20 acres</i>	<i>As determined by the Commission</i>

~~and the LESA score of a lot is within four points above or below the minimum LESA rating that qualifies a lot as Important Farmland, and the Commission grants a maximum lot size exception, the area of the proposed lot shall not exceed four acres. If the LESA score is between five and twelve points below the minimum LESA rating, the area of the proposed lot shall not exceed six acres. In instances where the LESA score of a lot is twelve or more points below the minimum LESA rating, or the lot being subdivided is less than 20 acres, the area of the proposed lot shall not exceed the acreage determined by the Commission. In any instance, the Commission may set a maximum area less than specified above.~~

Staff Discussion:

All of the proposed changes to this subsection are made to clarify the language and to update terminology that is out of date.

No changes are proposed to current subsection 4 – the regulations for boundary line adjustments of lots approved with a MLSE which were adopted at the end of 2022.

Staff Recommendation

Staff has no concerns with the adoption of this text amendment. If the Commission is comfortable with it, we can place it on the June 2 Business Meeting agenda to initiate consideration and schedule public hearing for the July 7 Business Meeting. Please let me know if you have questions or concerns in advance of the meeting.

Ordinance Amendment Text (changes shown in bold italics with strikethroughs where necessary):

6.2.6 Maximum Lot Size Exception (MLSE)

C. Review Criteria and Regulations

1. Procedures for maximum ~~average~~ lot size exceptions. A lot ~~or lots~~ may qualify for a maximum ~~average~~ lot size exception by meeting one of the following criteria ***described in subsections 2-4 below.***

2. ***Exception for dwelling existing prior to October 17, 1980. A lot with a dwelling that existed prior to October 17, 1980 and is recognized as a farmstead or tenant house per Section 3.4 may be subdivided with a maximum lot size exception. Dwellings in existence and taxed as such or with a building permit issued before October 17, 1980 may be located on a lot that exceeds the maximum area requirements.*** Such lots may be created so long as:
 - a. ***Their size and location does not create low quality land characteristics as described in subsection 4 below*** on any other lots created as a result of the division, or
 - b. ***If the lots created has have zero dwelling unit rights remaining (excluding any lots for residential dwelling units that do not exceed the maximum area requirements).***

This exception shall not be applied more than once per lot existing on March 20, 2001 containing one or more such pre-1980 dwellings. ~~or;~~ ***The maximum lot size exception may be applied to any lot created in the subdivision.***

3. ***Exception for lot in permanent conservation easement. A lot may be created with a maximum lot size exception if the parent parcel The lot being divided, including without limitation any residual lot irrespective of area, has been placed under an permanent conservation easement granted to the Clarke County Conservation Easement Authority, the Virginia Board of Historic Resources, the Virginia Outdoors Foundation, and/or any other entity authorized to hold an open-space easement pursuant to the Code of Virginia Open-Space Land Act (Va. Code §10.1-1700 et seq.) and approved by the Clarke***

~~County Board of Supervisors,~~ and that *Additional requirements include:*

a. All the lots in the proposed subdivision shall be ~~are~~ located in a manner consistent with the physiographic and/or historic characteristics of the property *as recommended by the primary holder of the conservation easement.*

b. As to requests for a maximum lot size exception based upon the land having been ~~For lots that were~~ placed in an easement held or co-held by the Clarke County Conservation Easement Authority (recorded after November 19, 2013), said easement must have included the termination of at least one (1) dwelling unit right in order for the property to qualify for a maximum lot size exception under this paragraph. ~~or;~~

4. Exception for low quality land. *A lot may be created with a maximum lot size exception if it is determined by the Planning Commission,* prior to subdivision approval, that the lot to be subdivided is of sufficiently low quality *as described below* to justify using more than the maximum lot area of low quality land for a proposed lot.

a. Low quality land characteristics. *Low quality land contains one or more of the following characteristics: The following are considered characteristics of low quality land that would permit maximum lot sizes for dwelling purposes in excess of the maximum lot size allowed by this section:*

