

ZOR WORK GROUP REQUESTS FOR Planning Commission Uses Subcommittee Discussion and Review

3/22/2023

- **The CORE ISSUE** is not about the definition of “*farm*.” It’s about Use-Specific Standards for high-intensity use ancillary activities and impacts to residential uses, regardless of business type (agricultural or not) and regardless of district (rural or suburban).
- **“High-Intensity” use impacts** for many Uses have been mitigated through Use-Specific Standards utilizing “*levels*” or “*tiers*” to accommodate setting and parcel size to address: minimum acres, hours of operation, volume of attendees, yard setbacks, landscaping/buffering, parking, road access, lighting and noise, water, etc.
- **Uses WITHOUT Use-specific standards** adequate to mitigate impacts of events and ancillary activities are those that have received the most complaints
 - Use-specific standards for a use with ancillary activities and impacts were proposed by Staff in 2014, and confirmed legal by then Attorney General opinion. Use-specific standards were again proposed by Staff in 2021 for associated “events,” consistent with other Virginia Counties, again confirmed as legal by VA Attorney General.
- **In the ABSENCE of use-specific standards**, a definition of “*farm*” would provide first-level location mitigation for four high-intensity uses that are required to be “*located on a farm*” by the Code of Virginia.

PACKET CONTAINS:



- Review of Public Input Themes: RURAL versus DATA CENTER Use Zoning-Specific Issues
- RESPONSES TO STAFF COMMENTS: PC 2/25/23 Work Session & 3/22/23 Staff Report
- REDC Comments on ZOR January 2023 Text for Planning Commission Review
- SAMPLE INCONSISTENCIES of Use-Specific Standards
- ORIGINAL Staff-produced recommendations for Oct. 2014 Planning Commission review

ZOR WORK GROUP SUMMARY OF PUBLIC INPUT THEMES & ZONING-SPECIFIC ISSUES

ZONING Requirement	RURAL HIGH-INTENSITY USE STANDARDS ISSUES	DATA CENTER USE-STANDARDS ISSUES
PUBLIC INPUT THEMES	<p>1. Establish equitable Use-specific standards for any/all High-intensity uses throughout the county (all districts). Apply “levels” or “tiers” based on size of operation and scalability, as requested by ZOC, REDC, groups and individuals,</p> <p style="margin-left: 20px;">a. Board Direction per 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>2. Revise and retain a new definition of “Farm” to appropriately locate businesses without use-specific standards to mitigate impacts to residential uses (e.g., traffic, noise, lighting, hours of operation road access) and environmentally sensitive areas</p> <p style="margin-left: 20px;">a. Board Direction: TLUC, 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 style="margin-left: 20px;">b. “Farm” is used in the current zoning ordinance and new draft text without definition. Public input requested a definition <u>since 2015</u>.</p> <p style="margin-left: 20px;">c. The Code of Virginia § 4.1-206.1 permits VaABC licenses to winery, brewery and distillery operations that are “<u>located on a farm in the Commonwealth on land zoned agricultural.</u>”</p> <p style="margin-left: 20px;">d. <u>Disparity between business regulations</u> has created inherently inequitable business operation requirements.</p> <p style="margin-left: 20px;">e. Defining “Farm” would provide more <u>equitable regulations for businesses</u> and provide Staff with <u>better application approval requirements</u> for the protection of environmentally sensitive and nearby residential areas.</p>	<ul style="list-style-type: none"> • Enhance the facade requirements contained in the current Zoning Ordinance, to better mitigate the industrial impacts of a Data Center on residential uses and public roads. • Mitigate the impacts of a Data Center use when the use is proposed to be in proximity to a residential use. • Reduce the environmental impacts of a Data Center use on a site. <p style="margin-left: 20px;"><i>Clarify whether the use of native plants will be required with the additional specific landscape standards. LPAT connections to the RSCR may fall on data center property; how will this be addressed?</i> <i>SPECIFIC TEXT SUGGESTIONS: A. Environmental Standards applicable in all zoning districts: Provide emergency back-up power system data on projected emissions and efficiency ratings. B.3.a.2. Screening and Location of Mechanical Equipment --Separation from Residential Uses. Mechanical equipment must be screened from adjacent residential by the data center building or enclosed in a structure so that any current or future residential development is screened (aside from any rooftop machinery) by the required setback plus the building structure or equipment enclosure. 5. Exterior Lighting Any exterior lighting must be fully shielded, directing light downward and into the interior of the property, and away from adjacent existing or planned roads and adjacent properties. 7. Standards for Data Centers Adjacent to Residential.b. Minimum Setback for Structures. Structures must be set back at least 500 feet (to be ideal, but no less than 250 ft.) NOTE: c & d Change in building height and step-back should be maintained but distances increased to 250 ft. ADD new e. Noise attenuation: A noise and vibration impact analysis must be submitted to: i. measure the existing background noise anticipated during operating hours ii. compute potential noise impacts iii. develop noise mitigation techniques including but not limited to acoustic louvers, acoustic mufflers, low-speed fans, enclosures, containers, barriers, silencers for emergency generators and HVAC equipment. f. Generator testing. To occur only during those times of day with the loudest background noise based on the noise analysis.</i></p>

