

COUNTY OF LOUDOUN

DEPARTMENT OF PLANNING AND ZONING

MEMORANDUM

DATE: October 1, 2014

TO: The Loudoun County Planning Commission

FROM: Mark Depo, Senior Planner, Zoning Administration

SUBJECT: **ZOAM 2014-0003, Limited Brewery and Agricultural Processing Zoning Ordinance Amendment**
Planning Commission Work Session, October 7, 2014

The Planning Commission held a public hearing on the subject Zoning Ordinance amendment on September 16, 2014. There were 9 members of the public that spoke at the hearing. Speakers included representatives from the Zoning Ordinance Action Group (ZOAG), Visit Loudoun, Virginia Farm Winery operators, and Loudoun Farm Brewers Association.

At the conclusion of the Public Hearing, the Planning Commission voted to forward the ZOAM to the October 7, 2014 work session for further discussion (8-0-1, Ryan absent).

In preparation for the work session, the Planning Commission requested the following information: 1) Clarification of Code of Virginia § 15.2-2288.3:1 and a jurisdiction's ability to regulate a Limited Brewery use; 2) Citizen complaints related to Virginia Farm Winery and Limited Brewery uses; 3) Limited Brewery use standards in other Virginia jurisdictions; and 4) Limited Brewery use compared to other uses. A summary of the requested information can be found below.

Staff reiterates that the economic, development, tourism, and agricultural benefits related to the Limited Brewery use is in keeping with the County's vision for a vibrant and successful rural economy and fully supports the introduction of the use in Loudoun County. However, as stated at the Public Hearing, the proposed Standards are not intended to restrict the Limited Brewery use, but are intended to protect the health, safety and welfare of the public by mitigating the impact of the use on adjacent properties and surrounding communities.

To this end, and based on public comments and Planning Commission discussion at the Public Hearing, Staff has provided revised standards for the Limited Brewery use in Attachment 1. The revisions are intended to remove proposed Standards perceived as restricting the establishment of the use, reduce proposed Standards, and designate specific Standards for specific activities. These revisions include: 1) eliminating the requirement that the use of heavy equipment shall have direct

access to a paved road (5-667(E)(2)); 2) reducing the parking setback (5-667(C)); 3) requiring landscaping for outdoor activities and not for the use as a whole.

Staff will discuss more thoroughly these newly proposed standards at the work session.

Information requested by the Planning Commission at the September Public Hearing

1) Code of Virginia § 15.2-2288.3:1 and a Jurisdiction's Ability to Regulate a Limited Brewery Use

Many of the public hearing speakers discussed the legality of applying standards to the Limited Brewery use and the intent of the Virginia Senate and House of Delegates related to Senate Bill 430 ("SB 430"). While Staff cannot speak to the intent of the legislation, Staff has provided the following responses to address speaker comments and Staff's interpretation of the Code of Virginia.

Code of Virginia § 15.2-2288.3:1 provides that a jurisdiction is allowed to apply development standards to a Limited Brewery use. Although § 15.2-2288.3:1 limits certain local regulation of limited brewery licensees, § 15.2-2288.3:1 does authorize local regulation to protect the health, safety, and welfare of its citizens, and authorizes local regulation of outdoor amplified music, minimum parking, road access, or road upgrade requirements. The following sections of § 15.2-2288.3:1 highlight (red underlined text) where a jurisdiction is allowed to apply Standards for a Limited Brewery use:

Code of Virginia § 15.2-2288.3:1. Limited brewery license; local regulation of certain activities.

A. It is the policy of the Commonwealth to preserve the economic vitality of the Virginia beer industry while maintaining appropriate land use authority to protect the health, safety, and welfare of the citizens of the Commonwealth and to permit the reasonable expectation of uses in specific zoning categories. Local restriction upon such activities and public events of breweries licensed pursuant to subdivision 2 of § 4.1-208 to market and sell their products shall be reasonable and shall take into account the economic impact on such licensed brewery of such restriction, the agricultural nature of such activities and events, and whether such activities and events are usual and customary for such licensed breweries. Usual and customary activities and events at such licensed breweries shall be permitted unless there is a substantial impact on the health, safety, or welfare of the public. No local ordinance regulating noise, other than outdoor amplified music, arising from activities and events at such licensed breweries shall be more restrictive than that in the general noise ordinance. In authorizing outdoor amplified music at such licensed brewery, the locality shall consider the effect on adjacent property owners and nearby residents.

C. Any locality may exempt any brewery licensed in accordance with subdivision 2 of § 4.1-208 on land zoned agricultural from any local regulation of minimum parking, road access, or road upgrade requirements.

PUBLIC COMMENTS/ISSUES RAISED AT THE SEPTEMBER 16, 2014 PUBLIC HEARING

ISSUE 1: A speaker stated that Standards related to activities usual and customary to a Limited Brewery must take into account the economic impact on such licensed brewery and the agricultural nature of such activities. The speaker also stated that § 15.2-2288.3:1. requires the Limited Brewery use to be established before any Standards are applied so that substantial impact may be determined.

Staff agrees that Standards related to Limited Brewery activities and events must be reasonable and take into account the economic impacts and the agricultural nature of such activities and events, as well as, whether such activities and events are usual and customary. However, usual and customary activities and events are permitted “unless there is a substantial impact on the health, safety, or welfare of the public.” (Code of Virginia § 15.2-2288.3:1.A.)

Loudoun County already contains one licensed Limited Brewery and one licensed Brewery located in the AR-1 zoning district. In addition, a Limited Brewery is similar to a Virginia Farm Winery of which 40 are located in Loudoun County. Staff interprets the legislation for Limited Brewery as being similar to and consistent with Farm Wineries in that a jurisdiction is allowed to apply Standards to mitigate impacts in an effort to protect the health, safety, or welfare of the public consistent with Code of Virginia § 15.2-2288.3:1.A.

In a July 19, 2013 office of the Virginia Attorney General provided an official advisory opinion regarding the ability for Fauquier County, VA to apply Standards to Farm Wineries consistent with § 15.2-2288.3(A). The official opinion states, “this Office [office of the Attorney General] does not offer a view on the validity of these remaining sections [§ 6-401, subsections 8 and 9, Sections 6-402, 6-403, 5-1810.1 and 5-1810.2] of the Fauquier County Zoning Ordinance under the locality's zoning authority.” These listed Sections of the Fauquier County Zoning Ordinance provide development standards for such things as Noise, Lighting, Setbacks, Parking, Food Establishments, Occupancy, Closing Time, Server Training, and Events and prohibits specific accessory uses. [Attachments 2 and 3]

Additionally, the speaker commented on the statement “...substantial impact on the health, safety, or welfare of the public” found in Code of Virginia § 15.2-2288.3:1.A as it relates to a jurisdiction’s ability to regulate Limited Breweries and that this “substantial impact” language is only found under Farm Wineries. The term “substantial impact” is not defined in the Code of Virginia but is found in the Code of Virginia § 15.2-2288.3.A. Farm Wineries; § 15.2-2288.3:1.A. Limited Breweries; and § 15.2-2288.6.A. Agricultural Operations.

ISSUE 2: A speaker made reference to the summary statement of the adopted Code of Virginia § 15.2-2288.3:1 regarding a jurisdiction’s ability to regulate minimum parking, road access, or road upgrade requirements on any licensed Limited Brewery. Staff has interpreted § 15.2-2288.3:1.C to allow a jurisdiction to either regulate or exempt minimum parking, road access, or road upgrade requirements.

The summary statement the speaker referenced is the online summary of the SB 430 legislation as initially passed by the Senate that states,

“The bill limits local regulation of limited brewery licensees and specifically prohibits the imposition of minimum parking, road access, or road upgrade requirements on any licensed limited brewery.”

However, the summary statement found online was not updated to reflect the adopted legislation. The SB 430 language was subsequently amended by the House of Delegates and it was this revised language that passed both Virginia Senate and House of Delegates and was signed by the Governor. The following demonstrates the difference in the initial language passed by the Senate and the adopted language:

ORIGINAL PROPOSAL: § 15.2-2288.3:1.C Proposed by the Senate Committee on January 24, 2014

“No local ordinance should impose minimum parking, road access, or road upgrade requirements on any brewery licensed in accordance with subdivision 2 of § 4.1-208 on land zoned agricultural, unless the operations of such brewery create a substantial impact on the health, safety, or welfare of the public.”

ADOPTED: § 15.2-2288.3:1.C Approved March 27, 2014. Effective July 1, 2014

“Any locality may exempt any brewery licensed in accordance with subdivision 2 of § 4.1-208 on land zoned agricultural from any local regulation of minimum parking, road access, or road upgrade requirements.”

ISSUE 3: In reference to the information provided by a speaker at the public hearing that compared the Limited Brewery and Farm Wineries Sections of the Code of Virginia, there were two important Sections that were not provided. Section 4.1-208.2 related to beer license and Limited Brewery and § 4.1-219 related to limitations on Farm Wineries.

§ 4.1-208. Beer licenses.

“2. Limited brewery licenses, to breweries that manufacture no more than 15,000 barrels of beer per calendar year, provided (i) the brewery is located on a farm in the Commonwealth on land zoned agricultural and owned or leased by such brewery or its owner and (ii) agricultural products, including barley, other grains, hops, or fruit, used by such brewery in the manufacture of its beer are grown on the farm. The licensed premises shall be limited to the portion of the farm on which agricultural products, including barley, other grains, hops, or fruit, used by such brewery in the manufacture of its beer are grown and that is contiguous to the premises of such brewery where the beer is manufactured, exclusive of any residence and the curtilage thereof. However, the Board may, with notice to the local governing body in accordance with the provisions of § 4.1-230, also approve other portions of the farm to be included as part of the licensed premises.

Limited brewery licensees shall be treated as breweries for all purposes of this title except as otherwise provided in this subdivision.”

§ 4.1-219. Limitation on Class A and Class B farm wineries.

“For Class A farm winery licensees, at least 51 percent of the fresh fruits or agricultural products used by the owner or lessee to manufacture the wine shall be grown or produced on such farm and no more than 25 percent of the fruits, fruit juices or other agricultural products shall be grown or produced outside the Commonwealth.

For Class B farm winery licensees, 75 percent of the fresh fruits or agricultural products used by the owner or lessee to manufacture the wine shall be grown or produced in the Commonwealth and no more than 25 percent of the fruits, fruit juices or other agricultural products shall be grown or produced outside the Commonwealth. No Class B farm winery license shall be issued to any person who has not operated under an existing Virginia farm winery license for at least seven years.

