

WORK IN PROGRESS DRAFT

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MONTGOMERY COUNTY AGRITOURISM STUDY DRAFT CODE ASSESSMENT



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BACKGROUND

Montgomery County has a long history of preserving its rural landscape, and recognizing the importance of its agricultural uses, historic sites and unique open spaces. Since the creation of the Agricultural Reserve in 1980, Montgomery County has been a national leader in the development of innovative land conservation policies. The County's vision of directing growth and development into the appropriate areas with public services while preserving the County's rural areas has led to the protection of over 93,000 acres in the Agricultural Reserve. Preservation and enhancement of these rural areas and enhancement of the agricultural economy have consistently been major County goals.

At the same time, the agricultural economy nationwide is undergoing significant changes, and this is especially pronounced in urban/rural counties such as Montgomery County, where the access to markets, sophisticated "locavore" consumers, and a growing interest in food sourcing and production result in more intense uses of farmland that allow landowners more diverse economic options. The growth in agritourism, farm-to-table activities, wineries and breweries, culinary tourism and rural-themed event venues creates new opportunities and challenges for the County. While this new diversification of the rural economy offers the opportunity to enhance the economic potential of its agricultural land, it also poses the challenge of how to regulate these activities while protecting the core agricultural, natural and scenic assets of these lands as well as the residential communities that surround them. These issues are the focus of the current proposed Feasibility Study.

PROJECT SCOPE & PURPOSE

The purpose of this task is twofold:

1. To consider the potential for agricultural economic and cultural development through appropriate land uses and economic development activities in the rural areas of the County while, at the same time, assessing the feasibility of revisions and enhancements to the County's code and regulatory framework to allow for activities of the emerging rural economy while ensuring the protection and preservation of farmland, historic sites and open space; and
2. To inform the study of agritourism by understanding how other jurisdictions, locally and nationally, are responding to and managing the activities of the changing agricultural economy.

In association with the ongoing development of the County's Agritourism Study and its associated Advisory Committee, this research effort has engaged professional consulting expertise to assess feasible options for a comprehensive, countywide approach to land use and zoning strategies for agricultural economic and cultural development. This Code Assessment is the product of one portion of the consulting effort for this project and was conducted by EPR,PC.

GUIDING PRINCIPLES

The Montgomery County Agritourism Study Advisory Committee (ASAC) of interested stakeholders has been meeting monthly to discuss agritourism issues, challenges and opportunities. The County's Planning Department staff has provided relevant data and background research to the committee. Prior to starting the comparative review and code evaluation, the consultant team attended the ASAC meeting on June 20, 2018. At that meeting, the committee discussed areas of agreement and summary principles for the study that could guide the consultant's work. A list of basic principles and areas of agreement resulting from the committee deliberations as summarized by the chair (Jane Seigler) at the June 20th meeting is summarized below:

Focus on impacts more than types of activities

The committee felt that it was more important to focus on the impacts of the activities or events more so than the type or nature of the event or activity. Moreover, the committee felt that the distinction between a one-time event such as a wedding or festival, versus an ongoing activity such as a winery or market stand was not as relevant as the specific impacts of each.

Nexus to agriculture

The committee also felt that it was important that permitted activities in the Ag Reserve should have a nexus to agriculture. Activities that might be profitable or low impact but had no relationship to farming should not be encouraged in the Ag Reserve.

Strengthen the current review process

The committee supported the current approval process for agritourism uses, which includes informal coordination between the County DPS and the Office of Agriculture. The process should be formalized to some degree through interdepartmental memoranda or agreements and the Office of Agriculture should be afforded more resources to support participation in this process.

In addition, there were many additional points discussed by the committee over the past few months but the areas of consensus that emerged are those listed above. The group also formally agreed to recommend that the County NOT adopt the definition of agritourism enacted in HB 252 from the 2018 Maryland General Assembly session.

PART 1. CODE ASSESSMENT

AGRITOURISM IN THE COUNTY CODE

The Montgomery County Code is a complex legal instrument that regulates many types of uses and activities to protect the health, safety and welfare of its residents and businesses. The overall focus of agriculture and especially agritourism-related regulations is spread throughout many different sections of the Code, with the majority of them located in Chapter 59, the Zoning Ordinance. Additional code provisions that may regulate certain aspects of farming and agritourism can be found in the Subdivision Ordinance, Building Code and other code sections and there is no simple way to understand how agritourism is regulated in Montgomery County since provisions are dispersed in multiple disparate code sections.

The following Assessment in Part 1 of this document is organized according to the major divisions in the county code, such as zoning, subdivision, building, etc. The structure follows the organization of the code itself, i.e. by Article and Section. The relevant code section is listed verbatim from the code and then is discussed in terms of two aspects:

- **Issues:** a summary of how the code section affects the practice of farming and agritourism, events or uses, and highlighting if the code section has been an issue in discussions with the ASAC or in staff experience in zoning reviews.
- **Opportunities:** highlighting potential opportunities for refining the code provisions, adding new standards or modifying based on best practices from the research of other communities in the nation.

Following the Assessment, Part 2 will use the Opportunities sections of the Assessment to develop specific recommendations for revisions and enhancements to the county code to help support farming and agritourism.

A. ZONING ORDINANCE ASSESSMENT

ARTICLE 59-1. GENERAL ZONING ORDINANCE PROVISIONS

SECTION 1.4.2. SPECIFIC TERMS AND PHRASES DEFINED

Agriculture: The business, science, and art of cultivating and managing the soil; composting, growing, harvesting, and selling crops, and the products of forestry, horticulture, and hydroponics; breeding, raising, managing, or selling livestock, including horses, poultry, fish, game, and fur-bearing animals; dairying, beekeeping, and similar activities; and equestrian events and activities. Agriculture includes processing on the farm of an agricultural product to prepare the product for market and may cause a change in the natural form or state of the product.

ISSUES:

The ASAC has generally supported the current definition of Agriculture in the Ordinance. Note that there is no definition of agritourism per se in the county code. Instead, it is generally addressed under the definition of “Accessory agricultural education and tourism activities” within the definition of Farming. The code defines farming and agriculture essentially the same, whereas farming is a specific use in the Use Table, Division 3.2. Agricultural Uses, and agriculture is simply a term referenced in the Definitions, Division 1.4. Defined Terms.

OPPORTUNITIES:

There is an opportunity to more clearly define agritourism in Division 1.4. Defined Terms. This can serve as a standard definition that can be referenced in the Use Table and under the definition of permitted farming uses. A number of jurisdictions across the nation have created sophisticated definitions of agritourism, some aspects of which may be appropriate for Montgomery County.

ARTICLE 59-3. USES AND USE STANDARDS

SECTION 3.1.4. TEMPORARY USES

B. BENEFIT PERFORMANCE

A benefit performance, under Chapter 30 (Section 30-4), is permitted in any zone, including on property regulated by a conditional use, without requiring a modification of the conditional use plan. Unless the benefit performance is conducted on property that is occupied by a private club operating in compliance with this Chapter, a religious institution, a fire department, a public school, or a nationally chartered service or veterans organization not organized for gain or profit of any individual member of such groups, it must satisfy the following standards:

- 1. In any Residential, EOF, or NR zone, a benefit performance is a maximum of 15 days.*
- 2. The benefit performance must be a minimum of 600 feet from any dwelling, measured from the perimeter of the performance area as listed in the license application, unless a minimum of 75% of the occupants of the dwellings within the 600 feet measurement consent to the performance in writing.*

ISSUES:

This section permits benefit performances in any district, including the AR district. In fact, there appears to be no restriction on the time of the performance if it is in the AR district. It is unclear whether this provision has ever been an issue with landowners in the AR district, but there are very few performance standards associated with this provision and it is possible that large or lengthy benefit performances could present concerns of traffic, noise or other complaints from adjacent landowners.

OPPORTUNITIES:

There is an opportunity to include performance standards for benefit performances, related to traffic noise, duration and lighting that could serve to mitigate potential concerns and impacts on adjacent properties.

