

February 23, 2023

Planning Commissioners,

Thank you for your effort reviewing the ZOR Staff text and Key Change Matrix in preparation for your February 25th work session.

In addition to input you are receiving from multiple organizations and individuals, this letter outlines issues and recommendations that should be included in your discussions of Chapters 3, 4 and 13 on February 25th. The requests are supported by a chronology of requests, public input, Staff, Advisory Group, Planning Commission and Board review over the past eight years.

1. **Establish equitable Use-specific standards “Levels” or “Tiers”** for all High-intensity uses throughout the county.
 - a. Data Center use standards are planned for eastern districts to mitigate some impacts to residents, with additional zoning amendment work proposed. However, consistent use-standards have not been proposed or implemented for uses impacting residents and businesses in western districts.
 - b. Levels or tiers based on size of operation and scalability would provide equitable regulations for businesses and equal protections for adjacent residents, as highlighted to Staff in a [Zoning Comparison matrix since 2017](#).
 - c. This request is consistent with the 2019 General Plan Policy 3, Strategy 3.1, and was included as public input requests from the Zoning Ordinance Committee (ZOC) and Rural Economic Development Council (REDC), as well as numerous organizations and residents. (See Chronology).

2. **Revise and retain a new definition for “Farm.”** Staff has grossly under-represented the Public Comment Themes for the definition of “Farm,” and overstated the effectiveness of the definition of “Agriculture.” A definition of “farm” should be revised and retained for the following reasons:
 - a. The term “farm” is used in the current zoning ordinance and new draft text without definition. Multiple organizations, advisory groups and residents have requested a definition for this term since 2015 (See Chronology).
 - b. The Code of Virginia § 4.1-206.1 permits VaABC licenses to winery, brewery and distillery operations that are “located on a farm in the Commonwealth on land zoned agricultural.”
 - c. However, without defining “farm” these businesses have instead been permitted throughout the rural agricultural districts (AR-1 and AR-2) without regard for environmental impacts (e.g., mountainside) and without use-specific standards to mitigate impacts to residential areas (e.g., traffic, noise, lighting, hours of operation road access).
 - d. This has also resulted in a disparity between business regulations creating inherently inequitable business operation requirements.
 - i. As wine maker, Doug Fabboli, stated (on record) at the 6/7/2022 Rural Economic Development Council (REDC) meeting, there is a need for consistency for agricultural businesses.
 - ii. Mr. Fabboli pointed out that wineries have spent thousands of dollars and years growing crops, whereas other businesses have been allowed to “play, but didn’t have to pay,” by providing “beer from a bag, not ag.”
 - e. Defining “Farm” would provide more equitable regulations for businesses and provide Staff with better application approval requirements for the protection of environmentally sensitive and nearby residential areas.

3. **Maintain the definition of “Agricultural Structure.”** For the health, safety and welfare of the general public, retain the definition of Ag Structure as is (i.e., not for human habitation or employment) to avoid continuing loopholes around building code and fire safety for assembly structures and venues attracting 50 or more people.

Maura Walsh-Copeland
Zoning Ordinance Committee (ZOC) Member
& REDC ZOR Adhoc Committee Member

