

MEMORANDUM

June 21, 2012

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz,  Legislative Attorney
SUBJECT: Zoning Text Amendment 12-03, Agricultural Zones - Wineries

Zoning Text Amendment (ZTA) 12-03, sponsored by Councilmembers Rice, Floreen, and Elrich, was introduced on February 14, 2012.

The purpose of ZTA 12-03 is to allow wineries in the RDT zone greater latitude on the number of public events allowed before a special exception is required. Currently, two public events are allowed before a special exception is required. In the opinion of the sponsors, limiting wineries to two public events per year is unduly restrictive in a zone where agriculture is the preferred use. ZTA 12-03 would increase the number of public events allowed for a winery to 6 before a special exception is required.

ZTA 12-03 as introduced would amend the definition of a winery to require that 20 percent of the fruit for a winery be grown on site. The intent of the sponsors is to have assurance that wineries are connected with growing grapes on the property.

The Planning Board (4-1 with Commissioner Dreyfuss dissenting) voted to take no position on ZTA 12-03. A majority of the Board recommended getting stakeholders together to discuss the issues of on-site vineyards and the number of public events. The Board applauded the goal of ZTA 12-03 to ensure on-site vineyards without endorsing the ZTA. The recommendation to defer action on ZTA 12-03 was suggested by Planning Staff. In their view, more work was needed on both the definition of a winery and a public event.

The Council held a public hearing on March 27, 2012. The Agricultural Advisory Committee (AAC) supported increasing the number of public events. In the opinion of the AAC, the number of public events could help to promote more wineries in the agricultural zones. The AAC also recommended adopting a definition of winery that avoids making the winery illegal in a year of total crop failure. The group cited Frederick County standards:

A farm winery must have a minimum of 10 acres, a valid Class IV Maryland wine license and must grow 1 acre of fruit for every 2,000 gallons of wine or juice produced. For purposes of this

use, the term “farm” includes contiguous and noncontiguous parcels within the county in active agricultural production which are owned or leased by the processor.

A group of stakeholders was convened by Councilmember Rice. It included representatives from the only operating winery in the County, neighbors to the winery, civic associations, the Audubon Naturalist Society, the Department of Economic Development, the Department of Permitting Services, and the Planning Board. There were several general agreements among the group on the definition of a winery and the nature of a public event. There was no specific agreement on the numbers that should be associated with those metrics.

Issues

How should the definition of winery be amended?

ZTA 12-03 as introduced would amend the definition of winery as follows:

Winery: A facility for processing grapes or other fruit into wine for sale on site or through wholesale or retail outlets. At least 20 percent of the fruit used in the winemaking process must be grown on the site of the winery.

There are 2 fundamental problems with the definition: 1) if there was a total crop failure of the on-site vineyard, then the winery would not be permitted to produce any wine from off-site grapes that year;¹ 2) DPS would have the problem of determining the percentage of off-site grapes used in any given year of production.²

The intent of the definition was to ensure that a winery is a place that grows grapes. The stakeholder group agreed with the principle that on-site cultivation was a better means of accomplishing that goal than a percentage of grapes in the wine. The stakeholders did not agree on either a minimum number of acres under cultivation or a formula that related the acres in cultivation to the production capacity of the winery.

Staff recommends part of the criteria used by Frederick County:

Winery: A facility for processing grapes or other fruit into wine for sale on site or through wholesale or retail outlets. At least one acre of grapes or other fruit must be grown on site for every 2,000 gallons of wine or juice producing capacity.

An alternative that the Committee might consider is to have an absolute minimum number of acres under cultivation on site. Although Frederick County has a minimum acreage of 10 acres, nearby sites under contract can be included to meet the minimum acreage requirement. Frederick County’s minimum acreage is not an on-site minimum acreage.

¹ If on-site production is zero, then no off-site grapes could be used under the requirement that 20 percent of grapes must be grown on site.

² The assignment to count the number of trucks coming into a winery and comparing that to the number of on-site truck loads is a job description that DPS does not find appealing.

What events should be counted, and how many events should be allowed without a special exception?

Currently, the code limits “public events”. The Zoning Ordinance does not define “public event”. As far as DPS knows, a public event is anytime the public is invited (by any form of advertisement, including website posting) to an establishment for any stated purpose. What a winery might view as normal course of business advertising, DPS might view as a public event. From the winery’s point of view, the code should distinguish between the normal course of business and a major happening, such as a grape stomp.