SECTION 3.1.5. TRANSFERABLE DEVELOPMENT RIGHTS

A. The following uses are prohibited if the lot or parcel on which the use is located is in the AR zone and is encumbered by a recorded Transfer of Development Rights easement:

b. Bed and Breakfast (if not accessory to Farming)

B. However, any building existing on October 2, 2007 may be repaired or reconstructed if the floor area of the building is not increased and the use is not changed.

ISSUES:

No known issues

OPPORTUNITIES:

No opportunities identified

SECTION 3.1.6. USE TABLE

The following Use Table identifies uses allowed in each zone. Uses may be modified in Overlay zones under Division 4.9.

ISSUES:

Issues will be identified under each relevant use that appears in the table under the AR district – note that for the uses listed below, P means Permitted, L means Limited and C means Conditional.

OPPORTUNITIES:

Opportunities will be identified under each relevant use

AGRICULTURAL AUCTION FACILITY -C

A. Defined

Agricultural Auction Facility means any structure and land where farm-related merchandise is sold to a bidder.

B. Use Standards

Where an Agricultural Auction Facility is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:

- 1. The minimum lot area is 5 acres.*
- 2. The minimum setback of the auction facility (whether enclosed within a building or not) and the parking area is 50 feet from any lot line where the subject lot abuts property in residential use.*
- 3. The Hearing Examiner may specify the types of goods to be auctioned.*
- 4. Evening and weekend operations may be permitted under the limits established by the Hearing Examiner.*
- 5. Where the subject lot abuts property in residential use, the noise level at the lot line must satisfy Chapter 31B.*
- 6. The agricultural exemption of State law (Section 31B-14(c)) is not applicable.*
- 7. If the subject lot abuts property in the AR zone, screening under Division 6.5 is not required.*
- 8. In the AR zone, this use may be prohibited under Section 3.1.5, Transferable Development Rights.*

ISSUES:

An Agricultural Auction Facility is a conditional use in the AR District. There are performance standards under the conditional use that address potential impacts on adjacent land and residential uses. No know issues have been raised with this use.

OPPORTUNITIES:

No opportunities identified

AGRICULTURAL PROCESSING -C

A. Defined

Agricultural Processing means any operation that transforms, packages, sorts, or grades farm products into goods that are used for intermediate or final consumption, including goods for non-food use, such as the products of forestry. Agricultural Processing includes milk plant, grain elevator, and mulch or compost production and manufacturing, but does not include Slaughterhouse (see Section 3.2.8, Slaughterhouse).

B. Use Standards

Where Agricultural Processing is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:

- 1. The minimum lot area is 10 acres.*
- 2. The minimum setback for an Agricultural Processing structure from any lot line is 75 feet.*
- 3. The lot must front on and have access to a road built to primary residential road or higher standards unless processing materials are produced on-site.*
- 4. If the subject lot abuts property in the AR zone, screening under Division 6.5 is not required*

ISSUES:

It should be noted that the definition of Agriculture as mentioned above under Article 59-1. includes agricultural processing, which is somewhat redundant but not identical with how agricultural processing is described under 3.2.2 in the Use Table and could be confusing from a regulatory standpoint.

Agricultural Processing can be a very general term for a wide variety of value-added processing activities that occur as part of the agricultural economy. It is an area that is particularly important for the evolving rural economy in many places around the country because it enhances farmers' ability to earn a return on their operations beyond the simple commodity value of their crops. Value added processing industries can vary widely and range from food processing to crafts to compost. New uses are constantly being developed and this can be a very fluid issue in developing regulations and standards to address the evolving uses. Use Standard 3 would seem to preclude this use on Rustic Roads unless processing materials are produced on site. In other words, this use can not occur on a Rustic Road if materials grown on the farm are trucked to an off-site processing location.

OPPORTUNITIES:

The definitions of agricultural processing in Article 59-1 and Section 3.2.2 could be compared and refined to eliminate any redundancies. By eliminating any overlap between the two definitions, it should make the review process clearer for agricultural processing uses in the AR zone.

While it is impossible to predict all the possible and emerging new uses in agricultural processing, there is an opportunity to tighten the definition of this dynamic use by strengthening the relationship to farming and the farm economy in the definition portion. Also, there is an opportunity to clarify Use Standard 3 so that it is more performance-based. Standards could be developed that addressed the amount of vehicular traffic generated by

the use rather than whether the processing is done on-site or not. This would more accurately address potential impacts of the scale of the use regardless of where processing is done.

COMMUNITY GARDEN -L

ISSUES:

No known issues

OPPORTUNITIES:

No opportunities identified

EQUESTRIAN FACILITY – L/C

A. Defined

Equestrian Facility means any structure or land that is used primarily for the care, breeding, boarding, rental, riding, or training of horses or the teaching of equestrian skills. Equestrian Facility includes events such as competitions, exhibitions, or other displays of equestrian skills.

B. Use Standards

1. *Where an Equestrian Facility is allowed as a limited use, it must satisfy the following standards:*

a. *The minimum gross acreage per horse is as follows:*

i. *for 1-2 horses, 2 acres;*

ii. *for 3-10 horses, one acre per horse; and*

iii. *for more than 10 horses, 10 acres plus an additional one-half acre for each horse over 10.*

b. *In the RNC zone, a maximum of 5 horses is allowed.*

c. *Any Equestrian Facility that keeps or boards more than 10 horses must meet all nutrient management, water quality, and soil conservation standards of the County and State. A nutrient management plan prepared by a qualified professional and a soil conservation and water quality plan prepared by the Montgomery Soil Conservation District Board must be submitted through a letter of certification by the landowner to DPS, or other relevant agency. Enforcement of the nutrient management, water quality, and soil conservation plans is the responsibility of the State of Maryland. The landowner must obtain all plans within one year after starting operations.*

d. *Each building, show ring, paddock, outdoor arena, and manure storage area must be located at least 100 feet from any existing dwelling on an abutting property.*

e. *Amplified sound must satisfy Chapter 31B.*

f. *Any outdoor arena lighting must direct light downward using full cutoff fixtures; producing any glare or direct light onto nearby properties is prohibited. Illumination is prohibited after 10:00 p.m. on Friday or Saturday, and after 9:00 p.m. on Sunday through Thursday.*

g. Equestrian events are restricted as follows:

Site Requirements	Hours of Operation		Number of Participants and Spectators			
	Su-Th	Fr-Sa	Event	Informal Event	Minor Event	Major Event
			0-25	26-50	51-150	151-300
Up to 17.9 acres	6am-9pm	6am-10pm	Unlimited on any day	None	None	None
18 - 24.9 acres	6am-9pm	6am-10pm	Unlimited on any day	Unlimited on Sat, Sun and holidays; maximum of 6 weekdays per month	None	None
25 - 74.9 acres	6am-9pm	6am-10pm	Unlimited on any day	Unlimited on Sat, Sun and holidays; maximum of 6 weekdays per month	Maximum of 7 per year	None
75+ acres and direct access to a roadway with an arterial or higher classification	6am-9pm	6am-10pm	Unlimited on any day	Unlimited on Sat, Sun and holidays; maximum of 6 weekdays per month	Maximum of 7 per year	Maximum of 3 per year lasting up to 3 consecutive days each

h. A permit must be obtained from DPS for each event involving between 151 and 300 participants and spectators, per day. The applicant must specify the nature of the event, the anticipated attendance of spectators and participants, the number of days the event will take place, the hours during which the event will take place, the area to be used for parking, any traffic control measures intended to be put in place, and any other information determined by DPS to be relevant to the issuance of the permit. A fee for issuance of the permit may be set by DPS.

i. An Equestrian Facility conditional use application may be filed with the Hearing Examiner to deviate from any limited use standard regarding: number of participants and spectators; number of events each year; event acreage; or hours of operation. An Equestrian Facility conditional use approval must be renewed every 5 years. Before the conditional use is renewed the Hearing Examiner must evaluate the effectiveness of the terms and conditions of the original approval.