SECTION	ISSUE	RECOMMENDATIONS
4.0	<p>Use-Specific Standards. Residents throughout the County are having zoning-related issues with high-intensity uses – from those near data centers in the east to those near large-scale tourism event venues in the west. Regardless of location, Uses in all zoning districts should have consistent, equitable performance standards (noise, light, traffic, setbacks, scalability, etc.) appropriate for residential settings, for the benefit of all residents as well as fairness to businesses.</p> <p>This is consistent with 2019 Comp Plan Policy 3, Strategy 3.1: <i>Ensure compatibility of rural economy uses through the evaluation of the scale, use, intensity, and design (site and building) of development proposals in comparison with the dominant rural character and adjacent uses.</i> <i>Action A: Evaluate and revise zoning regulations and development standards for rural economy uses. Such regulations and standards will address traffic capacity, safe and adequate road access, number of employees, site design standards (e.g., land disturbance, buffering, use intensity, siting, and architectural features), and public health, safety and welfare.</i></p>	<p>Data Center Use-Specific Standards required to mitigate noise and health impacts to adjacent/nearby residential. High-intensity uses that have constant generator/fan noise, lighting or fumes, should have sufficient protections for residential health, safety and welfare.</p> <p>High-intensity agritourism operations Uses and Use-specific standards should apply three or four "Levels" or "tiers" for various size operations, as is done for a number of other rural economy business uses. This would accommodate small to large operations while managing impacts to residential areas. Those that host regular, large-scale non-agricultural events should be managed by their scale and impact for noise, lighting and traffic, and would be consistent with mitigation efforts implemented by other Virginia counties.</p>
13.F	<p>Definition of "FARM" The Zoning Ordinance must include a definition of "farm" to define the uses that per Code of VA are to be "<i>located on a farm.</i>" Staff's Original definition of "FARM" was, <i>"An agricultural use of one or more parcels of land, whether abutting or not, having a minimum of 5 acres and operated under the same ownership or stewardship, used for the production, cultivation, growing, harvesting or processing of agricultural or horticultural products or for animal husbandry purposes.</i></p>	<p>The Code of Virginia includes for the definition of farm the actual farming activities, not just a broad statement of "agriculture." The Loudoun definition of "FARM" should be consistent with the Code of Virginia, Code of VA § 46.2-698. C.</p> <p>The only recommended CHANGE from the original staff August 2022 draft text was to this definition was to remove "processing," as this by itself does not define a farm. "Agricultural processing" is a separate definition and therefore does not need to be included in the definition of "farm."</p>
13.0	<p>Agricultural Structure There needs to be a clear distinction between an "Agricultural Structure" and a "Farm Structure" in terms of Uniform Building Code compliance.</p> <ul style="list-style-type: none"> • <i>An Agricultural Structure is not a place used by the public or a place of human habitation or employment where agricultural products are processed, treated, or packaged.</i> (FEMA) • A Farm Building or Structure may "sample or sell" products, which thereby implies human habitation or employment. 	<p>A Farm Building or Structure may "sample or sell" products, but are considered "<i>exempt</i>" from building and fire codes per VA Code § 36-99 even when hosting an assembly of more than 50 people. 2018 Virginia Agritourism & Building Codes Review</p> <ul style="list-style-type: none"> • <i>Any building that is used as a place of assembly on a farm that is not determined (per VA State Code and Attorney General opinion) to be an agriculture structure must comply with USBC.</i> • <i>"Occupant loads of 50 or more (which defines a public assembly) should not be exempt from the USBC and the SFPC."</i> • <i>"When the building is only used for events located on the farm as its primary purpose, the building may not be exempt."</i>

TIMELINE QUESTIONS	CHRONOLOGY
Have requests been made for review of use-specific performance standards and definitions for high-intensity uses?	<p>Yes 2015-0006 Rural Uses ZOAM (Zoning Ordinance Amendment) Stated purpose to amend zoning ordinance text for errors, fixes and "<i>incorporate revisions recommended by the public</i>" to "<i>make rural use performance standards equitable,</i>" and "<i>increase the consistency and uniformity in regulations across rural economy uses.</i>"</p> <p>2016-Sept. BOS Strategic Planning Retreat included goals for "<i>Improving the rural economy in a way that maintains the quality of life for current residents,</i>" to improve the balance and ensuring high quality of life for residents.</p>
Has the current or past Planning Commission been requested to review performance standards compatibility?	<p>Yes. 2016-April. ZOAM-2015-0006 Rural Uses – Planning Commission Public Hearing Review of uses in open spaces, in villages and near residential, Staff stating, "<i>Uses may not be in keeping with the scale and intensity of the other agricultural and passive uses currently permitted, and may create conflicts with noise, lighting and traffic on private roads that adversely affect existing residents.</i>"</p>

