

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
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IN THE MATTER OF:
WINDRIDGE VINEYARDS LLC
Applicant

Robert Butz

For the Application

Robert Harris, Esquire
Attorney for the Applicant

Before: Lynn A. Robeson, Hearing Examiner

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OZAH Case No. CU 22-10

HEARING EXAMINER’S REPORT AND DECISION

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I. STATEMENT OF THE CASE

Filed on June 24, 2022, the Applicant, Windridge Vineyards, LLC (Applicant or Windridge) filed an application for approval of a conditional use for a Country Inn under Section 59.3.5.3.A.2.b of the Zoning Ordinance on property located at 15700 Darnestown Road, Germantown, MD 20874 in the RC (Rural Cluster) Zone. Windridge already operates a Farm Alcohol Production facility (*i.e.*, a winery) on the property. A winery is a limited use permitted under Section 59.3.2.10.B of the Zoning Ordinance.

Staff of the Montgomery County Planning Department issued its Report recommending approval of the application on September 23, 2022, with two conditions: (1) the use is limited to a Country Inn in addition to the existing use of Farm Alcohol Production [the winery], and (2) all Limited Use requirements remain in full force and effect for the Farm Alcohol Production use per Section 59.3.2.10.B. Staff's recommendation was predicated on there being no changes to the existing structures on the property. Exhibit 17, p. 6. Staff commented on the purpose of the application (*Id.*):

Adding this additional use while utilizing all the existing structures and site conditions with no proposed exterior changes will allow Windridge to:

- Convert part of the existing lower-level wine cellar into a tasting area offering upscale food and wine pairings.
- Extend the hours of operations to allow customers to enjoy the sunsets most summer days. Other than the events allowed per the Farm Alcohol Production, the applicant is not planning on staying open past 10:00 pm on most days.

Subsequent correspondence with the Applicant, however, revealed that a 3,500 square foot tasting room had already been built within the winery and that it proposed to construct a new 5,000 square foot tasting room, independent of the building housing the winery, to the northeast. Exhibits 24, 30. Windridge explained that (Exhibit 24):

After preliminary plan approval Applicant determined that they could not afford to build the tasting room as originally planned and built the winery, wine cellar and a smaller tasting room of 3,500 sq. ft. co-located with the winery, as well the parking area, the septic system to serve the full approved development (including reserve septic fields for future expansion).¹

The October 21, 2022, public hearing proceeded as scheduled. Contrary to the Staff Report, Mr. Robert Butz, Managing Member of Windridge, testified that Windridge sought approval of a new, separate, 5,000 square foot tasting room northeast of the winery. Exhibit 24, T. 12-13.

After being advised that an application for new construction must be remanded to Staff for further review, the Applicant opted to forgo requesting approval for the new construction, and the hearing proceeded to approve a Country Inn for the existing operations, including the 1,500 tasting room already constructed. T. 12, 24-36. No one appeared either in support or opposition to the application. The record remained open for 10 days to receive the transcript, and closed on October 31, 2022.

After review of the record of the case, the Hearing Examiner approves the application for a Country Inn on the subject property as configured in the site plan (Exhibit 8) reviewed by Staff, and subject to the conditions of approval in Part IV of this Report.

