

# **ZONING ORDINANCE AUDITS**

## **Permit, Processes & Procedures Attachments**


The following provides a series of Chronologies for a variety of Rural Uses, prepared by residents and/or organization directly impacted by rural use establishments.

The Chronologies and information are intended to support the issues and recommendations provided in the Zoning Ordinance Audit, providing specific examples of the issues cited. They are illustrative, but not exclusive or exhaustive of rural uses impacts.



## ZONING EXAMPLE INPUT LOCATION or ISSUE: BEAR CHASE BREWERY

The following provides a chronology of key events related to this issue or location, with the purpose of identifying key problems (e.g., uses, permits, policies, procedures, enforcement, etc.) to improve.

DATE (Mth/Yr if known)	KEY EVENT/ACTIVITY/ISSUE (e.g., application, permit, construction, violation notice, etc.)	BRIEF DESCRIPTION OF PROBLEMS/IMPACTS
7/6/2016	<b>Madison Hospitality (MH)</b> (S6271151) formed. The registered agent is listed as Brent J. Digeronimo. Both addresses are 2588 Ocean Shore Avenue, Virginia Beach, VA.	 <p style="text-align: center;"><b>BlueRidge Mountain Road</b></p>
Unknown	Benjamin Farmery, represents Madison Hospitality. <a href="mailto:benj@madisonhospitality.com">benj@madisonhospitality.com</a> ; 703-395-91219 (M); 703-723-7523 (P)	
Unknown	Parcel 6416697100, Book 793, Page 528: State Use Class: Farm 20-99.99AC; Neighborhood R891301; Ag District N/A	
2/23/2017	Site Plan Pre-Submission (PSUB) meeting request from Benjamin Farmery, Madison Hospitality Services, LLC. 19117 Caddy Court, Leesburg, VA 20176 **	
3/6/2017	<b>MH</b> presents a request to LC that the residential property be rezoned so that they could convert it to either a B&B or a Country Inn for travelers, Military veteran retreats; requesting that they develop a 10,000 sq foot facility, as well as to investigate use of the land for agricultural purposes, such as hops. **	<p><b>Problem:</b> This property and its plans are within 200 feet of a private residence. It lies very close to the already difficult intersection of 2-lane Route 601 with Route 7. As proposed, extensive traffic back-up can be expected on Route 601.</p> <p><b>Solution:</b> Appropriate regulations</p> <ul style="list-style-type: none"> <li>to mitigate the impact of this level of commercial operation on water quality (all residents are dependent on well water), septic management and impact on ground water quality, noise, light, traffic and nearby property values.</li> <li>Consultation with appropriate agencies to determine whether the crops proposed are appropriate for the soil and climate conditions;</li> <li>how the increase in potential traffic will be handled (VDOT); and</li> <li>dialogue the Loudoun Economic Development Council as to parameters to consider when advising prospective businesses in the rural sector</li> </ul>
3/22/2017	Pre-submission Application Conference held; attendees: Neelam Henderson, B&D Engineering; Benj Farmery, Madison Hospitality; Roger Healey, McEnerney Associates; Bill Houck, B&D E&S; Jamie Fultz, B&D E&S Mngr; Mark Depo, P&Z Admin; Ryan Reed B&D NRT **	<p><b>Problem:</b> The synopsis of the meeting states: "The meeting was exploratory in nature and subsequent discussion/notes are not binding for either the County or the attendees." The synopsis stated nothing re: the current Comp Plan was discussed; that VDOT approval was required, and lists various zoning issues discussed.</p> <ul style="list-style-type: none"> <li>As facts later substantiated, this led the applicant to believe certain County regulations and requirements were simply <i>suggestions</i>.</li> </ul>

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		<b>Solution:</b> Preliminary meetings must document that zoning regulations specified for a particular project are binding, and are the responsibility of the applicant to know, understand, and follow.
4/6/2017	Response from Mark Depo, to PSUB request 2017-0007; response sent to Neelam Henderson, citing MDOD, B&B, and Country Inn zoning regulations. **	NOTE: reference is to MCPI 6481667100 = 32.49 acres
6/15/2017	<b>Bluemont Estates, LLC</b> formed in Virginia (S6877254). Prestige Worldwide Services, LLC is listed as its registered agent. Mark Tatum is listed as PWS, LLC registered agent. The address for both PWS and Mark Tatum is listed as 43510 Squirrel Ridge Place, Leesburg, VA	
7/29/2017	Benj Farmery posted notice: ownership of Bluemont Manor and Country Inn property is Mark Tatum, Tony Bowers, Ted Holloway Tidmore and Justin Rufo.	
7/29/2017	Benj Farmery posted notice: "Coming Soon"....Bluemont Manor and Country Inn, advertising ability to sleep 25-30 people, outdoor pavilion, fire pits, outdoor kitchen, fireplace and entertainment area. "Perfect for corporate retreats, weddings, family reunions,..." "Be on the lookout for a Fall Concert series..." **	<p><b>Problem:</b> This property and its plans are within 200 feet of a private residence.</p> <p><b>Solution:</b> The Loudoun Economic Development should have knowledge of the surrounding properties in order to fully advise prospective applicant of the impact a commercial operation in a particular neighborhood will impose on water quality (especially where residents are dependent on well water), septic management and impact on ground water quality, noise, light, traffic and property value impact. Consultation with Loudoun Planning &amp; Zoning department on all points should be included.</p> <p><b>Problem:</b> Local residents/neighbors have no idea of the proposed commercialization of this land, and thus no opportunity to raise questions or concerns.</p> <p><b>Solution:</b> <b>PUBLIC NOTICE</b></p> <ul style="list-style-type: none"> <li>As soon as LC receives a request to change the nature of an existing property, public notice should be posted in a prominent place on the property, easily visible to passers-by, with contact numbers in order to enable questions and concerns. LC be required to notify each owner of properties within a 10-mile radius.</li> </ul>
7/31/2017	MCPI # 64166971000 purchased by Bluemont Estates, LLC.	NOTE: reference is to MCPI 6481667100 = 31.31 acres
Unknown	At some point plans for "Bluemont manor and Country Inn" evolved into plans for a brewery, tap room and music event center; possibly a B&B vs Airbnb	<p><b>Problem:</b> <b>CHANGE OF USE / MULTIPLE USES ON SITE.</b></p> <ul style="list-style-type: none"> <li>With the change in plans for this property, it now has disparate regulations for a B&amp;B facility, adjacent to a brewery and tasting tap room; different regulations for # of guests, # of events, hours of events....some guided by the County, some by the state.</li> </ul> <p><b>Solution:</b> Establish clear guidelines for noise, who is to officially monitor and where there is overlap between the 2 facilities, who predominates?</p>
change	<b>Bear Chase Brewing Company, LLC (BCBC)</b> (S6999702) formed. Mark Tatum is listed as its registered agent.	

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8/25/2017	BCBC made ABC application for a Limited Brewery, which means 500 or fewer barrels/year.**	<p><b>Problem:</b> Local residents/neighbors have no idea of the proposed commercialization of this land, and thus no opportunity to raise questions or concerns.</p> <p><b>Solution:</b> <b>VaABC PROPER NOTICE: POSTING AND PUBLICATION</b></p> <ul style="list-style-type: none"> <li>As soon as ownership makes application for any form of ABC license, public notice is required to be posed in a prominent place on the property, easily visible to passers-by, with contact numbers in order to enable questions and concerns.</li> </ul>
8/25/2017	VA Statutes require notice re: an ABC application be posted on the “front door” of the property	<p><b>Problem:</b> Some sites have long driveway setbacks, thus preventing reasonable knowledge of the application by the public, as was the case with BCBC</p> <p><b>Solution:</b> Require prominent signage re: the application to be posted where reasonable passers-by may be informed.</p>
8/30/2017 and 9/6/2017	BCBC published notice in the Washington Post (WP) classifieds section of their ABC brewery application, as required by VA statutes: publish intent on 2 separate occasions in a publicly circulated paper.	<p><b>Problem:</b> In rural communities, the circulation of the WP is limited. In the case of the Route 601 residents, only 10 of over 200 subscribe to the WP. (documented via conversation with WP carriers and regional distributor).</p> <p><b>Solution:</b> <b>VaABC PROPER NOTICE: POSTING AND PUBLICATION</b></p> <ul style="list-style-type: none"> <li>Require publication to be in all community newspapers, both free and circulated, on two separate occasions, at least 2 weeks apart.</li> </ul> <p><b>Problem:</b> Each announcement was 1.5 x 2 inches in size, and buried in the classifieds ads section.</p> <p><b>Solution:</b> Require a minimum size for each announcement, and that it be placed more appropriately in a local Metro, Business, or Neighborhood Happenings section, (e.g. Loudoun Times; Loudoun Now, etc).</p>
10/17/2017	BRMCA Welcoming Committee members went to the BCBC property, believing they were going to meet new residents, and/or leave BRMCA membership materials for them	<p><b>Problem:</b> There was no one on the property; what they saw were areas of forest clearing, grading, and a new gazebo-type structure.</p> <p><b>Solution:</b> Public advisement of new property use plans as previously stated.</p>
10/17/2017 - 3/30/2018	BRMCA filed complaints and concerns with LC, regarding plans, construction, noise, traffic, fire safety, water health, septic management, etc	<p><b>Problem:</b> <b>LACK OF PERMITS</b></p> <p>BCBC began work without engineered plans for additional wells, additional septic, new construction, etc.</p> <p><b>Solution:</b></p> <ul style="list-style-type: none"> <li>Require LC to have in hand the final definitive plan requested for property development and construction, and to then issue clearly stated application requirements and approvals BEFORE work is begun.</li> <li>Require periodic on-site inspections by relevant LC departments</li> </ul> <p><b>Problem:</b> <b>ENFORCEMENT BY COMPLAINT</b></p> <p>Adjacent neighbors experienced sound and noise pollution, negatively impacting their quietude and use of their property</p> <p><b>Solution:</b> Establish clearly stated hours of construction operation; set back; noise and light protective barriers</p> <p><b>Problem:</b> <b>INCONSISTENT COUNTY REQUIREMENTS</b></p>

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		<b>Benjamin Farmery stated BCBC was “the only” brewery required to obtain certain permits; that he spoke with other local “farm breweries” and was told those establishments did not require any permits due their Agri-business status.</b> <b>Solution:</b> LC to make clear at any and all meetings with prospective land disturbing entities exactly what is required; make sure there have copies of same, and craft a plan for reasonable oversight of the development process.
4/26/2018	Loudoun Records list this as a sale date for the property, from Bluemont Estates, LLC to Bluemont Estates, LLC; sale price \$0	
6/19/2018 - 8/22/2018	Adjacent neighbors notify LC of land clearing, noise and light disruptions	<b>Problem:</b> NOISE ORDINANCES UNCLEAR (ZONING VS. CODIFIED) Lack of understanding of LC regulations by BCBC as to noise, light; difficulty getting an official noise reading by LC officials: <b>Solution:</b> Clear documentation to enterprise of regulations, with same shared to neighbors
6/19	Bluemont resident reaches out to Paris Neighborhood—“Anyone else getting blasted off the mountain tonight?” in reference to BCBC music event. Dialogue via Paris Neighborhood site; others concerned re: noise, traffic at 601 & 7.	<b>Problem:</b> ENFORCEMENT BY COMPLAINT Noise pollution from music events at BCBC <b>Solution:</b> Report via LEX; request courtesy from ownership; advise ownership re: regulations
7/6/2018	BCBC submits engineered plans for 2nd driveway to VDOT	
8/2/2018	VDOT issued permit for 2nd driveway, as required by the level of activity generated by the advertised brewery, tap room, and music events	<b>Problem:</b> The proximity to residences; traffic congestion for residents; parking along 601; overflow parking into VDOT lot at Route 7, and pedestrian traffic to brewery; bus in ditch trying to bring guests to site <b>Solution:</b> LC to require certain minimum acreages and/or set backs; limited auto traffic; develop a clear cut regulation re: the # of guests a site may host, and a way to enforce this.
8/4/2018	BCBC officials opens per their on line announcement **	<b>Problem:</b> NO AG FOR RURAL AG BUSINESS BCBC claims they are growing hops, and have plans “to plant an orchard of fruit trees...as well as expand our hop fields to yield even more ingredients for our brewery.” This “farm” or supposed “agri-business” does not have those crops growing on site in a meaningful way. <b>Solution:</b> DEFINITION OF “FARM” VA needs stronger statutes to encourage true farm operations, and to protect rural lands from shabby agri-business operations.
9/30/2018	Adjacent neighbors advise LC of Lighting and Landscape buffer violations by BCBC	<b>Problem:</b> As stated <b>Solution:</b> LC advised BCBC of violations; fence barrier constructed; lighting modified
10/20/2018	Tour bus attempting to turn around south of BCBC, landed on private property stone wall, disabled.	<b>Problem:</b> As stated, reported by a BRMCA member <b>Solution:</b> Unknown; the bus is gone.
2/10/2019	BCBC on line advertises Bear Chase Manor as a B&B, but also directs people to seek information at “View listing on VRBO.”	<b>Problem:</b> MULTIPLE RURAL USES. Uncertainty under which entity BC Manor is operating, and how to manage overlap of regulations for a brewery/taproom/music event venue with the BC Manor regulations. <b>Solution:</b> LC to clarify and define

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3/14/2019	BCBC advertises serving off site at The Manor in Round Hill.	<b>Problem:</b> Is BCBC within their ABC license for a "Limited Brewery" as they new are beginning of-site distribution of their product <b>Solution:</b> Confirm any updated licensing with ABC Board
5/10/2019	BCBC is granted an ABC license to serve wine.	<b>Problems:</b> <b>VaABC POSTING AND PUBLICATION</b> <ul style="list-style-type: none"> <li>No public notice was posted in a reasonable place on the property so that the public could be aware.</li> <li>Public notice was posted in the Washington Times, which has only on-line circulation outside of the immediate Washington, DC metro area</li> </ul> <b>Solutions:</b> <ul style="list-style-type: none"> <li>Require reasonable posting so that passers-by can be aware and have time to respond to ABC board.</li> <li>Require a minimum size for each announcement, and that it be placed more appropriately in a local Metro, Business, or Neighborhood Happenings section. (Loudoun Times, Loudoun Now, etc).</li> </ul>
5/11/2019	Public intoxication and assault at BCBC	<b>Problem:</b> As stated <b>Solution:</b> 3 arrests by LC Sheriff's department



## ZONING COMMITTEE CHRONOLOGY: Bluemont Area

The following provides a chronology of key events related to this location, with the purpose of identifying key problems (e.g., permits, policies, procedures, enforcement, etc.) to improve.

