

PHED Committee #4
July 9, 2018

MEMORANDUM

July 5, 2018

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz, Senior Legislative Analyst

SUBJECT: Zoning Text Amendment 18-03, Farm Alcohol Production

Purpose: Worksession to development recommendation on ZTA 18-03 for consideration by the Council

Expected Participants:

Gwen Wright
Pam Dunn
Greg Russ
Mark Beall

Background

Zoning Text Amendment (ZTA) 18-03, lead sponsor Council President Riemer, co-sponsors Councilmembers Leventhal, Katz, Floreen, Navarro, and Hucker, was introduced on April 10, 2018. ZTA 18-03 would allow Farm Alcohol Production in Agricultural and Rural Residential zones under certain circumstances.

Currently, wineries are specifically allowed in Agricultural and Rural Residential zones. ZTA 18-03 would incorporate many of the standards that were applicable to wineries and apply those standards and others to breweries, cideries, and distilleries. In addition to the manufacture of alcoholic beverages, ZTA 18-03 would allow tasting rooms and, to the extent allowed by the state manufacturing license, the sale of food. It would also allow up to nine events a year with 300 or more people. A larger number of events could only be allowed if the use is approved as a conditional use.

On April 27, 2018, in the memorandum to the Planning Board, Planning staff had no objection to the intent of ZTA 18-03 but thought more conversation was warranted on the issue of events. Planning staff noted that Equestrian Facilities had regulated events in terms of the number of participants, the hours of operation, and the number of events, based on the parcel size. On May 14, 2018, the Planning Board agreed with Planning staff's comments.

The public hearing on ZTA 18-03 was held on May 15, 2018. There were 11 speakers, including the Planning Board representative.

Doug Lickliter, speaking on behalf of the Agricultural Advisory Committee, and Ed Boyce, founder of Black Ankle Vineyards, spoke in favor of ZTA 18-03 but expressed a concern that potential amendments to the ZTA may make it too restrictive on how the alcohol producer must use on-site agricultural products; in their opinion, the winery standard of 5 acres of fruit production would not work for breweries. Robert Butz also spoke in support of ZTA 18-03. In his opinion, it will promote a vibrant and successful Agricultural Reserve. Bob Sissle (speaking for the Montgomery Agricultural Producers), Drew Baker (founder of Old Westminster Winery), Jessica Snyder (Waredaca Brewing Company), and Phil Mooth (Brookfield Beer Farm) all supported ZTA 18-03 as a means of favoring the agricultural use of land and agritourism.

Caroline Taylor, speaking on behalf of 11 civic groups and 11 individuals, wanted the ZTA to assure master plan consistency and to mitigate impacts with a clear set of standards. Jim Brown, Sugarloaf Board member, recommended that the Council think about the safety aspects of more tasting room participants driving on rural roads.¹ He recommended distinguishing the approval process for large “beer halls” (300 people) and smaller-scale tasting rooms. Tom Hertzog opposed ZTA 18-03. In his opinion, because it removes alcohol production from the requirement for a conditional use, the marketing for tasting rooms would change the character of the Agricultural Reserve.

Issues

Is the approval of ZTA 18-03 premature?

There are 3 facts that argue against the Council’s approval of ZTA 18-03 at this time.

- 1) ZTA 17-07 allowed breweries and distilleries in CR, CRT, and CRN zone. It also expanded the limits of brewing and distilling in EOF zones. (Those zones also allow retail uses – tasting rooms- without conditional use approval.) ZTA 17-07 only became effective on January 1, 2018. ZTA 18-03 would allow the same use in the Agricultural on much less expensive land. The Council may want to know the effects of ZTA 17-07 before considering ZTA 18-03.
- 2) The Department of Permitting Services has recently interpreted the building code to allow breweries and distilleries on farms with an entry level tasting room for less than 50 people as an agricultural building that does not require a new building permit.² The impact of this recent interpretation on promoting more such facilities in the Agricultural Reserve Zone is not known.
- 3) Increased interest in the economic development of Montgomery County’s Agricultural Reserve through tourism has led to an on-going Planning Department study. The study was approved by the Council in the Department’s work program. The Planning Department has not completed this work. Recommendations are expected by January 2019.