- Physical features or small size or irregular shape of potential residual lot such that efficient use of farm machinery would not be possible or that said land would be left to no useful purpose; or
- Combination of physical features and setting such that the maximum lot size allowed in this section for a lot proposed in a minor or major subdivision is too small to accommodate a dwelling, drainfield, and well so as to meet the minimal applicable health standards and provided that no lot may be created or increased in area so as to exceed a maximum area of four acres. An application for a maximum lot size exception, submitted under this section, shall be accompanied by a written statement prepared by ~~the~~ a Virginia ~~Health~~ Department *of Health environmental specialist* or *an onsite soil evaluator (OSE)* ~~a professional soil scientist~~ (as defined in County Code Chapter 143, Septic Systems) stating why the proposed lot could not accommodate a dwelling, drainfield, and well meeting Virginia and Clarke County health standards within the maximum lot size allowed in this section. Lots proposed in a major subdivision are not eligible for a Maximum Lot Size Exception under this section; or
- Land that is part of a lot where such land has been determined by the Zoning Administrator *not* to be ~~not~~ important farmland.

b. Important farmland determination. ~~For the purpose of granting maximum lot size exceptions under this section, the dominant decision-making tool shall be~~ **The Clarke County Land Evaluation and Site Assessment (LESA) System, edition dated March 24, 1992;** *shall be used as the primary decision-making tool to evaluate maximum lot size exception requests under this subsection. This tool* ~~which~~ is maintained for public use, inspection and information in the Clarke County ~~Department of Planning Administrative Offices in Berryville, Virginia,~~ and is hereby incorporated into and made a part of this Ordinance as if fully set out herein. ~~The Zoning Administrator shall use the aforementioned LESA System to evaluate a maximum lot size exception.~~ A report on the result shall be forwarded to the Commission. The Commission shall designate as Important Farmland any lands with the following characteristics:

Lot Size	LESA Rating
Under 40 Acres	72% or More
40-129.99 Acres	68% or More
130 Acres or More	64% or More

In instances where the LESA score of a lot is within four points above or below the minimum LESA rating that qualifies a lot as Important Farmland, the Commission may grant or deny a maximum lot size exception, depending on the evidence presented indicating whether the subject land is important farmland. In these instances, the Commission may consider:

- The extent that the proposed lot exceeds the maximum lot size allowed in this section;
- Whether the LESA System accurately reflects the suitability of the subject lot for continuing agricultural use; and
- Factors reasonably related to agricultural suitability of the subject lot that are not appropriately addressed by the LESA System, such as physical features.

~~In instances where the lot being subdivided is 20 acres or larger, The maximum allowable lot size shall be determined using the following chart however, in any instance, the Commission may set a maximum lot size less than specified in the chart:~~

<i>LESA rating for important farmland</i>	<i>Maximum lot size</i>
<i>Within 4 points above or below minimum LESA rating, lot is 20 acres or larger</i>	<i>4 acres</i>
<i>Between 5 and 12 points below the minimum LESA rating, lot is 20 acres or larger</i>	<i>6 acres</i>
<i>12 or more points below the minimum LESA rating OR the lot is less than 20 acres</i>	<i>As determined by the Commission</i>

~~and the LESA score of a lot is within four points above or below the minimum LESA rating that qualifies a lot as Important Farmland, and the Commission grants a maximum lot size exception, the area of the proposed lot shall not exceed four acres. If the LESA score is between five and twelve points below the minimum LESA rating, the area of the proposed lot shall not exceed six acres. In instances where the LESA score of a lot is twelve or more points below the minimum LESA rating, or the lot being subdivided is less than 20 acres, the area of the proposed lot shall not exceed the acreage determined by the Commission. In any instance, the Commission may set a maximum area less than specified above.~~

5. No lot approved with a maximum lot size exception shall be reduced in size by boundary line adjustment without approval by the Planning Commission for one or both of the following hardship reasons:
- To correct an encroachment of a driveway, onsite sewage disposal system, or a structure located on an adjacent lot
 - To aid in the repair or replacement of a failing onsite sewage disposal system located on an adjacent lot



Clarke County Planning Department

101 Chalmers Court, Suite B

Berryville, Virginia 22611

(540) 955-5132

www.clarkecounty.gov

TO: Planning Commission

FROM: Brandon Stidham, Planning Director

RE: Discussion, Farm winery/farm brewery/farm distillery regulations text amendment (TA-23-03)

DATE: May 19, 2023

Item #4C is a discussion of potential changes to the Zoning Ordinance regulations for farm wineries, farm breweries, and farm distilleries.