DATE	KEY EVENT (e.g., application, permit, construction, violation notice, etc.)	BRIEF DESCRIPTION OF PROBLEMS/IMPACTS
1999	Great Country Farm opened as an Agricultural Tourist Operation. Owners were long time farmers in the area and the purpose was to provide a pick your own farm products, farming educational programs and some outside events.	Some traffic and noise complaints were noted but nothing too serious.
2000 or so	Whitehall Estates opened as Bed and Breakfast and wedding venue	Some traffic and noise complaints were noted but nothing too serious
2007	Bluemont Vineyard and Winery opened by individuals who own Great Country Farm. Purpose was to grow grapes and act as a Winery. Once it was solidly established started doing weddings and other events,	Much more traffic noted and noise complaints.
2015	Dirt Farm Brewery began operations. Part of the Great Country Farm family business enterprises. Once started, it began having weddings and special events.	Much more traffic noted and some noise complaints.
2016 or so	HighHoldBorne Wedding Venue began operations on Ridge Road	<b>ISSUES:</b> <ul style="list-style-type: none"> <li>• This operation is in a residential type farm location</li> <li>• operation generated more traffic and many noise complaints were noted. Police came out as did County Zoning personnel with little improvement.</li> </ul>
Long Term Presence	Bluemont Community Center	Many events held each year with few complaints due to long presence in the area
2019/2020	Traffic Issues caused by overall number of rural uses in area:	<b>COMPOUNDING IMPACTS OF RURAL USES IN BLUEMONT</b> <b>ISSUES:</b> <ul style="list-style-type: none"> <li>• The continuing addition of additional rural use venues in the area over the years without regard to compounding impacts.</li> <li>• Volume of uses in vicinity has generated a large increase in traffic and noise to the area.</li> <li>• The additional traffic and noise represents an on-going safety hazard and, a negative impact to the quality of life for neighbors.</li> <li>• As each one of the rural venues was created and approved by the County and VDOT, the <u>compounding traffic</u> was not properly considered in the process. This allowed for a continual growth in traffic now exceeds volume allowed in Zoning performance standards.</li> <li>• Outside of just the amount of traffic, the following serious traffic areas are noted.</li> </ul>

DATE	KEY EVENT (e.g., application, permit, construction, violation notice, etc.)	BRIEF DESCRIPTION OF PROBLEMS/IMPACTS
		<ul style="list-style-type: none"> <li>○ Snickersville Turnpike and Route 7: Small entrance to Bluemont with limited line of site issues plus mountainous terrain which makes stopping and turning off of and onto Route 7 difficult and dangerous.</li> <li>○ Snickersville Turnpike and Foggy Bottom Road: Serious line of sight problem for people leaving venues on Foggy Bottom</li> <li>○ Rural Gravel roads in area are used by horse riders, bicycles and walkers and traffic represents safety issue.</li> <li>• Outside of an automated speed sign on Snickersville Road, no real road improvements have been implemented to improve the traffic situation.</li> </ul> <p><b><u>RECOMMENDATIONS</u></b></p> <ul style="list-style-type: none"> <li>• Application for Rural Uses in close proximity must be reviewed for overall compliance with Zoning Performance standards 5-654.</li> <li>• To improve current traffic situation and enforcement, roadwork and other actions would need to be taken to correct situation and these would certainly change the rural environment and cultural look which is not desirable.</li> </ul>
	Noise Issues	<p><b><u>NOISE IN RURAL AREAS</u></b></p> <p><b><u>ISSUES:</u></b></p> <ul style="list-style-type: none"> <li>• Large events at multiple Bluemont venues generates noise that impacts quality of life for neighbors.</li> <li>• Current approach of having police monitor and enforce sound rules is ineffective due to differing noise enforcement standards between zoning and codified ordinances.</li> <li>• Need to apply and enforce the zoning rule of 60 decibels at property line.</li> </ul>
	Size and Number of Rural Use Venues Issues	<p><b><u>REVIEW IMPACTS OF MULTIPLE VENUES</u></b></p> <p><b><u>RECOMMENDATION:</u></b></p> <ul style="list-style-type: none"> <li>• The size and VOLUME OF VENUES in an area should be a consideration as new rural venues are considered for an area.</li> <li>• The combined impact of multiple venues generates many issues and must be evaluated for neighborhood/area overall impacts.</li> </ul>



## ZONING EXAMPLE INPUT: Limited Brewery: Old 690 Brewing Co.

The following provides a chronology of key events related to this issue or location, with the purpose of identifying key problems (e.g., uses, permits, policies, procedures, enforcement, etc.) to improve.

DATE (Mth/Yr)	KEY EVENT/ACTIVITY/ISSUE (e.g., application, permit, construction, violation notice, etc.)	BRIEF DESCRIPTION OF PROBLEMS/IMPACTS
2013	"Misrepresenting a material fact" by falsifying permits and applications and been uncommunicative about business intent (VA §4.1-225.1a)	
	Evidence shows Old 690 owners planned to open a brewery as early as January, 2013, proving subsequent statements on County applications that they were building a "pole barn" for "winery production" false.	Web domains showed intent as "ShortHillBrewing.com" and "690Brewery.com" ABC Lic. Indicated "date began business: 1/31/2013" Zoning use not permitted.
3/12/2013	Zoning permit Z3029914001 issued for use of an "Agricultural Structure with conditions approved for a one-story barn for wine production."	<b>PERMIT ISSUE:</b> Zoning permit issued on property not in compliance for stated use (wine production). Application not verified by Zoning before approval.
Sunday, 5/5/2013	Facebook posts found May, 2013 <i>We have a name!!! After many weeks of thinking, analyzing, and discussing we finally settled on "Old 690 Brewing Company".</i>	
5/16/2013	Completion of "Pole Barn"	
5/18/2013	Started installing hops poles (facebook post photo). Shows property use was not a "farm" until after business was formed.	
7/18/2013	<u>Brewer's Notice application</u> Line 5 – Business address 15670 Ashbury Church Road. Line 10 – Our brewery is a: X BREWPUB Line 13 – Brewer's Business Day: 4:00am Line 14 – Filing notice to: X Give TTB our original notice that we intend to engage I the business of producing beer Line 16 – Estimated production in barrels/year? X Not more than 60,000 barrels/year Line 18 – If a Brewpub: a) must separate brewery operations from public areas b) serving tanks approx. <u>7</u> barrels c) measuring Line 21 – Under penalties of perjury declare notice true, correct and complete. Signed 9/13/13.	Conflicting information to Zoning Permit/application existed. Zoning Administration should have used for later enforcement for fraudulent application.  False Information: Only permit on file with Loudoun County: "Wine production"
7/18/2013	<u>Attachment to Brewer's Notice:</u> Item 12—Does applicant own the land or building comprising the brewery? Response: X Yes Premises Info: 2.8 acres of land comprises brewery property, .8 acres hops, .5 acres parking, .5 acres green area, Brewery bldg bldg. on 1 acre." Bldg 2240 sqft Diagram includes: "Tasting Room Bar", "Room 40'x32' Tasting Room, Brew house 40'x24', RESTROOM 8'x8' – confirms Health Dept permit required BEFORE license provided to comply with County regs Sketch Plan – Shows "100+" to Johnson property and "100+" to adjacent property. Shows "Barrel rope border" never done	Plans submitted for VaABC/State TTB licenses showed planned use was not permitted by current Zoning.  Plans also showed requirement for Health Department review (restroom/septic), which was not done prior to license approval.  <b>More thorough review of plans and supporting documents should be required.</b>
9/3/2013	LLC Operating Agreement signed (not created for SCC). Article II Purpose: "Establish and operate a brewery and brewpub and engage in other lawful activities."	Further evidence was available for review of LLC documentation, indicating use/purpose not permitted by Zoning.

DATE (Mth/Yr)	KEY EVENT/ACTIVITY/ISSUE (e.g., application, permit, construction, violation notice, etc.)	BRIEF DESCRIPTION OF PROBLEMS/IMPACTS
12/2/2013, 12/9/2013	VaABC license application received Type license applied for: "Brewery & Keg license" "Retail off-premises Brewery w/ Keg" – NOT "Limited Brewery" Type of Business: "Brewery" Date began business: "1/31/2013" Busi. Hrs: "9am-4am" Question 48 – "REQUIRED Documents for ALL Establishments: ____ Lease (not checked. Later said not included/provided) ____ "Health permit and/or agricultural certificate" (not checked, and not in file) [REQUIRED FOR RESTROOM]	VaABC is required to send License application to local government for identification of "opinion" 12/9/13 letter was John Roberts, LC Atty Office and Michael Chapman, LC Sheriff Office. Because VaABC has no record of a response, the report/file indicated Loudoun County was "neutral" on application. <b>PROCESS ISSUE:</b> VaABC should have been notified that applicant had falsified zoning permit, building construction identified use, and use (brewery) was not permitted for location.
2/4/2014	<b>10 day posting of VaABC notice on property front door – therefore until ~2/14/2014. No copy or verification in file.</b>	<b>PROCESS: PROPER NOTICE TO NEIGHBORS.</b> At time of VaABC posting, 2014 property assessment data contained NO REFERENCE to a "barn" or pending business on single family dwelling property. <b>The front door of Old 690 is not visible from road. Residents or the general public could not have seen the notice unless they trespassed on the property.</b>
2/27/2014 (Thurs) & 3/6/2014 (Thurs)	Legal notices published in Leesburg Today. (Start of 30 day objection period: 2/27/2014. End: 3/26/2014) Notice language: Applying to ABC for a "Brewery Limited/Keg Permit & Retail Brewery Keg license to sell or manufacture alcoholic beverages."	<b>PERMIT PROCESS:</b> County should have objected as Use was not permitted by Zoning. <b>PROCESS: PROPER NOTICE TO NEIGHBORS.</b> Nothing to indicate to adjacent property owners that a business consisting of tasting room/event venue/bar/brewpub was being planned. Based review of other legal notices in Leesburg Today, the Feb/March notices <u>would not</u> have provided neighbors with full information about the activities and events.
2/28/2014 (Fri.)	<b>Va Senate Bill 430 (SB-430) Passed House &amp; Senate. Alcoholic beverage control; limited brewery license created; local regulation of certain activities.</b> Creates a new limited brewery license for breweries that manufacture no more than 15,000 barrels of beer per calendar year, are <b>located on a farm in the Commonwealth</b> , and use agricultural products that are grown on the farm in the manufacture of beer. The bill limits local regulation of limited brewery licensees and specifically allows any locality to exempt a brewery licensee from minimum parking, road access, or road upgrade requirements.	<b>Loudoun Zoning:</b> <ul style="list-style-type: none"><li>• Did not define nor enforce requirement for use to be "located on a farm."</li><li>• Ignored stipulation <u>allowing</u> zoning performance standards to define minimum parking, road access or road upgrade requirements.</li></ul>
3/27/2014 (Thur)	<b>VA Governor Signed SB-430:</b> <i>An Act to amend and reenact § 4.1-208 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-2288.3:1, relating to breweries located on farms; local regulation of certain activities.</i> [S 430] Approved March 27, 2014	
3/27/2014	VaABC Memorandum. Additional Information offered regarding the applications. Presently there is no lease agreement involved with business operation at [15670 Ach. Ch. Rd. Pville 20132.] The property is owned by two members of the applicant LLC . . . If a lease agreement is secured in the future it will be submitted. The applicant has made contact with the Virginia Department of Ag and Con. Svc reference "an inspection of brewery premises in the near future." - ADDITIONAL INFO – VDACS statement 8/4/2015 "Old 690 called a long time ago saying, "Thinking about starting a brewery." Never heard back from them."	<b>PERMIT PROCESS ISSUES:</b> <ul style="list-style-type: none"><li>• VaABC Memo stated application was incomplete (no lease agreement), and awareness of "a possible issue with Loudoun County Zoning involving the applicant and will handle the matter accordingly."</li><li>• Lack of communication and coordination between VaABC and Loudoun County, resulting in license approved for zoning use not permitted.</li><li>• Applicant "contacted" VDACS, however, did not complete process.</li></ul>
7/1/2014	SB-430 became law.	
7/2/2014	VaABC license issued to Old 690 Brewing Co. LLC, effective 7/1/2014 - License # 84313. Retail Off Premises Limited Brewery/Keg Permit - License # 84314. Limited Brewery (500 barrels or less annually) and Keg Permit.	<b>VaABC license approved for use not permitted by Zoning, without proper review and objection.</b>
8/8/2014	<b>Opening Night of Old 690 (per facebook)</b>	
8/19/2014	<b>Notice of Violation sent by Loudoun County Department of Planning and Zoning, Case # 2014-29526 JC,</b> Section 1-203: brewery use not permitted in AR1 Zoning District	<b>PERMIT PROCESS/ENFORCEMENT ISSUE:</b>