¹ “Every society, all government, and every kind of civil compact therefore, is or ought to be, calculated for the general good and safety of the community.” George Mason.

² https://mcgov-my.sharepoint.com/:b:/g/personal/zyontj01_montgomerycountymd_gov/EfcoFLhazNxGhZyH0pcnFWEbEbN3WNR7WphCRuagpEji9Q?e=pcUGe7

The study is examining various aspects of agritourism, including events held on farms, wineries, breweries, produce stands and farm-to-table offerings, to understand the land use regulations associated with these activities. It intends to examine applicable sections of the county's zoning ordinance and its subdivision regulations to determine if modifications in policy are needed to provide clarity and direction for property owners. The Planning Department established the Montgomery County Agritourism Study Advisory Committee (ASAC), composed of representatives drawn from County agencies, local farms, and civic groups, to help make recommendations.³

Allowing the Planning Board study to develop recommendations, may result in more consensus and a more comprehensive approach to the issues surrounding agricultural tourism. **Staff recommends deferring action on ZTA 18-03.**

The following issues assume that the Committee recommends proceeding with the approval of ZTA 18-03.

Should Farm Alcohol Production be allowed as a limited use instead of a conditional use?

As reviewed in detail below, wineries, breweries and distilleries associated with agriculture are currently allowed in the Agricultural Reserve zone without the approval of ZTA 18-03. ZTA 18-03 would allow Farm Alcohol Production as a limited use and expand provisions for tasting rooms. It would also allow a number of large events at these facilities beyond the tasting room's normal operations.

Approval as a limited use does not allow for a case by case determination of whether the retail tasting room, is appropriate at a particular location. A limited use allows the Council to detail standards under which the use is acceptable, but it is difficult to have uniform standards that assure compatibility in every case.

An alternative (or in addition) to development standards for the use, would be to make the use subject to conditional use approval. This would be exactly how Agricultural Processing is allowed currently; however, Agricultural Process may be a primary use and Farm Alcohol Production must be an accessory use to farming. The Council received testimony on both sides of this issue. The Condition Use approval process adds cost and time to the approval process. **At least until the Planning Board's Agricultural Tourism study is completed, Staff recommends requiring the new Farm Alcohol Production use to be a condition use when the tasting room is design for 50 of more people.**

Does ZTA 18-03 require sufficient links to agriculture?

Generally

ZTA 18-03 allows Farm Alcohol Production under the category of "Accessory Agricultural Uses". As a general matter, an accessory use is defined (in part) under Section 59.3.7.4.B as follows:

³ The Committee membership represents County stakeholders and helps ensure a balanced discourse and study on the provision of Agritourism in the County. The membership of the Committee can be found on the Planning Department's web site - <http://montgomeryplanning.org/wp-content/uploads/2018/06/Final-Advisory-Committee-List.pdf>

Accessory Use means a use that is incidental and subordinate to the principal use of a lot or site or the principal building, and located on the same lot or site as the principal use or building.⁴

It is not the intent of sponsor to allow Farm Alcohol Production as a primary use of a site. Farming must be retained as the primary use. This is in addition to the requirement that the site be classified as agricultural by the State Department of Assessments and Taxation.⁵ There is also a requirement for State Licensing. A Class 8 Farm Brewery License requires that the end product must be “manufactured with an ingredient from a Maryland agricultural product, including hops, grain, and fruit, produced on the licensed farm.”

The specific connection required between agricultural and the alcohol production in ZTA 18-03 is:

Some ingredients used in the production process must be grown on-site.⁶

“Some ingredients” means that any ingredients, without regard to their significance in terms of dollar value or percentage of raw materials, would be sufficient to satisfy the provision.

The sponsor proposed a minimal requirement for the connection to on-site agriculture in ZTA 18-03 to allow flexibility in establishing the use. The sponsor, in proposing this provision, is not anticipating a minimal farming operation; Farm Alcohol Production use must be an accessory use on a farm.