However, upon petition by the Department of Agriculture and Consumer Services, the Board may permit the use (i) of a greater quantity of out-of-state products if supplies grown or produced in the Commonwealth are insufficient for a farm winery licensee, whether Class A or Class B, to achieve the level of production which otherwise could be anticipated during a given license year or (ii) by a Class A farm winery of a lesser percentage of products grown or produced on the farm if unusually severe weather or disease conditions cause a significant reduction in the availability of fruit or other agricultural products grown or produced on the farm to manufacture wine during a given license year. As used in this section, the terms "owner" and "lessee" shall include a cooperative formed by an association of individuals for the purpose of manufacturing wine. The term "farm" as used in this section includes all of the land owned or leased by the farm winery licensee as long as such land is located in the Commonwealth.”

These two Sections are important while comparing the uses of Limited Breweries and Farm Wineries. A Limited Brewery is treated as a brewery and as a separate and distinct activity from other activities on the farm: “... licensed premises shall be limited to the portion of the farm on which agricultural products, including barley, other grains, hops, or fruit, used by such brewery in the manufacture of its beer are grown and that is contiguous to the premises of such brewery where the beer is manufactured...”. This is not the case for Farm Wineries where the entire property of the Farm Winery is licensed. In addition, the farm where the Limited Brewery is located is an “Agricultural operation” as defined in §3.2-300 of the Code of Virginia, however staff has interpreted that the Limited Brewery itself, also required to be located on a farm, is not an “Agricultural operation” nor is it included within the definition of “Agritourism activity” as defined in § 3.2-6400. [Definitions provided, below] Again, this is not the case for Farm Wineries where there are limitations for Farm Wineries regarding agricultural production (See Section 4.1-219, above) and a Farm Winery is specifically included within the definition of an “Agritourism

activity”.

“Agricultural operation” means any operation devoted to the bona fide production of crops, or animals, or fowl including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silviculture activity.

“Agritourism activity” means 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.

2) Citizen Complaints Related to Virginia Farm Winery and Limited Brewery Uses

Over the years Zoning Enforcement has received complaints related to Virginia Farm Wineries. The complaints range from tasting rooms functioning as a bar in a residential area to signage along public roadways to questions regarding, setbacks for buildings and parking and general concerns regarding noise, traffic, trash and drivers under the influence.

The Virginia Department of Alcoholic Beverage Control (ABC) provides a list of approved breweries throughout Virginia [<http://www.abc.virginia.gov/>]. One licensed Limited Brewery (origination date 7/2/2014) and one licensed brewery (origination date 8/16/2012) are located in the AR-1 zoning district in Loudoun County. Complaints have been received for both breweries that include issues related to the brewery being in conflict with the Homeowners Association (HOA), setbacks for buildings and parking, noise, traffic, trash and drivers under the influence.

3) Limited Brewery Use in Other Virginia Jurisdictions

As requested by the Planning Commission, Staff contacted the following Virginia jurisdictions regarding the Limited Brewery use: Albemarle County, Clarke County, Fairfax County, Fauquier County, Nelson County, Prince Williams County, Rappahannock County Warren County, and York County. Of the Counties contacted only one, Warren County, has adopted language to address the Limited Brewery use and Code of Virginia § 15.2-2288.3:1. The other counties are either in the process or have not started any process to amend their Zoning Ordinance. Staff has provided information from these counties in Attachment 4.

4) Limited Brewery Use Standards Compared to Other Uses

The standards proposed by Staff are not intended to restrict the Limited Brewery use but are intended to protect the health, safety and welfare of the public by mitigating the impact of the use on adjacent properties and surrounding communities. The proposed standards are not new to the Zoning Ordinance but are standards that already exist for several agricultural and commercial uses that operate or provide accessory functions similar to a Limited Brewery use, such as Bed

and Breakfast and Country Inn uses (§ 5-601); Commercial Winery (§ 5-625); Agriculture, Horticulture and Animal Husbandry (§ 5-626); Agriculture Support Uses, Direct and No Direct Association with Agriculture, Horticulture or Animal Husbandry (§ 5-627 and § 5-630); Farm Based Tourism (§ 5-628); Banquet/Event Facilities (§ 5-5-642); and Restaurant, in the AR districts (§ 5-643). Additionally, these uses are also subject to the following additional performance standards: Exterior Lighting and Noise Standards for Specific Uses (§ 5-652); Landscaping Standards for Specific Uses (§ 5-653); and Road Access Standards for Specific Uses (§ 5-654). Staff has provided information comparing the proposed Limited Brewery Standards and the uses listed above, in Attachment 5.

Attachments

1. Revised Limited Brewery Regulations dated October 1, 2014
2. July 19, 2013 Virginia Office of the Attorney General advisory opinion
3. Fauquier County regulations for Farm Wineries
4. Virginia Counties Comparison Table
5. Loudoun County Use Comparison Table
6. Farm Winery/Limited Brewery Code of Virginia Information
7. Code of Virginia

CC:

Planning and Zoning, Director, Julie Pastor, FAICP
Planning and Zoning, Zoning Administration, Michelle Lohr

**ZOAM 2014-0003 LIMITED BREWERY REVISED STANDARDS
PLANNING COMMISSION WORK SESSION
OCTOBER 1, 2014**

Red Text: September 16, 2014 public hearing proposed regulation language.

Blue Text: Revisions to September 16, 2014 public hearing proposed regulation language.

5-667 Brewery, Limited. Brewery, limited shall be licensed as a Limited Brewery in accordance with Section 4.1-208 of the Code of Virginia and shall be located in the AR-1, AR-2, A-10 or A-3 districts. No Limited Brewery shall be established either as the initial use of the subject property or by change of use of this property or by conversion of one such use to another until a sketch plan or site plan, as applicable, for such proposed new use has been approved and the appropriate building permit and/or applicable Fire Prevention Code requirements and/or permits have been met and/or obtained. A Limited Brewery shall comply with the following standards:

(B) Size of Use.

- (1) **Structures.** The size of structures used for a Limited Brewery shall not exceed 12,000 square feet.
- (2) **Storage Yards.** The total area of storage yards used for a Limited Brewery shall not exceed 5,000 square feet.

(C) Yard Standards.

(1) Structures and, storage areas, and parking shall be set back at least 60 feet from all lot lines.

(2) Parking areas shall be set back at least 40 feet from all lot lines.

(D) Landscaping/Buffering/Screening.

(1) **Buffer.** The outdoor events areas use shall comply with the landscaping and screening standards of Section 5-653(A). The landscaping and screening requirements of Section 5-653(A) may be waived or modified in whole or in part by the Zoning Administrator in the circumstances listed in Section 5-1409.

(2) **Parking and Storage Areas.** Parking and storage areas shall be screened to comply with the requirements of Section 5-653(B).

(E) Parking.

(1) **General.** Parking and loading shall be provided as required by Section 5-1102.

(E) **Roads/Access Standards.**

(1) General Access Standards.

- (a) A Limited Brewery shall comply with the road access standards of Section 5-654.
- (b) There shall be no more than two points of access for a Limited Brewery.
- (c) For any Limited Brewery that is located on a lot which does not have frontage on a publicly maintained road, documentation shall be provided to the Zoning Administrator demonstrating that the private access easement serving such lot may be used to provide access to the Limited Brewery.

~~(2) **Vehicles/Equipment.** Limited Breweries that use heavy equipment shall have direct access to a paved public road.~~

(F) **Exterior Lighting Standards.** Exterior lighting shall comply with the standards of Section 5-652(A)(1)-(3) (Exterior Lighting Standards). In addition to the requirements of Section 5-652, the maximum height of pole mounted exterior lighting, outside of parking areas, shall be 12 feet.

(G) **Noise.**

(1) The use shall comply with the noise standards of Section 5-652(B) (Noise Standards).

(H) **Water and Wastewater.**

(1) **A Limited Brewery must provide safe and adequate water and waste water disposal, as approved by the Health Department.**



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

July 19, 2013

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

The Honorable Christopher K. Peace
Member, House of Delegates
Post Office Box 819
Mechanicsville, Virginia 23111

Dear Delegate Peace:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You inquire regarding the validity of a Fauquier County Zoning Ordinance related to farm wineries. You specifically ask whether the ordinance's provisions exceed the locality's zoning authority, are preempted by state alcoholic beverage control law, or violate the Constitution of Virginia.

Response

It is my opinion that the Fauquier County Zoning Ordinance for farm wineries, at least in part, is an invalid exercise of local authority because it exceeds the locality's delegated zoning authority¹ and is preempted by state law governing alcoholic beverages.

Applicable Law and Discussion

Virginia follows the Dillon Rule of strict statutory construction, which provides that "municipal corporations have only those powers expressly granted, those necessarily or fairly implied therefrom, and those that are essential and indispensable"² and its corollary that "[t]he powers of county boards of supervisors are fixed by statute and are limited to those powers conferred expressly or by necessary implication."³ Therefore, to have the power to act in a certain area, local governments

¹ To the extent a local government ordinance exceeds the powers granted by the General Assembly, the ordinance would violate the Virginia Constitution. *See* VA. CONST. art. VII, § 2

² *Bd. of Supvrs. v. Countryside Inv. Co.*, 258 Va. 497, 503, 522 S.E.2d 610, 613 (1999) (quoting *Bd. of Supvrs. v. Horne*, 216 Va. 113, 117, 215 S.E.2d 453, 455 (1975)).

³ *Cnty. Bd. v. Brown*, 229 Va. 341, 344, 329 S.E.2d 468, 470 (1985); *accord* *Gordon v. Bd. of Supvrs.*, 207 Va. 827, 832, 153 S.E.2d 270, 274 (1967).

must have express enabling legislation or authority that is necessarily implied from enabling legislation.⁴

Notwithstanding Virginia's reliance on the Dillon Rule, localities generally are conferred broad zoning powers.⁵ Nonetheless, the General Assembly has restricted localities' authority to regulate certain activities and events at farm wineries. Section 15.2-2288.3 specifies several areas in which a locality is either limited in or precluded from exercising its zoning power over farm wineries licensed by the Virginia Alcoholic Beverage Control Board. For instance, "[n]o local ordinance regulating noise, other than outdoor amplified music, arising from activities and events at farm wineries shall be more restrictive than that in the general noise ordinance."⁶ The pertinent County ordinance provides that

Sound generated by outdoor amplified music shall not be audible at or beyond the property line of the Farm Winery. Outdoor amplified music shall include music emanating from a structure, including open pavilions and temporary structures such as tents. In addition, no noise emanating from a Farm Winery shall exceed the noise limits set forth in Section 9-700 [of the county zoning code].^[7]

Because the local provision comports with §15.2-2288.3, I conclude it is a valid exercise of the County's zoning authority.