2. Where an Equestrian Facility is allowed as a conditional use, it may be permitted by the Hearing Examiner under all applicable limited use standards, Section 7.3.1, Conditional Use, and the following standards:

a. If the subject lot abuts property in the AR zone, screening under Division 6.5 is not required.

b. In the AR, R, RC, and RNC zones:

i. The Equestrian Facility must not adversely affect abutting land uses or the surrounding road network.

ii. In evaluating the compatibility of an Equestrian Facility on the surrounding land uses, the Hearing Examiner must consider that the impact of an agricultural use on surrounding land uses in an Agricultural or Rural Residential zone does not necessarily need to be controlled as stringently as the impact in a Residential zone.

c. In the RE-2, RE-2C, RE-1, and R-200 zones:

i. Any Equestrian Facility on less than 5 acres must establish through a pasture maintenance plan, feeding plan, and any other documentation the Hearing Examiner requires, that the site contains sufficient open pasture to ensure proper care of the horses and proper maintenance of the site.

ii. The Hearing Examiner may limit or regulate more stringently than limited use standards the following:

(a) the number of horses that may be kept or boarded;

(b) the number of horses that may be rented out for recreational riding or instruction;

(c) the number and type of equestrian events that may be held in a one-year period; and

(d) the hours of operation of any equestrian event or activity.

iii. The facility operator must satisfy the state requirements for nutrient management concerning animal waste.

ISSUES:

The use standards for equestrian uses are among the most detailed in the AR zone. Use standards for Limited Use include extensive standards for both ongoing operations and for events. While these kinds of standards for number and size of event are often challenging to administer from a staff perspective, they provide protection for surrounding lands against the most obvious impacts resulting from excessive frequency and size of events. While the use standards in general are strong, some issues were identified as potential opportunities for enhancement, particularly relating to roadway classifications, lighting and unclear language in the conditional use standards, as summarized below.

OPPORTUNITIES:

Under the limited use standards, the table for events lists events of 151-300 people as being restricted to roadways with an arterial or higher classification. There is an opportunity for this standard to adopt different performance standards that address the amount of vehicular traffic generated by the use rather than the roadway classification.

The lighting requirements under 1.f. above could be eliminated if the county had comprehensive lighting standards elsewhere in the Code. Many localities have adopted “dark sky” standards for lighting in rural and suburban areas to preserve rural character and protect wildlife.

The language under 2.b. above is unnecessarily vague for use in a zoning code and references wording such as “*must not adversely affect abutting land uses or the surrounding road network.*” This language could be revised to focus on specific measurable impacts to allow staff less leeway in subjective interpretation of the standards.

FARM SUPPLY, MACHINERY SALES, STORAGE, AND SERVICE – C

A. *Defined*

Farm Supply or Machinery Sales, Storage, and Service means the sales, storage, or service of farm supply materials and machinery used in farming for agricultural purposes or similar equipment service such as lawn care equipment repair. Farm Supply or Machinery Sales, Storage, and Service does not include sales, storage, or service of vehicles and other machinery not associated with farming.

B. *Use Standards*

1. *Where Farm Supply or Machinery Sales, Storage, and Service is allowed as a limited use, it must satisfy the following standards:*

a. If the subject lot abuts property in the AR zone, this use is limited to farm building supply and services that construct, stabilize, and repair farm accessory buildings, structures, and fences.

b. If the following standards are satisfied, the use is allowed:

i. the minimum lot area is 2.0 acres;

ii. it abuts or is located perpendicularly across a right-of-way from property in an Industrial zone;

iii. the impervious area of the site does not exceed any impervious area recommendation for the site in the master plan; and

iv. the subject lot does not abut property in the AR zone.

2. *Where Farm Supply or Machinery Sales, Storage, and Service is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:*

a. The minimum lot area is 5 acres. The Hearing Examiner may require a larger area if warranted by the size and characteristics of the inventory.

b. The minimum setback from any lot line for parking, buildings, or inventory storage is 75 feet, except that the minimum setback from the street may be reduced to 50 feet if the Hearing Examiner finds that:

- i. the confronting property is in an Agricultural or Rural Residential zone; and
- ii. the smaller setback would be compatible with surrounding uses.

c. The Hearing Examiner may reduce the required number of parking spaces to a minimum of 2 spaces for every 1,000 square feet of gross floor area, excluding storage area, if it finds that the reduction can be made without adverse impact on abutting uses.

ISSUES:

No issues with these types of uses were identified and the use standards have several features that serve to protect the surrounding areas from adverse impacts of these uses. Use standard 1.b.ii limits the locations for this use to areas next to industrially zoned land, as a limited use, which considerably restricts where this use could be established without going to a conditional use approach.

OPPORTUNITIES:

No opportunities identified

FARMING – P

Defined

Farming means the practice of agriculture on a property, and any associated buildings. Agriculture means the business, science, and art of cultivating and managing the soil; composting, growing, harvesting, and selling crops, and the products of forestry, horticulture, and hydroponics; breeding, raising, managing, or selling livestock, including horses, poultry, fish, game, and fur-bearing animals; dairying, beekeeping, and similar activities; and equestrian events and activities. Agriculture includes processing on the farm of an agricultural product to prepare the product for market and may cause a change in the natural form or state of the product. Farming includes the following accessory uses:

- A. *Accessory agricultural processing and storage of products grown or raised on-site or on property owned, rented, or controlled by the farmer. Accessory agricultural processing includes a milk plant, grain elevator, on-farm animal slaughtering, and mulch or compost production and manufacturing.*
- B. *The sale of products of agriculture and agricultural processing, if products are produced on-site or on property owned, rented, or controlled by the farmer.*
- C. *The sale of horticultural products grown off-site, but kept on the farm temporarily on a maximum of 2 acres or 20% of the site, whichever is less.*
- D. *The delivery and installation of horticultural products grown on the farm.*
- E. *The production and manufacturing of mulch or compost where up to 20% of the materials used in accessory processing can come from off-site sources.*
- F. *Accessory agricultural education and tourism activities conducted as a part of a farm's regular operations, with emphasis on hands-on experiences and events that foster increased knowledge of agriculture, including cultivation methods, animal care, water conservation, Maryland's farming history, the importance of eating healthy, and locally grown foods. Allowed activities include corn mazes, hay rides, and educational tours, classes, and workshops. The maximum footprint for any structure and the*

total footprint of all structures primarily used for education or tourism is limited to 10% of the total footprint square footage of all structures on the site used for agriculture. The property must have DPS approved sanitation facilities for this accessory use.

ISSUES:

The definition of farming also references agriculture, and agricultural processing, which are defined in Article 59-1. under the definitions section. There are also a series of important definitions of the accessory uses to farming, many of which deal with agritourism issues. For example, accessory use B. restricts the sale of products to those grown on property owned, rented or controlled by the farmer. However, accessory use C. allows the sale of off-site horticultural products if they are kept on the farm temporarily. In this case, it seems that off-site products can clearly be sold on a farm, although the definition of ‘temporarily’ should be clarified. In addition, there is potential redundancy with the definition of “Farm Market, On-site” below.

Finally, accessory use F. addresses agritourism specifically. It stipulates two important standards for accessory agritourism uses – that they have a nexus to agriculture, history and the farm’s regular activities, and that they have a limited footprint for structures devoted to their use. However, with new farming practices, the need for farm structures is declining and the limitation of agritourism structures to only 10% of the total agricultural structures on the property may result in allowable footprints that are too small practically to allow these uses. Conversely, this standard may encourage the building of unneeded agricultural structures on a farm, solely to increase the baseline of agricultural structures under roof that would then increase the allowable footprints of agritourism structures.