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	<p>Section 2-103(c) brewery with retail and food sales not permitted in AR1 Zoning District  Section 6-1000: "barn for wine production" permit issued 3/12/2013. Brewery beyond scope of approved zoning permit.  Section 5-1203(A): Erected signs without sign permits from Zoning Administrator  <b>RESULT: No action taken by VaABC per § 4.1-225.2.a</b>  2. The place occupied by the licensee:  a. Does not conform to the requirements of the governing body of the county, city or town in which such establishment is located, with respect to sanitation, health, construction or equipment, or to any similar requirements established by the laws of the Commonwealth or by Board regulations;</p>	<ul style="list-style-type: none"> <li>County had ongoing and ample notice of intent to violate Zoning, from "pole barn" inspections, "wine production" claims, direct notice during ZOAG meeting attendance, VaABC request for comment, etc.</li> <li>Yet all enforcement waited until after formal opening and direct impacts to adjacent properties.</li> <li>Enforcement by complaint is insufficient and was completely unwarranted for the series of violations.</li> </ul>
12/18/2014	Board of Zoning Appeal shut down brewery due to operation without zoning permit. <b>RESULT: No action taken by VaABC</b>	<b>ZONING ENFORCEMENT:</b> Due to multiple posting/notification delays, it took four months to halt zoning violations, known by the County (as planned) for over a year.
1/5/2015	Email from VaABC Agent Kelly -- "County zoning violations are not enough to get Old 690 revoked at this time."	<b>ENFORCEMENT:</b> Complete lack of coordination and operation between (State) VaABC and (County) Zoning.
1/21/2015	<b>Board of Supervisors approved Limited Farm Brewery use</b> with no performance standards.	
1/29/2015	Zoning Permit Stated: "A minimum of 51% of the agricultural products used for the processing, preparation, and/or manufacturing shall be derived from the agricultural use."	
1/30/2015	<b>Old 690 allowed to reopen by Loudoun County Board of Supervisors</b>	<b>PERMITTING PROCESS:</b> <ul style="list-style-type: none"> <li>Old 690 and Health Department knew at time of approval that facility was not inspected and did not comply with water and septic (illegal connections to 1996 household well and septic).</li> <li>No new application or inspection for "change of use" or "extension of water" on application</li> </ul>
2/9/2015	Formal complaint filed in Loudoun Online Complaint system, Lex: Old 690 serving food without a food permit.	<b>Enforcement by Complaint:</b> Health Department
4/28/2015	Sent summary of March 24 <sup>th</sup> meeting to Agent Kelly. Formal notification to VaABC of Old 690 water/septic violations and other health, safety, welfare issues. Result: No action by VaABC.	<b>PROCESS:</b> State Agency (VaABC) made aware of other State agency violations (Health Department). No action taken
5/28/2015	<p><b>Expansion of Old 690 licensed area approved by VAABC:</b> Agent Kelly: "None of the localities objected to the expansion of the rear area of Old 690. I believe the 30 days is up which means the rear area will now be part of his license premises.  <b>FAILURE TO PERFORM VaABC General Order #502, Section IV. Procedures Relate to Additional Agent Investigations as Part of an Existing License or a New Application,</b>  A. Additional Dining/Designated Area Requests,  1. For Enlargement of license premises, the agent will conduct an investigation.  f. Ascertain the opinion of local officials and citizens where applicable  3. If the agent finds that the area should not be approved because all criteria have not been met, or if local objections have been raised, then a hearing should be recommended in the investigation.  B. Outside Terraces or Patios  VI. Temporary Extension of Licensed Privileges Investigations (not more than four days/year)  A. 10. Ascertain the opinion of local citizens and officials, where applicable.  11. If the agent finds the area(s) unsuitable, or there are local objections, a hearing should be recommended in the investigation report.</p>	<p><b>PROCESS – State/County Lack of Coordination:</b></p> <ul style="list-style-type: none"> <li><b>Internal VaABC states notification to "local officials."</b> Even with notice of violation and advance notice of Health Department issues, VaABC approved "expansion" of licensed area because County did not object/weigh in.</li> <li><b>Opinion of local citizens:</b> VaABC did not request, nor heed, written concerns from adjacent properties regarding expansion.</li> </ul>
6/16/2015	Notice of Violation from Health Department – septic. <b>RESULT: No action taken by VaABC</b>	No coordination between County and State for Health department notice of violation.
7/20/2015	Email to Agent Kelly stating water issue still not resolved and no mention of real estate valuation being a prerequisite to moving forward with objection.	VaABC changed criteria for complaint, from HD/water to real estate valuation.

DATE (Mth/Yr)	KEY EVENT/ACTIVITY/ISSUE (e.g., application, permit, construction, violation notice, etc.)	BRIEF DESCRIPTION OF PROBLEMS/IMPACTS
7/21/2015	Response to Agent Kelly: "Until Both the septic and water issues are resolved and are in legal compliance with County and State requirements, the brewery is still in violation of *§ 4.1-225-2.a, Grounds for which [VaABC] Board may suspend or revoke licenses." *§ 4.1-225-2.a. 2. <b>The place occupied by the licensee: a. Does not conform to the requirements of the governing body of the county, city or town in which such establishment is located, with respect to sanitation, health, construction or equipment, or to any similar requirements established by the laws of the Commonwealth or by Board regulations;</b> Please let us know if you have any status on the water, and any reason or justification for the delay in license revocation due to the illegal water (and septic) status for the past 12 months."	VaABC refused to take action to enforce § 4.1-225-2.a.
7/29/2015	Office of Drinking Water, Deborah Hoy, email stating, "No one from the VDH-Office of Drinking Water has visited the Old 690 Brewery yet."	Permit/Process – No inspection by VDH-Office of Drinking Water prior to County permitting as required by Code of VA
8/4/2015	Conversation Notes with <b>Joe Buchanan – Department of Agriculture and Consumer Services (VDACS)</b> <ul style="list-style-type: none"> <li>- Brewery wants to start wholesaling. Needs FDA, Ag and TTB approvals.</li> <li>- "Old 690 called a long time ago saying, 'Thinking about starting a brewery.' Never heard back from them."</li> <li>- ODW met with LC Health Dept Monday 8/3/15</li> </ul>	Permit/Process – No inspection by <b>Department of Agriculture and Consumer Services (VDACS)</b> prior to County permitting as required by Code of VA
8/5/2015	Health Dept (J. Lock) confirmed they (HD and ODW) have not reviewed Old 690 water compliance yet. County, EPA, water, building any violation. (If we can get any one of these that states he can't be there the State has to close them)	<b>LOOPHOLE:</b> Health Department confirmed Brewery still has illegal tap to private household well.
8/17/2015	Old 690 Water Questionnaire – Stated opened only 3 days/week. No reference to Wednesday hours. "Service bottled water." No reference to "human consumption" use in bathroom or use of water for beer production. Stated quantity of patrons does not match quantity listed on septic engineering report.	
8/25/2015	ODW, Deborah Hoy email: "VDH - ODW and the Loudoun County Health Department are planning to visit the brewery next week to inspect the exiting well and well site for use as a public well."	
8/26/2015	ODW, Deborah Hoy email: "It does appear that due to the breweries use, it will be regulated as a public water system. Because we have not yet inspected the well and well site, we have not made any determinations of the existing well for use as a public water supply well. No waivers have been requested and VDH-ODW has not approved any waivers at this stage."	<b>PROCESS – Delayed review.</b> ODW confirmed Brewery "tasting room" is a transient, non-community public water works.
8/28/2015	Mark Winsted, Emery and Garrett Groundwater. Concurred neighbors have "every right to be concerned about the aquifer and the groundwater contamination."	
9/4/2015	ODW report sent to Old 690. Existing Class IIb well meets minimum requirements for transient non-community public waterworks. Hoy, "If there is a groundwater contamination issue, monitoring would eventually pick it up since Old 690 is required to submit the test results to ODW."	
9/8/2015	Conversation with Agent Kelly. Discussed evidence to date. <b>Agent Kelly was not able to define "quietude or tranquility."</b> Discussed real estate valuation methods, VDOT, sheriff reports, Underage Alcohol Buyer (UAB) discussed	
9/9/2015	Lock, Health Dept: "Dept. of Ag is waiting for well approval which is technically not complete by ODW." ODW, Hoy – Old 690 is a waterworks. Entitled to Informal Fact Finding Proceeding (IFFP). Have 15 days to respond. "Regulation of the existing waterworks at Old 690 Brewery is still pending."	<b>PROCESS/PROCEDURE:</b> Lock: "Gap in regulation for wastewater effluent and NO ONE is responsible for ensuring compliance."
9/10/2015	Mark Nelson, US EPA Hydrogeologist, Water Protection Division. "All non-domestic waste water discharge to the subsurface are regulated by federal law."	
9/13/2015	Letter sent to Public Officials requesting immediate action. Recipients: Delagate LaRock, Senator Dick Black, Loudoun County BOS Chairman Scott York, Supervisor Janet Clarke, Delegate Randy Minchew, Loudoun County Director of Health Department	<b>COMPLAINT:</b> No response to formal written complaint.

DATE (Mth/Yr)	KEY EVENT/ACTIVITY/ISSUE (e.g., application, permit, construction, violation notice, etc.)	BRIEF DESCRIPTION OF PROBLEMS/IMPACTS
	David Goodfriend, Congresswoman Barbara Comstock, Attorney General Opinions Counsel, Tim Oksman	
9/17/2015	Waiver Request Evaluation – Joe Lock: “Mr. _____ states that the covenants for the subdivision do not allow anything to be constructed within the area near the well.” “Approval with conditions: The owner must comply with all requirements for the proposed public non-community well set forth by the Office of Drinking Water	<b>DEPT. COMMUNICATION.</b> Heath Department waiver request with no approval indicated for beer production water use by Dept of AG.
9/29/2015	Agent Kelly, “I spoke with Mark Depo and he said: Agricultural Processing is a separate use and would not apply to a Limited Brewery or Virginia Farm Winery.”	<b>RURAL USE DEFINITIONS:</b> “Farm,” “Ag Processing” vs. “Brewery, Limited”
9/30/2015	Email to Kelly and M. Depo: “If Ag Processing does not apply, then did Mark explain why the requirement was included in the Permit Comments section on the Zoning Permit for a Limited Farm Brewery? Was this an error on the permit?”	Possible error on Zoning Permit
10/28/2015	Third <b>UAB notice</b> to VaABC: Letter regarding underage drinking received (signed for) by SSA Kelly and witnessed by J. Patrick Griffin	<b>COMPLAINT PROCESS:</b> Underage Alcohol Buyer (uab) complaint submitted for third time.
11/5/2015	Summary of VaABC delays to Dr. Goodfriend: <ul style="list-style-type: none"> <li>• VaABC/Agent Kelly made aware of Old 690's illegal water and septic hookup in writing on April 28, 2015. No action taken by VaABC, it was discussed at a meeting with her on June 9th, with direct evidence to prove the statements.</li> <li>• Instead of enforcement, VaABC called Health Dept. June 15th, resulting in the Notice of Violation to Old 690 issued on June 16th.</li> <li>• Again, instead of enforcement, Old 690 was allowed to install a new septic system in July, that was not certified until August (five months after the matter was highlighted to the County).</li> <li>• VaABC/Agent Kelly on Sept. 8th, indicated it was her belief that all issues with Old 690 were “now” resolved. However, only septic had been allowed to be corrected; their water hookup was still illegal.</li> <li>• Per the onlineRME documents, instead of enforcement of §4.1-225-2.a Agent Kelly emailed Health Dept. on Sept. 9th. Believing all water issues were resolved she stated, “In reality it's a good thing they are in compliance.”</li> <li>• Although Deborah Hoy of ODW said that was not the case and that the matter was still pending, <b>more</b> time was given to resolve the issues instead of enforcement, resulting in the waiver request and conditioned approval from Health Dept. office on 9/17/2015.</li> </ul>	<b>PERMITTING PROCESS:</b> Consistent, ongoing pattern of delay by State Agencies: VaABC, ODW, Health Department, and giving more time rather than enforcement of §4.1-225-2.a  Old 690 knowingly falsified permit information and connected water and septic illegally, with knowledge of the Health Department and lack of enforcement by Loudoun County and VaABC.  <b>ENFORCEMENT / WAIVERS PROVIDED in lieu of compliance.</b> No authority to waive portions of an ordinance or waivers should be given to businesses that break the law, or violate the purpose/intent of the residential neighborhood established by original subdivision covenants and restrictions.
<b>2016</b>		
2/3/2016	<b>Met with VaABC Director Shawn Walker and Agent Kelly. Reviewed evidence.</b> Director Walker confirmed understanding that to support a “cause exists” for §4.1-222.A.2.d. neighbors only needed to prove <b>substantial interference</b> with the usual quietude and tranquility of residential area <b>OR</b> adverse affect on real property values – not both. <ul style="list-style-type: none"> <li>• Dir. Walker also confirmed that to conduct a revocation hearing that VaABC would need to join and support our claims of cause exists and other Code of Virginia violations as indicated above, rather than a claim by residents alone Told that VaABC would need to join neighbors in hearing and cause to revoke license. Walker stated he would respond by end of February.</li> </ul>	<b>COMPLAINT PROCESS:</b> Complaint to revoke a VaABC license requires VaABC Enforcement to JOIN with complainants in suit, to be adjudicated by – VaABC. “ <i>Fox watching the chicken coop.</i> ”
4/12/2016	Old 690 owners applied on the Building/Zoning Permit Application for a <b>5000 sq ft “New Building for Manufacturing Beer</b>	<b>PERMIT/PROCESS:</b> New application for NEW 5000 sqft EXPANSION facility. <b>LACK OF PROPER NOTICE:</b> Application found by accident by neighbors.
4/25/2016	Old 690 owners applied on the Health Department Application for an “ <b>Ag Barn</b> ” with no reference to “increase waste load,” “extending water,” or “extending sewer” and listed as “other” instead of “commercial.” Application put on hold 4/27/2016.	<b>LOOPHOLE:</b> Application for “Ag Barn”
5/2/2016	Meeting with Supervisor Buffington, County Attorney Leo Rogers, Zoning Administrator Michele Lohr and Planning Department Mark Depo. Listed critical issues to be addressed:	<b>ZONING PERMIT ERROR:</b> County notified that Zoning Permit issued January, 2015 contained material error. (see 5/18/16 for resolution/apology)