The public understanding of what activity would be regulated and the Department of Permitting Services’ enforcement efforts might be helped by having a definition of events that could significantly inconvenience neighbors for limited periods of time. The stakeholders agreed on distinguishing ticketed or cover charge events from normal course of business events. There was also agreement that after dark activities should be prohibited. The stakeholders did not agree on the number of events.

Councilmember Rice recommends revising ZTA 12-03 so that footnote 38 reads as follows:

³⁸ Permitted by right if no more than two public events are held per year; however, in the RDT zone, a winery is permitted by right if:

- 1) no more than 9 days of events that require an entrance ticket or a cover charge are held per year; and
- 2) the public is allowed on winery property only during daylight hours.

The following text was considered at the stakeholders meeting:

A ticketed event shall be one open to the public at the winery or on a winery property for which there is a cover charge or any charge apart from that for wine, wine tastings, winery or vineyard tours, food and drink that may be served at a winery under Maryland code section _____. wine drinking paraphernalia (e.g. corkscrews and filters), and clothing, wine glasses and other similar items bearing the name or logo of the winery, which items, inter alia, are sold at a winery during the regular course of its business.

A ticketed event may last more than one day, but in no case shall it be longer than four (4) noncontiguous days.

Staff would recommend a requirement to provide notice to DPS and the public at least 60 days before events that would require tickets or a cover charge.

This Packet Contains
ZTA 12-03 (revised)

© number
1 – 3

Zoning Text Amendment No.: 12-03
Concerning: Agricultural Zones -
Wineries
Draft No. & Date: 3 – 6/15/12
Introduced: February 14, 2012
Public Hearing: March 27, 2012
Adopted:
Effective:
Ordinance No.:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: Councilmembers Rice, Floreen, and Elrich

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- revise the definition of a winery;
- revise the number of public events that a winery can hold annually as of right in certain zones; and
- generally amend the provision for wineries.

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-A-2 “DEFINITIONS AND INTERPRETATION.”
Section 59-A-2.1 “Definitions.”
DIVISION 59-C-9 “AGRICULTURAL ZONES.”
Section 59-C-9.3 “Land Uses.”

EXPLANATION: *Boldface* indicates a Heading or a defined term.
Underlining indicates text that is added to existing law by the original text amendment.
[Single boldface brackets] indicate that text is deleted from existing law by original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
* * * indicates existing law unaffected by the text amendment.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. DIVISION 59-A-2 is amended as follows:

DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION.

Sec. 59-A-2.1. Definitions.

* * *

Winery: A facility for processing grapes or other fruit into wine for sale on site or through wholesale or retail outlets. At least [[20 percent of the fruit used in the winemaking process must be grown on the site of the winery]] one acre of grapes or other fruit must be grown on site for every 2,000 gallons of wine or juice producing capacity.

* * *

Sec. 2. DIVISION 59-C-9 is amended as follows:

DIVISION 59-C-9. AGRICULTURAL ZONES.

* * *

Sec. 59-C-9.3. Land uses.

No use is allowed except as indicated in the following table:

— **Permitted uses.** Uses designated by the letter “P” are permitted on any lot in the zones indicated, subject to all applicable regulations.

— **Special exception uses.** Uses designated by the letters “SE” may be authorized as special exceptions under Article 59-G.

	Rural	RC	LDRC	RDT	RS	RNC	RNC/TDR
* * *							
(b) Agricultural-Industrial:							
* * *							
Winery. ³⁸	SE/P	SE/P	SE/P	SE/P	SE/P	SE ²	SE ²
* * *							

21 ³⁸ Permitted by right [provided] if no more than two public events are held per year; however, in
22 the RDT zone, a winery is permitted by right if:

23 1) no more than [[6 public events]] 9 days of events that require an entrance ticket or a
24 cover charge are held per year; and

25 2) the public is allowed on winery property only during daylight hours.

26

27 **Sec. 3. Effective date.** This ordinance becomes effective 20 days after the
28 date of Council adoption.

29

30 This is a correct copy of Council action.

31

32

33 _____
Linda M. Lauer, Clerk of the Council