Background

The current regulations were adopted in 2015 in response to General Assembly legislation that provided protections to farm wineries, farm breweries, and farm distilleries by limiting local zoning authority over these operations. Per Code of Virginia §15.2-2288, these operations are allowed by-right as agricultural operations and localities cannot require special use permits for them. Furthermore, localities are preempted entirely from regulating the following activities:

- Production/harvesting of agricultural products and the manufacturing of wine, beer, or alcoholic beverages.
- On-premises sale, tasting, and consumption of wine, beer, or alcoholic beverages during regular business hours within the normal course of business of the operation.
- Direct sale and shipment of product to consumers, licensed wholesalers, and out-of-state purchasers.
- Storage, warehousing, and wholesaling of product.
- Sale of wine, beer, or alcoholic beverage-related items that are incidental to the sale of wine, beer, or alcoholic beverages.

State code language also states that local regulations “shall be reasonable and shall take into account the economic impact on the [farm winery, farm brewery, or farm distillery] of such restriction, the agricultural nature of such activities and events, and whether such activities are usual and customary for [such operations] throughout the Commonwealth.” The language continues, “Usual and customary activities and events at [such operations] shall be permitted without local regulation unless there is a substantial impact on the health, safety, or welfare of the public.”

Current zoning regulations echo the State code preemptions noted above and require a zoning permit to operate any farm winery, farm brewery, or farm distillery. The only current requirements to obtain a zoning permit are approval of a State license to operate a farm winery, limited brewery, or limited distillery; issuance of a business license by the Commissioner of the Revenue; and approval of the private well and onsite sewage disposal system by the Virginia Department of Health (VDH) for both domestic and process operations.

Staff has taken a strict interpretation of “usual and customary activities” in reviewing these operations over the years. In addition to the activities specifically preempted from local regulation by State code, Staff interprets “usual and customary activities” to include:

- Tasting rooms
- Retail shops to sell product and product-related items
- Sale of pre-packaged food items not requiring regulation as a “food establishment” by VDH
- Temporary use of food trucks or off-site caterers

Staff has not interpreted “usual and customary activities” to include:

- Public events, with the exception of events permitted as special events under Code of Clarke County Chapter 57
- Retail sale of wine, beer, or alcoholic beverages produced by other off-site operations or merchandise not related to wine, beer, or alcoholic beverages
- Minor commercial public assembly events such as weddings, private parties, or private meetings
- Live music or entertainment concerts which are promoted as events and/or are charged a separate fee. Incidental entertainment that occurs infrequently such as amplified or acoustic background music may be acceptable.

The objective is to allow these agricultural operations to conduct their core functions of growing agricultural products and producing beverages for public sale and consumption without allowing them to become an event and entertainment destination. Such public-oriented activities may be allowable as special uses but should not be allowed as the by-right, “usual and customary activities” of an agricultural operation.

Staff has also interpreted that farm wineries, farm breweries, and farm distilleries are required to be part of an agricultural operation located on the same lot or a contiguous lot under common ownership. Changes to State code requirements for licensure of these operations in recent years allow licensed farm wineries, farm breweries, and farm distilleries to produce alcoholic beverages with limited or in some cases no onsite agricultural production. Absent an onsite agricultural production component, a farm winery, farm brewery, or farm distillery would essentially be a manufacturing operation. Food and beverage manufacturing operations are not allowed in the AOC or FOC Districts with the exception of “small-scale processing of fruits and vegetables” which is allowed as a special use.

Proposed Text Amendment:

The proposed text amendment is an attempt to codify Staff’s interpretations and application of our current regulations as they conform to State code requirements. The desired end result is a clearer ordinance and more robust and standardized review process when these operations propose public-oriented activities. In some cases, code language was adopted from similar regulations currently used by Fauquier County – a jurisdiction that views development in agricultural areas similarly to Clarke County.

Structurally, the separate farm winery, farm brewery, and farm distillery uses would be combined into a single use with common use regulations. A new definition is proposed:

An agricultural operation with agricultural activities conducted on the same lot or on a contiguous lot under common ownership, which is licensed as a farm winery, a farm brewery, or a farm distillery by the Commonwealth of Virginia.