OPPORTUNITIES:

There are some opportunities to refine the definitions under this use:

- The definitions of farming and agricultural processing in this section could be compared with those in Article 59-1 and refined to eliminate any redundancies. By eliminating any overlap between the two definitions, it should make the review process clearer for agricultural processing uses in the AR zone.
- The definition of “temporary” storage of off-site horticultural products (accessory use C) could be clarified.
- There is an opportunity to tighten up on the provisions in accessory use C by limiting the type or quantity of goods grown off-site that are sold on a farm in exchange for eliminating the provision that these are “temporarily” stored on the farm. This would eliminate the need to define and monitor temporary storage as well as reduce the redundancy with the definition of Farm Market-On Site under Accessory Agricultural Uses.
- Further, there is an opportunity to loosen the standard for percent of total agricultural structures that may be devoted to agritourism in order to better align with the modern agritourism economy and needs for support structures.

WINERY – L/C¹

A. Defined

¹ Note – this section was written before ZTA 18-03 was adopted on October 2nd, 2018. It has been left in its original state, but it should be noted that it applies to language and standards that have now been superseded by ZTA 18-03. An assessment of ZTA 18-03 is included in this report in Part 3.

Winery means any structure and land for processing grapes or other fruit into wine for sale on-site or through wholesale or retail outlets where a minimum of 5 acres of grapes or other fruit must be grown on the same parcel or lot as the processing facility.

B. Use Standards

1. *Where a Winery is allowed as a limited use, it must satisfy the following standards:*

a. *In the AR zone:*

i. *A maximum of 9 days of events that require an entrance ticket or a cover charge is allowed each calendar year. Additional events require conditional use approval by the Hearing Examiner under Section 7.3.1.*

ii. *The maximum lighting level at any lot line is 0.1 footcandle.*

b. *In the R and RC zone, a maximum of 2 special events such as a wedding, festival, or other similar event are allowed each calendar year. Additional events require conditional use approval by the Hearing Examiner under Section 7.3.1.*

2. *Where a Winery is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:*

a. *The minimum lot area is 10 acres.*

b. *The minimum setback for any structure from any lot line is 75 feet, except that the minimum front setback may be reduced to 50 feet if the Hearing Examiner finds the reduced setback is compatible with abutting and confronting agricultural uses.*

c. *The lot must front on and have access to a road built to primary residential or higher standards.*

ISSUES:

The 5-acre minimum requirement for on-site cultivation serves to maintain the link between growing and selling on the same property. Some other localities have used other standards to maintain this principle, such as a percentage of the land area used for cultivation.

The restriction on events in the use standards is based on frequency of events and not on scale or impacts. It is also notable that the limitation on the number of special events applies only to the R and RC zones but not to the AR zone.

OPPORTUNITIES:

Several opportunities were identified for enhancing the use standards to maintain a link with on-site growing while addressing impacts through performance standards. These include:

- Using a “percent of land area under cultivation in grapes or other fruit” standard rather than an absolute minimum of 5 acres (although the 5-acre minimum could still be included in addition).
- Using a “sliding scale” matrix for linking the size of the property to the size of the event as is done for equestrian facilities.

- Including standards for special events (“wedding, festival, or other similar event”) in the AR zone as is currently done in the R and RC zones.
- Under conditional use standards, adopt different roadway standards that addressed the amount of vehicular traffic generated by the use rather than the roadway classification.

ACCESSORY AGRICULTURAL USES / FARM MARKET, ON-SITE - L

1. Defined

Farm Market, On-site means the display and retail sale of agricultural products produced on the farm where the farm market is located, or agricultural products produced on another farm under the control of the owner or operator of that farm market. A limited portion of the sales may include agricultural products produced on another farm. A Farm Market, On-site may include farm food products certified as non-potentially hazardous by the Department of Health and Human Services.

2. Use Standards

Where a Farm Market, On-site is allowed as a limited use, it must satisfy the following standards:

a. In the AR, R, RC, RNC, RE-2, RE-2C, RE-1, and R-200 zones:

- i. The minimum setback for the sale and display area is 25 feet from the paved edge of the roadway.*
- ii. Firewood sold at a Farm Market, On-site must be cut and split on the farm where the wood is harvested.*
- iii. A maximum of 25% of the Farm Market, On-site display and sales area may be used for agricultural products not produced on a farm under the control of the owner or operator of the Farm Market, On-site. In the event of crop failure due to drought, insect damage, disease, or other cause beyond the control of the owner or operator of the Farm Market, On-site DPS may, upon the recommendation of the Department of Economic Development and the Montgomery County Agricultural Advisory Committee and, for a limited period of time, permit more than 25% of the Farm Market, On-site display and sales area to be used for agricultural products not produced on a farm under the control of the owner or operator of the Farm Market, On-site.*

b. In the R-90, R-60, R-40, TLD, TMD, THD, R-30, R-20, R-10, CRN, CRT, CR, GR, NR, LSC, EOF, IL, and IM zones:

- i. All of the agricultural products for display and retail sale must be produced on-site.*
- ii. The minimum setback for the sale and display area is 25 feet from any lot line where the subject lot abuts property in a Residential zone.*

ISSUES:

The Use Standard limitation (a.iii.) of a maximum of 25% of the display and sales area being devoted to off-site grown products is a type of standard that helps reinforce the connection to locally grown products. It also discourages farmers markets from becoming large retail outlets for farm-related products that are commercially

produced elsewhere. In addition, the allowance for flexibility in cases of crop failure provides some relief to economically distressed farmers.

OPPORTUNITIES:

There is an opportunity to provide more flexibility for the 25% maximum display area standard in cases where the products are grown within a certain radius of the farm (50 mile or 100 mile) or where the products are grown elsewhere in the county or just in the Ag Reserve. In these cases, potentially more than 25% of the display area could be used for these types of locally grown products that would help reinforce a “buy local” brand for the county. This flexibility could be incorporated as a new set of standards for Conditional uses, for example.

TEMPORARY AGRICULTURAL USES/SEASONAL OUTDOOR SALES - L

1. Defined

Seasonal Outdoor Sales means the temporary sales of seasonal farm products offered annually for a limited period of time, such as the sale of pumpkins and evergreen trees.

2. Use Standards

Where Seasonal Outdoor Sales is allowed as a limited use, it must satisfy the following standards:

- a. A temporary use permit from DPS is required. Temporary use permit duration is a maximum of 45 days. A maximum of 2 temporary permits can be issued per site annually.*
- b. A plan must be submitted by the applicant demonstrating adequate vehicular circulation, parking, and queuing.*
- c. Any obstruction that adversely affects visibility at an intersection or to any Seasonal Outdoor Sales driveway is prohibited.*
- d. Evergreen trees may only be sold beginning the first Saturday following Thanksgiving Day through December 24th, and are exempt from Section 3.2.12.B.2.b and Section 3.2.12.B.2.e.ii.*
- e. In the Agricultural, Rural Residential, Residential, LSC, and EOF zones:*
 - i. The property must be vacant or used for nonresidential purposes.*
 - ii. Except where Seasonal Outdoor Sales occur on the site of a Religious Assembly use, the site must front on and have access to a road built to primary residential or higher standards.*

ISSUES:

This use is clearly defined as applying only to temporary seasonal outdoor sales and does not overlap with other farmers market-type uses defined above. The use of permitting as a tool is an effective way to address these types of temporary uses. Although they require additional staff time, they can also be an effective regulatory tool for recurring event-type uses that are done for-profit (weddings, reunions, etc.). Use Standard b. that requires transportation and parking plans is also an effective way to address short-term impacts for these types of uses, although it is unknown what impact this has on staff review capacities.

Use standard e.i. may be confusing in the AR zone since it is unclear if “nonresidential” applies to a farm use.

OPPORTUNITIES:

Although no opportunities are recommended for refinements to these standards, the provisions under this use for temporary permits and required transportation/parking plans may be considered for application in other use categories where there are concerns about the traffic impacts from temporary large-scale events.

Use Standard e.ii. precludes properties fronting on Rustic Roads from this use. An opportunity exists to reconsider this exclusion based on road classification and base it instead on a performance standard for traffic impacts.