⁴ DPS Staff submitted the following process when asked how the department would go about determining that a use was accessory to farming:

The applicant will need to submit a business program for all current farming activities occurring on site as well as proposed accessory uses. Their business program should be as detailed as possible to include the type of farming activities and how much area is covered with these activities. It should also be very detailed in the type(s) of accessory uses that are proposed, how much area it will cover, will it be utilizing existing structure or proposed structure or temporary tents as well as an estimate as to how many and how often the accessory events will be taking place. Applicant must also submit to the DPS ZSPE a site plan showing the existing farming activities that are taking place on the site. The site plan should also show the proposed accessory uses to the farming and proposed parking.

DPS ZSPE Process:

1. ZSPE will review the business program and site plan that was submitted to DPS. Zoning may request additional information or clarification from the applicant if needed.
2. ZSPE will research the property on the Zoning Map and the State Tax Records to determine the zone and what the property is access as, i.e. Residential, Commercial, Exempt, or Agricultural.
3. ZSPE may contact the Montgomery County Office of Agriculture if they need help determining what is currently taking place on the site as far as the farming activities as well and to see if the applicant has approach them about the propose accessory uses. The Office of Agriculture will have its own internal processes which may include working with the Maryland Soil Conservation District.
4. ZSPE will also coordinate internally at DPS with other sections if other permits are needed such as Commercial Building, Sediment Control, ROW, and Well & Septic.
5. Once ZSPE has completed all the research, they will go over all the information to make sure they are in agreement with the accessory use.
6. If all requirements are met, ZSPE will issue a letter to the applicant letting them know their accessory use is approved or not.

⁵ The law directs the Department of Assessments and Taxation to determine if the land is "actively used" for farm or agricultural purposes and defines "actively used" as "land that is actually and primarily used for a continuing farm or agricultural use." A parcel of land that is less than 20 acres but greater than or equal to 5 acres may be eligible to meet the gross income test of \$2,500 annually when the extent of agricultural activity is difficult to determine.

⁶ Section 59.3.2.10.B.2.a.ii.

The current requirement for wineries is to have at least 5 acres in fruit used in the winery process. That requirement would be deleted in ZTA 18-03 as introduced. **Staff recommends retaining the requirement for on-site fruit cultivation for wineries.**

Grains of various types are used in the production of beer and distilled spirits. Hops are used in beer. Both grains and hops can be grown in the County. Brewers are very particular about their ingredients. **Staff lacks the expertise to recommend a percentage of dollar value or a percentage of on-site raw materials that might be required.**

Where TDRs have been severed

A number of land uses, not related to agriculture, were prohibited by ZTA 17-07, when Transferable Development Rights were severed from AR zoned land. There is no such prohibition in ZTA 18-03.

Farm Alcohol Production must be accessory to a farm and at least some on-site agricultural products must be used. There is an association with agriculture for this use; it would be allowed without regard to the status of TDRs on the underlying site.

What are the current rules for agricultural production and how does ZTA 18-03 change those rules?

Current land use provisions concerning alcohol production in the AR zone

There are 3 current uses (Farming, Agricultural Processing, and Winery) that allow some alcoholic production without the approval of ZTA 18-03.

Farming includes the “processing of the product for market and may cause a change in the natural form of the product.”⁷ Under this provision, a farm may have an on-site brewery that processes grains and hops into beer. It does not specifically allow for on-site tasting rooms and events. Events are allowed as part of agricultural tourism.⁸

⁷ Section 3.2.6. Farming

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....

⁸ Section 3.2.6.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.

A winery is allowed as a limited use with a provision for on-site sales and up to 9 events requiring a ticket in a calendar year.⁹ The provision is limited to wine and does not include brewing. The use requires a minimum growing area for grapes or fruit of 5 acres. Exceeding the number of events would require approval as a conditional use.

Agricultural Processing is a conditional use in the Agricultural Reserve Zone.¹⁰ Distilling and fermentation are operations that transform farm products into goods that are used for final consumption and would be allowed under the Agricultural Processing use. It does not require the facility to be on a farm. It does not include on-site sales, although that may be an accessory use, depending upon the scale of sales relative to the alcohol production.