More generally, § 15.2-2288.3 recognizes that there will be some local control over farm wineries: it states that

Local restriction upon such activities and events of farm wineries licensed in accordance with Title 4.1 to market and sell their products shall be reasonable and shall take into account the economic impact on the farm winery of such restriction, the agricultural nature of such activities and events, and whether such activities and events are usual and customary for farm wineries throughout the Commonwealth.

It further provides that "[u]sual and customary activities and events at farm wineries shall be permitted without local regulation unless there is a substantial impact on the health, safety, or welfare of the public."

Also, § 15.2-2288.3 enumerates several specific areas in which local regulation of farm wineries is strictly prohibited. Subsection E expressly provides that

No locality shall regulate any of the following activities of a farm winery licensed in accordance with subdivision 5 of § 4.1-207:

1. The production and harvesting of fruit and other agricultural products and the manufacturing of wine;
2. The on-premises sale, tasting, or consumption of wine during regular business hours within the normal course of business of the licensed farm winery;

⁴ Any doubt as to the existence of such power must be resolved against the locality. *See* City of Richmond v. Bd. of Supvrs., 199 Va. at 684, 101 S.E.2d at 645; 2009 Op. Va. Att'y Gen. 41, 42.

⁵ *See* VA. CODE ANN. § 15.2-2280 (2012).

⁶ Section 15.2-2288.3(A) (2012).

⁷ FAUQUIER COUNTY, VA., ZONING ORDINANCE § 6-402(1).

3. The direct sale and shipment of wine by common carrier to consumers in accordance with Title 4.1 and regulations of the Alcoholic Beverage Control Board;
4. The sale and shipment of wine to the Alcoholic Beverage Control Board, licensed wholesalers, and out-of-state purchasers in accordance with Title 4.1, regulations of the Alcoholic Beverage Control Board, and federal law;
5. The storage, warehousing, and wholesaling of wine in accordance with Title 4.1, regulations of the Alcoholic Beverage Control Board, and federal law; or
6. The sale of wine-related items that are incidental to the sale of wine.

Section 6-401, subsections (1) through (7), of the Fauquier County Zoning Ordinance designates as “by-right uses accessory to the production and harvesting of grapes,” which shall be allowed at a farm winery “upon approval of a Zoning Permit pursuant to section 13-500,” those activities that § 15.2-2288.3(D) and § 15.2-2288.3(E) prohibit localities from regulating.⁸ To the extent that the process of obtaining a Zoning Permit imposes obligations and burdens, including fees, upon the farm winery applicant and allows Fauquier County the ability to restrict through its review and potential denial of the zoning permit application those activities, the Fauquier County Zoning Ordinance exceeds the locality’s zoning authority.

Additionally, § 4.1-128(A) of the Virginia Code prohibits localities from adopting ordinances that regulate alcoholic beverages or certain activities relating to alcoholic beverages at farm wineries.⁹ Section 6-401, subsections (1) through (5), of the Fauquier County Zoning Ordinance regulates those activities at farm wineries that § 4.1-128(A) prohibits localities from regulating. Therefore, Section 6-401, subsections (1) through (5), of the Fauquier County Zoning Ordinance exceeds the locality’s authority under the provisions of § 4.1-128(A) as well as under the provisions of § 15.2-2288.3.

The remaining restrictions on the activities at farm wineries imposed by Section 6-401, subsections 8 and 9, Sections 6-402, 6-403, 5-1810.1 and 5-1810.2 of the Fauquier County Zoning Ordinance may be consistent with § 15.2-2288.3(A).¹⁰ Whether the restrictions are permitted are factual questions based on whether the locality properly considers the economic impact on the farm winery of such restriction, the agricultural nature of such activities and events, and whether such activities and events are usual and customary for farm wineries throughout the Commonwealth. As this Office consistently has declined to answer questions resolving factual matters, rather than pure questions of statutory or Constitutional interpretation, this Office does not offer a view on the validity

⁸ See § 15.2-2288.3(D) (“No locality may treat private personal gatherings held by the owner of a licensed farm winery who resides at the farm winery or on property adjacent thereto that is owned or controlled by such owner at which gatherings wine is not sold or marketed and for which no consideration is received by the farm winery or its agents differently from private personal gatherings by other citizens.”).

⁹ See § 4.1-128(A) (“No county, city, or town shall, except as provided in § 4.1-205 or § 4.1-129, adopt any ordinance or resolution which regulates or prohibits the manufacture, bottling, possession, sale, wholesale distribution, handling, transportation, drinking, use, advertising or dispensing of alcoholic beverages in the Commonwealth. Nor shall any county, city, or town adopt an ordinance or resolution that prohibits or regulates the storage, warehousing, and wholesaling of wine in accordance with Title 4.1, regulations of the Alcoholic Beverage Control Board, and federal law at a licensed farm winery.”).

¹⁰ See § 15.2-2288.3(A).

Honorable Christopher K. Peace
July 19, 2013
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of these remaining sections of the Fauquier County Zoning Ordinance under the locality's zoning authority.¹¹

Conclusion

Accordingly, it is my opinion that the Fauquier County Zoning Ordinance for farm wineries, at least in part, is an invalid exercise of local authority because it exceeds the locality's delegated zoning authority and is preempted by state law governing alcoholic beverages.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General

¹¹ See 1986-87 Op. Att'y Gen. Va. 252.

ORDINANCE

THE FAUQUIER COUNTY FARM WINERY ORDINANCE:
ZONING ORDINANCE TEXT AMENDMENTS TO SECTIONS 3-318, 5-1810, 6-102, 6-400
AND 15-300 OF THE FAUQUIER COUNTY ZONING ORDINANCE

WHEREAS, Fauquier County (the “County”) desires to implement an ordinance addressing the operation of farm wineries in accordance with the laws of the Commonwealth of Virginia; and

WHEREAS, the County is home to approximately 26 farm wineries at this time and anticipates that additional farm wineries will desire to open and operate within the County; and

WHEREAS, the County desires to protect and promote the cultivation of grapes and the production of excellent, locally made wines; and

WHEREAS, the County is cognizant of the desire of many farm wineries to conduct certain activities and events at farm wineries that are tangential to the making and sale of their wine, but serve to enhance their profitability, particularly in the early years of wine production; and

WHEREAS, the County is equally cognizant of its need to protect the health, safety and welfare of the public, particularly when the consumption of alcohol is occurring in proximity to the use of the County’s rural road network; and

WHEREAS, the County is further cognizant of the legitimate and reasonable expectations of property owners adjacent to farm wineries to the peaceable enjoyment of their properties without inappropriate intrusion of undue noise, light and traffic; and

WHEREAS, the County has had a longstanding policy, as set forth in its Comprehensive Plan, of channeling both residential growth and the growth of commercial business ventures primarily into its identified “Service Districts” where transportation access and other infrastructure is better suited to such land uses; and

WHEREAS, Section 15.2-2288.3(E) of the Code of Virginia sets forth certain aspects of wine production and sale that the counties may not regulate, including “the on-premises sale, tasting, or consumption of wine during regular business hours within the normal course of business of the licensed farm winery,” and the County fully respects this limitation on its authority; and

WHEREAS, Section 15.2-2288.3(A) of the Code of Virginia specifically allows local regulatory restrictions on the activities and events of farm wineries, including “usual and customary” events and activities, as long as such regulatory restrictions (i) are reasonable, (ii)

take into account the economic impact on farm wineries, and (iii) address a substantial impact on the health, safety and welfare of the public; and

WHEREAS, the Code of Virginia does not define “usual and customary,” “events and activities,” “economic impact,” or “substantial impact on the health, safety and welfare of the public,” but rather defers to localities to define the same in a reasonable manner; and

WHEREAS, the County has determined, based on research of farm winery practices within Fauquier County and across the Commonwealth, that while there is variation in the amount and extent of events and activities from winery to winery, most farm wineries limit their events and activities to a low number of small events designed specifically to showcase their own wines to small groups of loyal customers, and are able to do so while maintaining the viability of their respective business plans; and

WHEREAS, the County has determined that the proposed restrictions on winery activities and events take into account: (i) the economic impact of the restrictions; (ii) whether the restricted activities and events are agricultural in nature; and (iii) whether such activities are usual and customary for farm wineries throughout the Commonwealth; and

WHEREAS, the County recognizes that the proliferation of farm wineries serving alcoholic substances throughout the rural areas of the County that are generally served by narrow winding roads, absent reasonable limitations on the size and frequency of events and activities, will substantially impact the health, safety and welfare of the public; and

WHEREAS, the County recognizes the goal of reducing undue business regulation where possible without undermining the County’s responsibility to protect the health, safety and welfare of the public through the judicious use of administrative approvals that avoid the legislative process inherent in a Special Exception under the Zoning Ordinance;

WHEREAS, on November 13, 2008, the Board of Supervisors initiated a proposed text amendment to address Farm Wineries; and

WHEREAS, the Planning Commission unanimously recommended approval of a revised version of the text amendment on August 27, 2009, after holding a work session on the proposed amendment on February 17, 2009 and public hearings on the issue on April 30, 2009; May 28, 2009; and July 30, 2009; and

WHEREAS, the Board of Supervisors held a work session on the proposed text amendment on October 8, 2009 and public hearings on the proposed amendment on October 8, 2009; November 12, 2009; December 10, 2009; January 14, 2010; July 14, 2011; August 11, 2011; September 8, 2011; June 14, 2012 and July 12, 2012; and

WHEREAS the County has determined that the restrictions contained in this Ordinance are tailored to address substantial impacts on the health, safety and welfare of the public; and

WHEREAS, the Board of Supervisors desires to facilitate the ability of Farm Wineries legally operating as of the date of this Ordinance to comply herewith without undue disruption of reasonable ongoing business practices by including certain transition rules as a part of this Ordinance; and

WHEREAS, adoption of the proposed amendments to the Fauquier County Zoning Ordinance supports good zoning practice, convenience and the general welfare; now, therefore, be it

ORDAINED by the Fauquier County Board of Supervisors this 12th day of July 2012, That Sections 3-318, 5-1800, 6-102, 6-400 and 15-300 be, and are hereby, amended as set forth below, with such text amendments to be known collectively as “The Fauquier County Farm Winery Ordinance;” and

(Note: provisions are organized under Section headings are for reference only and not part of the adopted language.)

I. DEFINITIONS UTILIZED IN THE FARM WINERY ORDINANCE *(appearing in Section 15-300 of the Zoning Ordinance):*

15-300 FARM WINERY DEFINITIONS:

ABC BOARD: The Alcoholic Beverage Control Board of the Commonwealth of Virginia.

CATERED FOOD: Food that has been prepared by a CATERER, or is served from a FOOD CART, in either case with a valid HEALTH DEPARTMENT permit.