USE-SPECIFIC STANDARDS COMPARISON EXAMPLES

- As discussed at the 3/16/23 PC Uses Subcommittee meeting -- Data Center use standards are planned for suburban 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 rural districts.

ZONING Requirement	EXAMPLES OF RURAL HIGH-INTENSITY USE STANDARDS ISSUES	EXAMPLES OF DATA CENTER USE-STANDARDS ISSUES
Yard standards, Setbacks, proximity to homes		
Landscaping/ Buffering	NONE (Agriculture exemption)	Buffer Type "C"

ZONING Requirement	EXAMPLES OF RURAL HIGH-INTENSITY USE STANDARDS ISSUES	EXAMPLES OF DATA CENTER USE-STANDARDS ISSUES
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Setbacks (cont.)

Rural Use	Setback requirements
Country Inn, Rural Retreat, Banquet/Events	Min. 200' from adjacent properties
Commercial Wineries	125' for use
Small based Business, Farm Based Tourism, Banquet parking	100'
Ad Support with and with/out Ag	60' for structures & storage
Limited Brewerty Farm Winery Eco Tourism	No zoning setbacks
COMPARISON: Albemarle County	
Structures	Front 75', Side 25', Rear 35'
Parking Areas	Front 75', Side 125', Rear 125'

GOOD SETBACKS EXAMPLE



PROBLEM SETBACKS EXAMPLE



EXAMPLES OF DATA CENTER USE-STANDARDS ISSUES



Data Center Considerations and Recommendations



Setbacks -Evaluate setbacks between approved uses. Consider a 500ft minimum as both a visual and sound buffer or transition area for data center use that abuts residential.