DATE (Mth/Yr)	KEY EVENT/ACTIVITY/ISSUE (e.g., application, permit, construction, violation notice, etc.)	BRIEF DESCRIPTION OF PROBLEMS/IMPACTS
	Rural Uses ZOAM, legality of disparate regulations for Craft Beverage vs. Farm Breweries, current zoning permit for Old 690 in error, severity of ongoing health, safety and welfare issues.	
5/10/2016	Notified of upcoming Father's Day (6/19) event at Old 690 expected to have 600 attendees. Multiple FOIAs submitted to Health Dept, Planning/Zoning, Emergency Management to determine veracity and extent of event.	
5/18/2016	Mark Depo responded to Zoning Permit error: Reference to "51% of agricultural produces" was "provided in error and is contrary to the Revised 1993 Loudoun County Zoning Ordinance for a Limited Brewery use. . . . Zoning Administration will coordinate with Permitting Staff to reissue the zoning permit, for clarification purposes, removing the above error statement."	<b>PERMIT ERROR:</b> Zoning Dept. confirmed error on original 1/2015 zoning permit.
5/15-6/15/2016	Residents notified the Board of Supervisors and County Departments (Health, Planning & Zoning, Building & Development, Office of Emergency Management) in writing and in person of concerns for a large event (600 people per OEM Request for Event Planning) to be held on Father's Day, June 19 <sup>th</sup> , requesting a meeting to discuss emergency mitigation with no action taken by the County	<b>NON-ENFORCEMENT OF COMPLAINT – IN ADVANCE OF SPECIAL EVENT.</b>
5/20/2016	"Between 6:00pm and 6:45pm, the licensee sold alcoholic beverages to a person who the licensee knew or had reason at the time to believe was less than twenty-one years of age, in violation of Sections 4.1-304 A. and 4.1-225 1.b of the Code of Virginia and 3 VAC 5-50-10 and 3 VAC 5-50-20 and upon review of the investigative report the Board being of the opinion that is has reasonable cause to believe that the charge is substantiated by the evidence, certain privileges of the license should suspended."	<b>VaABC UAB VIOLATION -- Incident # 201512091507</b> Took almost a year for follow-up from initial complaint of UAB for enforcement action to be taken.
6/2/2016	Received confirmation via FOIA to Office of Emergency Management (OEM) that Father's Day event application did reference "Anticipated Attendance/Participants: Total 600 per day"	
6/4/2016	<b>B Chord Hearing Decision overturned on appeal</b> , primarily based on noise and interference with use and enjoyment of residential property: <i>Board cannot ignore the will of the citizens and residents of the community where the applicant is located. The testimony and evidence presented by the community members, especially that of the nearby residents, is sufficient to give the Board reasonable cause to believe that the operation of a limited brewery by the applicant would interfere with the usual quietude and tranquility of the residents nearby.</i> <i>Specifically, Ms. Jean Baderschneider provided testimony regarding a few times when gatherings at the place to be licensed caused her to move her horses due to noise levels, effectively interfering with the use and enjoyment of her residential property.</i>	<b>B Chord VaABC resolution:</b> <ul style="list-style-type: none"> <li>confirmed issue of quietude and tranquility by limited brewery operation for A facility NOT in operation.</li> <li>However, complaints of facility IN operation ignored.</li> </ul>
6/19/2016	Father's Day event with OVERWHELMING impacts to neighborhood. Sheriff and Fire Marshall called.	<b>NON-ENFORCEMENT BY COMPLAINT:</b> After prior notice of concern, notification and photos during event with over 600-800 people sent to BOS, County Attorney and senior County Staff. <b>NO RESPONSE.</b>
6/24/2016	Licensee was informed of the UAB charge by notice dated June 24, 2016	
7/5/2016	<b>Consent Settlement Order, \$2000 Civil Penalty agreed and signed by Old 690 owner</b>	
9/7/2016	Owners withdrew 5000 sq ft bldg. applications from April. Owners filed Sept. 7, 2016 for construction of a "pavilion,"(600 sqft), 2 additional bathrooms (250 sqft) and additional storage facility(500 sqft). - <u>Health Department application</u> showed "pavilion" at different location on sketch plan than the <u>Building/Zoning application</u> , showing pavilion adjacent to neighbor's property and no indication where parking will be moved.	<b>LACK OF PROPER NOTICE</b> New application for expansion, with no notice to neighbors or opportunity to object, even after two years of issues.
9/22/2016	Community letter sent to Loudoun County elected officials and staff objecting to expansion and requesting means for protection: Ricky Barker, Loudoun County Planning and Zoning; Dr. David Goodfriend, Loudoun County Health Department; Leo Rogers, Loudoun County Attorney; Michele Lohr, Loudoun County Zoning Administration; Mark Depo, Loudoun County Planning and Zoning; Phyllis Randall, Chairperson Board of Supervisors; Tony Buffington, Blue Ridge Supervisor	<b>NON-ENFORCEMENT OF COMPLAINT;</b> Formal complaint sent in writing. No response.

May 11, 2018

Representative Richard Black,  
Director Ricky Barker,  
Chairwoman Supervisor Phillis J. Randall  
Supervisor Tony R. Buffington, Jr.,  
Supervisor Geary M. Higgins,

Representatives and Public Advocates,

I am a concerned neighbor and citizen attempting to find resolution for a series of issues regarding violation of zoning codes, conservation easements, and historic land use, and appeal for your assistance and time:

I recently reached out to the Loudoun County Department of Planning and Zoning to report a zoning violation at 18915 Lincoln Rd, Purcellville, VA 20132. Several years ago, the property owners (the Matthews) built a facility that was presented to the Goose Creek Historic District, and the Zoning Commission as a "Family Gathering Building." As described in my LEX complaint #4113545, the Matthews have used it for a wide variety of non-family purposes, including using it as a stage theater for an advertised seating of +140.

This morning I received a response from Loudoun County inspector, Chris Sciolino, informing me that he received my complaint, but that he was holding off inspecting the violation because:

*The property owners currently have an application in for a rural retreat that is under review and the theater is included in that application. I am awaiting the decision of that review before I can take any action if needed. I was informed that the decision would probably be made within the next week or two on their application.*

While I truly appreciate Chris' response, this news is troublesome. The Matthews have been using this facility as a commercial theater for at least a year. As a reference point, a quick google can find several, one of the most notable (and loudest...) was the "First Act productions" presentation of Annie Jr, which ran several 2PM and 7PM shows at the end of January 2018. While the old adage "it's easier to ask for forgiveness than permission" is widely used—this is not the time or the place. The Mathews built the facility under the guise of a "Family Gathering Building" and the use clearly out-paced that. So, they are attempting to further modify the allowable uses to legitimize their existing zoning violations.

As a neighbor overlooking the Matthews property, I purchased my home out here in rural Loudoun for peace and quiet. Indeed, I purchased my home knowing that many of the abutting properties, including the Matthews' land, is within the Goose Creek Historic District—which gave me peace of mind that the land would maintain its rural character. Should the zoning commission approve this request, the character of the land will be compromised.

But, in addition to that, I bought this land knowing that the Matthews' property was within a Conservation Easement (Pin # 457464769, Instrument # 198707310293205). I have a copy of the Deed of Gift of Easement in front of me. It specifies that the Loudoun County Board of Supervisors has stewardship of the property, and that:

*No industrial or commercial activities, with the exception of farming, forestry, and activities that can be conducted from a residential or farm building without the alteration of the external appearance of the building shall be conducted on the property. (Item 2)*

In reviewing the terms of the easement, I was bothered and disturbed that the "Family Gathering Building" that is currently in misuse on the Matthew's property was built at all. Upon further research, I believe I found the answer to this question in the publicly available minutes from the Loudoun County Board of Supervisors Transportation and Land use Committee meeting on January 16, 2015, which notes that:

*Loudoun county is the sole holder of approximately 24,500 acres of easements and the co-holder of approximately 3,000 acres.*

The meeting went on to discuss the county's lack of resources and inability to enforce these easements, noting that the Board of Supervisors has jurisdiction and responsibility to oversee these easements, but lacks the proper resources, going on to state: "Potential Mitigation Costs are Unknown" should the community bring a suit. Upon further research we found interesting legal precedent regarding the failure of oversight of conservation easements and illegal commercial uses (*Wetlands America Trust, Inc, v. White Cloud Nine Ventures*).

From the information I have available, the facts are these:

1. The Matthews applied for zoning approval, achieved approval, and built a structure with a stated use of Family Gathering Building, which, on the face, was compliant with the AR-1 zoning.
2. The Matthews have been and are currently using their "Family Gathering Building" for a variety of unallowable uses, including a commercial theater (seating +140 people), in violating with the AR-1 zoning requirements.
3. They are now applying to legitimize/legalize their pattern of illegal land uses.
4. Upon reviewing the "Certificate of Appropriateness Justification" for their current structure (stamped May 09, 2013 by the Loudoun County Department of planning), the Matthews clearly state that:

*The scope of this initiative is to construct improvements for private use and enjoyment of the Matthews family and our friends. As designed, the improvements provide a place for our children to spend their non-school hours with their friends.*

They had stated that the current structures were for personal use, and a "family recreation area," then they clearly violated this intent. While I respect and understand the Inspector's note that he is awaiting the current decision before investigating, a history of violations should not be ignored—and, indeed, should be noted as part of the Zoning Commission's current decision-making process.

5. Regardless of if the purpose of the structure was to facilitate "Family Gatherings" or as a "Commercial Theater"—the construction seems to be in violation of the terms of the conservation easement (Pin # 457464769, Instrument # 198707310293205)—over which the Loudoun County Board of Supervisors has the responsibility of stewardship.

As a former consultant who spent several years working with City Planning, Zoning, and other municipal officials, I understand the difficulties associated with budget constraints and cross-jurisdictional approvals. However, as a neighbor and a citizen, I cannot sit idly by while this proceeds. To be explicit, my concerns are thus:

- a. The Matthews have a clear pattern of asking for forgiveness rather than permission, and have a documented history of showing contempt for their neighbors, going as far as calling them a "special interest group" as we citizens attempt to uphold the standards of the Goose Creek Historic District and the Conservation Easement. Therefore, I am highly concerned that their actual land uses will further stretch past their stated intentions.
- b. Over the last year I've been disturbed by the noise, and constant light (they never turn them off) from their "Family Gathering Building." I've had to listen to the muddled echo of songs and plays going on as I'm trying to sleep (my land looks down on the property in question) as they illegally use the land as a commercial theater—often well into the night 10PM+. I have no doubt this will continue, or get worse should this application be approved.
- c. I've watched as they expanded paved parking for 30+ cars, laying blacktop on top of a Conservation Easement which should be limited to strictly agricultural uses.
- d. We've witnessed influxes of traffic where people speed through Lincoln, a small, historic rural town, further degrading the quiet, historic nature of the property—a direct result of the Matthews current and continued violating of the Conservation Easement, and of Zoning Laws.
- e. We've observed them regularly parking commercial vehicles (front-end loader, multiple large truck/trailer rigs, and a full-sized excavator that is there now) along the edge of my property. And have found that the official address of their commercial construction company, TMG Construction Company, is listed as their home address: 18915 Lincoln Rd, Purcellville, VA 20132 (the property in question). All of which are questionable (at best) under the zoning code.
- f. In addition to being concerned about the noise, traffic, light, and violation of the natural land—this has also made me highly concerned regarding Loudoun County's financial stewardship. As I understand it, people who own land within Conservation Easements are responsible for upholding the nature of the land within the terms of the easement—and, in return, they receive tax benefits on the land. After reviewing the tax records

on the Matthew's property, I'm reasonably sure they have been receiving the substantial tax benefits of living within a Conservation Easement, while violating the terms of the Easement itself.

The Zoning Commission has a duty to apply sensible land use limitations to uphold the nature of rural communities, while creating thriving commercial and industrial centers. To quote the Envision Loudoun 2018 Comprehensive Plan, one of the Commission's objective is to "Strengthen Natural and Historic Assets." Allowing for uses which degrade the natural environment, create additional traffic, light, and create exceptions within what should be rural AR-1 land to uses which should be limited to Planned Development Town Center zones (such as a 140+ seat theater) does not achieve this goal. The Matthews have already manipulated the Zoning Commission when they constructed their "Family Gathering Building" and used it for commercial uses. I hope that the Commission approaches this situation with the wisdom to make up for their previous folly.

The Loudoun County Board of Supervisors has a duty to maintain the Conservation Easements. Though it's definitely not the avenue we wish to travel, we have had several meetings with people in the community (neighbors, citizens of the Goose Creek Historic District, Citizens of Lincoln) to discuss coming together to take legal action against the Board regarding their failure to enforce Conservation Easements. The precedent set by the VA Supreme Court in *Wetlands America Trust, Inc. v. White Cloud Nine Ventures* is clearly in favor of upholding the integrity of these easements. I hope that the Board considers taking steps to prioritize the stewardship of these easements so that legal action is not necessary.

Lastly, I'm also writing to appeal to Representative Black. As our representative, and member of the committee on Agricultural, Conservation, and Natural Resources, I hope and expect that you will share our concerns with regard to ensuring that Loudoun has the will and resources to maintain our natural land in the form of our Conservation Easements, and uphold the thing that makes Northern Virginia in general, and Loudoun County in particular such a great place to live—our ability to develop industry side-by-side with maintaining the rural and agricultural history of the land.

I have inquired if there is a public hearing, or other avenues where I and my fellow citizens can voice our opinion on this matter. I would love to have additional discussions if needed, and I hope this all can proceed amiably with the goal to maintain our historic agricultural district.

Thank you,  
Sam Coulson  
Citizen of Loudoun

[coulsonwriting@gmail.com](mailto:coulsonwriting@gmail.com)  
18690 Haps Lane, Purcellville VA., 20132.



## ZONING EXAMPLE INPUT: Vanish Brewery

The following provides a chronology of key events related to this issue or location, with the purpose of identifying key problems (e.g., uses, permits, policies, procedures, enforcement, etc.) to improve.