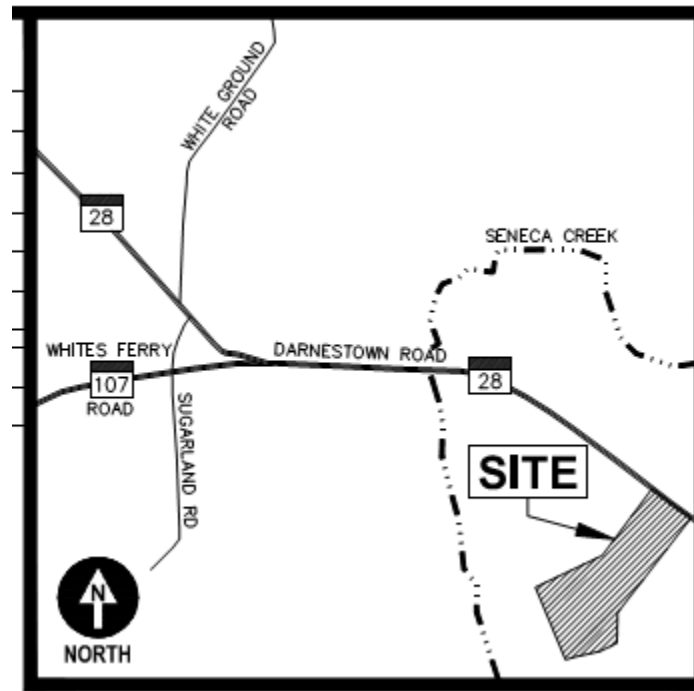
II. FACTUAL BACKGROUND

A. Subject Property

Staff advises the subject property consists of 44.874 acres, accessed from Darnestown Road. Exhibit 8, 17. A map of the general vicinity is included on the approved preliminary plan

¹ At the public hearing, Mr. Butz testified that the tasting room constructed in the winery building is 1,500 square feet, rather than 3,500 square feet. As Mr. Butz's testimony is under oath, and the other information was in an email, the Hearing Examiner finds that the existing tasting room is 1,500 square feet in size.

(Exhibit 9, on the next page). According to Staff, the property slopes downward from Darnestown Road toward the western property line. It contains two forest stands along the northwest and



Vicinity Map
Exhibit 9

southwest corners. Two streams follow the forest stands. Exhibit 17, p. 5. The property is currently developed with an existing vineyard approved for Farm Alcohol Production. A 96,658-square foot building houses a tasting room on the first floor, a wine cellar, and a covered pavilion and outdoor patio. Picnic tables and seating areas surround the winery building. The Staff Report includes an aerial photograph of the existing improvements (Exhibit 17, p. 5, on the next page).

B. Surrounding Area

To determine the compatibility of the proposed use with the surrounding area, it is necessary to delineate the “surrounding area”, which is the area that will be most directly impacted by the proposed use. Once delineated, the Hearing Examiner must assess the character of the

neighborhood and determine whether the impacts of the proposed conditional use will adversely affect that character.



Aerial Photograph of Existing Improvements
Exhibit 17, p. 5butts

Staff's determination of the surrounding area is shown below (Exhibit 17, p. 4). Staff characterized the surrounding area as "primarily low-density residential along with agricultural



uses in the RC Zone. *Id.* Staff advises that an active farm abuts the property to the north and northwest, low density residential developments are to the northeast and southeast, and Seneca State Park is to the west.

Nothing in the record contradicts Staff's delineation or characterization of the surrounding area. Having no evidence to the contrary, the Hearing Examiner finds that the boundaries of the surrounding area are those delineated by Staff and that the character of the area is a mix of low-density residential uses mixed with agricultural and recreational (the State Park) uses.

C. Proposed Use

Mr. Butz testified that he is a lifelong farmer in Montgomery County and grew up on the farm next door. The winery sits on a farm that has been in his family since the 1960's. Farming has been the only career he's had and has run the farm with his three brothers for 30+ years. T. 9.

About 15 years ago, he and his wife started thinking about what the farm would look like in the future. Their current operations are traditional commodity crops, such as corn, wheat, soy, etc. That kind of farming requires access to large tracts of land that are near each other, which is

getting more and more difficult in Frederick and Montgomery Counties. They came up with the idea of a winery and planted their first vineyard 12 years ago. At the time, he thought he would just sell fruit in the local market, which they did for about 5 years. Then he decided he could use the fruit to make wine and made his first vintage 2017 and began selling in 2019 out of a small pavilion building. In 2020, they built a new winery and tasting room, and the facilities shown on Exhibit 8. T. 9-10.

Mr. Butz testified Windridge requested the Country Inn conditional use to expand operations to meet customer expectations. Under the existing liquor license for the winery, they do not have approval to serve food from an on-site kitchen and must use food trucks to provide food. They are also restricted to offering only alcoholic beverages produced on-site. The use of food trucks has been the source of at least one complaint from a customer, according to Mr. Butz. The entire property will be operated with the limited use (winery) and the Country Inn approvals in place. They will comply with necessary regulations and conditions for both throughout the property.

Mr. Butz testified that a preliminary plan has been approved that outlines their long-term vision for the site. It permits a commercial kitchen and a 5,000 square foot tasting room. Exhibit 9. However, just as they were going to build, the COVID pandemic hit and it was not feasible for them to build a 5,000 square foot stand-alone tasting room. T. 11. What they ended up doing is constructing a smaller, 1,500-foot tasting room over the existing winery. They have been operating that way since then.