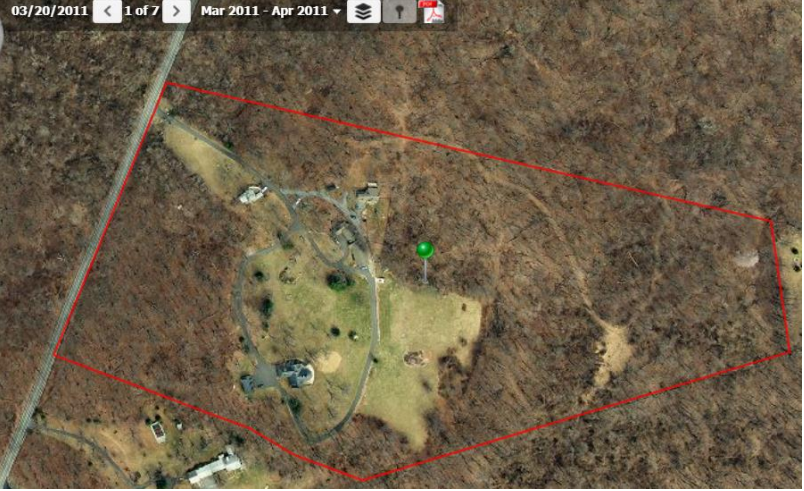

Building height –Stark contrast between uses should be avoided. Allowing 70ft tall structures directly adjacent to homes half that size results in a “David and Goliath” unnatural difference. Suggest tapering down to the closest point of setback.



USES SUBCOMMITTEE PROPOSED 3/16/23

- 200' setback with step back requirements
- 100' for parking

ZONING Requirement	EXAMPLES OF RURAL HIGH-INTENSITY USE STANDARDS ISSUES	EXAMPLES OF DATA CENTER USE-STANDARDS ISSUES
Lighting		 <p data-bbox="1136 472 1990 646"> Illumination dusk to dawn, 7 days/week. Lighting Standards -Evaluate lighting standards and adjust to have minimal impact on residential uses within close proximity. Consider implementing “lights out” periods as a reprieve for residents. Security Lighting -Re-evaluate security lighting standards and increase scrutiny over the types, placement and overall necessity of security lighting. </p>
Use-specific Noise	 <ul data-bbox="302 1370 785 1403" style="list-style-type: none"> • Mobile Vendor generator usage? 	 <p data-bbox="1136 1024 1990 1252"> Sound (A) –Noise issue is well documented from other communities with active facilities nearby. Between heavy HVAC usage, cooling fans, power management/substations and backup power generation, these facilities emanate sound. Sound standards should be consistent with residential uses when in proximity. HVAC noise exemptions should not be allowed for systems that are perpetually in use. Sound (B) –Reflective sound is often overlooked side effect of large concrete structures. Standards should be implemented to minimize external sound reflection for facilities bordering residential uses. </p> <p data-bbox="1136 1289 1696 1321"> <u>USES SUBCOMMITTEE PROPOSED 3/16/23</u> </p> <ul data-bbox="1136 1328 1793 1360" style="list-style-type: none"> • Generator testing – time/notice requirements

ZONING Requirement	EXAMPLES OF RURAL HIGH-INTENSITY USE STANDARDS ISSUES	EXAMPLES OF DATA CENTER USE-STANDARDS ISSUES
<p>Parking</p>	<p>Lack of parking requirements & enforcement</p> 	<p>HOA Parking Situation Analysis:</p> <ul style="list-style-type: none"> • Comprises a mix of housing units: single family homes, townhomes, and condos. Notably, there are a variety of townhome designs, with some having two-car garages, others one-car garages, and some without a garage. This creates a challenging parking situation due to the following: • Parking density is high, esp. in townhome sections, and demand exceeds capacity when residents return from work. (5pm – 7am) • Some TH sections do not have a garage, creating higher reliance on limited HOA street parking. • Due to COVID-19 there was an increasing amount of cars are parking on HOA streets. • Uncertain who is parking on HOA owned streets or how to contact them. • No Contact Information available currently, therefore, unable to resolve parking issues without contacting Towing or Law Enforcement. • Fair Enforcement due to the size of the property and different types of houses.
<p>Road Access</p>	<p>Arterial and gravel road access</p> 	<p>Easements -Review and amend easement access processes to provide additional oversight. Experience demonstrates the abuse that can occur if unchecked access to easements are permitted. For new construction, access should be granted only upon submission of a project plan outlining all facets of the construction. A plan that extends beyond easement boundaries should never be allowed without demonstrated agreement with the impacted property owner(s).</p>

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Grading / Clearing	<p><u>BEFORE</u></p>  <p><u>AFTER</u></p> 	