CATERER: An individual or business holding a valid HEALTH DEPARTMENT license that allows catering, where such individual or business operates a “food service establishment” meeting all applicable HEALTH DEPARTMENT requirements at a location remote to a FARM WINERY, with only final preparation and serving being conducted ON-PREMISES at the FARM WINERY.

CLOSING TIME: The hour by which THE NORMAL COURSE OF BUSINESS and all SPECIAL EVENTS are concluded, and all customers or attendees have departed.

EXTENDED BUSINESS HOURS: An extension of operating hours beyond REGULAR BUSINESS HOURS, granted by the Zoning Administrator through an Administrative Permit, which extends the hours that a FARM WINERY may be open to the public.

FARM WINERY: An agricultural use licensed as a “farm winery” pursuant to, and as defined in the Code of Virginia Section 4.1-100, with a current Zoning Permit for a farm winery issued by the County, and actually growing and

harvesting grapes on the “farm” as defined in the Code of Virginia Section 4.1-219 and operating as a “farm winery” pursuant to Virginia Code Section 4.1-219.

FOOD CART: A mobile food unit as defined in the Virginia Administrative Code 12VAC5-421-10 that is licensed by the HEALTH DEPARTMENT that is allowed to reside ON-PREMISES at a FARM WINERY only during the time it is actually serving food during REGULAR BUSINESS HOURS, EXTENDED BUSINESS HOURS, or in conjunction with an approved SPECIAL EVENT.

HEALTH DEPARTMENT: The Department of Health of the Commonwealth of Virginia, including its local office in the County.

LIGHT ACCOMPANIMENTS: Food, to accompany WINE TASTING AND CONSUMPTION, that meets the exemption criteria from the definitions of “Food Establishment” and “Potentially Hazardous Food” in the food regulations of the Virginia Administrative Code, 12 VAC 5-421.10, and without the issuance of any “temporary food establishment permit” (as defined therein).

NORMAL COURSE OF BUSINESS: The day-to-day operations of a FARM WINERY which include, or are accessory to, the production and harvesting of grapes and the manufacture of wine, (a) as specifically enumerated in (a) Section 15.2-2288.3(E) of the Code of Virginia, or (b) as specifically enumerated in Section 6-401 of this Ordinance.

ON-PREMISES: Located on the parcel of real property on which a licensed FARM WINERY is physically located and conducting its NORMAL COURSE OF BUSINESS.

REGULAR BUSINESS HOURS: The daily time period during which a FARM WINERY may be open to the general public, extending from 10:00 a.m. until 6:00 p.m.

SPECIAL EVENT: A FARM WINERY activity or event that meets any one or more of the following three criteria:

- a. CATERED FOOD is served, including service from a FOOD CART;
- b. The number of invited or ticketed attendees is 150 or greater; or
- c. The activity takes place after REGULAR BUSINESS HOURS.

WINE TASTING AND CONSUMPTION: Sampling, by the general public, of wines and the purchase of wine by the glass or bottle to drink ON-PREMISES at a FARM WINERY.

WINE-RELATED ITEMS: Items for retail sale at a FARM WINERY that may be used in connection with the serving, storing or display of wine, or written material describing wine or food or the experience of consuming the same, or items of apparel displaying the name and/or logo of the specific FARM WINERY at which such items are being sold.

II. FRAMEWORK FOR THE USES ALLOWED AT A FARM WINERY (appearing in Section 3-318 of the Zoning Ordinance):

	SITE PLAN	RC	RA	RR -2	V	R - 1	R - 2	R - 3	R - 4	T H	G A	M D P	C -1	C -2	C-3	C V	I-1	I-2
3-318 AGRICULTURE (CATEGORY 18)																		
17. Farm Winery w/accessory uses, including up to 2 events or activities per month as set forth in Section 6-401(9).		P	P															
18.1 Farm Winery with Extended Business Hours and/or up to 2 events or activities per month as set forth in Section 6-401(9), plus 1 Special Event per month pursuant to Section 5-1810.1.		A	A															
18.2 Farm Winery with additional Special Events per Section 5-1810.2	X	SE	SE															

III. USES ALLOWED BY-RIGHT AT A FARM WINERY (appearing in Section 6-400 of the Zoning Ordinance):

PART 4 6-400 FARM WINERIES

6-401 By-Right Accessory Uses at a Farm Winery

The following uses and activities shall be considered by-right uses accessory to the production and harvesting of grapes at a FARM WINERY, and shall be allowed at a FARM WINERY upon approval of a Zoning Permit pursuant to Section 13-500 of the Ordinance, subject to the use limitations set forth herein and in Sections 6-402 and 6-403:

1. The On-Premises sale of wine during Regular Business Hours, or if approved, during Extended Business Hours;
2. Wine Tasting and Consumption conducted On-Premises at a Farm Winery during Regular Business Hours, or if approved, during Extended Business Hours;
3. The direct sale and shipment of wine by common carrier to consumers in accordance with Title 4.1 of the Code of Virginia and regulations of the ABC Board;
4. The sale and shipment of wine to Alcoholic Beverage Control Board licensed wholesalers, and to out of state purchasers in accordance with Title 4.1 of the Code of Virginia and regulations of the ABC Board, and federal law;
5. The storage, warehousing and wholesaling of wine in accordance with Title 4.1 of the Code of Virginia and regulations of the ABC Board, as well as federal law;
6. The sale of Wine-Related Items incidental to the sale of wine during Regular Business Hours, or if approved, during Extended Business Hours;
7. Private personal gatherings held by the owner of a Farm Winery who resides at such Farm Winery (or on property adjacent thereto that is owned or controlled by such owner) where wine is not sold or marketed at such event; and further provided that such private personal gathering is not otherwise regulated pursuant to the provisions of the Zoning Ordinance;

8. Light Accompaniments served in conjunction with Wine Tasting and Consumption during Regular Business Hours, or if approved, during Extended Business Hours; and
9. Up to two times in any calendar month, activities or events that would otherwise fall within the definition of a Special Event, but which are ~~(a)~~ limited to ~~25~~ **35** invitees or ticketed attendees, and held when the Farm Winery is closed to the general public, and in any case prior to Closing Time; ~~provided that in;~~ ~~or (b) In~~ lieu of holding any one such authorized monthly ~~2535~~-person activity or event in any month, a Farm Winery may instead serve, once in any calendar month, ~~Catered Food to the general public in conjunction with Wine Tasting and Consumption (and not in conjunction with any ticketed or by-invitation activity or event) during Regular Business Hours, or if approved, Extended Business Hours.~~

6-402 General Standards and Use Limitations at a Farm Winery

The following standards and use limitations shall apply to all uses at a Farm Winery:

1. Noise: Sound generated by outdoor amplified music shall not be audible at or beyond the property line of the Farm Winery. Outdoor amplified music shall include amplified music emanating from a structure, including open pavilions and temporary structures such as tents. In addition, no noise emanating from a Farm Winery shall exceed the noise limits set forth in Section 9-700.
2. Lighting: Lighting shall be fully shielded as set forth in Section 9-1005 and shall comply with the general requirements set forth in Sections 9-1006.4 and 9-1006.7. Structures and uses requiring building permit approval because of the extent of Special Events shall be subject to all lighting limitations applying to commercial uses.
3. Setbacks: Any structure to be utilized as part of a Farm Winery where any Special Events will occur shall be located a minimum of 300 feet from all lot lines; provided that any existing Farm Winery structure for which the County has issued a Zoning Permit for operation as a Farm Winery prior to adoption of this Farm Winery Ordinance that does not meet the 300-foot setback requirement may ~~remain in operation and may~~ be expanded if such expansion is no closer to any lot line than the existing structure and is otherwise in accordance with all statutes, ordinances and regulations then applicable to such expansion.
4. Parking: Off-street parking, ~~including the means of ingress and egress, areas~~ shall be located no closer than ~~100~~ **50** feet from any property line and shall be screened using fencing and/or landscaping materials; ~~provided that any existing parking area as of the date of this Ordinance that does not meet the 100 foot setback requirement may remain in use with appropriate screening as aforesaid. The setback requirement shall also apply to driveways providing the ingress and egress to such parking areas, except to the extent such driveways must necessarily intersect the setback area to reach the road. so as to substantially eliminate light penetration after dark from vehicular headlights onto adjoining properties.~~
5. No Food Establishments: In no case shall food be provided which results in a Farm Winery having to be licensed by the Health Department as a *Food Establishment* or *Temporary Food Establishment* as defined by the Virginia Administrative Code 12VAC-421-10.
6. Occupancy: No activities or events held at a Farm Winery, including Wine Tasting and Consumption and Special Events, shall result in more people being On-site than

the authorized occupancy limits under such Farm Winery's Health Department septic permit, or under any other applicable statute, ordinance or regulation.

7. Closing Time: The Closing Time for any Special Event held at a Farm Winery shall be no later than 9:00 p.m. ~~Sunday Monday~~ through Thursday, ~~and~~ 11:00 p.m. Friday and Saturday, ~~and~~ 10 p.m. Sunday.
8. Server Training: Every Farm Winery shall be required to cause its employees serving wine to the general public to participate in a bona fide server training program designed to educate servers on how to address potentially intoxicated patrons from a list of approved programs published from time to time by the Zoning Administrator.

6-403 Prohibited Accessory Uses at a Farm Winery

The following uses/activities are prohibited accessory uses at any Farm Winery:

1. Restaurants, Food Establishments as defined by the Health Department, or any activity which requires a Temporary Food Establishment Permit from the Health Department
2. Helicopter rides
3. Hot air balloons
4. Fireworks
5. Grocery, convenience or general stores
6. Go-kart, motorized bike or four-wheeler trails, tracks or rides
7. Amusement park rides
8. Flea markets
9. Farmers' markets
10. Bowling Alleys
11. Mini-golf
12. Personal Services, including beauty or spa type services
13. Lodging
14. Such other uses as are determined by the Zoning Administrator to be similar in nature or in impact to those listed above.

IV. USES ALLOWED AT A FARM WINERY WITH APPROVAL OF AN ADMINISTRATIVE PERMIT *(appearing in Section 5-1810.1 of the Zoning Ordinance):*

5-1810.1 Administrative Permits for a Farm Winery

1. The following uses and activities may be allowed at a FARM WINERY through approval of an Administrative Permit by the Zoning Administrator, subject to the use limitations in Section 6-402 and 6-403; and subject to the regulations below:
 - A. A Farm Winery may be permitted to operate in the Normal Course of Business during Extended Business Hours from 6:00 p.m. to 8:00 p.m. during the months of May through August, and 6:00 p.m. to 7:00 p.m. during the month of September.
 - B. In addition to the activities or events described in Section 6-401(9), one Special Event per calendar month may be authorized; provided that such Special Event shall not exceed 150 invitees or ticketed attendees (or if less, the occupancy limits referenced in Section 6-402.6 of this Ordinance.