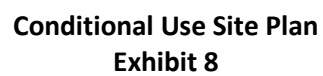
1. Conditional Use Site Plan

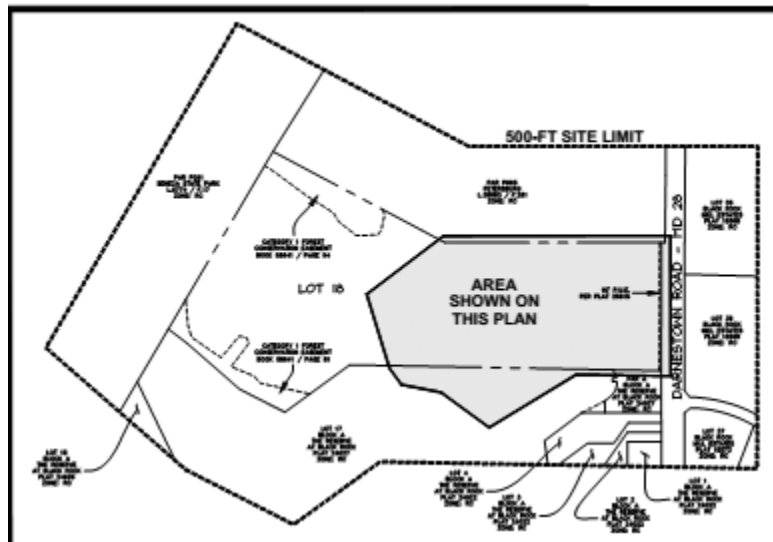
The application presented at OZAH's public hearing was different than what had been reviewed by Staff. Staff reviewed Exhibit 8, which shows no change to existing exterior

conditions. At the public hearing, Windridge requested the addition of a new stand-alone 5,000 square foot tasting room. Exhibit 30. Ultimately, Windridge chose to proceed with the plan that had been reviewed by Staff (Exhibit 8), rather than having its application for the new tasting room remanded to Staff for further review. T. 36-37. This decision describes the proposed use and depicted by ***Exhibit 8***, which is shown on the following page.

2. Operations

Mr. Butz plans no changes to the existing operations, except that they will be open later in the evening. The grapes used for wine will still be grown on the property. T. 50. They will have the same number of employees and the same buildings. Right now, they largely work on a





reservation system. For that reason, he anticipates they will have fewer customers coming at one time because he will be able to offer more services and they will stay longer. He doesn't feel like the vineyard needs more customers but would like the customers to have a broader range of options when they come. T. 15.

Seating is limited by the septic capacity. According to Mr. Butz, he is using one septic field currently, but has approval for a reserve septic field that will be used when a commercial kitchen is installed. If large events exceed the existing septic capacity, he can use portable sanitary facilities.

The winery use currently has amplified music on Friday nights. They have had no noise complaints. They plan no changes to the existing lighting, which Windridge represents is safe and adequate for egress after dark. Exhibit 22. Mr. Butz agreed to conditions of approval limiting noise levels at the property line to those mandated by the County Code (*i.e.*, 55dB in the evening). He also agreed to a condition that illumination from lighting will not exceed 0.1 footcandles at the property line. The location for events is about 1,000 feet from the property line. T. 46.

Mr. Butz testified that he may have had approximately four events at the winery that had around 200 people. In the normal course of business, he testified that he has 220 people showing up in very close proximity to each other. T. 43. There are times when everyone shows up at one time, such as an hour before sunset on a Friday. T. 43-44. According to him, he has witnessed situations when 225 people have shown up at 5:00 pm on a Friday and he's never had a problem with congestion on Darnestown Road. Events like weddings typically involve a bus and corporate events use carpools with designated drivers. In that case, the number of cars is nowhere near 225 people, even if that number of people are attending. T. 44.

According to Mr. Butz, he personally counted room for 274 parking spaces on the property, some of which are in a field or gravel and therefore are not marked. Therefore, he testified, a cap of 225 on the number of people attending at one time can be accommodated on-site.

D. Community Response

No one from the community appeared either for or against the conditional use application.

