



# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

## PROPOSED AGRITOURISM ZONING ORDINANCE AMENDMENT

Agritourism is listed as a First Tier, Priority 1 item under Agricultural Districts and Uses on the Zoning Ordinance Amendment Work Program. In July 2019, staff convened a workgroup comprised of Fairfax County farmers and agritourism providers. Staff met with the workgroup on three occasions to discuss and gain feedback on the proposed amendment. Staff has also participated in regional discussions on agritourism issues. This document presents a discussion of agritourism, as well as the proposed associated changes to the Zoning Ordinance. While Fairfax County is an urbanizing county, there are local farms within the county that are looking for economic opportunities associated with agritourism that would allow them to conserve agricultural land and support their agricultural business.

### **BACKGROUND**

Section 3.2-6400 of the Code of Virginia defines agritourism activity as “any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, wineries, ranching, historical, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity.” The Code goes on to address local regulation of agritourism activities in Section 15.2-2288.6 and states that no locality is allowed to regulate agritourism activities unless there is a substantial impact on the health, safety, or general welfare. However, the Code of Virginia does not identify any criteria by which to measure those impacts. Therefore, the Zoning Administrator has had to determine on a case-by-case basis whether such activity has a substantial impact on the health, safety, or general welfare of the public. Setting thresholds in the Zoning Ordinance will provide a predictable and consistent path for future agritourism activities in Fairfax County.

### **CURRENT ZONING ORDINANCE PROVISIONS**

The Zoning Ordinance allows agriculture by-right in the R-A through R-1 Districts. Agriculture,<sup>1</sup> as defined in the Zoning Ordinance, requires the property to be five acres in size and be a business engaged

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<sup>1</sup> **Sect. 20-300 Definitions.** AGRICULTURE: The use of a farm or other tract of land not less than five (5) acres in size as a business engaged in the production of crops, nursery stock or plant growth of any kind and/or the raising of livestock, aquatic life or other animals to produce products such as food and fiber and the wholesale sale of the foregoing plant and animal products. Agriculture may also include the operation of agritourism uses, as set forth in the Code of Virginia, and a licensed farm winery, limited brewery or limited distillery, but only as those uses are defined in this Ordinance and only in accordance with the provisions of Part 6 of Article 9, when a special exception is required.

The term 'agriculture' shall not include the following uses: (a) the maintenance and operation of plant nurseries; (b) the operation or maintenance of a commercial stockyard or feed yard; (c) the retail sales of agricultural products except as an accessory use; or (d) the operation of landscape contracting services. However, the definition of agriculture shall not be deemed to preclude the keeping of livestock on parcels of two (2) acres or more in size as permitted by Sect. 2-512 or gardening, as permitted as an accessory use in Sect. 10-102.



in the production of crops, nursery stock or plant growth of any kind and/or the raising of livestock, aquatic life or other animals to produce products such as food and fiber and the wholesale of the foregoing plant and animal products. Agriculture may also include the operation of agritourism uses, as set forth in the Code of Virginia, and a licensed farm winery, limited brewery or limited distillery. Special Exception approval is required under certain circumstances for a licensed farm winery, limited brewery or limited distillery located on a farm containing 20 acres or more. The definition of agriculture is not proposed to be substantially changed with the Zoning Ordinance Modernization (zMOD) project. Currently if someone is pursuing an agritourism use that does not meet the definitions of licensed farm winery, limited brewery or limited distillery, staff suggests that they submit a use determination request. The use determination process allows the Zoning Administrator and her staff to determine if the proposed use has a substantial impact on the health, safety or general welfare of the community. If there is such an impact, Special Permit or Special Exception approval may be required, depending on the type of agritourism use.

### **PROPOSED AMENDMENT**

#### **Agritourism**

This amendment proposes to explicitly list, and define, agritourism as a permitted accessory use to agriculture while establishing use limitations that address concerns surrounding the health, safety and general welfare of the community. The proposed definition is as follows.

AGRITOURISM: Any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy agricultural activities, including farming, historical, cultural, or natural activities and attractions, regardless of whether the participant paid to participate in the activity.