~~capacity of the septic system serving the Farm Winery as approved by the Health Department).~~

2. The following procedures shall apply to the consideration of the initial approval as well as any reissuance of an Administrative Permit for a Farm Winery:
 - A. Written notice shall be provided by the Zoning Administrator to all adjoining property owners ~~(as well as any owners of property located within a three-mile radius of the Farm Winery who have submitted a written request to the Zoning Administrator to receive notices of requests for Administrative Permits by a particular Farm Winery)~~ at least ~~15~~ **30** days prior to the action of the Zoning Administrator on the requested Administrative Permit. Such notice shall solicit input to the Zoning Administrator regarding the requested Administrative Permit.
 - B. The procedure for approval shall be that specified in Section 5-009, ~~except that the Zoning Administrator shall be required to render a decision on the application within 45 days rather than the 30 days specified in Section 5-009.8.~~
 - C. The Administrative Permit shall be granted initially for a period of one year. A permit holder may apply for ~~a renewal of the an~~ Administrative Permit to be reissued for ~~a subsequent 2-year periods, and thereafter subsequent 2 to 5 year periods,~~ up to 4 months prior to ~~the such~~ Administrative Permit's expiration; provided that the Zoning Administrator shall have the discretion to determine whether such ~~renewal~~ reissuance shall be for one or two years, taking into account complaint and citation history and the nature of any conditions imposed.
 - D. The process for ~~renewals~~ reissuance shall be the same as for the initial approval.
 - E. The Administrative Permit shall remain in effect until its end date notwithstanding any change of ownership of the Farm Winery or transfer of title to the Farm Winery property, provided that in the event of any such transfer, the Farm Winery shall provide written notice thereof to the County within ten (10) days following such transfer.
 - F. The Zoning Administrator may decline to ~~reissue renew~~ an Administrative Permit upon a finding by the Zoning Administrator that uncorrected violations of the Administrative Permit, the Zoning Ordinance or any State or Federal law or regulation exist, or that repeated violations have occurred. The Zoning Administrator shall notify the Farm Winery in writing of the decision to not ~~reissue renew~~ an Administrative Permit.
 - G. An Administrative Permit may be suspended by the Zoning Administrator for a period of time up to the remaining period in effect for such Administrative Permit upon a finding by the Zoning Administrator that uncorrected violations of the Administrative Permit, the Zoning Ordinance or any State or Federal Law or regulation exist, or that repeated violations have occurred. The Zoning Administrator shall notify the Farm Winery in writing of the suspension of an Administrative Permit. The Zoning Administrator may also pursue all enforcement available pursuant to Section 13-600 of the Zoning Ordinance.
 - H. Each calendar day of any multi-day event shall be counted as a separate Special Event under the Zoning Ordinance.

3. The following limitations shall apply to consideration of an Administrative Permit for a Farm Winery:
 - A. No uses shall be granted by Administrative Permit if the Farm Winery is on a lot less than 11 acres in size.
 - B. Foods other than Light Accompaniments, including meals, may be served at a Special Event held at a Farm Winery pursuant to an Administrative Permit; provided that, (i) such food is either prepared off-site by a Caterer or prepared On-Premises in a Food Cart; and (ii) in no case shall food be provided which results in a Farm Winery having to be licensed as a “Food Establishment” under the Code of Virginia or which requires a “Temporary Food Establishment Permit” from the Health Department.
 - C. No uses shall be granted by Administrative Permit if the parcel on which the Farm Winery is located does not have direct access to a public street. For purposes of this provision, a private access easement or road shall not be considered “direct access to a public street” unless (i) the easement or road is exclusive to the Farm Winery parcel and the use contemplated by the Administrative Permit has been approved in writing by the owner(s) of the easement’s servient estate, or (ii) the easement or road serves multiple parcels and the use contemplated by the Administrative Permit has been approved in writing by all holders of such access right and the owner(s) of the easement’s servient estate.
 - D. No outdoor uses shall be granted by Administrative Permit if the proposed Special Event location is within 300 feet of a private residence not on the Farm Winery property that was in existence on the date the Farm Winery was first licensed by the ABC Board of the Commonwealth of Virginia.
 - E. The Closing Time for any Special Event held at a Farm Winery pursuant to Administrative Permit shall be no later than 9:00 p.m. ~~Sunday~~ **Monday** through Thursday, ~~and~~ 11:00 p.m. Friday and Saturday **and 10 p.m. Sunday.**
 - F. **Notwithstanding the limitations set forth for Special Exceptions in Section 5-1810.2, a Farm Winery with an approved ABC permit as of July 12, 2012, which meets the limitations herein for Administrative Permit approval, except for (a) the 11 acre minimum size requirement of 5-1810.1(3)(A) and/or (b) the “direct access” requirement of 5-1810.1(3)(C), may apply for Special Exception approval of the uses set forth in 5-1810.1(1).**
4. The Zoning Administrator shall consider the following standards in determining whether or not to grant **or reissue** an Administrative Permit:
 - A. The presence or absence of a history of past violations of conditions of permits issued by the County or the Health Department;
 - B. The consistency of requested Special Event sizes with:
 - i. The capacity of access roads to accommodate the expected vehicular traffic, including road designation on the Rural Road Classification Map 10.1 in the Comprehensive Plan;
 - ii. The road safety based on factors such as sight distances, road surfaces, road width and shoulder width;
 - iii. The designed capacity of the entrance;
 - iv. The designed capacity of the Farm Winery’s septic system, as approved by Health Department; provided that no Special Events may have a number of attendees in excess of the approved capacity

- of the Farm Winery’s septic system, as approved by the Health Department; and
- v. The availability and location of parking facilities.
- C. The size of the Farm Winery property;
- D. The distance of the Farm Winery’s proposed Special Event locations to the nearest non-Farm Winery residences;
- ~~E. The distance between the Farm Winery entrance and driveway, and any nearby non-Farm Winery residence;~~
- ~~FE.~~ The effect of headlight glare from Special Event traffic on neighboring residences;
- ~~GF.~~ The effect of noise on residents in the surrounding areas;
- ~~HG.~~ The capacity of the Farm Winery’s event facilities to accommodate the number of proposed attendees;
- ~~HH.~~ The written comments of nearby property owners and residents received by the Zoning Administrator; and
- ~~J.~~ Such other factors as the Zoning Administrator determines may have a substantial impact on the health, safety or welfare of the public.

The Zoning Administrator shall stipulate, where appropriate, conditions and restrictions in conjunction with the granting of an Administrative Permit to assure that the proposed use will be compatible with surrounding uses and to protect the health, safety and welfare of the public.

V. USES ALLOWED AT A FARM WINERY WITH APPROVAL OF A SPECIAL EXCEPTION *(appearing in Section 5.1810.2 of the Zoning Ordinance):*

5-1810.2 Special Exception For Farm Winery Special Events

Additional Special Events may be allowed at a Farm Winery only pursuant to this Section 5-1810.2 by approval of a Special Exception by the Board of Supervisors, subject to the following:

1. Special Events granted by Special Exception shall meet the standards and use limitations for Farm Winery uses in Sections 6-402 and 6-403;
2. Special Events granted by Special Exception shall further meet the standards and use limitations set forth in Sections 5-1810.1(3);
3. The standards for consideration of an Administrative Permit as set forth in Section 5-1810.1(4) shall apply to Special Events requested pursuant to this section, except that the Board of Supervisors may authorize a single event per year with attendance exceeding the capacity of the Farm Winery’s septic system provided appropriate accommodations are made for temporary facilities during that Special Event.
4. A Special Exception for one or more Special Events shall only be granted if the Farm Winery property has frontage on a major collector or higher classification street as designated in the Comprehensive Plan unless the Board of Supervisors finds that the type and amount of traffic projected by such Farm Winery (in conjunction with any road or entrance area traffic mitigation proposal) is such that it will not cause a substantial adverse impact on the health, safety or welfare of the public, or the owners of adjacent or proximate properties.

5. A Special Exception shall not be granted for any Special Event unless the Farm Winery property contains more than 25 acres, including contiguous parcels under common ownership.
6. A maximum of 18 Special Events per calendar year may be approved, with up to 200 attendees per Special Event, except that for Farm Winery properties over 50 acres in size, up to 24 Special Events per calendar year may be approved, with up to 250 attendees per Special Event, as well as one additional Special Event per calendar year of up to 500 attendees. Such maximum number of Special Events shall be inclusive of any Special Events authorized by Administrative Permit on the Farm Winery property, **but shall be in addition to any uses allowed by-right under Section 6-401.** No more than two (2) Special Events, whether approved by Administrative Permit or by Special Exception, may be allowed or conducted in any one calendar month, **in addition to any uses allowed by-right under Section 6-401.**
7. The Special Exception holder shall provide to the Zoning Administrator evidence reasonably satisfactory to the Zoning Administrator of adequate security, emergency services and traffic control for all Special Events. Such evidence shall include, as appropriate, copies of any required permits or licenses from the following agencies that control traffic, security, emergency services and sanitary issues:
 - a. Sheriff's Office
 - b. Virginia Department of Transportation
 - c. Emergency Services Coordinator
 - d. Health Department
8. The initial Special Exception permit shall be granted for a period of no more than three (3) years. After the initial term, the Farm Winery may apply to have the permit ~~renewed~~ reissued for additional ~~three (3) year~~ periods of **5 years or greater, as determined by the Board of Supervisors.** The procedure for ~~reissuance~~ ~~renewal~~ shall be that specified in Section 5-009. The Special Exception may, at the discretion of the Board of Supervisors, provide for administrative ~~renewal~~ reissuance by the Zoning Administrator in the event that there is no history, during the then current period of such Special Exception, of citations for violations of the Zoning Ordinance, or any state or federal law or regulation
9. The Special Exception shall remain in effect until its end date notwithstanding any change of ownership of the Farm Winery or transfer of title to the Farm Winery property, provided that in the event of any such transfer, the Farm Winery shall provide written notice thereof to the County within ten days following such transfer.

VI. ENFORCEMENT PROCEDURES AND FINES:

All provisions of Part 13-600 of the Zoning Ordinance, related to Violations, Infractions and Penalties may be utilized for enforcement at Farm Wineries, to include the injunction procedures established in Section 13-602; the criminal procedures set forth in Section 13-602; and the civil penalties, with fines, set forth in Section 13-603. In addition, suspected violations of the noise, light and occupancy limit provisions of this Ordinance may be reported to the Sheriff's Office by dialing 911 at any time.