III. FINDINGS AND CONCLUSIONS

A conditional use is a zoning device that authorizes uses if pre-set legislative standards are met. Pre-set legislative standards are both specific to a particular type of use, as set forth in Article 59.3 of the Zoning Ordinance, and general (*i.e.*, applicable to all conditional uses), as set forth in Division 59.7.3 of the Zoning Ordinance. The specific standards applied in this case are those for a Group Day Care for up to 12 children under Section 59-3.4.4.D. of the Zoning Ordinance. The appropriate standard to be used in determining whether a conditional use would have an adverse effect and, therefore, should be denied, is "whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a [conditional use]." *Montgomery County*

v. Butler, 417 Md. 271, 275 (2010). Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (*Zoning Ordinance*, §7.1.1.), the Hearing Examiner concludes that the conditional use proposed in this application, with the conditions imposed in Part IV of this Report and Decision, would satisfy the specific and general requirements for the use.

A. Necessary Findings (Section 59.7.3.1.E.)

The general findings necessary to approve all conditional uses are found in Section 59.7.3.1.E of the Zoning Ordinance. Standards pertinent to this review, and the Hearing Examiner's conclusions for each finding, are set forth below:²

E. Necessary Findings

1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:

a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;

Conclusion: Staff advises that the application conforms to the approved preliminary plan approved for the property (Preliminary Plan No. 120190020). Exhibit 17, p. 8. Farm alcohol production (*i.e.*, the winery) is a limited use in the RC Zone. *Zoning Ordinance*, Sections 59.3.1.6, 59.3.2.10.B. Mr. Butz testified that it continues to meet all the limited use standards for a winery. T. 50-52. Having no evidence to the contrary, the Hearing Examiner finds that this the application conforms to the approved preliminary plan and the limited use standards for a winery.

b. satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6.

² Although §59.7.3.1.E. contains six subsections (E.1. through E.6.), only subsections 59.7.3.1.E.1., E.2. and E.3. contain provisions that apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

Conclusion: This subsection requires an analysis of the standards of the RC (Rural Cluster) Zone contained in Article 59-4; the use standards for Country Inn contained in Article 59-3; and the applicable development standards contained in Article 59-6. Each of these Articles is discussed below in separate sections of this Report and Decision (Parts III.B, C, and D, respectively). Based on the analysis contained in those discussions, the Hearing Examiner finds that the application satisfies the requirements of Articles 59-3, 59-4 and 59-6.

c. substantially conforms with the recommendations of the applicable master plan;

The property falls within the area covered by the *2002 Potomac Subregion Master Plan* (Master Plan or Plan). Staff concluded that the application substantially conforms to the recommendations of the Master Plan (Exhibit 17, p. 10):

The Master Plan recommends this area to “provide a compatible mix of agricultural uses and low-density residential development that promotes agriculture and protects scenic and environmentally sensitive areas.” The existing winery with the additional use of a Country Inn will help support the continued farming/agricultural use and scenic areas on the property.

Conclusion: Mr. Butz testified that the winery is a means of continuing to farm the land that has been in his family since the 1960's. The farm currently grows commodity crops (*e.g.*, corn, wheat, etc.) but the large tracts of land needed for commodity farming are becoming rare in the area. T. 9-10. The property is already subject to 3.34-acre forest conservation easement, and two on-site streams and their environmental buffers have been preserved. Exhibit 17, pp. 7-8. He plans to keep cultivating grapes on the property and will implement both the winery limited use and the Country Inn conditional use. Given Mr. Butz's testimony, including his plan to keep growing vineyards on the site, the Hearing Examiner finds that the application substantially conforms with the Master Plan.

d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;

The Hearing Examiner already found that this application conforms to the Master Plan. Planning Staff found that the use will not alter the existing character of the area because no modifications to the property's exterior are proposed, and the extended hours would not change the character of the property or the surrounding area. Exhibit 17, p. 10.

Conclusion: The Hearing Examiner agrees with Staff that the existing landscaping and structures, permitted when the winery was developed, are now part of the existing character of the area. There is no evidence to contradict Staff's determination that operational changes (the extended hours) will alter the character of the area and conditions of approval ensure that existing impacts will not change, particular as the winery use is located well away from the property lines. Based on this record, the Hearing Examiner finds that the application meets this criterion.

e. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;

Staff determined that the addition of this conditional use will not adversely change the existing character of the surrounding area because there are no other conditional uses within the area. Staff found that the use proposed maintains the agricultural, low-density character of the surrounding area.