<p>Have any studies been done, and to whom were conclusions presented?</p>	<p>Yes. 2017-May. Rural Uses Case Study Concluded: 1) zoning inconsistency, and 2) location/intensity impacts (noise, traffic, use enforcement) were primary factors impacting “balance.” Matrix of use inconsistencies developed. 2018-May. Case Study presented to ZOAG & County Senior Staff Identified issues for Comprehensive Plan and Zoning Ordinance Rewrite.</p>
<p>Were specific policies related to evaluating use specific standards, compatibility and consistency included in the 2019 Comprehensive Plan and Project Plan?</p>	<p>Yes. 2019-June. Comprehensive Plan included RPA Policy 3, Strategy 3.1 <i>Ensure compatibility of rural economy uses through the evaluation of the scale, use, intensity, and design (site and building) of development proposals in comparison with the dominant rural character and adjacent uses.</i> 2019-Sept. Project Plan: Goals of Zoning Ordinance Rewrite <ul style="list-style-type: none"> • <i>Consistency audit:</i> analyzing existing standards and striving for consistency within the document and across zoning districts when feasible. • <i>Opportunities and challenges:</i> evaluating input from stakeholders about the current Zoning Ordinance and making improvements where appropriate. </p>
<p>Has the Transportation Land Use Committee (TLUC) reviewed the need for new definitions including “farm”?</p>	<p>Yes. 2019-November. TLUC recommendation to BOS: “Add new definitions for ‘Agricultural Operation,’ ‘Agricultural Products,’ and ‘FARM.’” <i>“The Zoning Ordinance currently does not define the terms; however, these terms are consistently referenced throughout the Zoning Ordinance. Code of Virginia statutes that apply to certain agricultural activities and local regulation of such agricultural activities (e.g., Limited Distillery, Limited Brewery, Farm Winery, and Agricultural Processing) also reference these terms.</i> <i>The proposed amendment intends to establish new definitions for these terms in order to: 1) clarify the distinction between the types of agricultural properties and functions, 2) maintain consistency with the Code of Virginia, and 3) ensure that these terms are used consistently in the Zoning Ordinance.”</i></p>
<p>Has County ZOR Staff received public comments with specific requests to address impacts of high-intensity uses?</p>	<p>Yes. 2020-April. ZOR Focus Group Input reinforced public input Requests for high-intensity uses and definition of “farm.” 2020-May Zoning Audit Public Input Website launched to County Staff Includes input from over a dozen organization requests for review of high-intensity uses and definition of “farm.” 2020-July: Formal Public Input Zoning Audit submitted 2021-March. ZOR Round 2 Input reinforced public input Requests for consistency of high-intensity uses and definition of “farm.”</p>
<p>Were specific issues and standards requiring revision documented to Staff by Zoning Ordinance Committee (ZOC) representatives?</p>	<p>Yes. 2021-May ZOC Text INPUT-Use Matrix-Definitions</p>
<p>Was a clear list of high-intensity uses and areas of inconsistency provided to Staff?</p>	<p>Yes. 2021-Sept. ZOR-2021-INTENSITY SORT & REVISED Rural Zoning Comparison</p>
<p>Were any comparisons of how other counties address similar issues researched?</p>	<p>Yes. ZOR-2021–Virginia Counties Ordinance Comparison</p>
<p>Did Staff document and present any DRAFT TEXT for ZOC to review?</p>	<p>Yes. 2021_Oct. Staff Draft Text was presented to ZOC. The staff draft text was deleted after complaints of businesses. A Former DPZ Director stated, “If ZOC recommends that the text that was removed be put back in, then, yes, the public will see that.”</p>
<p>Did any BOS Advisory Group(s) recommend review and/or consideration of use standards for high-intensity uses, deleted draft text, and definition of “farm?”</p>	<p>Yes. 2022-July. Rural Economic Development Council (REDC) ZOR Round 3 Public Input REPORT 2022-July. Zoning Ordinance Committee (ZOC) Findings & Recommendations Report</p>
<p>Were comments received in 2022 during the 90-day Public Input for review of high-intensity uses, deleted draft text and definitions including “farm?”</p>	<p>Yes. 2022-Aug. Public Input – General Public Comments 08-02-22</p>
<p>Do the Feb. 25th PC Work session agenda and Staff’s Key Change Matrix of issues include review of high-intensity uses, previously deleted Staff draft text, or the definition of “farm?”</p>	<p>NO. Staff has excluded these subjects on the PC Feb 25th work session agenda.</p>