ZTA 18-03

ZTA 18-03 would allow Farm Alcohol Production as an accessory use to farming where it is a state-licensed production facility of agriculturally-assessed land that uses some ingredients grown on-site in the production process and parking is accommodated on-site. Retail sales would be allowed, as would 9 events of more than 300 people. Identical to the provision in wineries, additional events would be allowed for a facility approved as a conditional use. Farm Alcohol Production would be broader than the current provisions for wineries and, as such, the winery use would be deleted.

Standards

Current lot size provisions

Farming has no minimum lot size. Wineries and Agricultural Processing both have a minimum lot size of 10 acres for conditional use approval.

The code prescribes no minimum lot size for farm processing. As a general matter, except for purely agricultural uses, the code requires a record plat before the issuance of a building permit. M-NCPPC may require the applicant to go through the subdivision regulation process for a new building or addition. Planning staff described the following analysis to get to any required lot size:

Assuming there is sufficient Site Area of 25 acres for AR density purposes (See 59.4.2.1.F.1), the Planning Board could approve a lot that, among other requirements, meets 50.4.3.C.1, Lot

⁹ Section 3.2.10. Winery

A. Defined

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.

¹⁰ Section 3.2.2. Agricultural Processing

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).

Design; the lot size, shape, width and orientation must be appropriate for the location of the subdivision and for the type of development or use contemplated on the lot. The lot must be able to accommodate the proposed structure and other infrastructure deemed necessary to serve the lot including parking, stormwater, access drives, etc. Note that the lot could be as small as 40,000 square feet which is the minimum prescribed by the Code in the AR zone.

If the deed parcel is grandfathered, i.e., created by deed before adoption of the RDT zoning on the property but consistent with the zoning in place on the date of deed recordation, it could be platted for such a use even though it is not 25 acres or greater in Site Area.

M-NCPPC is generally notified of land disturbances in excess of 5,000 square feet and DPS reviews the sediment control permit. However, M-NCPPC is not involved if the land disturbance is reviewed by the Soil Conservation District. The Soil Conservation District reviews sediment control for purely agricultural.¹¹

There are two operating breweries in the AR zone – Waredaca and the Brookeville Brewery. Both entities renovated existing agricultural buildings. No new building permits were required.¹² Because there were no building permits for new buildings, there were no subdivision and no minimum lot sizes required.

Wineries have their own characteristics. Rockland Farms winery is on a 34-acre farm. Sugarloaf Mountain Vineyard cultivates 22 acres of grapes on an 88-acre site.

ZTA 18-03 provision for lot size

There is no minimum lot size for a Farm Alcohol Production use in ZTA 18-03 as introduced. **Staff recommends a minimum site area of size of 25 acres.** That is the minimum site area required for a detached house or a building for a cultural institution, religious assembly, public use or conditional use allowed in a zone.¹³ A lot may be smaller than the site area. A more conservative approach would be to require a minimum lot area.

Current road access requirements

Wineries and Agricultural Processing uses are each allowed only as a conditional use where the site has access to a road built to primary residential road or higher standards; however, Agricultural Processing may be on a road built to lower standards if the process materials are produced on-site. Farming does not have any road access standards. One existing brewery is on an exceptional rustic road and there have been no complaints.

¹¹ The Soil Conservation District is conservative as to what it determines to be “purely” agricultural and will quickly kick activity it deems non-agricultural back to DPS.

¹² Under State and County law, an agricultural building is not required to get a building permit. DPS did not require a building permit for the conversion of an existing barn when the portion open to the public was on the entry level of the building and the capacity of the facility was for 50 people or less. This provision does not exempt the owner of an agricultural building from obtaining required electrical, plumbing, well and septic permits, or from complying with all other applicable local, state, and federal regulations, laws, and ordinances.

¹³ A lot may be small that the total site area. The minimum lot area for a detached dwelling unit is 40,000 square feet (See Section 59.4.2.1.F.2).