Conclusion: The evidence in this record supports Staff's conclusion. The entire property is approximately 45 acres, with relatively few physical improvements. While some aspects of the Country Inn are commercial in nature, in this case, the designation is sought primarily to enhance

services that the winery can provide without a major change in operations. The Hearing Examiner finds that this standard has been met.

f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of "a conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:

i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or

ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and

Staff advises that public facilities are adequate to serve the use. These were tested for the winery in the preliminary plan previously approved in 2019. According to Staff, the Country Inn designation adds no new peak hour trips to the 2019 approval. Staff verified with the Department of Permitting Services Well and Septic Section that the approved septic system (one existing and one reserve field approved) will support the additional hours of operation. Exhibit 17, pp. 10-11. Conclusion: Nothing in the record contravenes Staff's analysis, as Windridge represents that there will be no change in operations. The Hearing Examiner adds a condition limiting seating to the capacity permitted by the existing septic system (not including reserve fields). Events larger than the capacity of the existing septic system may occur if the Applicant obtains portable sanitary facilities.

g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an

inherent and a non-inherent adverse effect in any of the following categories:

- i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;***
- ii. traffic, noise, odors, dust, illumination, or a lack of parking; or***
- iii. the health, safety, or welfare of neighboring residents, visitors, or employees.***

Conclusion: This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use on nearby properties and the general neighborhood. Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” *Zoning Ordinance*, §1.4.2. Inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use. Non-inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* Non-inherent adverse effects are a sufficient basis to deny a conditional use, alone or in combination with inherent effects, if the adverse effect causes “undue” harm to the surrounding neighborhood. When analyzing whether impacts are inherent or non-inherent, the Hearing Examiner must examine the size, scale, scope, light, noise, traffic, and environmental effects of the proposed use.

Staff identified the following physical and operational characteristics necessarily associated with (*i.e.*, inherent to) a Country Inn: (1) vehicular trips to and from the property; (2) hours of operation; (3) parking for employees and customers; (4) noises or odors associated with vehicles, and (5) lighting. Exhibit 17, p. 11. To this list, the Hearing Examiner would add noise

from amplified music. Staff concluded that the proposed application did not have any non-inherent adverse effects (*Id.*):

These characteristics are inherent and are typically associated with similar agriculture and low-density uses and do not exceed what is normally expected. All the abutting and confronting agricultural and low-density residential uses are well buffered from the Property with sufficient distance, existing landscaping and existing Category I forest Conservation Easements surrounding three out of the four sides of the Property.

In response to a question from the Hearing Examiner, Mr. Butz testified that the winery operates in a manner like other wineries in the area. T. 53.

Conclusion: Nothing in the record contradicts Staff's finding that there are no non-inherent adverse effects from this use. The Applicant has agreed to conditions limiting noise from amplified music and illumination at the property line to the levels mandated by the Zoning Ordinance and County Code. Mr. Butz testified that the property has had up to 225 people at one time during the peak hour without causing congestion on Darnestown Road. Based on this record, the Hearing Examiner finds that this standard for approval has been met, with the conditions imposed in Part IV of this Report.

2. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.

Staff determined that the application met this criterion because Windridge proposes no change to existing improvements or operations.

Conclusion: The Hearing Examiner agrees with Staff that approval of a Country Inn on this property will not change the character of the neighborhood. While there are some changes to operations (such as later hours), the bulk of the operations remain the same and the seating area and tasting room are well buffered from neighboring properties. The Hearing Examiner finds that this standard has been met.

3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.

Conclusion: The application satisfies all specific requirements for the conditional use, and as discussed above, the proposed use will be compatible with the neighborhood. The Hearing Examiner concludes that, with the conditions imposed in Part IV of this Report and Decision, the conditional use should be approved.

B. Development Standards of the Zone (Article 59.4)

To approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the zone where the use will be located – in this case, the RC Zone. Development standards for the RC Zone are contained §59.3.4.3.B of the Zoning Ordinance. Staff advises that the application meets all development standards of the RC Zone and the limited use standards for a Country Inn (see Part III.C, next). Staff included in its Report a table (shown on the next page) of the development standards of the RC Zone, the limited use standards for a Country Inn, and parking standards in the Staff Report.

Conclusion: The table in the Staff Report demonstrates that improvements meet all development standards for the RC Zone in Article 59.4 of the Zoning Ordinance. Having no evidence to the contrary, the Hearing Examiner finds that the application meets the development standards of the RC Zone.

