

Public Hearing Notice

The Clarke County Board of Supervisors will conduct three public hearings in the Berryville Clarke County Government Center Main Meeting Room, 101 Chalmers Court, 2nd Floor, Berryville, VA, on Tuesday, September 19, 2023, at 6:30 pm, or as soon thereafter as the matter may be heard, to hear public comment on the following:

PH 2023-09: (TA23-03) Farm Winery, Farm Brewery, and Farm Distillery Regulations. Proposed text amendment to amend the current uses, “farm winery,” “farm brewery,” and “farm distillery,” per Section 5.2A of the Zoning Ordinance. The amendment would consolidate these three uses under a new use defined as 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. A new minimum lot size of 5 acres is proposed and new zoning permit requirements and use regulations for operations that are open to the public would be added. The proposed administrative requirements are intended to mitigate any potential significant impacts on the health, safety, and welfare of the public.

Information regarding the above matters is available to the public in Clarke County Administration and on the County website. Any person desiring to speak on the above matters should appear at the appointed time and place. Written copies of statements are requested but not required. Clarke County does not discriminate on the basis of handicapped status in admission to its programs and activities. Accommodations will be made for handicapped persons upon prior request.

Chris Boies – County Administrator

ZONING ORDINANCE TEXT AMENDMENT (TA-23-03)
Farm Winery, Farm Brewery, and Farm Distillery Regulations
July 18, 2023 Board of Supervisors Meeting – SCHEDULE PUBLIC HEARING
STAFF REPORT – Department of Planning

The purpose of this staff report is to provide information to the Planning Commission and Board of Supervisors to assist them in reviewing this proposed ordinance amendment. It may be useful to members of the general public interested in this proposed amendment.

Description:

Proposed text amendment to amend the current uses, “farm winery,” “farm brewery,” and “farm distillery,” per Section 5.2A of the Zoning Ordinance. The amendment would consolidate these three uses under a new use defined as 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. A new minimum lot size of 5 acres is proposed and new zoning permit requirements and use regulations for operations that are open to the public would be added. The proposed administrative requirements are intended to mitigate any potential significant impacts on the health, safety, and welfare of the public.

Requested Action:

Schedule public hearing for the Board’s August 15, 2023 meeting.

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 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 (by the Virginia Department of Environmental Quality), 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 or on a contiguous lot

under common ownership.

- 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 impacts that may occur 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 – A proposed list of specifically prohibited activities is included. 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.

Planning Commission Recommendation:

Following a duly advertised public hearing on July 7, 2023, the Commission voted 7-0-4 (Dunning, Glover, Hunt, Staelin absent) to recommend adoption of the text amendment. No one spoke for or against the text amendment at the public hearing.

Staff Recommendation:

Staff has no outstanding concerns with the adoption of this text amendment and recommends the Board schedule public hearing for the August 15, 2023 meeting.

History:

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| May 15, 2022. | Ordinances Committee agreed by consensus to forward the proposed text amendment to the full Commission for consideration. |
| May 30, 2023. | Placed on the Commission’s Work Session agenda for initial discussion. |
| June 2, 2023. | Commission voted 8-0-3 (Glover, Ohrstrom, Staelin absent) to schedule public hearing for the July 7 Business Meeting. |
| July 7, 2023. | Commission voted 7-0-4 (Dunning, Glover, Hunt, Staelin absent) to recommend adoption of the text amendment |
| July 18, 2023. | Placed on the Board of Supervisors Meeting agenda to schedule public hearing. |

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**