ZTA 18-03 road access requirements

There are no minimum requirements for road access in ZTA 18-03 as introduced. **Staff recommends requiring a Farm Alcohol Production site to have access to a road built to primary residential road or higher standards when a conditional use is required.**

Events

No events are allowed at an Agricultural Production facility. Farms are allowed events for agricultural tourism if the use is accessory to farming. A provision for wineries allows a limited use winery, 9 events where a ticket or a cover charge is required. More events are allowed if a conditional use is approved. There are no limits to the number of people attending any allowed event at a winery or on a farm.

ZTA 18-03 number of events

Farm Agricultural Production facilities would be limited to 9 events in a calendar year. All Farm Alcohol Production would be limited by their State license as to how much product can be sold on-site and the types of food that could be sold.¹⁴

As a limited use, ZTA 18-03 would allow “events and activities that are normal and customary to the regular operations of a winery, cidery, brewery, and distillery...”. The number of people at these events

¹⁴ § 2-209. Farm brewery license

(a) In general. —

- (1) There is a Class 8 farm brewery license.
- (2) Subject to paragraph (3) of this subsection, a Class 8 farm brewery license allows the licensee to sell and deliver beer manufactured in a facility on the licensed farm or in a facility other than one on the licensed farm to:
 - (i) A wholesaler licensed to sell and deliver beer in the State; or
 - (ii) A person in another state authorized to acquire beer.
- (3) The beer to be sold and delivered under paragraph (2) of this subsection shall be manufactured with an ingredient from a Maryland agricultural product, including hops, grain, and fruit, produced on the licensed farm.
- (4) A Class 8 farm brewery may be located only at the place stated on the license.
- (5) Notwithstanding any local law, a licensee may exercise the privileges of a Class 8 farm brewery license.
- (6) A licensee may:
 - (i) Sell beer produced by the licensee for consumption on the licensed farm;
 - (ii) In an amount not exceeding 6 fluid ounces per brand, provide samples of beer that the licensee produces to a consumer:
 1. At no charge; or
 2. For a fee; and
 - (iii) Sell or serve:
 1. Bread and other baked goods; 2. Chili; 3. Chocolate; 4. Crackers; 5. Cured meat; 6. Fruits (whole and cut); 7. Salads and vegetables (whole and cut); 8. Hard and soft cheese (whole and cut); 9. Ice cream; 10. Jelly; 11. Jam; 12. Vinegar; 13. Pizza; 14. Prepackaged sandwiches and other prepackaged foods ready to be eaten; 15. Soup; and 16. Condiments.
- (7) Subject to subsections (d) and (e) of this section, a licensee may exercise the privileges of the license each day during the following times:
 - (i) From 10 a.m. to 6 p.m., for consumption of beer and sales and service of food at the licensed farm; and
 - (ii) From 10 a.m. to 10 p.m....

would be limited by required sanitation facilities.¹⁵ In addition, A maximum number of 9 events or activities with more than 300 participants is allowed in a calendar year. More larger events are limited in number unless a conditional use is approved.

Council President Riemer recommends reducing the number of people allowed that triggers one of the 9 events to 225. **Staff agrees with revising ZTA 18-03 to reflect the lower limit.**

Current standards for lighting

Wineries may not cast more than .1 footcandle of light at the property line. Agricultural Processing facilities are not required to satisfy a lighting standard, but such facilities are required to be setback 75 feet from a property line. There are no lighting standards for farming.

ZTA 18-03 lighting standards

No lighting standard is proposed for Farm Alcoholic Production facilities in ZTA 18-03. **Council President Riemer and Staff recommend adding a standard that allows no more than .1 footcandle at any property line.**

Current noise limits

Noise limits are the subject of Chapter 31B of the code¹⁸, with some exemptions.¹⁹ All uses must satisfy those requirements without regard to zoning.

¹⁵ Under Section 59.3.2.10.B.2.a.vii, the structure used for tasting rooms “must satisfy all building, life safety, fire, and sanitation code requirements.”

¹⁸Sec. 31B-5. Noise level and noise disturbance violations.

(a) Maximum allowable noise levels.