C. Use Standards for a Country Inn (Section

The specific use standards for approval of a Country Inn are set out in Section 59.3.5.3.A of the Zoning Ordinance:

Table 1: Conditional Use Development and Parking Standards (RC)

Development Standard Section 59.4.3.4.B	Permitted/ Required	Existing/Proposed*
Minimum Lot Area	5 Acres	44.72 Acres
Minimum Lot Width at Front Building Line	300 ft	664.33 ft
Minimum Lot Width at Front Lot Line	50 ft	665.23 ft
Maximum Density		
Maximum Lot Coverage	10%	0.85%
Minimum Front Setback	50 ft	>50 ft
Minimum Side Setback	20 ft	>20 ft
Minimum Sum of Side Setbacks	40 ft	>40 ft
Minimum Rear Setback	35 ft	>35 ft
Maximum Height	50 ft	<50 ft
Vehicle Parking Requirement (Section 59.6.2.4.B)		
Winery/Country Inn: 10/1,000 patron area	25 spaces	>100 spaces
Production/Storage: 1.5/1,000 sq. ft.	11 spaces	

*There is no proposed development with this Application.

**Table Comparing Development Standards of the
RC Zone, Limited Use Standards for Country Inn, and Vehicle Parking
Requirements with Proposed Development
Exhibit 17, p. 9**

1. Defined

Country Inn means an establishment for dining in a rural area that may include a maximum of 12 overnight guest rooms and the following subordinate uses: rural antique shop; handicrafts or art sales; equestrian- related retail sales and service; and recreational facilities primarily for the use of guests.

Conclusion: The application meets this definition. No retail uses other than service of food and alcohol are proposed.

b. Where a Country Inn is not legally existing before October 30, 2014, it may be allowed as a conditional use by the Hearing Examiner under Section 7.3.1, Conditional Use and the following standards:

- i. The minimum lot area is 2 acres, or a lesser area if a master plan recommends a lesser area.***
- ii. The maximum coverage is 10%.***

- iii. A minimum of 50% of the lot must be open space.*
- iv. The minimum setback from any street is 50 feet. The minimum setback from any other lot line is 75 feet.*
- v. Except in a building designated as a historic resource by the Master Plan for Historic Preservation, in the R-200 zone, the proposed site must have at least one property line abutting R, RC, RNC, or AR zoned property and the abutting property zoned R, RC, RNC, or AR must be at least 2 acres in size.*

Conclusion: Section 59.3.4.4.D.2.b requires a conditional use to meet all limited use standards in the section above. The table in the on page 19 of this Report demonstrates that the application meets all the limited use standards as far as setbacks, frontage, lot size, open space, and maximum lot coverage. The certified zoning map (Exhibit 4) shows that the property abuts two other large properties in the RC Zone. This standard has been met.

D. General Development Standards (Article 59.6)

Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. Many of these are not applicable to this application because the existing exterior improvements have been previously approved, and no changes are proposed. *Zoning Ordinance*, Sections 59.7.7.1.A.1, 59.6.4.2. (landscaping and outdoor lighting).³ This Report discusses the requirements of Article 6 that do apply to this case.

1. Parking Spaces Required

Staff determined that the winery and Country Inn uses require a total of 36 parking spaces. Exhibit 17, p. 9. At the public hearing, Mr. Butz testified that he would like to have events of up

³ Section 59.7.7.1.A.1 of the Zoning Ordinance states: "A legal structure or site design existing on October 30, 2014 that does not meet the zoning standards on or after October 30, 2014 is conforming and may be continued, renovated, repaired, or reconstructed if the floor area, height, and footprint of the structure are not increased, except as provided for in Section 7.7.1.C for structures in Commercial/Residential, Employment, or Industrial zones, or Section 7.7.1.D.5 for structures in Residential Detached zones. "Site Design" is defined as, "[t]he external elements between and around structures that give shape to patterns of activity, circulation, and form. Site design includes landforms, driveways, parking areas, roads, sidewalks, trails, paths, plantings, walls or fences, water features, recreation areas and facilities, lighting, public art, or other external elements." *Zoning Ordinance*, Section 59.1.4.1.

to 225 people, as permitted under the limited use standards for Farm Alcohol Production (winery). He testified that there were 274 parking spaces on the property, which he counted himself.