DATE (Mth/Yr if known)	KEY EVENT/ACTIVITY/ISSUE (e.g., application, permit, construction, violation notice, etc.)	BRIEF DESCRIPTION OF PROBLEMS/IMPACTS
2014	Vanish Starts life as a hops grower and processor.	No issues
	Over time it grew into a brewery, wine bar, event center with heavy traffic and large crowds of people.	
	Traffic Issue:	<p><b>COMMERCIAL ENTRANCE WITHOUT TURN LANES</b></p> <p><b>ISSUES:</b> Entrance to Brewery is off of the two lane section of Route 15.</p> <ul style="list-style-type: none"> <li>• Heavy brewery traffic must stop on busy Route 15 to turn into the facility with no turn lane or traffic calming approach. This causes back ups on Route 15 which in turn creates safety issues as traffic is disrupted.</li> <li>• When leaving the brewery, people must turn onto Route 15 with no acceleration lane. This leads to many close calls as cars enter the highway and fast traffic on Route 15 must stop to let them in.</li> <li>• This was not a problem when they first opened up as a hops grower and processor, but now that they have expanded the heavy traffic creates a serious safety hazard.</li> </ul> <p><b>RECOMMENDATION:</b></p> <ul style="list-style-type: none"> <li>• Zoning should review growth of a rural use venue and its impact.</li> <li>• Given the serious issues with overall traffic on Route 15, this issue should have been resolved as brewery permit was issued.</li> </ul>
	Septic/Sewer Issue:	<p><b>INSUFFICIENT SEPTIC/SEWER FOR COMMERCIAL USES</b></p> <p><b>ISSUES:</b></p> <ul style="list-style-type: none"> <li>• The brewery uses a rural septic type system.</li> <li>• Given the growth of the venue, neighbors are very concerned as to whether the septic system is large enough and capable of handling the large crowds using the facility.</li> <li>• In 2018-2019 a serious failure of the system was noted by neighbors. The County made the owners use portable toilets for a period of time which extended to a very long period of time. In addition, neighbors state that only a minor fix was performed on the system by the owner.</li> <li>• Neighbors are concerned about contamination of their water supply by this questionable septic system and they state that calls to the County do not yield solid answers.</li> </ul>



## ZONING COMMITTEE INPUT: Catesby Farm

### 22282 Catesby Farm Lane, Middleburg, VA 20117

The following provides a chronology of key events related to this location, with the purpose of identifying key problems (e.g., permits, policies, procedures, enforcement, etc.) to improve.

DATE	KEY EVENT (e.g., application, permit, construction, violation notice, etc.)	BRIEF DESCRIPTION OF PROBLEMS/IMPACTS
10/13/2015	Pre-application meeting at Dept. of Planning and Zoning for use as Banquet facility in AR-2 zone. "Policies support banquet use."	Attendees are from County Dept. of Planning and Zoning, Transportation, Dept. of Economic Development (Kellie Boles), lawyer and architect for owners. Requests advice before sign off. Traffic will be investigated.
12/29/2015	Application for minor special exception filed.	24 banquets/special events per year. Less than 200 guests. Restrictions outlined.
3/1/2016	Application approved by the VA Outdoors Foundation	Catesby easement owned by Virginia Outdoors Foundation (VOF)
3/8/2016	Owners hold a community meeting, invite neighbors to discuss the proposal	Meeting run by the owners' attorney and architect. Kellie Boles from county spoke in favor of the proposal.
3/22/2016	Neighbors complain to VA Outdoors Foundation	Approval upheld on 4/14/2016, VOF says owners preferred use allowed under easement provisions.
4/8/2016	Planning and Zoning Dept. notified by owners' attorneys of issues to be resolved.	
9/23/2016	Notice to neighbors of public hearing re: request for minor special exception to allow up to 24 banquet/special events per year and to modify road widths	Related to addresses on Catesby Farm Lane, Welbourne Road and Willisville Road.
10/12/2016	BOS Hearing on Minor Special Exception	Minor Special Exception granted despite overwhelming community opposition.
12/6/2016	BOS holds final vote on Minor Special Exception	Final Conditions of Approval worked out by Board of Supervisors
Nov. 2018 – Jan. 2019	Neighbors hear about Catesby's owners' efforts to advertise the estate for rental as a banquet hall/event venue or bed and breakfast. The offering would be in violation of the minor special exception but not in violation of the permitted use under AR-2, depending on the number of guests.	Official complaints are filed by neighbors and other interested parties (Unison Preservation Society) with Zoning Complaints through "Report-an-Issue". Joe Caminiti, supervisor of enforcement, informs all complainants by phone that 1) the owners never filed for their minor special exception; 2) he can't enforce the code unless an owner violates it with an event (so the offer of an event in an ad doesn't count as a violation); that 3) the events they are advertising may be a by-right use of the property.  Caminiti says he will check on the status of the minor special exception. In December, Steve Barney, project manager in the Dept. of Planning and Zoning, confirms no site plan for the minor special exception has been filed and no permits have been issued.
1/25/2019	Representative of Building and Development Dept. confirmed no site plan had been filed and no Bed and Breakfast application was filed.	


DATE	KEY EVENT (e.g., application, permit, construction, violation notice, etc.)	BRIEF DESCRIPTION OF PROBLEMS/IMPACTS
		<p><b><u>PERMITTING / ENFORCEMENT BY COMPLAINT</u></b></p> <p>Of note:</p> <ul style="list-style-type: none"> <li>• After much time and effort on the part of the County Staff and the Board of Supervisors, and over the universal objections of the surrounding community, Catesby's owners were granted the minor special exception they requested.</li> <li>• Apparently, however, county regulations don't require owners to take what they are granted and these owners have yet to accept this special use.</li> <li>• This misuse of county resources is a failure of the legislation and creates enforcement impediments.</li> <li>• Zoning enforcement officer Caminiti, for instance, wasn't aware Catesby received the exception. Neighbors, who were notified of the application, have been left to wonder day-to-day which set of zoning rules the facility is operating under.</li> <li>• Now, because enforcement only occurs when a formal complaint is filed, a neighbor impacted by noise and traffic must police his or her neighbor by counting the number of party goers and cars going into the event venue next door then call various permit issuers to check if they have been contacted and, finally, tally numbers to see if it's the "by-right use" they are acting under or if the owners have violated their minor special exception use.</li> </ul> <p>Clearly, the zoning enforcement system in Loudoun is unworkable – at least as far as protecting residents is concerned. It is underfunded, rests on incomplete and poorly written laws and is clearly out of touch with the needs of the rural part of the county where "agribusiness" lives next door.</p>



## ZONING COMMITTEE INPUT: INCIDENT CHRONOLOGY

**LOCATION:** [The Barn at Willow Brook \(15486 Limestone School Rd. Leesburg 20176\)](#)

The following provides a chronology of key events related to this location, with the purpose of identifying key problems (e.g., permits, policies, procedures, enforcement, etc.) to improve.

DATE	KEY EVENT (e.g., application, permit, construction, violation notice, etc.)	BRIEF DESCRIPTION OF PROBLEMS/IMPACTS
4/30/2018	Daryl & Betsy Madden purchase property	Property is part of Green Acres subdivision, one of 4 lots. All neighbors understood these to be <u>residential lots</u> .
Summer '18	Maddens introduce themselves as new neighbors	
6/14/2018	Applied Permit B80330780100/Z80330780101 for 2,526 sq. ft. <u>single family residence</u>	Parcel: 5.758 acres. One-third in flood plain. Residential area 
7/24/2018	Storm water management permit issued VSMP-2018-0071	

DATE	KEY EVENT (e.g., application, permit, construction, violation notice, etc.)	BRIEF DESCRIPTION OF PROBLEMS/IMPACTS
8/14/2018	Grading permit issued X20181810001 The Maddens have said – and Robert Williams in the County has said – that they were honest with the County of exactly what they wanted to do.	<b>Problem: ENFORCEMENT-GRADING PERMITS</b> <ul style="list-style-type: none"> <li>Grading permit was for disturbance of 1.90 acres. There are 82,764 sq.ft. in 1.90 acres.</li> <li>Per LC Zoning, <b><u>if more than 5,000 sq.ft. is disturbed for a B&amp;B Inn a Minor Special Exception and/or Site Plan is required. A Site Sketch is sufficient for &lt;5,000 sq. ft.</u></b></li> <li>Why were they not required to get a Minor Special Exception and/or supply a full site plan when <b>they disturbed 77,764 MORE land than the 5,000sq.ft. limit?</b></li> </ul>
9/1/2018	Applied Permit B80380530100/Z80380530101 for 5,856 sq. ft. “garage storage building”	Problem: <b>FALSIFIED PERMIT APPLICATION</b>
11/16/2018	Permit for garage storage building issued	
12/3/2018	Permit for house issued	
Winter 2019	Construction of house and what looked like a horse barn begins –	Maddens post no address or signs at their entrance to direct materials and trades service providers, so many end up across the street at my home (15483 Limestone School Rd)
Spring 2019	Barn begins to look very ornate An electrician arrives at my house looking for “ <b>the wedding venue.</b> ” We say we don’t know anything about a wedding venue, and that the three lots across the street with construction going on are all residential lots.	Problem: <b>FALSIFIED PERMIT/USE APPLICATION</b>
5/10/2019	Permit application B80330780200/Z80330780201 to finish basement of home	
Late spring 2019	Very fancy windows go in on the barn, upstairs and down, “viewshed” style windows. Several neighbors start discussing what it could be, its for sure not a barn for animals or storage. A neighbor finds the permits for unfinished storage and garage and single family residence.	Problem: No inspection/verification of actual or intended use.
July/August 2019	Permits for a retaining wall and typical deck	
August 2019	Furniture is mis-delivered and dropped off at neighbor’s house 15483 Limestone, blocking garage. Neighbors load it into truck and take it across the road. Owner, Betsy Madden, is there and mentions the house is almost finished and they’ll be moving in in “about 3 weeks.”	<b>Problems:</b> <ul style="list-style-type: none"> <li><b>False statements by owner</b></li> <li><b>No mention of being a B&amp;B or a wedding venue.</b></li> </ul>
8/5/2019	Final inspection of finished basement	
8/12/2019	Occupants applied for B90341020100Z903411020101 to <b><u>change the use of the single family home to a B &amp; B Inn with 2 guest rooms, 1 owner occupied room, and up to 22 parking spaces to accommodate overnight guests and daily private party attendees.</u></b>	<b>Problems: CHANGE OF BUSINESS USE/NOTIFICATION/FALSE ORIGINAL APPLICATIONS/PERMITS</b> <ul style="list-style-type: none"> <li>Neighbors were unaware of change of use applications.</li> <li>Neighbors dispute use of The Farmhouse at Willow Brook satisfies the definition of B &amp; B Inn under county definition Article 8 in the revised 1993 zoning code. (Emphasis added)</li> </ul>

DATE	KEY EVENT (e.g., application, permit, construction, violation notice, etc.)	BRIEF DESCRIPTION OF PROBLEMS/IMPACTS
	<p>Concurrent with that submission owners applied <b><u>to change the use of the existing garage storage building to an assembly structure to hold private parties associated with and accessory to the B &amp; B Inn</u></b> use and an annual private party permit Z90341050001 for those <b><u>private parties exceeding 50 guests</u></b>.</p> <p>Notes from county say</p> <ul style="list-style-type: none"> <li>• assembly building has a “small kitchen area for warming of food (no preparation) and</li> <li>• a men’s and women’s bathroom.</li> <li>• 7 parties have been applied for in 2019 with maximum attendees not to exceed 150 guests.</li> </ul>	<p>“Bed &amp; Breakfast Inn: A business operated in one or more structures which are used for providing overnight accommodations to <i>the public</i> and which may include rooms for meetings and private parties <u>as an accessory use</u>.”</p> <ul style="list-style-type: none"> <li>• The Farmhouse does not provide accommodations to the public. Use of the Farmhouse overnight is available only to couples booking the entire venue under certain “investment level” packages that are 1night/1 day or 2 nights/3days.</li> <li>• The Farmhouse at The Barn at Willow Brook is never available to the public for overnight accommodation, only as part of booking the entire venue.</li> <li>• The website describes the prep area as a caterer’s dream, not a small warming kitchen.</li> <li>• There are three stalls in the women’s bathroom alone, I don’t know how many in the men’s bathroom.</li> </ul>
8/14/2019	Occupancy permit for residence issued	
8/29/2019	Building inspection approval for storage garage issued	No permits for construction of the caterer’s prep kitchen, or the bathrooms having been applied for along the way for this “unfinished storage garage.”
Labor Day Weekend 2019	Sign goes up at the bottom of their driveway - The Barn at Willow Brook Googling the name returns a very professional website for an all- inclusive wedding venue. All inclusive packages of varying “investment” levels include space in The Farmhouse for the bride and girls to get ready and the groom and his guys to hang out; limited space is available for overnight stay only under certain investment levels.	<b>PROBLEM:</b> <b>B&amp;B/EVENT VENUE ON 5 ACRE PROPERTY WITH FLOOD PLAIN.</b>
Sep.13, 2019	Special Event permit is issued for outside wedding only on 9/14.	My understanding is buildings had not been given final permits and occupancy.
Sep. 14, 2019	Indoor wedding and indoor reception take place. Neighbors were divided on calling Fire Marshall. Some wanted to, others did not want to ruin the bride and groom’s special day. Noise as very loud, we could hear snippets of conversation, the call for the last dance, cheering for the couple and a chant of “left, left, right, left.” Fortunately wedding ended early. Neighbors did call Fire Marshall at the end, but no one was in building by the time they got there.	Problem: <b>NOISE COMPLAINT.</b> Fire Marshal arrives after wedding completed.
Sep. 15, 2019	Willow Brook holds a wedding vendor expo.	Problems: No permit, still without clearance for buildings.
Sep. 16, 2019	Several neighbors complain to county about indoor wedding Maddens claim it was due to rain clouds rolling in. Wrong. Rain was gone long before wedding..	Problem: <b>ENFORCEMENT BY COMPLAINT</b>