RESIDENTIAL

ACCESSORY RESIDENTIAL USES/FARM LABOR HOUSING UNIT - L

E. Farm Labor Housing Unit

1. Defined

Farm Labor Housing Unit means a dwelling unit accessory to the farm and under the control of the owner or operator of the farm on which the dwelling unit is located and occupied by an agricultural worker actively engaged in farming on a full-time or part-time basis. Farm Labor Housing Unit includes mobile homes. A Farm Labor Housing Unit is not restricted by the definition of household or dwelling unit, and may share a well or septic system or both.

2. Use Standards

Where a Farm Labor Housing Unit is allowed as a limited use, it must satisfy the following standards:

- a. In the Agricultural and Rural Residential zones, it is excluded from any density calculations if it remains accessory to a farm. If the property associated with a Farm Labor Housing Unit is subsequently subdivided so that it is no longer accessory to the farm as defined in Section 59.3.7.4.B, the Farm Labor Housing Unit is included in the density calculations.*
- b. The maximum number of tenants in a single dwelling is limited by well and septic capacity.*
- c. In the RE-2C zone, only one Farm Labor Housing Unit is allowed and it must be a mobile home.*
- d. In the Agricultural, Rural Residential, RE-2, and RE-1 zones, a Farm Labor Housing Unit in existence before June 1, 1958 may be rented to a tenant other than an agricultural worker, if the dwelling meets all applicable health and safety regulations. In the event a Farm Labor Housing Unit in existence before June 1, 1958 is rebuilt, the rebuilt unit may be rented to a tenant other than an agricultural worker. The rebuilt dwelling may not exceed the floor area of the pre-existing dwelling.*
- e. In the RE-2, RE-1, and R-200 zones, only one mobile home is allowed.*
- f. The owner must record a covenant against the property to which the Farm Labor Housing Unit is accessory, with restrictions that satisfy Section 3.3.3.E. The covenant must be in a form approved by the County Attorney's Office, the County's Office of Agriculture, and the Planning*

Board. The owner must record the covenant before the Department of Permit Services approves a building permit for the unit.

ISSUES:

No issues with these types of uses were identified.

OPPORTUNITIES:

No opportunities identified

COMMERCIAL

RETAIL SALES & SERVICE/RURAL COUNTRY MARKET – C

1. Defined

Rural Country Market means the display and retail sale in a rural or residential area of agricultural products and farm food products certified as non-potentially hazardous by the Department of Health and Human Services. A Rural Country Market includes the display and sale of non-edible farm products only if the products are grown and processed on farms in the State of Maryland. Rural Country Market does not include the sale or storage of bread, cheese, or other foodstuffs produced in a commercial kitchen, or an eating and drinking establishments (see Section 3.5.3, Eating and Drinking).

2. Use Standards

Where a Rural Country Market is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:

- a. The minimum tract area is 2 acres.*
- b. The maximum height is 20 feet, unless located in an existing building.*
- c. The minimum setback from the street and from any side or rear lot line is 50 feet, except that the minimum setback from the street may be reduced to 25 feet if the Hearing Examiner finds that the smaller setback would be compatible with surrounding uses. The Hearing Examiner may approve the use of an existing structure that does not meet these requirements if the Hearing Examiner finds that the use is suitable and compatible with the surrounding area.*

ISSUES:

The primary difference between this use and the Farm Market, On-site use (under Agricultural uses, above) is that there is no requirement under this use for the products to be grown on property owned or controlled by the farmer. Both uses allow the sale of food items that are non-potentially hazardous.

It is notable that a “locally grown” requirement is also included under the standards for this use, that non-edible products must be grown within the State of Maryland. This is potentially confusing in light of the new definition of “regionally grown” and the reference to “local products” both referenced in the new ZTA 18-03.

Also, this use precludes the sale of foodstuffs produced in commercial kitchens or eating establishments. These types of sales are conditionally permitted in AR zones under Section 3.5.3, Country Inns, which are not permitted in the AR zone.

OPPORTUNITIES:

There is an opportunity to clearly define “locally grown” more comprehensively in Article 59.1; Division 1.4; Defined Terms, so that it is clear when used here, as well as in the new provisions of ZTA 18-03.

LODGING /BED AND BREAKFAST – L

A. *Defined, In General*

Lodging means a building used for the short-term overnight accommodation of paying guests.

1. *Defined*

Bed and Breakfast means a detached house with rooms for rent and where breakfast is customarily served to guests.

2. *Use Standards*

a. *Where a Bed and Breakfast is allowed as a limited use, it must satisfy the following standards:*

i. *A Bed and Breakfast is prohibited in a dwelling unit that also provides guest rooms for roomers, or in a Farm Labor Housing Unit, or on a site that includes an Accessory Apartment.*

ii. *The display of a sign must include the official house number.*

iii. *Breakfast is the only meal that may be served and only to overnight guests, except as provided in Subsection 59.3.5.6.B.2.a.x.*

iv. *A guest must only remain in a Bed and Breakfast for a maximum of 14 days in any one visit.*

v. *A record of all overnight visitors must be maintained.*

vi. *The Bed and Breakfast must be registered with DPS.*

vii. *In the Agricultural, Rural Residential, and Residential zones, the minimum lot area is the greater of 9,000 square feet or the minimum lot area for a detached house building type in the zone.*

viii. *In the Agricultural, Rural Residential, and Residential zones, on a lot of less than 2 acres, a maximum of 3 bedrooms may be designated as guest rooms for which compensation is charged.*

ix. *Except as provided in Subsection 59.3.5.6.B.2.a.x, a Bed and Breakfast must be in an owner-occupied house with no more than 5 guest rooms.*

x. *In the Agricultural and Rural Residential zones, a Bed and Breakfast located in any detached house or accessory building designated as historic on the Master Plan for Historic Preservation:*

- (a) *may have no more than 10 guest rooms on any site;*
 - (b) *may serve overnight guests any meal; and*
 - (c) *must be occupied by either an owner or an owner-authorized manager.*
- xi. *Parking must be located behind the front building line.*
 - xii. *In the AR zone, this use may be prohibited if not accessory to Farming under Section 3.1.5, Transferable Development Rights.*
- b. *Where a Bed and Breakfast is allowed as a conditional use, it may be permitted by the Hearing Examiner under all limited use standards, Section 7.3.1, Conditional Use, and the following standards:*
- i. *The Hearing Examiner may deny a petition for a Bed and Breakfast with frontage on and access to a road built to less than primary residential standards if it finds that road access will be unsafe and inadequate for the anticipated traffic to be generated or the level of traffic would have an adverse impact on neighboring residences.*
 - ii. *If there is inadequate space for parking behind the front building line, the Hearing Examiner may approve an alternative placement for parking.*
 - iii. *Screening under Division 6.5 is not required.*
 - iv. *To avoid an adverse neighborhood impact and assure that the residential use remains predominant, the Hearing Examiner may limit the number of transient visitors who may be accommodated at one time or the number of visits in any 30-day period.*

ISSUES:

In general, the Use Standards for Bed and Breakfasts are oriented towards limiting the size of these establishments and requiring owner-occupancy, which is consistent with a rural context. However, under section B.2.a.x, , above, it would be helpful to clarify the definition of “accessory to a farm use.”

OPPORTUNITIES:

No opportunities identified, other than to clarify the definition of “accessory to a farm use” As noted above.

TEMPORARY COMMERCIAL USES/TRANSITORY USE – L

1. Defined

Transitory Use means a use on private property or the public right-of-way conducted from a vehicle or from a movable structure that remains in the same location for less than 24 hours. Transitory Use includes a food service truck.

2. Use Standards

Where a Transitory Use is allowed as a limited use, it must satisfy the following standards:

- a. *A Transitory Use must be registered under Chapter 47.*
- b. *A Transitory Use may be located in the public right-of-way where it satisfies Chapter 47.*
- c. *A Transitory Use may be allowed on private property only if it would be allowed as a permanent use in the applicable zone under Section 3.1.6.*
- d. *A Transitory Use is prohibited on any portion of the open space required by the zone in which the property is located.*

ISSUES:

No known issues were identified.

OPPORTUNITIES:

No opportunities identified.