The scale of the agritourism activities would be subject to specific use limitations as detailed in the table in Attachment 1. If a provider would like to exceed the use limitations established for certain agritourism uses, a Special Exception could be pursued. The following activities, and similar uses as determined by the Zoning Administrator, are under consideration to be permitted as an agritourism use in conjunction with an agriculture operation.

- Farm tours including educational programs, workshops or demonstrations related to agriculture
- Harvest-your-own activities
- Seasonal festivals including crop mazes or hayrides
- Special events as an accessory use not related to agricultural, including but not limited to corporate and other private events, fundraising activities and weddings
- Hiking, equestrian trails and other similar passive recreational activities
- Wayside Stands

Staff proposes a scaled approach to agritourism because of the substantial impact the activity has on health, safety, and general welfare depending on lot size. Using farm wineries, past interpretations, and research of other Virginia jurisdictions, staff determined where potential impacts arise with agritourism activities on a lot size basis. Three varying scales of agritourism activities – small, medium, and large were identified based on lot size. Staff applied the acreage and number of attendees currently permitted under farm wineries to the large scale agritourism category; however, staff does not propose to distinguish the number of attendees based on the road type. A Farm Winery is limited to 200 attendees or 300 if located on a major arterial. Staff is proposing to allow a certain number of attendees for agritourism activities regardless of the road classification. Should the Board support this approach, staff may recommend a corresponding revision to the farm winery regulations. The acreage and number of attendees were scaled down from those previously mentioned for farm wineries in order to create the small and medium size thresholds. Small scale is for lots of 5 up to 10 acres; medium scale is for lots of 10 up to 20 acres; and large scale is for lots of 20 acres or more. The table in Attachment 1 details the scaled approach staff is proposing for agritourism. The list of activities, permissions, and use limitations for each scale is provided. The permissions are identified as “P” which means permitted by-right and “SE” which means Special Exception approval is required. Each scale has the same list of activities, but the allowances, i.e., number of attendees and number of days for the activity increase as the scale increases.

In all three scales, farm tours, harvest-your own activities as well as trails and other passive recreational activities are permitted by-right with no limitation on visitors or days in use. The current provision limiting the size of wayside stands<sup>2</sup> to 400 square feet is proposed for small and medium scale agritourism. However, staff is proposing to increase the square footage permitted for wayside stands to between 800 and 1,600 square feet for large scale agritourism. The use limitations for seasonal festivals (“festival”) and special events (“events”) are summarized below for each scale. If the owner/operator wishes to exceed these limitations, they could request special exception approval from the Board of Supervisors.

- Small Scale: Festivals and events would be limited to 150 or fewer attendees per day. Additionally, festivals and events would each be limited to a total of 4 days per calendar year with no festival or event exceeding 2 consecutive days.
- Medium Scale: Festivals and events would be limited to 200 or fewer attendees per day. Additionally, festivals and events would each be limited to a total of 8 days per calendar year with no festivals or event exceeding 2 consecutive days.
- Large Scale: No limitation on the number of days for festivals or events if there are 300 or fewer total attendees. Additionally, there can be 2 seasonal festivals per year, each with a maximum duration of 6 weeks, and 12 special events per year, which exceed 300 attendees.

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<sup>2</sup> **Sect. 10-102 Permitted Accessory Uses**

30. Wayside stands, but subject to the following limitations:

B. Structures shall not exceed 400 square feet in gross floor area.

In addition to the use limitations detailed in Attachment 1, this amendment would also establish the following provisions related to agritourism.

- Permit food trucks when they are in conjunction with an agritourism activity, the number and duration of which are still under consideration.
- Permit Bed and Breakfast establishments by-right in the R-A through R-1 Districts on a parcel of 20 acres or more when the provisions of Paragraphs two through four of Sect. 9-526<sup>3</sup> are met.
- Similar to the current provision for Farm Wineries, Breweries and Distilleries, prohibit activities such as helicopter rides, firework displays, antique/flea markets, go-cart/all-terrain vehicle tracks, and mechanized amusement park rides.

Please note that farm wineries, distilleries, and breweries are separately defined, and no changes are proposed to the existing special exception standards and their ability to host events for those uses, except for potentially removing the road distinction for permitted number of attendees to match this proposal.