DATE	KEY EVENT (e.g., application, permit, construction, violation notice, etc.)	BRIEF DESCRIPTION OF PROBLEMS/IMPACTS
Oct. 5, 2019	<p>Wedding – with a band.</p> <p>Noise is very loud, lots of outside activity and noise as well as indoor. A neighbor about ½ mile away was awakened between 11:00 and 11:00 by lots of excited celebrating during the couple's "send-off."</p> <p>This neighbor complains to Betsy Madden. Betsy Madden tells her they are making changes, no more bands, earlier send-offs etc....</p>	Problem: <b>NOISE COMPLAINT.</b>
Oct. 12, 2019	<p>Wedding</p> <p>Noise outside during ceremony and cocktail hour. Noise at end of wedding.</p>	Problem: <b>NOISE COMPLAINT.</b>
Oct. 19, 2019	<p>Wedding</p> <p>Very exuberant cheering at end of outdoor ceremony had neighbors' horses racing around in the field. Loud noise outside from end of ceremony and during cocktail hour. It was a lovely evening, there was party noise outside for most of the evening. Conversation carries.</p> <p>"Asshole" heard clearly on my screened porch ¼+ mile away. I was briefly awakened _ not sure what time – by loud conversation and a couple horn honks as people were leaving.</p>	Problem: <b>NOISE COMPLAINT.</b>
Oct. 26, 2019	<p>Wedding</p> <p>Tent was set up to left of entrance to the Willow Brook Barn. Not sure if/what permits are required for tents.</p> <p>Traffic began arriving at 1:57 pm. Two lost cars went to neighbor's barn on Old Dory Lane (private road) and used turnaround at her barn. Third car went there at 2:02.</p> <p>One of those cars went up and down our driveway (directly across from Willow Brook) several times before finally finding Willow Brook. At 2:15 another car came up our driveway all the way to the area behind our house and asked my husband (he was on a tractor and had to stop it and get off) if the wedding was in our barn....he directed them to Willow Brook.</p> <p>At least four cars came all the way to our house.</p> <p>Neighbors returning from the Washington International Horse Show in D.C. also heard it and saw lights and activity.</p>	<p>Problem: <b>TRAFFIC &amp; NOISE COMPLAINTS</b></p> <p>Music was audible and partying still going on past midnight.</p>



DEPARTMENT OF PLANNING AND ZONING  
STAFF REPORT

Hearing Date: 10/26/17

**BOARD OF ZONING APPEALS PUBLIC HEARING**

**APPLICATION:** APPL-2017-0009, Tigges NOV, 16652 Mandileigh Lane

**DECISION DEADLINE:** October 26, 2017

**APPLICANT/OWNER(S):** Jon & Christine Tigges  
16652 Mandileigh Lane  
Hamilton, VA 20158

**APPELLANT:** Jon Tigges, Property Owner

**SUMMARY OF APPEAL:** On June 29, 2017 Zoning Enforcement Staff issued a Notice of Violation to Jon & Christine Tigges, the owners of the parcel located at 16652 Mandileigh Lane, Hamilton, Virginia (PIN: 380-26-3060). Jon Tigges (the "**Appellant**") appealed the June 29, 2017, Notice of Violation which cited the following violations of the Revised 1993 Loudoun County Zoning Ordinance: Sections 1-103(C) and 6-1000, which indicated the following violations: 1) the Appellant is allowing the parking of vehicles within the floodplain FOD (Major Floodplain) for events associated with the Bed & Breakfast (B&B) Inn use on the property, which is not a permitted use in the FOD (Major Floodplain); and 2) the Appellant is holding events associated with the Bed & Breakfast (B&B) Inn use on the property without obtaining the required County zoning permit approvals for events for more than 50 attendees.

**STAFF CONTACT(S):** Jacob Hambrick, Asst. Enforcement Program Manager,  
Keith Fairfax, Enforcement Program Manager  
Mark Stultz, Zoning Administrator

**ATTACHMENTS**

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Number	Description
1	October 16, 2014 ZCOR-2014-0169
2	Approved Bed & Breakfast Inn Zoning Permit
3	June 3, 2017 Site Photos from Complainant
4	June 10, 2017 Site Inspection Photos
5	June 29, 2017 Notice of Violation
6	Submitted Appeal Packet
7	§15.2-2286 of the Code of Virginia
8	Z40376170101 Bed & Breakfast Inn Sketch Plan

## PARCEL INFORMATION

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**Zoning:** AR-1 (Agriculture Rural -1)  
Floodplain Overlay District (FOD) – Major Floodplain (Portion)

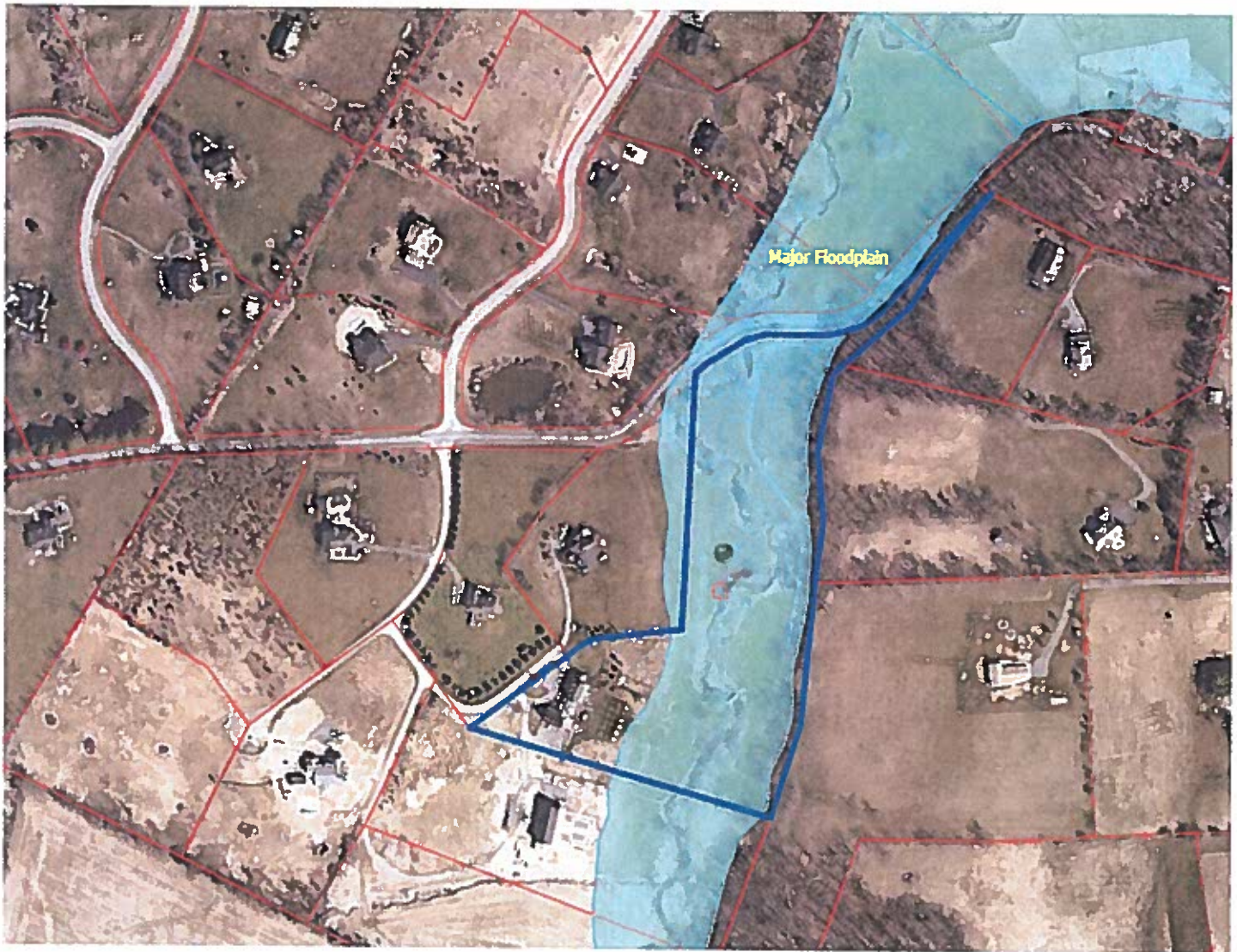
**Tax Map Number:** /37//57/////2/ ; **Parcel Identification Number (PIN):** 380-26-3060

**Acreage:** 9.66 Acres

**Location/Address:** The Property (the “Property”) is located approximately 1 ½ miles north of the Town of Hamilton, north of Harry Byrd Highway (Route 7), west of Hamilton Station Road (Route 704), and on the south side of Piggott Bottom Road (Route 711), at 16652 Mandeleigh Lane, Hamilton, Virginia, in the Catoctin Election District.



**The Property**  
**(Looking from the South)**



The Property  
(FOD - Major Floodplain)

**Surrounding Zoning/Use(s) Table:**

Direction	Zoning District	Site Description
North	AR-1 Residential	Single Family Residential (Minimum 3 Acre Lots)
South	AR-1 Residential	Barn Structure (Lot Owned by Appellant)
East	AR-1 Residential	Single Family Residential (Minimum 3 Acre Lots)
West	AR-1 Residential	Single Family Residential (Minimum 3 Acre Lots)

## RELEVANT ZONING ORDINANCE REQUIREMENTS

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The sections of the Revised 1993 Loudoun County Zoning Ordinance (the “Zoning Ordinance”) that are germane to this appeal are as follows:

- *Section 1-103, Application of Ordinance:*

*(C) General Prohibition. No building, structure; no use of any building, structure or land and no lot of record now or hereafter existing shall hereafter be established, altered, moved, diminished, divided, eliminated or maintained in any manner except in conformity with the provisions of this Ordinance.*

- *Section 4-1500, FOD – Floodplain Overlay District*

*Section 4-1505, Permitted Uses:*

*The following uses shall be permitted within the FOD provided such uses conform with Section 5-1000. Uses allowed in the underlying district shall be prohibited to the extent such uses are not permitted, or special exception uses in the FOD. Where any uses, structures or improvements will result in development within the FOD, an application for a Floodplain Alteration must be submitted in accordance with Section 4-1508(B) and the FSM.*

- (A) Permitted uses in FOD (Major Floodplain). Such uses shall not cause any increases in base flood elevation of the FOD (Major Floodplain) unless otherwise provided below.*
  - (1) Agriculture, horticulture, forestry, and fisheries, not requiring the erection of structures, except that incidental structures shall be permitted in accordance with this Section. An increase in base flood elevation may be permitted provided a CLOMR is obtained from FEMA prior to approval of the requisite Floodplain Alteration application for such use.*
  - (2) Passive and Active Recreation Open Space Uses, except swimming pools, provided that the area of impervious surfaces within the FOD (Major Floodplain) does not exceed three percent (3%) of the area of FOD (Major Floodplain) located within the subject parcel and the boundary of the FOD (Major Floodplain) does not change.*
  - (3) Stormwater management improvements as follows:*
    - (a) Rooftop disconnection. Associated soil amendments shall be located outside of areas of existing tree cover and shall not require the clearing of existing tree cover.*
    - (b) Sheet flow to conservation area.*
    - (c) Sheet flow to vegetated filter and associated soil amendments located outside of areas of existing tree cover and not requiring the clearing of existing tree cover.*

- (d) Grass channel and associated soil amendments.*
  - (e) Soil amendments located outside of areas of existing tree cover and not requiring the clearing of existing tree cover.*
  - (f) Other stormwater management improvements provided that such improvements shall only serve permitted or approved special exception uses in the FOD, and shall only serve those portions of such uses that are located within the FOD.*
- (4) Utility lines in the floodplain and road crossings. An increase in base flood elevation on site may be permitted provided a CLOMR is obtained from FEMA prior to approval of the requisite Floodplain Alteration application for such use. Road crossings shall be designed and constructed in accordance with the standards and regulations of the Virginia Department of Transportation (VDOT) and/or the FSM, whichever shall apply.*
  - (5) Public roads shown on the Comprehensive Plan or included in a Capital Improvement Program project. An increase in base flood elevation may be permitted provided a CLOMR is obtained from FEMA prior to approval of the requisite Floodplain Alteration application for such use.*
  - (6) Public roads, private roads, and driveways.*
  - (7) Repair, reconstruction or improvement of existing residences, so long as the footprint of the existing residence is not increased within the FOD and provided that such repair, reconstruction or improvement, whether located within or outside of the FOD, is not a substantial improvement. If such repair, reconstruction or improvement is a substantial improvement then conformance with Section 4-1509 shall be required.*
  - (8) Parking areas accessory to permitted or approved special exception uses in the FOD (emphasis added). All such parking areas shall be equipped with best management practices in accordance with Chapter 5 of the FSM and Chapter 1096 of the Codified Ordinances.*
  - (9) Incidental structures, not exceeding 840 square feet of floor area, associated with permitted or approved special exception uses in the FOD. Such structures include storage sheds, maintenance sheds, backstops, bath houses and locker rooms. Provided, however, bulk storage of gasoline, chemicals, fuels or similar substances are prohibited in the FOD; and further provided that any new construction shall comply with applicable FEMA standards.*
  - (10) Temporary storage of material or equipment necessary in the construction of permitted or special exception uses in the FOD.*

- (11) *Alterations of the floodplain associated with any permitted or approved special exception uses in the FOD. Such alterations shall not relocate or alter the natural active channel except for road crossings permitted under Section 4-1505(A)(4) or Section 4-1505(A)(13), to protect existing habitable structures subject to periodic flooding, or for stream restoration permitted under Section 4-1505(A)(16). Applications for alterations of the floodplain shall be in accordance with Section 4-1508(B). To the extent that the boundaries of the floodplain change as a result of an approved Floodplain Alteration, any areas no longer within the floodplain may be used for any use in the underlying zoning district, subject to the provisions of the applicable zoning district regulations and conditions of any approved special exception.*
- (12) *Restoration and rehabilitation of historic structures.*
- (13) *Road crossings that result in an increase in the base flood elevation off-site provided that:*
  - (a) *A CLOMR is obtained from FEMA prior to approval of the requisite Floodplain Alteration application for such use.*
  - (b) *The road crossing shall be a feature shown on the Comprehensive Plan or included in a Capital Improvements Program project.*
  - (c) *The road crossing shall be designed and constructed in accordance with the standards and regulations of the Virginia Department of Transportation and/or the FSM, whichever shall apply.*
  - (d) *The resulting increase in the base flood elevation shall not affect existing buildings and structures.*
  - (e) *Affected off-site property owners may at any time mitigate impacts on their land as a result of an increase in the base flood elevation by:*
    - (i) *Submitting a Floodplain Alteration to reclaim that portion of their land subject to the increase in base flood elevation as a result of the road crossing, provided there is no increase in the base flood elevation; and/or*
    - (ii) *Requesting a modification of the building setback or parking setback requirements on specific lots or parcels of land affected by the increase in the base flood elevation by special exception approved by the Board of Supervisors, in accordance with Section 6-1300 and 4-1507 of the Zoning Ordinance.*
- (14) *Public water utility drinking water supply reservoirs, including, without limitation, reclaimed quarries.*
- (15) *Maintenance of the design conditions of an approved Floodplain Alteration.*