- (1) Except as otherwise provided in Sections 31B-6(a), 31B-6A, and 31B-8, a person must not cause or permit noise levels that exceed the following levels:

Maximum Allowable Noise Levels (dBA) for Receiving Noise Areas

| | Daytime | Nighttime |
|----------------------------|---------|-----------|
| Non-residential noise area | 67 | 62 |
| Residential noise area | 65 | 55 |

Sec. 31B-6A. Seasonal noise level standard for qualifying outdoor arts and entertainment activities.

(a) Each outdoor arts and entertainment activity held at a qualifying performing arts facility must not exceed the following noise decibel limits:

- (1) from 11 a.m. to 11 p.m. during April 1 through October 31, 75 dBA, as measured on the receiving property; and
(2) at all other times, the maximum allowable noise level set in Section 31B-5.

(b) A qualifying performing arts facility which has complied with this Section must not cause or permit noise levels from an outdoor arts and entertainment activity to exceed the standards in subsection (a).

(c) Any outdoor arts and entertainment activity conducted at a qualifying performing arts facility which has complied with this Section must not be cited as causing a noise disturbance.

(d) The Department must annually advise the Executive and Council, and the operator of each qualifying performing arts facility, whether the noise levels specified in this Section remain appropriate for that facility and the extent of compliance with those levels.

¹⁹ Sec. 31B-10. Exemptions.

(a) This Chapter does not apply to:

- (1) agricultural field machinery used and maintained in accordance with the manufacturer's specifications;
(2) emergency operations by fire and rescue services, police agencies, or public utilities and their contractors;
(3) a source or condition expressly subject to any State or federal noise-control law or regulation that is more stringent than this Chapter;

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- (4) sound, not electronically amplified, created between 7 a.m. and 11 p.m. by sports, amusements, or entertainment events or other public gatherings operating according to the requirements of the appropriate permit or licensing authority. This includes athletic contests, carnivals, fairgrounds, parades, band and orchestra activities, and public celebrations.
 - (b) The County Executive may issue regulations exempting from Section 31B-5 sources associated with routine residential living during daytime hours, such as home workshops, power tools, and power lawn and garden equipment, when used in accordance with manufacturer specifications. This exception does not apply to repairs or maintenance on a motor vehicle that is not registered for use on public roads.

Zoning Text Amendment No.: 18-03
Concerning: Farm Alcohol Production
– Standards
Draft No. & Date: 2 – 3/27/18
Introduced: April 10, 2018
Public Hearing: May 15, 2018
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**

Lead Sponsor: Council President Riemer and Councilmember Rice
Co-sponsors: Councilmembers Leventhal, Katz, Floreen, Navarro, and Hucker

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- add Farm Alcohol Production as a use allowed in certain zones; and
- establish the standards for Farm Alcohol Production

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

| | |
|-----------------|--------------------------------------|
| Division 1.4. | “Defined Terms” |
| Section 1.4.2. | “Specific Terms and Phrases Defined” |
| Division 3.1. | “Use Table” |
| Section 3.1.6. | “Use Table” |
| Division 3.2. | “Agricultural Uses” |
| Section 3.2.10. | “Winery” |
| Section 3.2.11. | “Accessory Agricultural Uses” |
| Section 3.2.12. | “Temporary Agricultural Uses” |
| Division 8.2. | “Residential Floating Zones” |
| Section 8.2.3. | “Use Table for the RT and R-H Zones” |

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 text that is deleted from existing law by the 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:

1 **Sec. 1. Division 1.4 is amended as follows:**

2 **Division 1.4. Defined Terms**

3 **Section 1.4.2. Specific Terms and Phrases Defined**

4 * * *

5 **Agricultural Vending:** See Section [3.2.12.A.1] 3.2.11.A.1

6 * * *

7 **Farm Airstrip, Helistop:** See Section [3.2.11.A.1] 3.2.10.A.1

8 **Farm Alcohol Production:** See Section 3.2.10.B.1

9 **Farm Market, On-site:** See Section [3.2.11.B.1] 3.2.10.C.1

10 * * *

11 **Seasonal Outdoor Sales:** See Section [3.2.12.B.1] 3.2.11.B.1

12 * * *

13 **[Winery:** See Section 3.2.10.A]