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Agricultural Structure	<p data-bbox="300 191 793 386">“Light Utility Building” or “Restaurant”?</p>  <p data-bbox="804 310 1077 370">Lack of permitting & fire safety requirements</p> <p data-bbox="520 553 1108 597">“Ag Barn” – New construction (2017)</p> 																												
Use Intensity (Attendees vs. Acres)	<table border="1" data-bbox="415 980 963 1419"> <thead> <tr> <th>USE</th> <th>Attendees</th> <th>REQUIRES</th> </tr> </thead> <tbody> <tr> <td>Banquet/Event Facility</td> <td>200</td> <td>20 acre min</td> </tr> <tr> <td>Ag Support (5-627)</td> <td>> 600</td> <td>50-100 acres</td> </tr> <tr> <td>Farm Tourism</td> <td>> 600</td> <td>> 80 acres</td> </tr> <tr> <td>Ag Support Uses with Ag w/ Ag (5-627)</td> <td>200</td> <td>5-25 Acres</td> </tr> <tr> <td>Ag Support Uses w/out Ag (5-630, e.g., equestrian)</td> <td><200 200-400 400-600</td> <td>5-25 acres 25-50 acres 50-100 acres</td> </tr> <tr> <td>Commercial Wineries, and Limited Breweries</td> <td>Unlimited attendees</td> <td>10 acres min.</td> </tr> <tr> <td>Farm Based Tourism Eco-Tourism</td> <td>300/day Unlimited</td> <td>5 acres min.</td> </tr> <tr> <td>Farm Wineries</td> <td></td> <td>No min acres</td> </tr> </tbody> </table>	USE	Attendees	REQUIRES	Banquet/Event Facility	200	20 acre min	Ag Support (5-627)	> 600	50-100 acres	Farm Tourism	> 600	> 80 acres	Ag Support Uses with Ag w/ Ag (5-627)	200	5-25 Acres	Ag Support Uses w/out Ag (5-630, e.g., equestrian)	<200 200-400 400-600	5-25 acres 25-50 acres 50-100 acres	Commercial Wineries, and Limited Breweries	Unlimited attendees	10 acres min.	Farm Based Tourism Eco-Tourism	300/day Unlimited	5 acres min.	Farm Wineries		No min acres	
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RESPONSES TO STAFF COMMENTS: PC 2/25/23 Work Session & 3/22/23 Staff Report