- (16) *Stream Restoration designed in accordance with the FSM and approved by the County. An increase in base flood elevation may be permitted provided a CLOMR is obtained from FEMA prior to approval of the requisite Floodplain Alteration application for such use.*
- (17) *Wetland Mitigation. An increase in base flood elevation may be permitted provided a CLOMR is obtained from FEMA prior to approval of the requisite Floodplain Alteration application for such use.*
- (18) *Flood mitigation practices carried out in order to minimize and reduce flood risk in accordance with the Code of Federal Regulations, Title 44, Section 78.1, et seq.*
- (19) *Special Events, pursuant to 5-500(C), without land disturbing activity.*
- (B) *Permitted uses in floodplains in FOD (Minor Floodplain), with or without an increase in base flood elevation:*
  - (1) *Uses allowed under Section 4-1505(A), except that increases in the base flood elevation in the FOD (Minor Floodplain) shall be permitted.*
  - (2) *Alteration of the floodplain whether or not associated with a permitted or approved special exception use in the FOD. To the extent that the boundaries of the FOD change as a result of a Floodplain Alteration, any areas no longer within the FOD may be used for any use in the underlying zoning district, subject to the provisions of the applicable zoning district regulations and conditions of any approved special exception.*
  - (3) *Stormwater management improvements whether or not associated with permitted or approved special exception uses in the FOD.*
  - (4) *Ponds designed by the Natural Resources Conservation Service, a Licensed Professional Engineer, or a Class B Land Surveyor.*
  - (5) *Basketball or tennis courts, and swimming pools.*
  - (6) *Parking areas less than 5,000 square feet not otherwise permitted. Such parking areas shall not be subject to 100-year flooding greater than one (1) foot in depth, shall be equipped with best management practices in accordance with Chapter 5 of the FSM and Chapter 1096 of the Codified Ordinances, and shall not result in any change in existing grade.*

***Section 4-1506, Special Exception Uses:***

*The following uses and structures may be permitted in the FOD (Major Floodplain or Minor Floodplain) by the Board of Supervisors by special exception, subject to Section 6-1300 and Section 4-1507, provided that such uses conform with Section 5-1000 and such uses shall not cause any increase in the base flood elevation of the FOD (Major Floodplain) unless otherwise provided below. Uses allowed in the underlying district shall be prohibited to the extent such uses are not permitted or special exception uses in the FOD. Where any uses, structures or improvements will result in development within the FOD, an*

*application for a Floodplain Alteration shall be submitted in accordance with Section 4-1508(B) and the FSM.*

- (A) *Marinas, boat rentals, docks, piers, wharves, water ski jump facilities, and incidental structures associated with such uses, such as bath houses and locker rooms.*
- (B) *Special Events, pursuant to 5-500(C), with land disturbing activity.*
- (C) *Riding stables.*
- (D) *Structures required for the operation of a public utility not otherwise permitted by this Ordinance.*
- (E) *Incidental structures, greater than 840 square feet of floor area, associated with permitted or approved special exception uses in the FOD. Incidental structures include storage sheds, maintenance sheds, backstops, bath houses and locker rooms. Provided, however, bulk storage of gasoline, chemicals, fuels or similar substances are prohibited in the FOD; and further provided that any new construction shall comply with applicable FEMA standards.*
- (F) *Passive and Active Recreation Uses, except swimming pools, provided that the area of impervious surfaces within FOD (Major Floodplain) does not exceed ten percent (10%) of the area of FOD (Major Floodplain) located within the subject parcel, that cause the boundary of the FOD (Major Floodplain) to change, and/or that cause an increase in base flood elevation. Such increase in base flood elevation may be permitted provided a CLOMR is obtained from FEMA prior to approval of the requisite Floodplain Alteration application for such use.*

- **Section 5-600, Additional Regulations for Specific Uses**

***Section 5-601, Bed and Breakfast Homestay, Bed and Breakfast Inn, Country Inn and Rural Retreats and Rural Resorts Establishments:***

*No such use shall be established either as the initial use of the subject property or by change of use of the 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 applicable Fire Prevention Code permits have been obtained. These establishments may be located in accord with the lists of permitted and special exception uses for the individual zoning districts subject to the following criteria:*

(B) ***Bed and Breakfast Inn.***

(1) ***Intensity/Character***

- (a) ***Management.*** *The owner or manager of the premises shall provide full-time management at all times when the Bed and Breakfast Inn is occupied by overnight guests or private party attendees. An owner or manager may live on the premises.*

- (b) **Guest Rooms.** *The number of guest rooms shall not exceed 10.*
  - (c) **Lot Area.** *The minimum lot area shall be 5 acres.*
  - (d) **Size of Use.** *The floor area ratio shall not exceed 0.04.*
  - (e) **Food Service.** *The Bed and Breakfast Inn shall not contain restaurant facilities, but may provide food service for overnight guests or private party attendees, only.*
  - (f) **Private Parties.**
    - (i) *Private parties for up to 50 attendees, including overnight guests, may be held daily at the Bed and Breakfast Inn.*
    - (ii) *Private parties for more than 50 attendees, including overnight guests, may be held up to 20 times per calendar year and shall require approval of a Building Permit to allow the structure to be used for such private parties and a Zoning Permit for the private parties. A Zoning Permit shall be applied for at least thirty (30) days in advance of each private party, or at least 30 days in advance of the first private party of the calendar year if the dates of all such private parties are listed. The Zoning Permit application shall be accompanied by a copy of the approved Building Permit and proof of any necessary approvals from County agencies, such as the Health Department and Fire Official*
  - (g) **Hours of Operation.** *Hours of operation for private parties shall be limited to 7:00 AM to 12:00 midnight.*
  - (h) **Yard Standards.**
    - (i) *Parking shall be setback 40 feet from all lot lines.*
- (2) **Landscaping/Buffering/Screening.**
- (a) *The use shall comply with the landscaping and screening standards of Section 5-653(A) to screen outdoor private party areas, regardless the size of adjacent property. 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 or under the additional circumstance where the adjacent property owner(s) provides written consent to waive all or a portion of the required landscaping/ buffering/screening requirements.*

- (b) *Parking areas shall comply with the landscaping and screening standards of Section 5-653(B).*
  - (c) *New driveways providing access to a Bed and Breakfast Inn use shall not be located within a required buffer yard area except as minimally necessary to access the site.*
- (3) **Parking.**
  - (a) **General.** *Parking and loading for a Bed and Breakfast Inn shall be provided as required by Section 5-1102.*
- (4) **Exterior Lighting.** *Exterior lighting for a Bed and Breakfast Inn shall be subject to 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.*
- (5) **Noise.** *No outdoor music shall be permitted between 11 PM and 10 AM on Friday, Saturday, and any evening preceding a holiday recognized by Loudoun County, and between 10 PM and 10 AM on any other day.*
- (6) **Roads/Access.**
  - (a) *The Bed and Breakfast Inn shall comply with the Road Access Standards in Section 5-654.*
  - (b) *For any Bed and Breakfast Inn 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 establishment.*
  - (c) *There shall be no more than two points of access for the Bed and Breakfast Inn.*
- (7) *A structure existing prior to January 7, 2003, located within an Historic Site District or Historic and Cultural Conservation District may be used as a Bed and Breakfast Inn and shall be exempt from the minimum lot area, yard and floor area ratio requirements specified above, provided that any expansion or enlargement of such structure shall not exceed 15% of the total floor area existing prior to January 7, 2003, unless a greater expansion is approved by Minor Special Exception, pursuant to Section 6-1300.*

- **Section 6-1000, Zoning Permits:**

*No building permit or certificate of occupancy shall be issued, building or structure shall be erected or occupied, no use (except for agricultural uses as provided in the definition of Agriculture), or change in use or non-residential tenancy commenced, and no excavation or grading commenced relating thereto unless a zoning permit therefore has been issued by the Zoning Administrator and is still valid; except that a conditional grading permit may be obtained prior to construction plans and profiles or site plan approval in accord with the Facilities Standards Manual (FSM). In accordance with Section 4-1508(C), a zoning permit also shall be required for all development, as such term is defined in Section 4-1503, located within the FOD – Floodplain Overlay District (Major Floodplain). In addition, zoning permits shall be required prior to erection or occupation of an accessory structure or use listed below.*

- (A) *Residential accessory uses and structures including above ground deck; porch, gazebo; private garage, carport; private greenhouse; private swimming pool; storage shed for personal, non-commercial, use; studios and workshops without outdoor display for personal use; bus shelter/bus stand.*
- (B) *Commercial and industrial accessory uses and structures including emergency power generators; parking structures; recycling facilities pursuant to Section 5-607(B); storage sheds not exceeding 200 square feet; bus shelter/bus stand.*

- **Article 8, Definitions:**

*Agriculture: Uses characterized by general active and on-going agricultural activities, including agronomy, aquaculture, biotechnical agriculture (including education parks for biotechnical agriculture or a demonstration farm), forestry, fisheries, honey production, silviculture (including the harvesting of timber), and similar uses. Agriculture does not include a grocery store or the retail or wholesale sale of products remotely related to the production of agricultural products. Agriculture does not include preparatory functions such as grading or creation of planting beds through stockpiling of dirt or other means when such preparations do not result in an active and on-going agricultural activity within 30 days. Accessory uses may include offices, storage areas and repair facilities related to agriculture uses.*

*Agritainment: Events and activities such as corn mazes, hay rides and petting zoos, that allow for recreation, entertainment and tourism in conjunction with agriculture support and services directly associated with on-going agricultural activity on-site.*

*Bed and Breakfast Inn: A business operated in one or more structures which are used for providing overnight accommodations to the public and which may include rooms for meetings and private parties as an accessory use.*

## **BACKGROUND**

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- September 18, 2009: A zoning permit for a Home Occupation (Z90157120001) was approved for a 2-Bedroom B&B Homestay on the Property.

- July 21, 2014: A zoning permit (Z40376170101) application was submitted for a B&B Inn on the Property. In addition, a zoning permit (Z40376180001) application was submitted for private parties with more than 50 attendees associated with the B&B Inn for calendar year 2014.
- October 16, 2014: A zoning determination (ZCOR-2014-0169) was issued for the property, which found that the temporary parking of vehicles in the FOD (Major Floodplain) is not permitted for the private events associated with the B&B Inn. (Attachment 1)
- July 23, 2015: Zoning permit (Z40376170101) (Attachment 2) was issued for a B&B Inn on the Property. This permit was accompanied by a revised sketch plan (Attachment 2) showing that the parking would be provided outside of the FOD (Major Floodplain). Zoning permit (Z40376180001) for the events associated with the B&B Inn use was cancelled by the Appellant. The Appellant has not submitted any additional zoning permit applications for any events associated with the B&B Inn on the Property.
- November 1, 2016: A complaint was received stating that wedding events were being held on the Property every weekend.
- November 3, 2016: Zoning Enforcement Staff reached out to the Appellant regarding the complaint submitted. The Appellant informed the inspector that it was his position that he was operating under the “agritourism” legislation in the Code of Virginia and, therefore, did not need permits for the events on the Property.
- November 2016– May 2017: Zoning Enforcement and Zoning Administration Staff were in contact with the Appellant concerning the uses on the Property and attempted to resolve the violations by discussing the various use options and approvals required to establish the use in conformance with the Zoning Ordinance.
- June 3, 2017: Zoning Enforcement Staff received an email complaint that included photos showing a sign directing vehicles to park in an area within the FOD (Major Floodplain) for a wedding event on the Property. (Attachment 3)
- June 10, 2017: Zoning Enforcement Staff conducted an inspection of the Property and observed vehicles parked in the FOD (Major Floodplain) that were part of a wedding event for more than 50 attendees being held on the Property. Photos of this event were taken and are included as Attachment 4.
- June 29 2017: Zoning Enforcement Staff issued a Notice of Violation via certified mail to the Appellant for operating a B&B Inn on the Property in non-compliance with the approved zoning permit (Z40376170101). (Attachment 5)
- July 7, 2017: The June 29, 2017, Notice of Violation was delivered to the Appellant and signed for by Christine Tigges.
- July 31, 2017: Appeal of the June, 29, 2017, Notice of Violation was received by the County. (Attachment 6)
- August 15, 2017: Staff accepted APPL-2017-0009.

## APPELLANTS' POSITION

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The Appellants' complete basis for appeal is contained in Attachment 6. In summary, the Appellant's position is that the County has no authority to regulate "agritourism" activities on the Property under Code of Virginia §15.2-2288.6, *Agricultural operations; local regulation of certain activities*, and believes that wedding events fall under "agritourism" activities.

## ZONING ADMINSTRATOR'S POSITION

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As cited in the June 29, 2017, Notice of Violation, it is the Zoning Administrator's position that the Appellant is in violation of the Zoning Ordinance as follows: 1) the Appellant is holding events on the Property for more than 50 attendees without obtaining the required County zoning permit approval and 2) the Appellant is allowing the parking of vehicles within the FOD (Major Floodplain) for events associated with the B&B Inn on the Property, which is not a permitted use in the FOD (Major Floodplain).

### Zoning Permit for Private Parties at the B&B Inn:

Section 5-601, *Bed and Breakfast Homestay, Bed and Breakfast Inn, Country Inn and Rural Retreats and Rural Resorts Establishments*, of the Zoning Ordinance allows a B&B Inn to be established on a property that is properly zoned for such use. Under the Zoning Ordinance, a B&B Inn may include certain private parties such as weddings, wedding receptions, and other similar ceremonies. In accordance with this Section, the Appellant obtained an approved zoning permit for a B&B Inn on July 23, 2015. However, Section 5-601(B)(1)(f), *Bed and Breakfast Inn, Private Parties*, states "any private party for more than 50 attendees ... may be held up to 20 times per calendar year and shall require approval of a Building Permit to allow the structure to be used for such private parties and a Zoning Permit for the private parties...". The required zoning permit application for events to be held at the B&B Inn for more than 50 attendees has not been submitted by the Appellant. However, events for more than 50 attendees have been occurring on the Property since the B&B Inn zoning permit was obtained.