Any Farm Winery licensed by the ABC and holding a valid existing Zoning Permit for a Farm Winery from the County prior to adoption of this Ordinance shall be permitted to continue to conduct those events and activities for which it has advertised or is contractually committed through December 31, 2012; provided that (i) such events and activities comply with the requirements of applicable state or federal laws and regulations; and (ii) as of January 1, 2013, no such events or activities may be conducted unless permitted under this Ordinance or any Administrative Permit or Special Exception granted by the County hereunder.

The Board of Supervisors may, in its discretion, appoint a four member citizen mediation committee, to act as a threshold intervention effort to achieve compliance with certain aspects of this Ordinance and to mediate conflicts among Farm Wineries and their neighboring property owners. Such committee shall be comprised of two Farm Winery owners and two members of the community at large. The rules of operation for the committee shall be drafted and recommended to the Board of Supervisors by the initial appointed members thereof, and ratified by the Board of Supervisors, with such modifications as the Board deems necessary or appropriate. Subject to the discretion of the Board, such committee shall mediate disputes or complaints arising from neighboring property owners of Farm Wineries and such other compliance issues as may be referred to the Committee by the Zoning Administrator. In the event that committee is unable to resolve any compliance issues or conflicts within a time period established by the Board of Supervisors, then such issues or conflicts shall be referred to the county's appropriate enforcement officers for enforcement as appropriate.

VII. FEE WAIVERS:

The County hereby waives all application fees for any Administrative Permit or Special Exception request filed on or before December 31, 2013 by any Farm Winery licensed by the ABC and holding a valid existing Zoning Permit for a Farm Winery from the County prior to adoption of this Ordinance.

VIII. SEVERABILITY (*appearing in Section 6-404 of the Zoning Ordinance*):

6-404 Should any article, section, subsection, sentence, clause or phrase of the regulations constituting the "Farm Winery Ordinance," to include the definitions set forth in Section 15-300, the provisions relating to by-right accessory uses set forth in Sections 6-400, or the provisions related to Administrative Permits or Special Exceptions for a Farm Winery set forth in Sections 5-1810.1 and 5-1810.2 be held unconstitutional, in violation of the restrictions set forth in Virginia Code Section 15.2-2288.3, or otherwise invalid by a court of law, such decision or holding shall have no effect on the validity of the remaining provisions hereof. It is the intent of the Board of Supervisors to enact or have enacted each section and provision of this Farm Winery Ordinance individually, and each such section or provision shall stand alone, if necessary, and be in force regardless of the determined invalidity of any other section or provision.

	SITE	RC	RA	RR-2	V	R-1	R-2	R-3	R-4	T	G	M	C-1	C-2	C-3	C	I-1	I-2
	PLAN																	
3-318 AGRICULTURE (CATEGORY 18)																		
17. Winery with Special Events, Major	X	SE	SE	SE														
18. Winery with Special Events, Minor	X	SP	SP	SP														

6-102 Permitted Accessory Uses

~~27. **The sale of wine for on-site consumption of wine produced by the winery.**~~

5-1810 Additional Standards for Winery with Special Events, Major and Minor, in the RA, RC, and RR-2 Zoning Districts

- ~~1. Such a use shall have frontage on a major collector (or higher) as designated in the Comprehensive Plan unless the Board of Supervisors or the Board of Zoning Appeals finds that the type and amount of traffic generated by the facility is such that it will not cause an undue impact on the neighbors or adversely affect safety of road usage.~~
- ~~2. Any retail sales conducted on the property shall be accessory and incidental to the permitted activity. At least thirty (30) days prior to holding the event, the holder of the Special Permit or Special Exception for the property upon which the event will be held shall provide to the Zoning Administrator the name, address, and a contact person for each individual, group, association, partnership, or corporation which is expected to conduct retail sales at the event.~~
- ~~3. Major events are those with more than 150 attendees, but not more than 2,500 attendees per event, and are limited to two (2) within a calendar year. Minimum lot size for major events is forty (40) acres.~~
- ~~4. Minor events are those that allow less than 150 attendees per event, and are limited to fifteen (15) within a calendar year. Minimum lot size for minor events is twenty five (25) acres.~~
- ~~5. No structure used for or in conjunction with this use shall be located within fifty (50) feet of any lot line.~~
- ~~6. The Special Permit or Special Exception holder for a minor or major event shall provide adequate security, emergency services, traffic control, sanitation and refreshment services at every event. At least thirty (30) days prior to holding the event, the holder of the Special Permit or Special Exception permit for the property on which the event will be held, shall provide to the Zoning Administrator written proof, including copies of any permits or licenses, if required, from the following agencies that control traffic, security, emergency services, and on-site sanitary and refreshment facilities are adequate for the size and type of event:~~

- a. ~~Fauquier County Sheriff's Office~~
- b. ~~Virginia Department of Transportation~~
- c. ~~Fauquier County Emergency Services Coordinator~~
- d. ~~Fauquier County Health Department~~

~~7. The Special Permit or Special Exception permit shall be granted for a period of three (3) years and after such time, the holder may apply to have the permit renewed for additional five (5) year periods. The procedure for renewal shall be the same as specified in Section 5-009 above. After an initial five (5) year renewal, an applicant may request, and the BZA or Board of Supervisors may grant, a renewal for a period of greater than five (5) years, including an indefinite period. If such a renewal is granted, the holder of the Special Permit or Special Exception permit shall submit to the BZA or Board of Supervisors once every five (5) years thereafter, a report documenting that the use of the property as approved by the Special Permit or Special Exception is in full compliance with all requirements of law with respect to the maintenance and conduct of the use with all of the requirements and standards of this Ordinance, and with all conditions of the Special Permit or Special Exception that were designated in issuing the same. If at any time the BZA or Board of Supervisors determines that the use of the property is not in compliance, it may initiate action to revoke the Special Permit or Special Exception in accordance with Section 5-015 above.~~

15-300

DEFINITIONS

~~**WINERY WITH SPECIAL EVENTS, MINOR OR MAJOR:** An event or activity held at a winery to promote a wine product, by holding such uses as private parties, meals, and wine related festival.~~

**LOUDOUN COUNTY ZONING ORDINANCE
VIRGINIA COUNTIES COMPARISON**

	Limited Brewery (Proposed Section 5-667)	Albemarle County (Proposed Text)	Warren County (Adopted Limited Brewery Text)	Fauquier County* (Farm Winery)	Rappa- hannock County	Fairfax County	York County	Nelson County	Prince Williams County	Clarke County
Intensity/Size of Use	Max. 12,000 sq. ft. structures & 5,000 square feet storage areas.	200+ people require special use permit (sketch plan). 4,000 sq. ft. by-right (over 4,000 requires use permit)	Brew Pub (conditional use permit): 5,000 sq. ft.; Limited to 50 seats; Hours of operation 9 am – 9 pm. Microbrewery (by right): 3,000 sq. ft.; Limited to 10 seats; Hours of operation 9 am – 5 pm.	Occupancy limited to Health Department septic permit. Hours of operation: 9:00 pm Monday – Thursday; 11:00 pm Friday and Saturday; and 10 pm Sunday. 300' for structures and 100' for parking.	Has not started the process to amend the Zoning Ordinance to address SB 430.	Has not started the process to amend the Zoning Ordinance to address SB 430.	Is not actively pursuing an amendment to the Zoning Ordinance to address SB 430. Recently adopted a Zoning Ordinance amendment to address commercial breweries/microbreweries.	In the initial process of amending the Zoning Ordinance to address SB 430.	In the initial process of amending the Zoning Ordinance to address SB 430. Established a Rural Area Committee	Has not started the process to amend the Zoning Ordinance to address SB 430.
Yards	60' for structures and storage areas. 40' for parking. <i>(Initially Proposed: 60' for structures, parking, & storage areas.)</i>	75' front yard, 25' side yard and 35' rear yard for structures and parking.								
Landscaping/ Buffering/ Screening	Section 5-653(A). May waive/modify req. per Section 5-1409. Section 5-653(B) for parking.									
Parking	Section 5-1102.	1 space/2.5 customers								
Road/Access	Section 5-654; 2-access points; & access location.	Adjacent to state maintained road. Comply with VDOT.								
Vehicle/ Equipment	N/A <i>(Initially Proposed: Paved road access for heavy equipment.)</i>									
Exterior Lighting	Section 5-652(A)(1)-(3) & 12' maximum height for parking lot lighting.			Subject to Section 9-1005, 9-1006.4 and 9-1006.7						
Noise	Section 5-652(B).	Obtain Zoning Clearance for outdoor amplified music.								
Water/ Wastewater	Health Department approval.	Comply with Health Department.		Health Department septic permit.						
Other Information	Sketch Plan	Building Permit (review/exemption). Sketch Plan.	Comply with building inspection.	No Food Establishments. Server training program. 14 prohibited accessory uses. 1 special event permit per month for ≤150 people. Administrative Permit						

* Fauquier County has not started the process to amend the Zoning Ordinance to address SB 430 but does provide development standards for farm wineries.