MISCELLANEOUS

SOLAR COLLECTION SYSTEM – L

A. Defined

Solar Collection System means an arrangement of panels or other solar energy devices that provide for the collection, inversion, storage, and distribution of solar energy for electricity generation, space heating, space cooling, or water heating. A Solar Collection System includes freestanding or mounted devices.

B. Use Standards

Where a Solar Collection System is allowed as a limited use, it must satisfy the following standards:

- 1. In the Agricultural, Rural Residential, Residential, Commercial/Residential, and Employment zones a Solar Collection System must be an accessory use as defined in Section 3.1.3.*
- 2. Written authorization from the local utility company must be provided for a Solar Collection System that will be connected to the utility grid.*
- 3. Removal of trees or landscaping otherwise required or attached as a condition of approval of any plan, application, or permit for the installation or operation of a Solar Collection System is prohibited.*
- 4. Solar panels may encroach into a setback as allowed under Section 4.1.7.B.5.c and may exceed the maximum height as allowed under Section 4.1.7.C.3.b.*
- 5. The following standards apply to a freestanding Solar Collection System:*
 - a. In the Agricultural, Rural Residential, Residential, Commercial/ Residential, and Employment zones, it is allowed only as an accessory use where the system produces a maximum of 120% of on-site energy consumption and must satisfy the same development standards as an accessory structure; however it may be located in the side yard of a property in a Rural Residential or Residential Detached zone if the main*

building is set back a minimum of 70 feet from the side lot line and the Solar Collection System is setback a minimum of 50 feet from a side lot line and the height of the Solar Collection System is a maximum of 20 feet.

b. In the Residential Multi-Unit, Commercial/Residential, Employment, and Industrial zones, a Solar Collection System installed above a parking lot or other paved surface does not count towards the maximum coverage.

c. Signs are prohibited, except for a flush-mounted sign identifying the manufacturer of the system.

d. The Solar Collection System must be removed within 12 months of the date when the use is discontinued or abandoned by the system owner or operator, or upon termination of the useful life of the system. The Solar Collection System will be presumed to be discontinued or abandoned if no electricity is generated by the system for a period of 12 continuous months.

ISSUES:

Solar collection uses are a growing and much-discussed feature of rural land use throughout the nation. State and local model ordinances for addressing this use abound and can be used as examples of policy approaches to address and mitigate the impacts from solar collection. One key feature of Montgomery County's ordinance is the requirement for solar collection uses to be accessory uses as defined in Section 3.1.3. The ordinance in effect limits any large-scale energy generation from solar collection by limiting it to an accessory use "where the system produces a maximum of 120% of on-site energy consumption." It is also useful to note that the definition groups together solar collection for heating and cooling that may be done for the individual home with any solar collection that may be for energy generation.

OPPORTUNITIES:

Solar collection systems are generally divided into those used primarily for residential on-site energy generation and larger, utility-scale, for-profit, energy generation facilities. While it is clear that Montgomery County's code does not envision large utility-scale solar facilities in the Agricultural Reserve, there may be an opportunity for slightly more permissive regulatory approaches to solar collection while safeguarding the rural landscape from adverse impacts.

Some of the typical impact areas of concern for solar generating facilities include the loss of productive farmland, stormwater and runoff impacts, and impacts on community character, aesthetics and property values. Examples from ordinances around the nation show ways to deal with all these impacts to protect surrounding properties and the rural landscape as a whole. However, it is recommended that solar installations still be limited in site area, for example, to no more than 5-10 acres, and that they be controlled through conditional use processes to mitigate any adverse impacts.

ACCESSORY STRUCTURES- L

Accessory Structure

1. Defined

Accessory Structure means a structure subordinate to and located on the same lot as a principal building, the use of which is incidental to the use of the principal building or to the use of the land. An Accessory Structure is not attached by any part of a common wall or common roof to the principal building.

2. Use Standards

Where an Accessory Structure is allowed as a limited use, it must satisfy the following standards:

- a. *In Agricultural and Rural Residential zones, the maximum footprint of an accessory building on a lot where the main building is a detached house is 50% of the footprint of the main building. Buildings for an agricultural use are exempt from this size restriction.*
- b. *In Residential Detached zones, the maximum footprint of an accessory building on a lot where the main building is a detached house is 50% of the footprint of the main building or 600 square feet, whichever is greater. Buildings for an agricultural use are exempt from this size restriction.*

ISSUES:

Accessory structure provisions are sometimes an important issue for agritourism. The requirement for accessory structures to be limited to a certain proportion of the footprint of the main structure on a site is a common provision. However, a key provision in the Use Standards for Accessory Structures is that buildings or an agricultural use are exempt from this provision. However, the definition for Agriculture (under Section 1.4.2) states that, "Agriculture includes processing on the farm of an agricultural product to prepare the product for market and may cause a change in the natural form or state of the product." Since this definition could allow for some typical agritourism-related uses such as value-added processing, it is important to recognize that there would not be a restriction for size of footprints of structures that fall under this category.

OPPORTUNITIES:

No opportunities identified, other than to clarify the definition of agritourism, as noted in page 4 of this document.

DIVISION 4.2. AGRICULTURAL ZONE

SECTION 4.2.1. AGRICULTURAL RESERVE ZONE (AR)

ISSUES:

Article 59-4 in the Code deals with development standards for Euclidean Zones. Section 4.2.1 addresses development standards in the AR Zone. There are no issues specific to Agritourism that were identified in this section, other than the general reinforcement in the Intent Statement that Agriculture is the preferred use in the AR zone.

OPPORTUNITIES:

No opportunities identified, other than relative to the definition of agritourism, as noted in page 4 of this document. If this definition is clarified or modified, it would need to be reflected in the Intent Statement of this Section.

B. SUBDIVISION ORDINANCE ASSESSMENT

CHAPTER 50. SUBDIVISION OF LAND; ARTICLE 1. IN GENERAL

SECTION 3.3. EXEMPTIONS TO THE REQUIREMENTS OF THIS CHAPTER

B. Recordation of a plat before issuance of a building permit is not required for:

4. Property for Single-Unit Living:

a. An unplatted parcel or a part of a previously platted lot, proposed for single-unit living, which has not changed in size or shape since June 1, 1958, if a description and location of the property and proposed structure are submitted to the Planning Department, before issuance of a building permit, sufficient to:

i. locate the property on the tax maps of Montgomery County;

ii. show that the approval of the building permit application would not result in obstructing the future opening, extension, or widening of any necessary road, or otherwise jeopardize any planned public facility;

iii. show that the property and use comply with the zoning ordinance, and show the setbacks and any other information needed to check compliance with regulations, including provisions for water and sanitary service, and establishment of a building restriction line along any existing or proposed road sufficient to provide for future expansion or opening of such road to its ultimate width; and

iv. show that the approval of the permit would not adversely affect the General Plan.

b. An unplatted parcel or a part of a previously platted lot used for reconstruction of an existing detached house under Chapter 59, Section 7.7.1.

c. An unplatted parcel created by combining the entirety of two or more contiguous parcels that qualified for an exemption under Subsection (a).

ISSUES:

County staff has requested that this provision be reviewed. This provision in the Subdivision Ordinance allows “single unit living” to be built (or rebuilt) on certain types of unplatted parcels without requiring the recordation of a plat. Not requiring plat recordation also obviates the need for filing a Preliminary Plan application, with all the required drawings, supporting information and Planning Board approval that are required as part of a Preliminary Plan. However, Section 50.6 of the Code that defines the procedures for an “ADMINISTRATIVE SUBDIVISION PLAN” also allows provisions for subdivision of up to 5 lots for detached houses in the AR zone if certain provisions are met, such as a covenant being recorded for the unplatted balance of the tract, and that platted lots are 5 acres or less. The provision for a simplified Administrative Review for up to 5 lots in the AR zone is a very simple process in comparison to a Preliminary Plan requirement and allows staff review without having to go before the Planning Board.