This definition emphasizes that these operations must be agricultural in nature with agricultural activities being conducted on the same lot or on a contiguous lot in common ownership. This would prevent approval, for example, of a farm brewery in which only a negligible amount of hops is grown onsite, the vast majority of hops are brought in from another location, and the primary activity is beer manufacturing. It would also prevent satellite tasting rooms from being established under farm winery licensure where the farm winery itself is located on a separate lot.

Use regulations are proposed to be significantly expanded and are divided into general use regulations and use regulations that apply specifically to operations that are open to the public. The general use regulations contain the current State code language describing the allowable activities for farm wineries, farm breweries, and farm distilleries. Also included are new zoning permit requirements that set forth all administrative reviews necessary to protect the health, safety, and welfare of the general public. These include:

- Copies of permits demonstrating VDH approval of the private well and onsite sewage disposal system(s) for domestic and process uses.
- Virginia Department of Transportation (VDOT) approval of the property entrance.
- Approval of an erosion and sediment control plan and stormwater management plan, if required.

Additional general requirements include:

- Proof that the farm winery, farm brewery, or farm distillery will be conducted as an agricultural operation with agricultural activities on the same lot.
- Proof that an application for the applicable licensure with the Virginia Alcoholic Beverage Control Authority has been filed. A copy of the approved license must be provided to the zoning administrator before commencing production.

- Proof that a business license application has been filed with the Commissioner of the Revenue.
- Provision of any other pertinent information required by the zoning administrator such as a site sketch or other supplementary information.

A new minimum lot size requirement of five (5) acres is included. Staff chose five acres as it is the minimum lot size required for an agricultural operation on a lot not containing a dwelling to qualify for land use value assessment for taxation purposes.

Use regulations for public operations are added to address those impacts specifically when such operations allow the public to come onsite for tastings and sales. These include:

- Hours of operation -- Farm wineries, farm breweries, and farm distilleries cannot be open to the public between the hours of 8:00PM and 8:00AM. State code references allowing onsite sale, tasting, and consumption of products “during regular business hours within the normal course of business” of the farm winery, farm brewery, or farm distillery however such hours are not expressly stated. This regulation would allow a reasonable 12 hour period for public access to the operation.
- Food service – Language is added to codify Staff’s interpretation that food service is allowable so long as it does not require VDH permitting for a “food establishment,” typically required of temporary or permanent restaurant operations. Temporary food vendors are also allowed consistent with Zoning Ordinance requirements and vendor parking areas must be shown on the zoning site sketch.
- Entertainment activities and amplified sound – Language is added to clarify that live music and entertainment is permissible so long as it is “incidental and accessory” to the operation. Events that are advertised or promoted separately or for which a separate fee is charged is not considered to be “incidental and accessory.” A setback of 300 feet from all property lines is required for any building in which live music, entertainment, or amplified sound is conducted. Furthermore, no amplified sound shall be audible beyond any property line and all amplified sound is prohibited after 6:00PM.
- Public road access – If an operation is to be open to the public, the public ingress and egress is required to be via direct access to a public road. Use of a shared driveway or private access easement for the public would be prohibited, although traffic exclusive to the farm operation would be able to use a shared driveway or private access easement.
- Parking – Parking must be provided per the parking requirements in Section 7.2.5.
- Outdoor lighting – Any outdoor lighting must conform to the dark sky requirements for AOC and FOC properties found in Section 7.4.3 and lighting provided for the public’s safe egress shall be turned off one hour after closing or 9:00PM, whichever is earlier.

- Erosion and sediment control; stormwater management – This is required for any areas that would not be agriculturally exempt from such plans.
- Any events approved via agritourism activity zoning permit or special event permit (Chapter 57) would be subject to the limitations set forth in these use regulations.
- Prohibited activities – Borrowing an idea from Fauquier County, Staff has included a list of specifically prohibited activities. This list is not intended to be all-inclusive and includes uses and activities that are conducted at some farm wineries, farm breweries, and farm distilleries in other areas. These include:
 - Retail sale of merchandise not related to wine, beer, or alcoholic beverages
 - Minor commercial public assembly activities, such as weddings and private parties
 - Personal services such as spa and beauty services or educational/recreational classes
 - Amusement devices and similar rides including motorized go-karts, ATVs, hot air balloons, helicopters
 - Overnight accommodations
 - Camping

Some of these activities may be approvable with a special use permit obtained separately.