### **Farm Worker Housing**

The workgroup indicated a desire to provide housing for their farm employees on the farm property because the high cost of housing has made it difficult to retain employees who are often hired on a seasonal basis. The Zoning Ordinance currently permits quarters of a tenant farmer and his family, as an accessory use in the R-A through R-E Districts on a parcel of 20 acres or more (Par. 18 of Sect. 10-102). This amendment would consider continuing to permit accommodations for farm workers as an accessory use to agriculture and potentially permit more than one structure.

### **Administrative Permit Process**

Staff is exploring the possibility of requiring an Administrative Permit, similar to the current process of Temporary Special Permits, to allow seasonal festivals and/or special events that meets the use limitations in Attachment 1. This would allow for staff review of parking

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#### <sup>3</sup> **Sect. 9-526 Additional Standards for Bed and Breakfasts Uses**

2. All bed and breakfast uses shall be permitted only in residential structures, including normal residential accessory structures. Alterations undertaken on structures shall be limited to those which will not alter the exterior appearance of the structure from that of a dwelling or normal residential accessory structure.

3. A bed and breakfast may not include a restaurant; however, breakfast and other light fare may be provided for resident guests. In addition, this provision does not preclude the filing and approval of a separate Group 7 special permit application for a restaurant.

4. No off-street parking or loading space for the bed and breakfast use shall be located in any required side or rear yard that abuts an R district and all off-street parking spaces shall be adequately screened to minimize adverse impacts on adjacent residential properties. No more than three (3) parking spaces for the bed and breakfast use shall be located in any required front yard unless specifically permitted by the Board on a finding that such parking provisions will not adversely affect the character of the surrounding residential area.

arrangements, hours of operation and other activities associated with the seasonal festival or special event. Such a permit could be valid for an extended period of time, unless circumstances change.

### **R-A, Rural Agricultural District**

The purpose of the R-A, Rural Agricultural District is for the raising of livestock and/or farming. Provided that agricultural uses cover not less than 75% of the total land area, a single family detached dwelling can be accessory to the agriculture use on the property. There is approximately 95 acres of land in the R-A District. Staff analyzed these properties through aerial photography. The majority of these properties are vacant land or have a single family detached dwelling without an agricultural use. Staff believes there is value in amending the Purpose and Intent of this district to permit single family detached dwellings as a by-right use along with agriculture. This would better reflect the R-A District in its current state.

### **R-1, Residential District**

There have been previous discussions with the Board of Supervisors as to whether it is appropriate to permit agriculture in the R-1 District. The R-1 District is established to provide for single family detached dwellings and to allow other selected uses which are compatible with the low-density residential character of the district. While no consensus was reached on this topic, staff believes consideration should be given to increasing the minimum acreage required to establish an agricultural use in the R-1 District from 5 acres to 10 acres to minimize the impacts that an agricultural use and associated agritourism activities could have on adjacent properties, particularly if those adjacent properties are single family residences.

### **Rural Resort**

In discussions with the workgroup and in various requests received for use determinations, staff has heard that Fairfax County could capture some of the economic opportunities related to agriculture that is currently going to neighboring jurisdictions, by allowing a venue for events such as weddings and corporate retreats on our rural properties. Currently, the Zoning Ordinance deems these uses indoor commercial recreation, which is not permitted in residential districts. Additionally, there are no opportunities for overnight accommodations in the R-C through R-1 Districts, other than a Bed and Breakfast establishment which is limited to five guest rooms and requires the owner or manager to live on-site.

In response to these discussions, staff is proposing to add a new use of a Rural Resort as a special exception use in the R-A, R-E and R-C Districts on 20 acres or more. The proposed definition is as follows.

**RURAL RESORT:** A private establishment consisting of a structure or structures in which lodging units are offered to transients for compensation as the principal use. The rural resort may include conference and meeting facilities, restaurant, banquet and event facilities, personal service facilities, and recreational amenities.