<p style="text-align: center;"><u>2/25/2023 PC Work Session</u> <u>3/22/23 Staff Packet Statements</u></p>	<p style="text-align: center;"><u>ZOR Work Group Responses</u></p>
<p>The term “Farm” is not used in the ordinance at all so Staff recommends that it be removed from the definition. (BW, 2/25/23)</p>	<p>Word search in 1993 ZO shows 287 instances of use of the word “Farm” in from “Right to Farm” to inclusion for uses. “Farm” is specifically referenced/used in Section 4.08.05.B.1 “Location. A limited brewery must be located on a farm on land zoned agricultural.”</p>
<p>3/22/23 Packet: Code of Virginia legislation that uses “Farm” as a noun for 1) Limited Breweries 2) Farm Wineries, 3) Limited distilleries and 4) Agritourism. . . “Farm is used as an adjective (e.g., Farm market, Farm supply . . .). Would become constrained by a new “Farm” definition.</p>	<p>Cultural Tourism includes</p> <ul style="list-style-type: none"> • “Farm Based Tourism” (min. 5 ac), • “Eco-tourism’ (min. 5 ac) and • “Agritourism” – NO min. acre. Inherent inconsistency in definition and acre requirements. <p>Other definitions using “Farm” as a Noun, Verb or Adjective (example only, not exhaustive): <i>Farm markets, Farm Based Tourism, Farm buildings, Farm co-ops, Farm winery, Farm Supply Center, Guest Farm, Pet Farms, Farm Operations, Farm supply center, Farm machinery, farm product, Farming, Farm structure, Conservation Farm Plan, Farm management plan, farmland, Demonstration Farm, Farm share, farm producers, accessory farm building.</i></p> <p>Other words in definitions used as noun, verb and/or adjective: Agriculture/Agricultural, Building, composting, groundwater, lot, manufacturing, outdoor, perennial, private, rural, water, wetland, yard.</p>
<p>There is no policy direction to the define the term. (BW, 2/25/23)</p> <p>3/22/23 Staff Packet: “Use-Specific Standards for certain uses within the rural zoning districts are in place to mitigate the impact of nonresidential uses on the RPA. These limitations are in line with the 2019 GP, which aims to ensure compatibility of rural economy uses through development standards that address scale, capacity, and intensity of the use</p> <p>Further, the Board has not provided direction for staff to revise the traffic limitations or other mitigation measures for agricultural support uses. Therefore, staff does not recommend changes to the current limitations regarding customer traffic.</p>	<p>Incorrect. The Board and TLUC have included the discussion of rural zoning consistency and definition of Farm in several letters, ZOAMs, BOS discussions and 2019 Comp Plan policy:</p> <ul style="list-style-type: none"> • 2015-0006 Rural Uses ZOAM (Zoning Ordinance Amendment). Stated purpose to amend zoning ordinance text for errors, fixes and “incorporate revisions recommended by the public” to “make rural use performance standards equitable,” and “increase the consistency and uniformity in regulations across rural economy uses.” • 2016-Sept. BOS Strategic Planning Retreat included goals for “Improving the rural economy in a way that maintains the quality of life for current residents,” to improve the balance and ensuring high quality of life for residents, based on an Oct. 2016 letter to the REDC from Supervisory Buffington. • 2016-April. ZOAM-2015-0006 Rural Uses – Planning Commission Public Hearing. Staff stated, “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.” <p>RESULTED IN BOS direction -- 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. 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>TLUC direction for ZOR: 2019-November. TLUC recommendation to BOS: “Add new definitions for ‘Agricultural Operation,’ ‘Agricultural Products,’ and ‘FARM.”</p> <p><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. 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>

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<p>2/25/23: The definition serves no regulatory purpose. It's not a use and it's not used in a regulatory way in the ordinance. (BW)</p> <p>3/22/23: "Current Zoning Ordinance does not include a definition of Farm in the definitions chapter"</p>	<p>Statement is not accurate. The term "farm" is already being used in definitions in a manner that serves a regulatory purpose for uses.</p> <p>Definition Examples that de facto define Use-Specific Standards:</p> <p>Winery, Virginia Farm In the event such cooperative is licensed as a farm winery, the term "farm" as used in this definition includes all of the land owned or leased by the individual members of the cooperative, as long as such land is located in the Commonwealth</p> <p>Brewery, Limited: A brewery licensed as a Limited Brewery in accordance with Section 4.1-208 of the Code of Virginia, as amended, and located on a farm in the Commonwealth on land zoned agricultural. For the purposes of this definition, "farm" shall be defined as one or more contiguous parcels of land, totaling a minimum of 10 acres in size, owned or leased by such licensed limited brewery</p> <p>If "Limited Distilleries" is added to the Limited Brewery definition, then this will also be the case for Limited Distilleries (permitted on 10 acres, no ag component, not "located on a farm.")</p>
<p>"Farm" isn't listed as a land use. (BW, 2/25/23)</p>	<p>Definition of "farm" is not intended as a "use," but rather to define location compliance of Code of VA location approval in the absence of use-specific standards for certain uses currently without daily/yearly attendees, setbacks, landscaping/buffering, parking, road access, lighting, noise, etc. – consistent with zoning regulations applied to other rural uses.</p> <p>The following definitions in Chapter 13 are not "uses," but rather are included for clarity in the Zoning Ordinance (selected examples only)</p> <p><i>Berm, block, botanical garden, building, business vehicle, carport, companion animal, contiguous, contributing, crest, custom operator, decibel, density, developable land, driveway, easement, ecosystem, establishment, facility, fee simple ownership, fiscal, focal point, foot candles, forestry, green, groundwater, habitat, hazardous substance, historic setting, hours of operation, impulsive sound, infrastructure, intensity, karst terrain, landscape architect, Ldn, lot, maximum extent feasible, metes and bounds, mitigation measures, naturally occurring, neon, non-habitable, off-site, ordinary high water mark, parcel, perennial, permeable, plaza, public safety, record plat, resource area width, rezoning, road, roofline, screening, setback, sinkhole, story, structure, travelway, undisturbed grade, vegetative waste, vertical cost, yard</i></p>
<p>Question for staff – we've not had a definition of "farm" until now? Has that caused a problem? Have there been issues? Staff saying it has functioned fine without it? (MF)</p> <p>Staff: Correct (BW, 2/25/23)</p>	<ul style="list-style-type: none"> • 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. • Statements directly conflict with complaints via letters, emails and LEX to Staff and BOS for eight years. <p align="center">Submitted for ZOR Public Input Round 1</p> <p align="center">Zoning-Rural Uses-Permits-CASE STUDIES-2017-2018 RuralUses-Chronologies LCPCC Chronologies 4-1-2020 LCPCC Zoning Chronology-BC</p> <p align="center">Submitted for ZOR Public Input Round 3 Problems w. Permits UPDATE-3-14-2022</p> <p>Many other examples available via LEX reports, HOWEVER, Zoning Enforcement confirmed LEX reporting is a manual process that may (and has) consolidated multiple reports of the same issue into one "trouble ticket," thereby understating the true volume of complaints.</p>