**LOUDOUN COUNTY ZONING ORDINANCE
ADDITIONAL REGULATIONS COMPARISON**

	Limited Brewery (Proposed Section 5-667)	Bed and Breakfast Inn (Section 5-601)	Small Based Business (Section 614)	Commercial Winery (Section 5-625)	Agricultural Support Uses (Section 5-627)	Farm Based Tourism (Section 5-628)	Banquet/Event Facilities (Section 642)	Restaurant in AR (Section 5-643)
Intensity/Size of Use	Max. 12,000 sq. ft. structures & 5,000 square feet storage areas.	Minimum 5 acres. 0.04 FAR. Hours of Operation 7 am-12 midnight.	10+ acres 5,000 sq. ft. structure or storage yard plus 1,000 sq. ft. for each add. 10 acres, not to exceed 15,000 sq. ft.	Minimum 10 acres. Hours of Operation 10 am-10 pm.	Minimum 5 acres. Level I: 12,000 sq. ft. structures & 5,000 sq. ft. storage areas. Hours of Operation 6 am-9 pm.	Minimum 5 acres. Level III: max. 7,500 sq. ft. with 80+ acres. Storage – max. 25% of structure. Hours of Operation 8 am-6 pm.	Minimum 20 acres. 0.04 FAR. Hours of Operation 7 am-12 midnight	Minimum 20 acres and 0.01 FAR. (except for adaptive reuse) Hours of Operation 6 am-12 midnight
Yards	60' for structures and storage areas. 40' for parking. <i>(Initially Proposed: 60' for structures, parking, & storage areas.)</i>	40' for parking.	100' for 2,000 sq. ft. structure and yard. 300' for 2,000+ sq. ft. structure and yard. 500' adjacent to residential. No parking in required yard/setback.	125' for use.	60' for structures & storage areas.	Level I: 100' for 5,000 sq. ft. structure. Level II: 150' for 7,500 sq. ft. structure. Level III: 200' for 10,500 sq. ft. structure.	100' for use and parking. 200' for outdoor private parties.	100' for 1,500 sq. ft. structure. 150' for 1,500 to 4,000 sq. ft. structure. 175' for 4,000+ sq. ft. structure.
Landscaping/ Buffering/ Screening	Section 5-653(A). May waive/modify req. per Section 5-1409. Section 5-653(B) for parking.	Section 5-653(A). May waive/modify req. per Section 5-1409. Section 5-653(B) for parking.	Section 5-653(C) for storage.	Section 5-653(A) for use. Section 5-653(B) for parking.	Section 5-653(A) for use. Section 5-653(C) for storage.	Section 5-653(A) for use. Section 5-653(B) for parking. Section 5-653(C) for storage.	Section 5-653(A) for use. Section 5-653(B) for parking. Section 5-653(C) for storage.	Section 5-653(A) for use. Section 5-653(B) for parking. Section 5-653(C) for storage.
Parking	Section 5-1102.	Section 5-1102.	Section 5-1102.	Section 5-1102. Dust-free surfacing material.	Section 5-1102. Dust-free surfacing material.	Section 5-1102. Dust-free surfacing material.	Section 5-1102.	Section 5-1102.
Road/Access	Section 5-654; 2-access points; & access location.	Section 5-654; 2-access points; & access location.	N/A	Section 5-654.	Section 5-654.	Section 5-654	Section 5-654; 2-access points; & access location.	Section 5-654; 1-access point; & access location
Vehicle/ Equipment	N/A <i>(Initially Proposed: Paved road access for heavy equipment.)</i>	N/A	Paved road access for heavy equipment.	Paved road access for heavy equipment.	Paved road access for heavy equipment.	N/A	N/A	
Exterior Lighting	Section 5-652(A)(1)-(3) & 12' maximum height for parking lot lighting.	Section 5-652(A)(1)-(3) & 12' maximum height for parking lot lighting.	Section 5-652(A).	Section 5-652(A).	Section 5-652(A).	Section 5-652(A).	Section 5-652(A)(1)-(3) & 12' maximum height for parking lot lighting.	Section 5-652(A).
Noise	Section 5-652(B).	Shall not exceed 55 dB(A). No outdoor music 11PM -10AM on Fri, Sat, & preceding a Holiday & 10PM-10AM other days.	Section 5-652(B).	Section 5-652(B).	Section 5-652(B).	N/A	Section 5-652(B).	N/A
Water/ Wastewater	Health Department approval.			Health Department approval.				
	Sketch Plan	Sketch Plan (under 5,000 sq. ft. disturbance)	Sketch Plan	Site Plan	Site Plan	Site Plan	Site Plan	Site Plan

Red Text: Identifies standards that are required by similar uses that are being proposed for Limited Breweries.

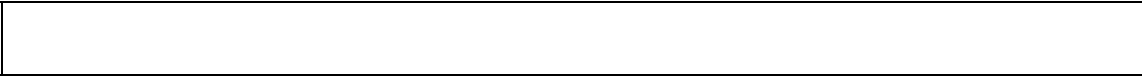
CODE OF VIRGINIA: FARM WINERY AND LIMITED BREWERY COMPARISON

FARM WINERY	LIMITED BREWERY
<p>§ 4.1-207. Wine licenses.</p> <p>5. Farm winery licenses, which shall authorize the licensee to manufacture wine containing 18 percent or less of alcohol by volume and to sell, deliver or ship the wine, in accordance with Board regulations, in closed containers, to (i) the Board, (ii) persons licensed to sell the wine so manufactured at wholesale for the purpose of resale, § 4.1-326 notwithstanding, or (iii) persons outside the Commonwealth. In addition, the licensee may (a) acquire and receive deliveries and shipments of wine and sell and deliver or ship this wine, in accordance with Board regulations, to the Board, persons licensed to sell wine at wholesale for the purpose of resale, or persons outside the Commonwealth; (b) operate a contract winemaking facility on the premises of the licensee in accordance with Board regulations; and (c) store wine in bonded warehouses located on or off the licensed premises upon permits issued by the Board. For the purposes of this title, a farm winery license shall be designated either as a Class A or Class B farm winery license in accordance with the limitations set forth in § 4.1-219. A farm winery may enter into an agreement in accordance with Board regulations with a winery or farm winery licensee operating a contract winemaking facility.</p> <p>Such licenses shall also authorize the licensee to sell wine at retail at the places of business designated in the licenses, which may include no more than five additional retail establishments of the licensee. Wine may be sold at these business places for on-premises consumption and in closed containers for off-premises consumption. In addition, wine may be pre-mixed by the licensee to be served and sold for on-premises consumption at these business places.</p>	<p>§ 4.1-208. Beer licenses.</p> <p>2. Limited brewery licenses, to breweries that manufacture no more than 15,000 barrels of beer per calendar year, provided (i) the brewery is located on a farm in the Commonwealth on land zoned agricultural and owned or leased by such brewery or its owner and (ii) agricultural products, including barley, other grains, hops, or fruit, used by such brewery in the manufacture of its beer are grown on the farm. The licensed premises shall be limited to the portion of the farm on which agricultural products, including barley, other grains, hops, or fruit, used by such brewery in the manufacture of its beer are grown and that is contiguous to the premises of such brewery where the beer is manufactured, exclusive of any residence and the curtilage thereof. However, the Board may, with notice to the local governing body in accordance with the provisions of § 4.1-230, also approve other portions of the farm to be included as part of the licensed premises.</p> <p>Limited brewery licensees shall be treated as breweries for all purposes of this title except as otherwise provided in this subdivision.</p>
<p>§ 15.2-2288.3. Licensed farm wineries; local regulation of certain activities.</p> <p>A. It is the policy of the Commonwealth to preserve the economic vitality of the Virginia wine industry while maintaining appropriate land use authority to protect the health, safety, and welfare of the citizens of the Commonwealth, and to permit the reasonable expectation of uses in specific zoning categories. Local restriction upon such activities and events of farm wineries licensed in accordance with Title 4.1 to market and sell their products shall be reasonable and shall take into account the economic impact on the farm winery of such restriction, the agricultural nature of such activities and events, and whether such activities and events are usual and customary for farm wineries throughout the Commonwealth. Usual and customary activities and events at farm wineries shall be permitted without local regulation unless there is a</p>	<p>§ 15.2-2288.3:1. Limited brewery license; local regulation of certain activities.</p> <p>A. It is the policy of the Commonwealth to preserve the economic vitality of the Virginia beer industry while maintaining appropriate land use authority to protect the health, safety, and welfare of the citizens of the Commonwealth and to permit the reasonable expectation of uses in specific zoning categories. Local restriction upon such activities and public events of breweries licensed pursuant to subdivision 2 of § 4.1-208 to market and sell their products shall be reasonable and shall take into account the economic impact on such licensed brewery of such restriction, the agricultural nature of such activities and events, and whether such activities and events are usual and customary for such licensed breweries. Usual and customary activities and events at such licensed breweries shall be permitted unless there is</p>

<p>substantial impact on the health, safety, or welfare of the public. No local ordinance regulating noise, other than outdoor amplified music, arising from activities and events at farm wineries shall be more restrictive than that in the general noise ordinance. In authorizing outdoor amplified music at a farm winery, the locality shall consider the effect on adjacent property owners and nearby residents.</p> <p>B, C. [Expired.]</p> <p>D. No locality may treat private personal gatherings held by the owner of a licensed farm winery who resides at the farm winery or on property adjacent thereto that is owned or controlled by such owner at which gatherings wine is not sold or marketed and for which no consideration is received by the farm winery or its agents differently from private personal gatherings by other citizens.</p> <p>E. No locality shall regulate any of the following activities of a farm winery licensed in accordance with subdivision 5 of § 4.1-207:</p> <ol style="list-style-type: none"> 1. The production and harvesting of fruit and other agricultural products and the manufacturing of wine; 2. The on-premises sale, tasting, or consumption of wine during regular business hours within the normal course of business of the licensed farm winery; 3. The direct sale and shipment of wine by common carrier to consumers in accordance with Title 4.1 and regulations of the Alcoholic Beverage Control Board; 4. The sale and shipment of wine to the Alcoholic Beverage Control Board, licensed wholesalers, and out-of-state purchasers in accordance with Title 4.1, regulations of the Alcoholic Beverage Control Board, and federal law; 5. The storage, warehousing, and wholesaling of wine in accordance with Title 4.1, regulations of the Alcoholic Beverage Control Board, and federal law; or 6. The sale of wine-related items that are incidental to the sale of wine. 	<p>a substantial impact on the health, safety, or welfare of the public. No local ordinance regulating noise, other than outdoor amplified music, arising from activities and events at such licensed breweries shall be more restrictive than that in the general noise ordinance. In authorizing outdoor amplified music at such licensed brewery, the locality shall consider the effect on adjacent property owners and nearby residents.</p> <p>B. No locality shall regulate any of the following activities of a brewery licensed under subdivision 2 of § 4.1-208:</p> <ol style="list-style-type: none"> 1. The production and harvesting of barley, other grains, hops, fruit, or other agricultural products and the manufacturing of beer; 2. The on-premises sale, tasting, or consumption of beer during regular business hours within the normal course of business of such licensed brewery; 3. The direct sale and shipment of beer in accordance with Title 4.1 and regulations of the Alcoholic Beverage Control Board; 4. The sale and shipment of beer to licensed wholesalers and out-of-state purchasers in accordance with Title 4.1, regulations of the Alcoholic Beverage Control Board, and federal law; 5. The storage and warehousing of beer in accordance with Title 4.1, regulations of the Alcoholic Beverage Control Board, and federal law; or 6. The sale of beer-related items that are incidental to the sale of beer. <p>C. Any locality may exempt any brewery licensed in accordance with subdivision 2 of § 4.1-208 on land zoned agricultural from any local regulation of minimum parking, road access, or road upgrade requirements.</p>
<p>§ 4.1-100. Definitions.</p> <p>"Farm winery" means an establishment (i) located on a farm in the Commonwealth with a producing vineyard, orchard, or similar growing area and with facilities for fermenting and</p>	<p>No definition for Limited Brewery</p>

<p>bottling wine on the premises where the owner or lessee manufactures wine that contains not more than 18 percent alcohol by volume or (ii) located in the Commonwealth with 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. As used in this definition, the terms "owner" and "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.</p>	
<p>§ 4.1-219. Limitation on Class A and Class B farm wineries.</p> <p>For Class A farm winery licensees, at least 51 percent of the fresh fruits or agricultural products used by the owner or lessee to manufacture the wine shall be grown or produced on such farm and no more than 25 percent of the fruits, fruit juices or other agricultural products shall be grown or produced outside the Commonwealth.</p> <p>For Class B farm winery licensees, 75 percent of the fresh fruits or agricultural products used by the owner or lessee to manufacture the wine shall be grown or produced in the Commonwealth and no more than 25 percent of the fruits, fruit juices or other agricultural products shall be grown or produced outside the Commonwealth. No Class B farm winery license shall be issued to any person who has not operated under an existing Virginia farm winery license for at least seven years.</p> <p>However, upon petition by the Department of Agriculture and Consumer Services, the Board may permit the use (i) of a greater quantity of out-of-state products if supplies grown or produced in the Commonwealth are insufficient for a farm winery licensee, whether Class A or Class B, to achieve the level of production which otherwise could be anticipated during a given license year or (ii) by a Class A farm winery of a lesser percentage of products grown or produced on the farm if unusually severe weather or disease conditions cause a significant reduction in the availability of fruit or other agricultural products grown or produced on the farm to manufacture wine during a given license year. As used in this section, the terms "owner" and "lessee" shall include a cooperative formed by an association of individuals for the purpose of manufacturing wine. The</p>	<p>No similar limitations for Limited Brewery</p>

term "farm" as used in this section includes all of the land owned or leased by the farm winery licensee as long as such land is located in the Commonwealth.