The Appellant's position, as stated in the appeal application, is that the County does not have the authority to regulate the event activities occurring on the Property under the Appellant's interpretation of §15-2-2288.6 of the Code of Virginia (Attachment 7). The Appellant points to the portion of the statute that states no locality shall regulate the carrying out of certain activities, to include "Agritourism activities" and "other activities or events that are usual and customary at Virginia agricultural operations." The Appellant's argument is flawed for many reasons.

First, the BZA is not a body that has jurisdiction under the Code of Virginia to decide this matter. The BZA lacks the necessary jurisdiction because the Appellant appears to be attacking the validity, under the Code of Virginia, of the Zoning Ordinance provisions that the Appellant was cited for violating. Essentially, the Appellant maintains that if a landowner has some sort of agricultural use on their property, then the Code of Virginia, under the umbrella of the use "agritourism activities", prohibits a locality from regulating any other use of the property through its zoning powers. As such, the Appellant maintains that all of the Zoning Ordinance regulations that the Appellant was cited for violating are invalid and cannot be enforced. The Zoning Administrator, however, does not have any legal authority to interpret whether the provisions of the Zoning Ordinance are valid under the Code of Virginia. The Zoning Administrator's issuance of an NOV is based solely on the regulations of the Zoning Ordinance. Likewise, the BZA does not have the authority to interpret whether the provisions of the Zoning Ordinance are valid under the Code of Virginia and is required to base its decision on an appeal solely on the requirements of the Zoning Ordinance.

A BZA finding that the Zoning Ordinance provisions that the Appellant was cited for violating are not valid under the Code of Virginia would exceed the statutory authority conferred upon the BZA. Any BZA finding in favor of the Appellant's argument that the cited Zoning Ordinance provisions are not valid under the Code of Virginia would essentially amount to an amendment of the Zoning Ordinance to either permit a new use or eliminate an existing use. The BZA, however, does not have such power to amend the Zoning Ordinance. *Foster v. Geller*, 248 Va. 563 at 568 (1994). The power to amend the Zoning Ordinance rests solely with the Board of Supervisors.

The authority of . . . boards of zoning appeals is prescribed by statute. . . . No statute confers the authority to rule on the validity of zoning ordinances upon . . . boards of zoning appeals. While . . . boards of zoning appeals must necessarily interpret zoning ordinances to execute their responsibilities, that obligation does not give rise to a power to declare these ordinances invalid. That is a determination within the sole province of the judiciary. *Town of Jonesville, et al. v. Powell Valley Village Limited Partnership, et al.*, 254 Va. 70, at 74 (1997).

Second, the Appellant's position is based on at least two completely erroneous assumptions. The first erroneous assumption is that the uses the Appellant was cited violations for all fall under the use "agritourism activities". Based on the plain language of the Zoning Ordinance and the Zoning Administrator's consistent administrative practice, this assumption is clearly wrong. While the Zoning Ordinance does not include the specific term "agritourism" that is used in the Code of Virginia, the Zoning Ordinance includes what has been administered as an analogous use known as "Agritainment". "Agritainment" is defined in Article 8 of the Zoning Ordinance as, "events and activities such as corn mazes, hay rides and petting zoos that allow for recreation, entertainment and tourism in conjunction with agriculture support and services directly associated with on-going agricultural activity on-site" (emphasis added). What is, and always has been, considered to be the use "Agritainment" under the Zoning Ordinance is completely distinct from the activities that Appellant was cited violations for.

The Zoning Ordinance has been consistently interpreted to consider weddings, wedding receptions, or similar functions as events that are not directly associated with a bona fide agricultural operation on a property, because these uses are not actually dependent on an agricultural use. Thus, weddings, wedding receptions, and similar ceremonies are not permitted as an "Agritainment" use, but rather are specifically permitted by the Zoning Ordinance either as a stand-alone principal use, such as Banquet Event Facility, or as an accessory use if associated with other permitted uses such as a B&B Homestay, B&B Inn, Country Inn, Restaurant, or Rural Resort. Such uses are subject to specific, additional regulations in the Zoning Ordinance designed to address the land use impacts that are commonly associated with the hosting of events. When not associated with one of the uses above, weddings, wedding receptions and similar events also can be permitted with the approval of a temporary zoning permit for a "special event" in accordance with the regulations in Section 5-500(C) of the Zoning Ordinance. Therefore, the plain language of the Zoning Ordinance and the Zoning Administrator's consistent administrative practice clearly make weddings, wedding receptions, and similar ceremonies a use that is distinct from the use "agritourism activities" and/or "Agritainment".

The second erroneous assumption that the Appellant's position is based on is that "agritourism activities" cannot be regulated by the County's zoning powers under the Code of Virginia. Based on the plain language of §15.2-2288.6 of the Code of Virginia, this assumption also is clearly wrong. §15.2-2288.6 of the Code of Virginia clearly states that a locality can regulate the referenced agricultural related activities, including "agritourism", if there is a substantial impact on the health, safety, or general welfare of the public. So even were the BZA to buy into the Appellant's first assumption that somehow the activities that the Appellant was cited violations for fall under the

umbrella of the use “agritourism activities” and/or “Agritainment”, the Board of Supervisors is still fully authorized under the Code of Virginia to regulate such activities.

That the Appellant’s activities are having a substantial impact on the health, safety, or general welfare of the public is clear from the complaints received by the public regarding the noise and traffic impacts that are associated with the event activities occurring on the Property, as well as the impacts caused by the parking for the events being located within the FOD (Major Floodplain). Accordingly, as permitted in §15.2-2288.6 of the Code of Virginia, the Board of Supervisor has adopted regulations in the Zoning Ordinance to address the substantial impacts on the health, safety, or general welfare of the public that are typically associated with such events as well as the uses that host such events. Such regulations are found under the Additional Use regulations of Section 5-627, and include regulations in regard to parcel size, number of visitors/vehicles per day, size of structures and storage areas, setbacks, landscaping, road access, lighting, and site plan and zoning permit approval. The Zoning Administrator’s position is that the events occurring on the Property, without complying with the Zoning Ordinance and obtaining the necessary approvals, are causing a substantial impact on the health, safety, or general welfare of the public, and will continue to cause such harmful impacts until such time as the Appellant obtains the necessary approvals and comes into compliance with the Zoning Ordinance.

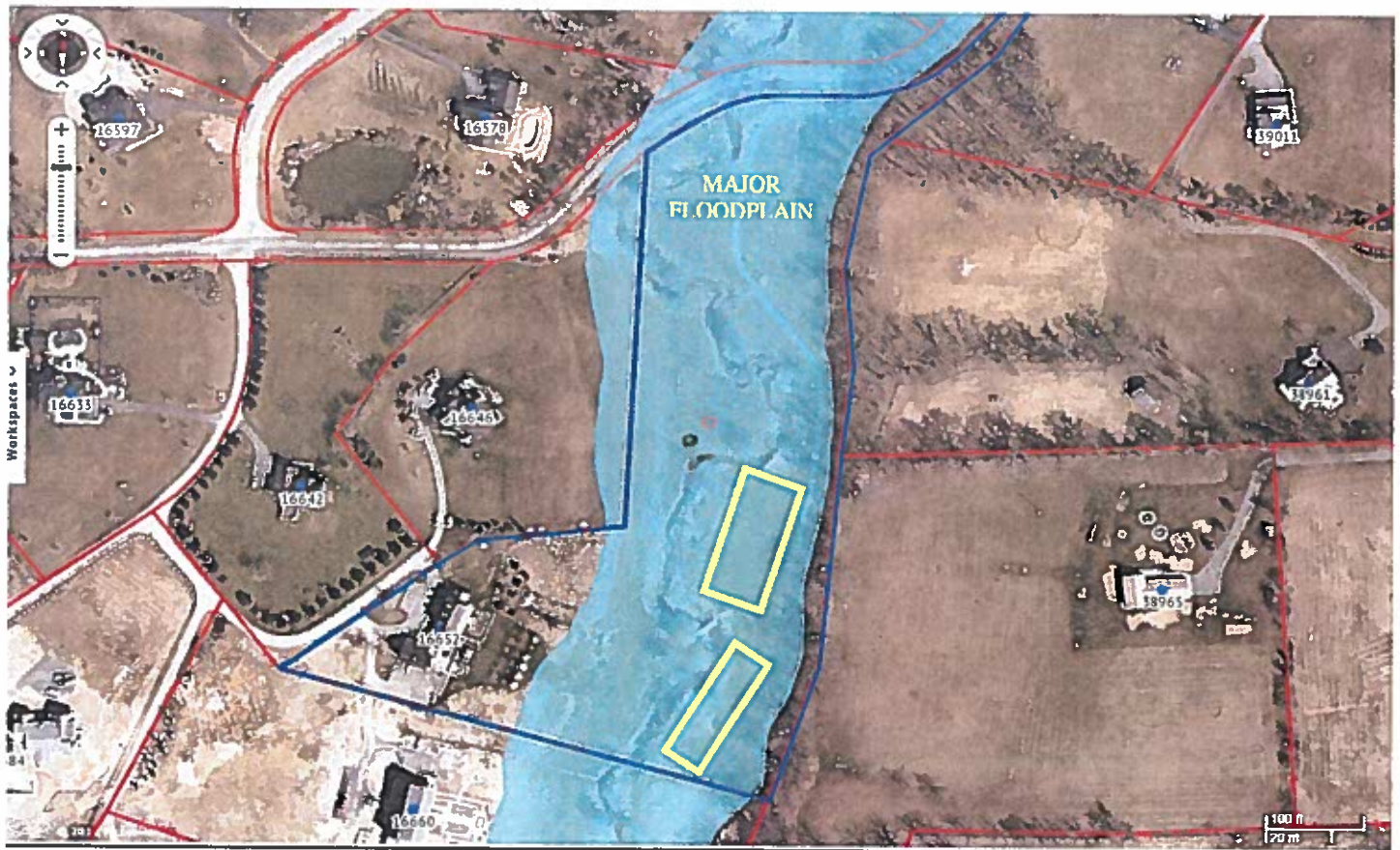


Figure 1

### **Parking in the FOD (Major Floodplain):**

As cited in the June 29, 2017, Notice of Violation, Appellants have allowed, and continue to allow, the parking of vehicles associated with events held at their B&B Inn within areas of FOD (Major Floodplain) on the Property as indicated with yellow boxes in Figure 1. Such parking is in violation of the Zoning Ordinance because pursuant to Section 4-1505(A)(8) of the Zoning Ordinance, only “parking areas accessory to uses permitted by right or special exception” are permitted in the FOD.

The Appellant contends that because “agriculture” and “passive and active recreation” are listed in the Zoning Ordinance as permitted uses in the FOD (Major Floodplain), any and all parking for the “agritourism” events held at the Property is either permitted within the FOD or cannot be regulated under the Zoning Ordinance. As discussed above, the events (weddings, wedding receptions, and similar functions) that the Appellant is hosting on the Property are a distinct use under the Zoning Ordinance from “Agritainment” (analogous to “agritourism activities”), and therefore are not considered to be part of a bona fide agricultural activity or a passive or active recreation use. The event parking in the FOD (Major Floodplain) that the Appellant was cited violations for was all associated with private parties held at the Appellant’s B&B Inn. Because a B&B Inn is not listed as a permitted or special exception use in the FOD, such parking is not permitted within the FOD (Major Floodplain), and the Appellant is in clear violation of the Zoning Ordinance.

The Zoning Administrator also notes that the Appellant is well aware that parking for their B&B Inn, and its associated private parties, is not permitted within the FOD (Major Floodplain). The approved zoning permit for the Appellant’s B&B Inn includes a sketch plan that depicts all of the proposed parking for the B&B Inn use as being located outside of the FOD (Major Floodplain). Additionally, the initial submission of the sketch plan attached to the zoning permit application for the Appellant’s B&B Inn depicted parking spaces within an area of FOD (Major Floodplain) located on the Property. The zoning permit for the Appellant’s B&B Inn was not approved until the sketch plan (Attachment 8) had been revised to relocate all parking associated with the B&B Inn outside of the FOD (Major Floodplain).

### **CONCLUSION**

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The Appellant is operating in non-compliance with the Zoning Ordinance by hosting private events (weddings, wedding receptions, private parties, and other similar events) associated with a B&B Inn with more than 50 attendees without approval of the required zoning permit and by parking vehicles within the FOD (Major Floodplain) that are associated with a use that is not permitted in the FOD. Although the Appellant maintains that the hosting of private events (weddings) is part of the agricultural operation on the Property and falls within “agritourism” under §15.2-2288.6 of the Code of Virginia, such a position is contrary to the plain language of the Zoning Ordinance, the Zoning Administrator’s consistent administrative practice, and the legislative intent of the Board of Supervisors. The Appellant’s B&B Inn, and its associated parking, is a distinct use that is clearly regulated by the Zoning Ordinance and therefore compliance with the regulations of the Zoning Ordinance is absolutely required. The Appellant must obtain the necessary zoning permit approval to hold events on the Property for more than 50 attendees and must remove all parking associated with the Appellant’s B&B Inn from the FOD (Major Floodplain) in order to come into compliance with the Zoning Ordinance.

The Zoning Administrator respectfully requests that the Board of Zoning Appeals finds that that the Notice of Violation was issued correctly and deny APPL-2017-0009.

**SUGGESTED MOTIONS:**

1. I move that the Board of Zoning Appeals uphold the June 29, 2017, Notice of Violation and deny APPL 2017-0009 based upon the following findings:
  - (A) The Appellant is the owner of the property identified as PIN: 380-26-3060 that is located at 16652 Mandeleigh Lane, Hamilton, Virginia, and zoned AR-1 (Agricultural Rural-1) and the Floodplain Overlay District (FOD) under the Revised 1993 Loudoun County Zoning Ordinance.
  - (B) Said property is in violation of the Revised 1993 Loudoun County Zoning Ordinance because it is being used in a manner that is not in conformance with the regulations of the Zoning Ordinance as follows:
    - i. Private events are being hosted on the property for more than 50 attendees without approval of the required zoning permit;
    - ii. Parking of vehicles for events associated with a Bed and Breakfast Inn is occurring within the Floodplain Overlay District (FOD) (Major Floodplain) located on the property, but a Bed and Breakfast Inn is not listed as a Permitted or Special Exception use in the FOD.

OR

2. I move an alternate motion.