<p><u>2/25/2023 PC Work Session</u> <u>3/22/23 Staff Packet Statements</u></p>	<p><u>ZOR Work Group Responses</u></p>
<p>Defining “farm” is not a tool to prohibit uses that some may or may not think should belong in western Loudoun. (JB, 2/25/23)</p>	<p>AGREED! Although some have requested to remove uses in environmentally and residentially sensitive locations, that is NOT the primary goal.</p> <ul style="list-style-type: none"> The primary goal is to implement consistent zoning ordinance use-specific standards for regulation equity for businesses and improved quality of life for residents. <i>In the absence of current Use-Specific Standards</i>, the definition of “farm” is to allow review and approval for appropriate location evaluation based only on current site plan zoning ordinance requirements for uses (e.g., setbacks, yard standards, traffic, lighting, noise, scale of operations / attendees, etc.)
<p>Is there another reason to add this definition? Is it a reason to preclude uses that are otherwise permitted by the state code? (CY, 2/25/23)</p>	<p>NO, a definition of “farm” would not “preclude” a use, but rather approve applications for locations that can accommodate the operation by scale (levels or tiers) if implemented.</p> <p>REDC: “Levels allows businesses without SPMI or SPEX” <i>If levels/tiers are not implemented for use-specific standards consistency, then a definition of “farm” would better define application and location approval and for high-intensity uses to be compliance with Code of VA requirement to be “located on a farm.”</i></p>
<p>Farmers who want to start out and work on small acreages; . . . we believe the agriculture definition and the regulations that say there is no minimum lot size for agriculture are really helpful. (CY, 2/25/23)</p>	<p>Farm Bureau response: <i>Five (5) ac minimum of Bona fide Ag Total acreage in bona fide agriculture, exclusive of curtilage, of 3, 4, 5 acres Not contiguous? Ag processing, 51% of crop grown in Loudoun</i></p>
<p>Commissioner Merrithew’s comment about certain building agriculture uses – maybe THAT’S the problem that needs to be solved, needs to be addressed or clarified in some way,</p>	<p>Two issues: Lack of definition of “tasting room/tap room” and permitting of an “Agricultural Structure” being used for non-ag activities and events. “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.” (FEMA) 2018 Virginia Agritourism & Building Codes Review</p> <ul style="list-style-type: none"> 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. When a farm building or structure falls outside the exemption, either because it’s no longer used for one of the specified purposes, or is no longer located on the property where a farming operation takes place, or because it is used for residential purposes, the strictures of 13 VA ADMIN. Code 5-63-30 would require the owner to obtain a new occupancy permit. "Occupant loads of 50 or more (which defines a public assembly) should not be exempt from the USBC and the SFPC." "When the building is only used for events located on the farm as its primary purpose, the building may not be exempt."