As noted earlier in the report, State code requires any local regulation to take into consideration the following three elements – economic impact on the operation, agricultural nature of the activities or events, and whether the activity being regulated is “usual and customary.” Staff believes that all of the proposed regulations meet this three-part test. The general use regulations ensure compliance with processes that would be required by other agencies including VDOT approval of the entrance, VDH approval of the well and septic system, and County/Virginia Department of Environmental Quality approval of erosion control and stormwater management plans. Requirements placed on public activities are consistent and in some cases less stringent than requirements placed on other businesses in the AOC and FOC Districts. Furthermore, activities such as live music, entertainment, and restaurant-level food service may be conducted by some operations but are not considered to be “usual and customary” of all farm wineries, farm breweries, and farm distilleries.

The Ordinances Committee reviewed this proposed text amendment at their May 15 meeting and agreed by consensus to forward it to the full Commission for consideration. Staff recommends the Commission discuss the text amendment at the May 30 Work Session and if you are comfortable, it can be added to the June 2 Business Meeting agenda to initiate consideration and schedule public hearing for the July 7 Business Meeting.

Please let me know if you have questions in advance of the Work Session.

Ordinance Amendment Text (changes shown in bold italics with strikethroughs where necessary):

<i>FARM WINERY, FARM BREWERY, OR FARM DISTILLERY</i>	
Permitted Use	AOC, FOC
Accessory Use	None
Special Use	None

Definition:

An agricultural operation with agricultural activities conducted on the same lot or on contiguous lot under common ownership, which is licensed as a farm winery, a farm brewery, or a farm distillery by the Commonwealth of Virginia.

Current farm winery definition:

~~An establishment, licensed as a farm winery by the Commonwealth of Virginia, with:~~

- ~~1. A producing vineyard, orchard, or similar growing area and with facilities for fermenting and bottling wine on the premises where the owner or lessee manufactures wine that contains not more than 18 percent alcohol by volume; or~~
- ~~2. A producing vineyard, orchard, or similar growing area or agreements for purchasing grapes or other fruits from agricultural growers within the Commonwealth, and with facilities for fermenting and bottling wine on the premises where the owner or lessee manufactures wine that contains not more than 18 percent alcohol by volume.~~

~~The terms “owner” or “lessee” shall include a cooperative formed by an association of individuals for the purpose of manufacturing wine. In the event such cooperative is licensed as a Farm Winery, the term “farm” as used in this definition includes all of the land owned or leased by the individual members of the cooperative as long as such land is located in the Commonwealth. (**Va. Code §4.1-100**).~~

Current farm brewery definition:

~~An establishment that is licensed as a limited brewery by the Commonwealth of Virginia.~~

Current farm distillery definition:

~~An establishment that produces alcoholic beverages other than wine or beer and is licensed as a limited distiller by the Commonwealth of Virginia.~~

General Use Regulations:

- 1. Permitted activities not subject to zoning regulation per Code of Virginia 15.2-2288.3:**
 - A. Farm wineries may conduct the following activities:**
 - The production and harvesting of fruit and other agricultural products and the manufacturing of wine.

- The on-premises sale, tasting, or consumption of wine during regular business hours within the normal course of business of the licensed farm winery.
- The direct sale and shipment of wine by common carrier to consumers *in accordance with Va. Code Title 4.1 and regulations of the Board of Directors of the Virginia Alcoholic Beverage Control Board Authority.*
- The sale and shipment of wine to the Virginia Alcoholic Beverage Control Authority, licensed wholesalers, and out-of-state purchasers *in accordance with Va. Code Title 4.1, regulations of the Board of Directors of the Virginia Alcoholic Beverage Control Board Authority, and federal law.*
- The storage, warehousing, and wholesaling of wine *in accordance with Va. Code Title 4.1, regulations of the Board of Directors of the Virginia Alcoholic Beverage Control Board Authority, and Federal law.*
- The sale of wine-related items that are incidental to the sale of wine.