OPPORTUNITIES:

There is an opportunity to simplify and make the procedures more uniform in the Subdivision Ordinance by modifying Section 3.3 so that unplatted parcels are still exempt from preliminary plan requirements but are required to go through an Administrative Review process to obtain building permits for single unit living. This will standardize all residential development in the AR zone to at least have this basic level of Administrative review and to have the lots recorded into the County's Land Records.

C. BUILDING CODE ASSESSMENT

CHAPTER 8 BUILDINGS; ARTICLE 1. GENERAL REQUIREMENTS

SECTION 8-1. SCOPE AND APPLICABILITY

(d) Exemptions. All buildings or structures must be constructed, extended, repaired, removed or altered under a permit that satisfies this Chapter, except for:

(1) ordinary repairs as defined in Section 8-3;

(2) a building or structure used exclusively for agricultural purposes on land used exclusively for agriculture; however, a permit under this Chapter is required for:

(A) a building or structure used for a purpose that is not exclusively agricultural, including conditional uses, even though located on otherwise agricultural land;

(B) an equestrian facility, building, or structure intended for use by participants or spectators at an equestrian event;

ISSUES:

County staff has requested that this provision be reviewed. This provision in the Code exempts buildings used exclusively for agricultural purposes from the requirements of a building permit. However, Conditional Uses and equestrian facilities are excluded from this exemption. A key aspect of this provision is the definition of agricultural use, discussed above in the Zoning Ordinance Assessment. The definition of agriculture in Section 1.4.2 "includes processing on the farm of an agricultural product to prepare the product for market and may cause a change in the natural form or state of the product." As discussed above, the current definition is broad enough to include many aspects of agritourism. However, it is also recommended in this document that this definition be amended to more specifically define agritourism uses.

OPPORTUNITIES:

There is an opportunity to clarify how this provision is interpreted partly by refining the definition of agritourism-related uses as discussed above. With this, it may also be useful to clarify in this section (d) on exemptions, the specific list of uses that should not be exempted from building permits. For example, the provision that equestrian facilities that are used by spectators require building permits is presumably a safety issue for structures such as grandstands and bleachers. Similar requirements may be added for other spectator or event uses where safety of the visiting public may be an issue. For all other agritourism uses, however, it should be made clear that they are exempt from building permit requirements.

PART 2. STATE AND LOCAL ALCOHOL PRODUCTION REGULATIONS

WINERY/BREWERY/DISTILLERY REGULATIONS IN STATE CODE

Venues that produce and sell alcoholic beverages have been a major driver of agritourism across the nation. Maryland also has benefited from the rapid expansion of the craft beer and wine industries. In 2006 the state produced just under 2 million gallons of beer. By 2016 that figure had increased to more than 7 million gallons. Wineries have also grown in popularity and number. In 1970 the state had only 7 wineries. As of September 2017, the state had 91 wineries.

Unlike other agritourism enterprises, the production, wholesale distribution, and retailing of alcohol is heavily regulated by the State of Maryland. This section summarizes some important provisions of state law that affect zoning and other code provisions related to agritourism in Montgomery County.²

OVERVIEW

The regulation of alcohol in Maryland, and throughout the United States, separates manufacturers, wholesalers, and retailers into separate ownership and operations. The purpose of this regulatory arrangement is to prevent “vertical integration,” where all steps in the supply chain are controlled by the same firm. Manufacturing and wholesaling of alcoholic beverages in Maryland is regulated by the state’s Comptroller through the issuance of permits. Retail operations are regulated at the local level through either a control or a licensing model. Under the control model the government controls the retail (and in some instances wholesale) selling of alcoholic beverages. Under the licensing model, private firms purchase a license to sell alcoholic beverages.

Most Maryland jurisdictions follow the licensing model, with local boards of license commissioners regulating the sale of alcoholic beverages by private firms. Montgomery County uses both the control and licensing models. In Montgomery County the Board of License Commissioners issues licenses to retailers for the sale of alcoholic beverages. However, Montgomery is one of four counties statewide where retail liquor is only sold through County-run dispensaries. Montgomery County also holds a monopoly on the wholesale distribution of beer, wine, and liquor. This means that a licensed retailer in the County may only sell alcoholic beverages that are purchased from the Montgomery County Department of Liquor Control.

WINERY MANUFACTURER’S LICENSES AND PERMITS

Wineries are required to obtain either a Class 3 or 4 license from the State. The Class 3 license allows the winery to acquire bulk wines from out of state. The Class 4 limited wineries license is most relevant to agritourism in Montgomery County. The State’s Class 4 limited winery license allows license holders to ferment and bottle wine from available Maryland agricultural products. If the Maryland Department of Agriculture (MDA) determines, however, that an insufficient supply of Maryland agricultural products exists, the license holder may use agricultural products from outside the State. A license holder may serve samples of wine, sell or serve more than a dozen food items, hold planned promotional events, purchase bulk wine and blend the wine with the license holder’s wine and pomace brandy if the aggregate purchase does not exceed 25% of the license holder’s annual wine and pomace brandy production, and conduct winemaking and packaging activities at another winery under

² The source of the content in this section is “Regulation of the Alcoholic Beverages Industry in Maryland” written by the Department of Legislative Services in November 2017.

certain circumstances. Wineries with a direct wine shipper’s permit can ship their products directly to Maryland consumers.

Wineries with a Class 4 permit may also obtain a winery off-site permit to sell its products off-premises at the Montgomery County Agricultural Fair, certain farmers’ markets, wine festivals, and other events. According to State code, permit holders are allowed to participate in 32 or less off-site events each year, with no more than 9 at a single venue.

BEER MANUFACTURER’S LICENSES AND PERMITS

Brewers are required to obtain one of four types of state license. The Class 8 farm brewery license is most relevant to agritourism in Montgomery County. The Class 8 farm brewery license allows the license holder to brew, bottle, or contract (manufacture on behalf of another license holder) for up to 15,000 barrels of beer each year. However, that beer must be manufactured with an ingredient from a Maryland agricultural product and produced on the licensed farm. The Class 8 farm brewery license holder may contract with other license holders to brew and bottle beer from ingredients produced on the licensed farm. They may also enter into a temporary delivery agreement with a distributor only for delivery of beer to a beer festival. State law also sets limits on the hours of operation for farm breweries and allows for up to 12 brewery promotion events per year. These events may be held from 10 AM to 10 PM and may not exceed 3 consecutive days.

It should also be noted that Maryland is the only jurisdiction among its neighboring states and the District of Columbia to limit the total amount of beer that may be sold on-premises by a brewery. This is a state law that Montgomery County does not control.

DISTILLERY MANUFACTURER’S LICENSES AND PERMITS

The State’s Class 1 distillery license authorizes the establishment and operation of a plant for distilling, rectifying, and blending an unlimited amount of brandy, rum, whiskey, alcohol, and neutral spirits at the location described in the license. A license holder may sell up to 2.25 liters of product for off-premises consumption to a person on a guided tour of the distillery if the license holder manufactures no more than 27,500 gallons of products each year.

A distillery off-site permit allows the permit hold to sell its product at specific agricultural fairs, farmers’ markets, and liquor festivals, and not more than six other events in a year that have as their major purpose an activity that is not the sale and promotion of alcoholic beverages and for which the distillery’s participation is a subordinate activity.

OTHER

Montgomery (along with Frederick and St. Mary’s counties) may issue an alcoholic beverages license to:

- A nonprofit or for-profit retail business engaged in the display and sale of original artwork by an individual artist or a group of artists. The board may not issue the license to a business that displays and sells commercially prepared or mass-produced artistic products.
- To a holder of a beauty salon permit. The license authorizes the holder to provide limited amounts of beer or wine by the glass for on-premises consumption by a beauty salon customer when the customer is provided a cosmetology service, or while the customer is attending an authorized fundraising event at the beauty salon.