Additional standards under consideration include requiring on-site management, limitation on the amount of gross floor area devoted to personal service (spa/salon use), banquet spaces, and number of lodging rooms for rent. Similar to the existing provisions for expanding an existing farm winery, the Board of Supervisors may impose conditions on events and activities, including but not limited to the type and number of allowable activities, the area of the site devoted to such activities, the adequacy of water and sanitation services to accommodate the anticipated number of attendees, the days and hours of such activities, the use of lighting or amplified sound systems, and the amount of parking available to accommodate the activity.

The purpose and intent of the R-C District<sup>4</sup> is to protect our natural resources; minimize impervious surface; protect water quality; and promote open, rural areas. Establishing a Rural Resort in this district could intensify the land use and impact the natural resources and water quality that the district intends to protect. If the Board wishes to consider such a use, particularly in the R-C District, careful consideration should be given to developing standards that would ensure that the purpose and intent of the district is maintained and potential environmental impacts mitigated.

### **OUTREACH**

Staff established an Agritourism Workgroup comprised of local farmers, property owners and stakeholders in July 2019. The workgroup has met three times to discuss the topic, express what agritourism activities they currently participate in and would like to establish in the future, and provide feedback on staff's proposal. Additionally, the proposal was introduced to the Agricultural and Forestal District Advisory Committee and two of the Zoning Ordinance Modernization's (zMOD) workgroups. One being the Citizens Advisory Workgroup and the other being the Land Use Attorneys Workgroup. Staff intends to continue our outreach with interested citizens groups as this proposal progresses.

### **NEXT STEPS**

Staff requests guidance on the proposed regulations and anticipates bringing this amendment to the Board for authorization in Spring of 2020. Questions and comments can be directed to Sara Morgan, Senior Planner at [sara.morgan@fairfaxcounty.gov](mailto:sara.morgan@fairfaxcounty.gov) or 703-324-1314.

### **ATTACHMENTS**

1. Agritourism Use Limitations Table

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#### **<sup>4</sup> Sect. 3-C01 Purpose and Intent**

The R-C District is established to protect water courses, stream valleys, marshes, forest cover in watersheds, aquifer recharge areas, rare ecological areas, and areas of natural scenic vistas; to minimize impervious surface and to protect the quality of water in public water supply watersheds; to promote open, rural areas for the growing of crops, pasturage, horticulture, dairying, floriculture, the raising of poultry and livestock, and for low density residential uses; and otherwise to implement the stated purpose and intent of this Ordinance.

	Lot Size	Activity	Permissions	Use Limitations
Small	5 to up to 10 acres	Farm Tours including educational programs, workshops or demonstrations	P	No limitation
		Harvest-Your-Own Activities	P	No limitation
		Seasonal Festivals and Special Events	P/SE	Limited to 150 or fewer total attendees per day; Limited to a maximum of 4 days per calendar year with no festival or event exceeding 2 consecutive days
		Trails and other similar recreational activities	P	No limitation
		Wayside stands	P	Limited to a size of 400 square feet (Par. 30 of Sect. 10-102)
Medium	10 to up to 20 acres	Farm Tours including educational programs, workshops or demonstrations	P	No limitation
		Harvest-Your-Own Activities	P	No limitation
		Seasonal Festivals and Special Events	P/SE	Limited to 200 or fewer total attendees; Limited to a maximum of 8 days per calendar year with no festival or event exceeding 2 consecutive days
		Trails and other similar recreational activities	P	No limitation
		Wayside stands	P	Limited to a size of 400 square feet (Par. 30 of Sect. 10-102)
Large	20 acres or more	Farm Tours including educational programs, workshops or demonstrations	P	No limitation
		Harvest-Your-Own Activities	P	No limitation
		Seasonal Festivals and Special Events	P/SE	Unlimited number of festivals if 300 or fewer total attendees; Maximum of 2 festivals per year, with a maximum duration of 6 weeks each, when exceeding 300 attendees; Maximum of 12 events per calendar year for more than 300 attendees
		Trails and other similar recreational activities	P	No limitation
		Wayside stands	P	Limited to a size of 800-1,600 square feet

**Key:** P – Permitted by-right; SE – Special Exception required to exceed use limitations

**Note:** If you had two events on a single day, it would be counted as one calendar day. If you had an event over two days, it would count as two calendar days.