REDC Comments on ZOR January 2023 Text for Planning Commission Review

<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 "located on a farm."</p> <p>The current Staff Definition of "Farm" was inadequately edited from the original August 2022 definition. ["One or more adjacent or contiguous parcels of land, having a minimum of 5 acres and operated under the same ownership or stewardship, used for agriculture or animal husbandry uses."]</p> <p>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. Also reference "Agriculture, Bona Fide."</i></p> <p>The only recommended CHANGE from the original staff 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>	<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 should be made consistent. The definition of "FARM" should also be consistent with the Code of Virginia.</p> <p>Language for consistency with other Code of VA definitions: Code of VA § 46.2-698. C. As used in this section, the term "farm" means one or more areas of land used for the production, cultivation, growing, or harvesting of agricultural products, but does not include a tree farm that is not also a nursery or Christmas tree farm, unless it is part of what otherwise is a farm. As used in this section, the term "agricultural products" means any nursery plants; Christmas trees; horticultural, viticultural, and other cultivated plants and crops; aquaculture; dairy; livestock; poultry; bee; or other farm products.</p> <p>"A farm is defined as the parcel or parcels used by an owner or lessee for the agricultural cultivation, growing, and harvesting of crops and/or animal husbandry."</p>
<p>Brewery, Limited and Farm Wineries size of Operation. REDC comments that 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 uses and use-specific standards. This would accommodate small to large operations while managing impacts.</p> <p>Brewery, Limited. Attendance. How is capacity considered for outdoor (licensed) space and vehicular traffic to comply with sketch plan (Chapter 7), parking, and road access standards (5.09.01)? Should a site visit be required for all new establishments?</p>	<p>To be consistent with other Rural Economy Businesses that have zoning intensity scale intensity regulations, Brewery Limited, and Farm Wineries should have similar intensity scale regulations.</p> <p>This would permit smaller operations to be permitted with little impacts, while larger operations would be in line with similar higher intensity operations.</p> <p>REDC commented that Limited Breweries should be positioned to transition to growing products that can be directly used in the production of their product as Virginia Tech continues to determine agriculture products that can economically and sustainably grow in this region. This would also allow businesses to more accurately develop and apply a business case to the appropriate size of operation, for the long-term viability of the rural economy use.</p>
<p>DEFINITIONS are required to clarify uses and use-specific standards: "Farm," "agricultural operations," "tasting room/tap room," "agriculture products," "agricultural production" and "agricultural manufacturing."</p> <p>-- These terms are used in the draft text without clear definitions. Code of Virginia requires limited breweries (and farm wineries) to be "located on a farm in the Commonwealth on land zoning agricultural."</p>	<p>-- Farm wineries are required to plant vines on the site of their primary establishment. This helps wineries to both reflect the agricultural attributes of the rural area and to create a natural buffer between their business and surrounding properties.</p> <p>-- Zoning should determine a similar ratio of the number of acres in on-site agriculture per acre of brewery to be utilized for agriculture production/manufacturing. Breweries will then be positioned to transition to growing products that can be directly used in the production of beer as VA Tech continues to determine agriculture products that can economically and sustainably grow in this region.</p>