B. Farm breweries may conduct the following activities:

- The production and harvesting of barley, other grains, hops, fruit, or other agricultural products and the manufacturing of beer.
- The on-premises sale, tasting, or consumption of beer during regular business hours within the normal course of business of such licensed brewery.
- The direct sale and shipment of beer in accordance with Code of Virginia Title 4.1 and regulations of the *Board of Directors of the* Alcoholic Beverage Control *Board Authority.*
- The sale and shipment of beer to licensed wholesalers and out-of-state purchasers in accordance with Code of Virginia Title 4.1, regulations of the *Board of Directors of the* Alcoholic Beverage Control *Board Authority*, and Federal law.
- The storage and warehousing of beer in accordance with Code of Virginia Title 4.1, regulations of the *Board of Directors of the* Alcoholic Beverage Control *Board Authority*, and Federal law.
- The sale of beer-related items that are incidental to the sale of beer.

C. Farm distilleries may conduct the following activities:

- The production and harvesting of agricultural products and the manufacturing of alcoholic beverages other than wine or beer.
- 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 distiller* and the Alcoholic Beverage Control Board pursuant to the provisions of subsection D of Va. Code § 4.1-119.
- The sale and shipment of alcoholic beverages other than wine or beer to licensed wholesalers and out-of-state purchasers in accordance with Va. Code Title 4.1, regulations of the Alcoholic Beverage Control *Board Authority*, and Federal law.
- The storage and warehousing of alcoholic beverages other than wine or beer in accordance with Va. Code Title 4.1, regulations of the Alcoholic Beverage Control *Board Authority*, and Federal law.

- The sale of items related to alcoholic beverages other than wine or beer that are incidental to the sale of such alcoholic beverages.

2. Zoning permit required. A zoning permit shall be required to operate a farm winery, farm brewery, or farm distillery. No zoning permit shall be issued until the following information is confirmed by the Zoning Administrator:

- A. That the proposed farm winery, farm brewery, or farm distillery will be conducted as an agricultural operation with agricultural activities conducted on the same lot.**
- B. That the applicant has filed an application with the Virginia Alcoholic Beverage Control Authority to operate a farm winery, farm brewery, or farm distillery, as defined in Va. Code Title 4.1, on the same property as proposed on the zoning permit. The applicant shall provide a copy of the approved license prior to commencing production of wine, beer, or alcoholic beverages.**
- C. That the applicant has filed a business license application with the Commissioner of the Revenue of Clarke County. An approved business license shall be maintained in good standing throughout the life of the use.**
- D. That the Virginia Department of Health (VDH) has approved private well and onsite sewage disposal permits for both domestic and process operations as applicable.**
- E. That the Virginia Department of Transportation (VDOT) has approved the property entrance for use by the farm winery, farm brewery, or farm distillery.**
- F. That an erosion and sediment control plan and stormwater management plan, if required, have been approved for the subject property per use regulation 7 below.**
- G. That the applicant has provided any other pertinent information required by the zoning administrator.**

~~2. Zoning Permit for Farm Wineries. Prior to commencing operations, the owner of a farm winery shall obtain a zoning permit from the Zoning Administrator and a business license from the Commissioner of Revenue. As a prerequisite for a zoning permit, the owner shall provide copies of approved private well and onsite septic system permits issued by the Virginia Department of Health for both domestic and process operations.~~

~~2. Zoning Permit for Farm Breweries. Prior to commencing operations, the owner of a farm brewery shall obtain a zoning permit from the Zoning Administrator and a business license from the Commissioner of Revenue. As a prerequisite for a zoning permit, the owner shall provide copies of approved private well and onsite septic system permits issued by the Virginia Department of Health for both domestic and process operations.~~

- ~~2. Zoning Permit for Farm Distilleries. Prior to commencing operations, the owner of a farm distillery shall obtain a zoning permit from the Zoning Administrator and a business license from the Commissioner of Revenue. As a prerequisite for a zoning permit, the owner shall provide copies of approved private well and onsite septic system permits issued by the Virginia Department of Health for domestic and process operations.~~
3. ***Minimum lot size. No farm winery, farm brewery, or farm distillery shall be operated on a lot less than five (5) acres in size unless such lot is part of an agricultural operation located on multiple contiguous lots in common ownership.***