Conclusion: There are well above the minimum required parking spaces on-site. The Hearing Examiner finds no reason to disbelieve Mr. Butz representation as to the number of spaces, particularly as they are not marked. Based on this record, the Hearing Examiner finds that the proposed use provides the minimum parking standards and that it may have up to 225 people at specific events, provided that portable sanitary facilities are provided when events exceed the septic capacity of the existing field.

2. Outdoor Lighting

Zoning Ordinance §59.6.4.4.E. provides:

E. Conditional Uses

Outdoor lighting for a conditional use must be directed, shielded, or screened to ensure that the illumination is 0.1 footcandles or less at any lot line that abuts a lot with a detached house building type, not located in a Commercial/Residential or Employment zone.

Windridge plans no changes to the existing lighting, which is well set back from the property line. Moreover, a condition of approval will limit illumination at the property boundaries to 0.1 footcandles, as required above. With this condition, this criterion is met.

3. Landscaping and Screening

Conclusion: Article 6 of the Zoning Ordinance, which contains specific screening requirements, does not apply to this application because no exterior changes are proposed. *Zoning Ordinance* §59.6.5.2.B. Thus, the only test for site screening and compatibility is that it be compatible with the surrounding area. The Hearing Examiner finds the existing conditions, which include a forest conservation easement and major setbacks from the property line, more than adequate to be compatible with the surrounding area.

4. Signage

Conclusion: The Applicant proposes no new signage for this use. Any changes to the existing signage will require a modification to the conditional use.

III. CONCLUSION

As set forth above, the application meets all the standards for approval in Articles 59.3, 59.4, 59.6 and 59.7 of the Zoning Ordinance.

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of Windridge Vineyards LLC (CU 22-10) for a conditional use under Section 59.3.5.3.A.2.b. of the Zoning Ordinance to operate Country Inn at 15700 Darnestown Road, Germantown, MD 20874, is hereby GRANTED, subject to the following conditions:

1. All development on the property shall be consistent with the conditional use site plan (Exhibit 8). Additional development will require modification of the conditional use.
2. The tasting room for the Country Inn may not exceed 1,500 square feet.
3. Illumination levels at all property lines shall not exceed 0.1 footcandles.
4. The facility must be operated in accordance with all applicable County noise regulations (Chapter 31B of the Montgomery County Code).
5. The number of people on-site at one time may not exceed the amount permitted by the existing septic field (not including the reserve field) unless the Applicant obtains portable sanitary facilities.
6. No retail services other than food and alcohol service are permitted without modification of this conditional use.
7. The facility must meet all applicable Federal, State, and County licensure, certificate, and regulatory requirements for the Farm Alcohol Production use on the property.
8. The facility must meet all limited use standards applicable to Farm Alcohol Production under Section 59.3.2.10.B of the Zoning Ordinance.
9. The Applicant must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The

Applicant shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Issued this 16th day of November 2022.



Lynn Robeson Hannan
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Any party of record may file a written request to appeal the Hearing Examiner's Decision by requesting oral argument before the Board of Appeals, within 10 days issuance of the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Additional procedures are specified in Zoning Ordinance §59.7.3.1.f.1. Contact information for the Board of Appeals is:

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600
<http://www.montgomerycountymd.gov/boa/>

The Board of Appeals website contains the notice below on it's current operations:

CURRENT OFFICE OPERATIONS: The Board of Appeals' offices remain open by appointment. Please see the attached Notice for appointment information and hours, and for up-to-date filing instructions. Note that in light of the efficiencies realized during the pandemic, the Board continues to require that all submissions be dual-filed (electronic and hard copy).

Note: All supporting materials for scheduled hearing and Worksession items must be sent to the BOA@montgomerycountymd.gov mailbox no later than **noon on the Tuesday of the week before** the scheduled proceeding date to ensure inclusion.

If you have questions about how to file a request for oral argument, please contact Staff of the Board of Appeals.

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such ex parte communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website: <http://www.montgomerycountymd.gov/boa/>.

NOTIFICATION OF DECISION TO BE SENT TO:

Robert Harris, Esquire
Attorney for the Applicant
Barbara Jay, Executive Director, Montgomery County Board of Appeals
Patrick Butler, Planning Department
Mark Beall, Planning Department
Victor Salazar, Department of Permitting Services
Michael Coveyou, Director, Finance Department
Cliff Royalty, Esquire, Associate County Attorney