	<p>-- This approach would also place breweries in better compliance with state code to have agricultural products produced on site that are used in the manufactured product.</p>
<p>Current definition of "Agriculture" states, "A use and category characterized by general active and ongoing agricultural activities, including agronomy, aquaculture, biotechnical agriculture (including education parks for biotechnical agriculture, or a demonstration farm), forestry, fisheries, honey production, silviculture, and similar uses."</p> <p>"Agriculture" includes:</p> <ul style="list-style-type: none"> • A direct market business for sale of products produced onsite-including but not limited to PYO (pick-your-own); and • "Community supported agriculture" (CSA), defined as an area of land managed and maintained by an individual or group of individuals to grow and harvest food and/or horticultural products for shareholder consumption or for sale or donation. <p>Agriculture does not include:</p> <ul style="list-style-type: none"> • A grocery store or the retail or wholesale sale of products remotely related to the production of agricultural products; or • Preparatory functions such as grading or creation of planting beds through stockpiling of dirt or other means that do not result in an active and ongoing agricultural activity within 30 days. 	<p>Agriculture definition should delete reference to "biotechnical agriculture" as there is no associated definition.</p> <p>Forestry and Silviculture, while similar to agriculture are generally seen to be their own separate uses.</p> <p>"Similar uses" should be further defined to avoid confusion on intent, applicability and approvals.</p> <p>"Produced onsite" does not equal "grown onsite," as required for the definition of "farm"</p>

SAMPLE INCONSISTENCIES of Use-Specific Standards

- Various uses have defined acres, hours, daily attendees, yard standards, parking requirements, etc.
- Some have NO standards, and one use is not listed in Chapter 4 at all.
- **Definition of 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](#).

ZOR CATEGORY: ZOR Section INTENSITY Level	4.04 Com/Food & Bev 4.04.05 HIGH	4.05 Public/Civic 4.05.06 HIGH	4.06 Indust/Prod. 4.06.02 Data Center HIGH	4.08 Agriculture 4.08.09 HIGH	4.08 Agriculture 4.08.05 HIGH	Agriculture NOT LISTED
	Banquet/Event Facilities / Section 5-642	Conference & Training Center / Section 5-640	Data Center Adjacent to Residential Section 5-664	Commercial Winery / Section 5-625	Limited Brewery / Section 5-667	Virginia Farm Winery
No of Guest Rooms	N/A	Attendees Level I: <50 on 50 ac Level II: >50-100, 100ac Level III: >100-150, 150 ac Level IV: >150 = SPEX	Use Mix: DC no more than 49% of gross floor area. Not located in bldg containing residential uses.	N/A	N/A	
Intensity/Size of Use (Min. Lot size)	Min 20 ac/200 attendees Min 50 ac/260 attendees Min 75 ac/310 attendees Min 100ac/360 attendees			Minimum 10 acres.	Minimum 10 acres (definition) No bldg restrictions	
Hours of Operation	Hours 7am - 12 midnight (incl deliveries)			Hours of operation 10am - 10pm		
Daily/Yearly Parties/Attendees	Daily & Yearly: Determined at STPL, SPEX or SPMI stage ("Private party" not deemed a "special event")	Level I: <50 on 50 ac Level II: >50-100, 100ac Level III: >100-150, 150 ac Level IV: >150 = SPEX		Unlimited attendees?		
Yards	100' for use & parking. Private parties: 200' unless adj. to commercial prop., then 100'	Level I: 50 ac, 150ft Level II: 100ac, 200ft Level III: 150ac, 250ft	Structures: Setback at least 100' from property line. Step-Back: If 200' from res prop line, no less than 15' or 40', whichever is lower.	125' for use.	50' from outdoor tasting rooms or similar outdoor activities.	

ADDITIONAL EXAMPLES FOUND HERE: [ZOR-revised-RuralZoningComparison-REV. MARCH 2023](#)

**LOUDOUN COUNTY ZONING ORDINANCE
ADDITIONAL REGULATIONS COMPARISON**

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

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

**LOUDOUN COUNTY ZONING ORDINANCE
VIRGINIA COUNTIES COMPARISON**

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

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