§ 4.1-208. Beer licenses.

The Board may grant the following licenses relating to beer:

1. Brewery licenses, which shall authorize the licensee to manufacture beer and to sell and deliver or ship the beer so manufactured, in accordance with Board regulations, in closed containers to (i) persons licensed to sell the beer at wholesale; (ii) persons licensed to sell beer at retail for the purpose of resale within a theme or amusement park owned and operated by the brewery or a parent, subsidiary or a company under common control of such brewery, or upon property of such brewery or a parent, subsidiary or a company under common control of such brewery contiguous to such premises, or in a development contiguous to such premises owned and operated by such brewery or a parent, subsidiary or a company under common control of such brewery; and (iii) persons outside the Commonwealth for resale outside the Commonwealth. Such license shall also authorize the licensee to sell at retail the brands of beer that the brewery owns at premises described in the brewery license for on-premises consumption and in closed containers for off-premises consumption.

Such license may also authorize individuals holding a brewery license to (a) operate a facility designed for and utilized exclusively for the education of persons in the manufacture of beer, including sampling by such individuals of beer products, within a theme or amusement park located upon the premises occupied by such brewery, or upon property of such person contiguous to such premises, or in a development contiguous to such premises owned and operated by such person or a wholly owned subsidiary or (b) offer samples of the brewery's products to individuals visiting the licensed premises, provided that such samples shall be provided only to individuals for consumption on the premises of such facility or licensed premises and only to individuals to whom such products may be lawfully sold.

2. Limited brewery licenses, to breweries that manufacture no more than 15,000 barrels of beer per calendar year, provided (i) the brewery is located on a farm in the Commonwealth on land zoned agricultural and owned or leased by such brewery or its owner and (ii) agricultural products, including barley, other grains, hops, or fruit, used by such brewery in the manufacture of its beer are grown on the farm. The licensed premises shall be limited to the portion of the farm on which agricultural products, including barley, other grains, hops, or fruit, used by such brewery in the manufacture of its beer are grown and that is contiguous to the premises of such brewery where the beer is manufactured, exclusive of any residence and the curtilage thereof. However, the Board may, with notice to the local governing body in accordance with the provisions of § [4.1-230](#), also approve other portions of the farm to be included as part of the licensed premises.

Limited brewery licensees shall be treated as breweries for all purposes of this title except as otherwise provided in this subdivision.

3. Bottlers' licenses, which shall authorize the licensee to acquire and receive deliveries and shipments of beer in closed containers and to bottle, sell and deliver or ship it, in accordance with Board regulations to (i) wholesale beer licensees for the purpose of resale, (ii) owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and (iii) persons outside the Commonwealth for resale outside the Commonwealth.

4. Wholesale beer licenses, which shall authorize the licensee to acquire and receive deliveries and shipments of beer and to sell and deliver or ship the beer from one or more premises identified in the license, in accordance with Board regulations, in closed containers to (i) persons licensed under this chapter to sell such beer at wholesale or retail for the purpose of resale, (ii) owners of boats registered under the laws of the United States sailing for ports of call of a foreign country or another state, and (iii) persons outside the Commonwealth for resale outside the Commonwealth.

No wholesale beer licensee shall purchase beer for resale from a person outside the Commonwealth who does not hold a beer importer's license unless such wholesale beer licensee holds a beer importer's license and purchases

beer for resale pursuant to the privileges of such beer importer's license.

5. Beer importers' licenses, which shall authorize persons licensed within or outside the Commonwealth to sell and deliver or ship beer into the Commonwealth, in accordance with Board regulations, in closed containers, to persons in the Commonwealth licensed to sell beer at wholesale for the purpose of resale.

6. Retail on-premises beer licenses to:

a. Hotels, restaurants and clubs, which shall authorize the licensee to sell beer, either with or without meals, only in dining areas and other designated areas of such restaurants, or in dining areas, private guest rooms, and other designated areas of such hotels or clubs, for consumption only in such rooms and areas.

b. Persons operating dining cars, buffet cars, and club cars of trains, which shall authorize the licensee to sell beer, either with or without meals, in the dining cars, buffet cars, and club cars so operated by them for on-premises consumption when carrying passengers.

c. Persons operating sight-seeing boats, or special or charter boats, which shall authorize the licensee to sell beer, either with or without meals, on such boats operated by them for on-premises consumption when carrying passengers.

d. Grocery stores located in any town or in a rural area outside the corporate limits of any city or town, which shall authorize the licensee to sell beer for on-premises consumption in such establishments. No license shall be granted unless it appears affirmatively that a substantial public demand for such licensed establishment exists and that public convenience and the purposes of this title will be promoted by granting the license.

e. Persons operating food concessions at coliseums, stadia, or similar facilities, which shall authorize the licensee to sell beer, in paper, plastic, or similar disposable containers, during the performance of professional sporting exhibitions, events or performances immediately subsequent thereto, to patrons within all seating areas, concourses, walkways, concession areas, and additional locations designated by the Board in such coliseums, stadia, or similar facilities, for on-premises consumption. Upon authorization of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the license.

f. Persons operating food concessions at any outdoor performing arts amphitheater, arena or similar facility which has seating for more than 3,500 persons and is located in Albemarle, Augusta, Pittsylvania, or Rockingham Counties. Such license shall authorize the licensee to sell beer during the performance of any event, in paper, plastic or similar disposable containers to patrons within all seating areas, concourses, walkways, concession areas, or similar facilities, for on-premises consumption. Upon authorization of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the license.

g. Persons operating food concessions at exhibition or exposition halls, convention centers or similar facilities located in any county operating under the urban county executive form of government or any city which is completely surrounded by such county, which shall authorize the licensee to sell beer during the event, in paper, plastic or similar disposable containers to patrons or attendees within all seating areas, exhibition areas, concourses, walkways, concession areas, and such additional locations designated by the Board in such facilities, for on-premises consumption. Upon authorization of the licensee, any person may keep and consume his own lawfully acquired alcoholic beverages on the premises in all areas and locations covered by the license. For purposes of this subsection, "exhibition or exposition halls" and "convention centers" mean facilities conducting private or public trade shows or exhibitions in an indoor facility having in excess of 100,000 square feet of floor space.

7. Retail off-premises beer licenses, which shall authorize the licensee to sell beer in closed containers for off-premises consumption.

8. Retail off-premises brewery licenses to persons holding a brewery license which shall authorize the licensee to sell beer at the place of business designated in the brewery license, in closed containers which shall include

growlers and other reusable containers, for off-premises consumption.

9. Retail on-and-off premises beer licenses to persons enumerated in subdivisions 6 a and 6 d, which shall accord all the privileges conferred by retail on-premises beer licenses and in addition, shall authorize the licensee to sell beer in closed containers for off-premises consumption.

(Code 1950, § 4-25; 1952, c. 535; 1956, c. 520; 1962, c. 532; 1964, c. 210; 1970, cc. 627, 723; 1972, c. 679; 1973, c. 343; 1974, c. 267; 1975, c. 408; 1976, cc. 134, 447, 496, 703; 1977, c. 439; 1978, c. 190; 1979, c. 258; 1980, cc. 526, 528; 1981, cc. 410, 412; 1982, c. 66; 1984, c. 200; 1987, c. 365; 1988, c. 893; 1989, c. 42; 1990, c. 707; 1991, c. 628; 1992, cc. 215, 350; 1993, cc. 828, 866; 1994, c. [585](#); 1995, cc. [497](#), [518](#), [544](#), [570](#); 1996, cc. [443](#), [604](#); 1997, cc. [489](#), [646](#), [662](#); 2000, c. [1047](#); 2003, cc. [329](#), [1029](#), [1030](#); 2006, c. [845](#); 2007, cc. [813](#), [870](#), [932](#); 2012, c. [619](#); 2014, c. [365](#).)

§ [15.2-2288.3:1](#). Limited brewery license; local regulation of certain activities.

A. It is the policy of the Commonwealth to preserve the economic vitality of the Virginia beer industry while maintaining appropriate land use authority to protect the health, safety, and welfare of the citizens of the Commonwealth and to permit the reasonable expectation of uses in specific zoning categories. Local restriction upon such activities and public events of breweries licensed pursuant to subdivision 2 of § [4.1-208](#) to market and sell their products shall be reasonable and shall take into account the economic impact on such licensed brewery of such restriction, the agricultural nature of such activities and events, and whether such activities and events are usual and customary for such licensed breweries. Usual and customary activities and events at such licensed breweries shall be permitted unless there is a substantial impact on the health, safety, or welfare of the public. No local ordinance regulating noise, other than outdoor amplified music, arising from activities and events at such licensed breweries shall be more restrictive than that in the general noise ordinance. In authorizing outdoor amplified music at such licensed brewery, the locality shall consider the effect on adjacent property owners and nearby residents.

B. No locality shall regulate any of the following activities of a brewery licensed under subdivision 2 of § [4.1-208](#):

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

C. Any locality may exempt any brewery licensed in accordance with subdivision 2 of § [4.1-208](#) on land zoned agricultural from any local regulation of minimum parking, road access, or road upgrade requirements.

(2014, c. [365](#).)