PART 3. ASSESSMENT OF ZONING TEXT AMENDMENT NO. 18-03

OVERVIEW

This zoning text amendment, adopted by the County Council on October 2, 2018 adds farm alcohol production as a use allowed in certain zones and establishes standards for farm alcohol production. ZTA 18-03 incorporates many of the standards applicable to wineries in the zoning ordinance and applies those standards and others to breweries, cideries, and distilleries. It allows farm alcohol production in agricultural and rural residential zones under certain circumstances. The amendment also includes standards for tasting rooms, the sale of food, and events.

SECTION 1.4.2 SPECIFIC TERMS AND PHRASES DEFINED

Regionally-Grown Products: Grains, fruits, vegetables, flowers, or honey harvested within the 5-state area of Maryland, Virginia, West Virginia, Delaware, and Pennsylvania and the city of Washington, DC.

ISSUES:

The multi-state definition of “regionally grown” used in the ZTA encompasses a large area, with the advantage that it pulls in more potential suppliers than if the definition were more narrowly construed. However, it may not fit with a consumer’s perceptions of what is a locally produced product. The Farm Alcohol Production use standards require that a “*plan with a schedule to increase the use of local Montgomery County agricultural products in the production process must be submitted to the Department of Permitting Services.*”

OPPORTUNITIES:

A jurisdictional definition of regionally grown is easy to define but is not as relevant from a consumer marketing standpoint as a mileage definition. Some other counties use a 50-mile radius, for example, to define locally or regionally grown products. The County may want to consider adopting a mileage-based, rather than jurisdictional-based, definition.

SECTION 3.2.10 ACCESSORY AGRICULTURAL USES

B. Farm Alcohol Production

1. Defined

Farm Alcohol Production means the transformation of agricultural products into alcoholic beverages. Farm Alcohol Production includes wineries, cideries, breweries, or distilleries on farms. Farm Alcohol Production may include other activities unrelated to the production and sale of alcohol or farming under certain circumstances.

2. Use Standards

- a) Where Farm Alcohol Production is allowed as a limited use, it must satisfy the following standards:*
 - i. The production capacity and associated activities of the alcoholic beverage must comply with the license issued by the State of Maryland Comptroller's Office.*
 - a. A brewery must have a Class 8 Farm Brewery License;*
 - b. A winery must have a Class 4 Limited Winery License; and*
 - c. A distillery must have a Class 1 Distillery License.*

- ii. *Some ingredients used in the production process must be grown on site.*
- iii. *Wineries and cideries must have at least 5 acres of fruit used in alcohol production grown on site or on abutting or confronting property rented by the producer, and:

 - a. *have at least 20 acres of grapes or other fruit in cultivation on property they own, rent, or control; or*
 - b. *source a majority of their grapes or other fruit from Maryland.**
- iv. *Breweries and distilleries must source a majority of their ingredients, if available at competitive prices, from Regionally-Grown Products. At least 1.0 acre of ingredients must be grown on site for use in the alcohol production process.*
- v. *A plan with a schedule to increase the use of local Montgomery County agricultural products in the production process must be submitted to the Department of Permitting Services.*
- vi. *The underlying land must be classified as agricultural by the State Department of Assessments and Taxation and the facility must be an accessory use of the farm.*
- vii. *Subject to all licensing requirements, the facility may:

 - a. *operate an on-site tasting room for its products; and prepare and sell food to the extent allowed by the State alcohol manufacturing license.**
- viii. *Events and activities that are normal and customary to the regular operations of a winery, cidery, brewery, and distillery, including membership-related events and traditional festivals related to agriculture or the business of alcohol production, are allowed without a limitation on the number of guests. A maximum of 5 days of events that require an entrance ticket or a cover charge is allowed each calendar year.*
- ix. *Weddings, corporate retreats, and other events accessory to the production of alcohol are allowed if the number of guests is equal to or lower than the capacity allowed by the Department of Permitting Service's Use and Occupancy Permit for on-site buildings:

 - a. *Except as allowed under subsection (c), the maximum number of participants at any event is 225. There is no limit on the number of events with 100 participants or fewer. The total maximum number of days of events in a calendar year is 50 for events with more than 100 participants.*
 - b. *A written log of all events must be kept by the holder of the alcohol production license. That log must be available for inspection by the Department of Permitting Services.*
 - c. *As a conditional use under Section 7.3.1, the Hearing Examiner may approve additional days of large public events and events with greater numbers of participants for either normal and customary events or other accessory events.**
- x. *If any structure is used for activities under subsection vii, viii, or ix, the structure must satisfy all building, life safety, fire, and sanitation code requirements.*
- xi. *Illumination at the property line must be limited to 0.1 footcandles or less.*
- xii. *All parking must be accommodated on site.*
- xiii. *Noise levels must satisfy Chapter 31B standards.*
- xiv. *Any new building or surface parking area used for Farm Alcohol Production and related events must be located at least 100 feet from an existing dwelling unit on an abutting property.*
- xv. *In the AR zone, except for sites where the property owner obtained a Maryland alcohol producer's license before October 2, 2018, the minimum site area for breweries and distilleries is 25 acres.*
- xvi. *Where Farm Alcohol Production is allowed as a conditional use, it must satisfy the standards under Section 7.3.1.*

ISSUES:

- Prior to the ZTA, the ordinance did not have specific allowance for farm alcohol production with the exception of wineries. The new ZTA combines wineries into a general provision for farm alcohol production that includes wineries, breweries, cideries and distilleries.
- For wineries, which were a Limited/Conditional use in the AR zone prior to the amendment, the former provisions allowed 9 days of events that require an entrance ticket or a cover charge for each calendar year under the A/R Limited Use provisions, with no language about other types of events. The new ZTA explicitly defines limits for types of events at breweries, cideries, and distilleries. It allows for up to 50 events accessory to the production of alcohol per year with between 100 and 225 participants (if the capacity of the facility allows for it), and it sets no limits on guests for events “*that are normal and customary to the regular operations of a winery, cidery, brewery, and distillery.*”
- The zoning text amendment allows for the facility to “*prepare and sell food to the extent allowed by the State alcohol manufacturing license.*” Section 2-210 of the state’s Alcoholic Beverages article defines the food items that can be sold at Class 8 farm breweries to include “bread and other baked goods; chili; chocolate; crackers; cured meat; fruits (whole and cut); hard and soft cheese (whole and cut); salads and vegetables (whole and cut); ice cream; jam; jelly; vinegar; pizza; prepackaged sandwiches and other prepackaged foods ready to be eaten; soup; and condiments.” It should be noted that these facilities are allowed a more extensive array of food products than are allowed for rural country markets in the AR zone and that restaurants are not allowed in the AR or Rural Residential districts. This means that the Farm Alcohol Production use will be the only way to sell most foodstuffs as a restaurant in the AR zone.
- The zoning text amendment also both increases and relaxes standards related to the cultivation of crops grown on site for use in the production process. It states that “*wineries and cideries must have at least 5 acres of fruit used in alcohol production grown on site or on abutting or confronting property rented by the producer, and: have at least 20 acres of grapes or other fruit in cultivation on property they own, rent, or control; or source a majority of their grapes or other fruit from Maryland.*” This relaxes the previous winery standard by allowing the fruit to be grown on an abutting or confronting property rented by the producer, rather than requiring it to be grown on site. But it also may be placing a requirement for crop production that is difficult to meet for a beginning vintner. For instance, in Virginia, 50 percent of vineyards are 7.3 acres or less.³

OPPORTUNITIES:

- In general, the recent adoption of this new ZTA makes it difficult to suggest major new additional changes to these new standards. However, one exception of an opportunity to reconsider the requirements for the cultivation of crops grown on site for use in the production process is noted below.
- Under the recommendations provided above for Wineries (under the ordinance provisions prior to the adoption of this ZTA) we had suggested that there is an opportunity to consider a “percent of land area under cultivation in grapes or other fruit” standard for the cultivation of crops grown on site for use in the production process, rather than an absolute minimum of 5 acres (although the 5-acre minimum could still be included in addition). This provision would provide more flexibility to smaller wineries and beginning vintners.

³ Virginia Commonwealth University. “Virginia 2016 Commercial Grape Report.”