Use Regulations for Public Operations

1. ***Hours of operation. Farm wineries, farm breweries, and farm distilleries shall not be open to the public between the hours of 8:00PM and 8:00AM.***
2. ***Food service.***
 - A. ***No food service shall be provided to the public which requires approval as a “Food Establishment” or which requires issuance of a “Temporary Food Establishment Permit” by the Virginia Department of Health (VDH).***
 - B. ***Temporary food vendors are permitted to operate at a farm winery, farm brewery, or farm distillery and shall comply with all use regulations as set forth in Zoning Ordinance Section 5.4 (Temporary Uses – Temporary Vendor). An area designated for temporary food vendors shall be shown on the zoning permit site sketch and shall be located within all building setback areas.***
3. ***Entertainment activities and amplified sound.***
 - A. ***Live music and similar performance-based entertainment activities shall be incidental and accessory to the farm winery, farm brewery, or farm distillery. Any such activities that are advertised and/or promoted as a separate event or for which a separate admission fee is charged shall not be considered incidental and accessory.***
 - B. ***Any building in which live music and similar performance-based entertainment activities are held or in which amplified sound is conducted shall be located a minimum of 300 feet from all property lines.***
 - C. ***Amplified sound from live music or similar performance-based entertainment activities, whether generated indoors or outdoors, shall not be audible at or beyond the property lines of the subject property. No amplified sound shall be conducted after 6:00PM.***

4. **Direct access to public road required.** *Farm wineries, farm breweries, and farm distilleries that are open to the public shall have direct access to a public road and shall use such direct access as the means of public ingress and egress. Use of a shared driveway or private access easement shall not constitute direct access to a public road and shall not be used for public ingress and egress.*
5. **Parking.** *Off-street parking shall be provided per Zoning Ordinance Section 7.2.5.*
6. **Outdoor Lighting.** *Outdoor lighting shall conform to the requirements of Zoning Ordinance Section 7.4.3 for outdoor lighting in the AOC and FOC Districts. Lighting provided for the public's safe egress from the property shall be turned off within one hour of closing or 9:00PM, whichever is earlier.*
7. **Erosion and sediment control; stormwater management.**
 - A. *An erosion and sediment control plan shall be provided if required per Code of Clarke County Chapter 148 (Erosion and Sediment Control) for areas which are not agriculturally exempt as determined by the Building Official or designee.*
 - B. *A stormwater management plan shall be provided if required by the Virginia Department of Environmental Quality (DEQ).*
 - C. *Land disturbance activities shall be conducted in accordance with the approved erosion and sediment control plan and/or stormwater management plan, if applicable.*
8. **Agritourism Activity Zoning Permit.** *Any event proposed to be held at a farm winery, farm brewery, or farm distillery as an agritourism activity zoning permit per Zoning Ordinance Section 5.4 shall be subject to the limitations of these use regulations.*
9. **Special Events.** *Any special event approved per Code of Clarke County Chapter 57 (Special Events) shall be subject to the limitations of these use regulations and shall conform to the requirements of the special event permit approval.*
- ~~3. **Special Events Conducted at Farm Wineries.** The owner or occupant of the property shall obtain such permit as required by Chapter 57 of the Code of Clarke County (unless exempt under the provisions of Section 57.3.2) for an activity/event that is not primarily the on-premises sale, tasting, or consumption of wine during regular business hours within the normal course of business of the farm winery, but which constitutes a Special Event as defined in Section 57.2.~~
- ~~3. **Special Events Conducted at Farm Breweries.** The owner or occupant of the property shall obtain such permit as required by Chapter 57 of the Code of Clarke County (unless exempt under the provisions of Section 57.3.2) for an activity/event that is not primarily the on-premises sale, tasting, or consumption of beer during regular business~~

~~hours within the normal course of business of the farm brewery, but which constitutes a Special Event as defined in Section 57.2.~~

~~3. Special Events Conducted at Farm Distilleries. The owner or occupant of the property shall obtain such permit as required by Chapter 57 of the Code of Clarke County (unless exempt under the provisions of Section 57.3.2) for an activity/event that is not primarily the on-premises sale, tasting, or consumption of alcoholic beverages other than wine or beer during regular business hours within the normal course of business of the farm distillery, but which constitutes a Special Event as defined in Section 57.2.~~

10. *Prohibited activities shall include but are not limited to:*

- *Retail sales of merchandise not related to wine, beer, or alcoholic beverages*
- *Minor commercial public assembly activities, such as weddings and private parties*
- *Personal services such as spa and beauty services or educational/recreational classes*
- *Amusement devices and similar rides including motorized go-karts, ATVs, hot air balloons, helicopters*
- *Overnight accommodations*
- *Camping*

Required Review Processes:

A Zoning Permit is required per Section 6.2.1