14 * * *

15 **Sec. 2. Division 3.1 is amended as follows:**

16 **Division 3.1. Use Table**

17 * * *

18 **Section 3.1.6. Use Table**

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

22 **Sec. 3. Division 3.2 is amended as follows:**

23 **Division 3.2. Agricultural Uses**

24 * * *

25 **[Section 3.2.10. Winery**

26 A. Defined

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

31 B. Use Standards

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

34 a. In the AR zone:

35 i. A maximum of 9 days of events that require an entrance
36 ticket or a cover charge is allowed each calendar year.

37 Additional events require conditional use approval by the
38 Hearing Examiner under Section 7.3.1.

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

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

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

48 a. The minimum lot area is 10 acres.

- 49 b. The minimum setback for any structure from any lot line is 75
50 feet, except that the minimum front setback may be reduced to
51 50 feet if the Hearing Examiner finds the reduced setback is
52 compatible with abutting and confronting agricultural uses.
- 53 c. The lot must front on and have access to a road built to primary
54 residential or higher standards.]

55 **Section [3.2.11] 3.2.10. Accessory Agricultural Uses**

56 * * *

57 B. Farm Alcohol Production

58 1. Defined

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

64 2. Use Standards

65 a. Where Farm Alcohol Production is allowed as a limited use, it
66 must satisfy the following standards:

67 i. The production capacity and associated activities of the
68 alcoholic beverage must comply with the license issued
69 by the State of Maryland Comptroller's Office.

70 ii. Some ingredients used in the production process must be
71 grown on-site.

72 iii. The underlying land must be classified as agricultural by
73 the State Department of Assessments and Taxation.

74 iv. Subject to all licensing requirements, the facility may:

75 (a) operate an on-site tasting room for its products;
76 and

77 (b) prepare and sell food to the extent allowed by the
78 State alcohol manufacturing license.

79 v. Events and activities that are normal and customary to
80 the regular operations of a winery, cidery, brewery, and
81 distillery are allowed.

82 vi. Weddings, corporate retreats, and other events accessory
83 to the production of alcohol are allowed:

84 (a) A maximum number of 9 events or activities with
85 more than 300 participants is allowed in a calendar
86 year. Additional events with more than 300
87 participants require conditional use approval by the
88 Hearing Examiner under Section 7.3.1.

89 (b) All parking must be accommodated on site.

90 (c) Noise levels must satisfy Chapter 31B standards.

91 vii. If any structure is used for activities under subsection iv,
92 v, or vi, the structure must satisfy all building, life safety,
93 fire, and sanitation code requirements.

94 b. Where Farm Alcohol Production is allowed as a conditional
95 use, it must satisfy the standards under Section 7.3.1.

96 C. Farm Market, On-site

97 * * *

98 Section [3.2.12] 3.2.11. Temporary Agricultural Uses

99 * * *

100 B. Seasonal Outdoor Sales

101 * * *

102 2. Use Standards

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

105 * * *

106 d. Evergreen trees may only be sold beginning the first Saturday
 107 following Thanksgiving Day through December 24th, and are
 108 exempt from Section [3.2.12.B.2.b] 3.2.11.B.2.b and Section
 109 [3.2.12.B.2.e.ii] 3.2.11.B.2.e.ii.

110 * * *

111 **Sec. 4. Division 8.2 is amended as follows:**

112 **Division 8.2. Residential Floating Zones**

113 **Section 8.2.3. Use Table for the RT and R-H Zones**

114 A. Section 3.1.1 through Section 3.1.4 apply to the Use Table in Section 8.2.3.

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

| USE OR USE GROUP | Definitions and Standards | RT-6.0 | RT-8.0 | RT-10.0 | RT-12.5 | RT-15.0 | R-H |
|-----------------------------|-------------------------------|--------|--------|---------|---------|---------|-----|
| AGRICULTURAL | | | | | | | |
| * * * | | | | | | | |
| Temporary Agricultural Uses | [3.2.12] <u>3.2.11</u> | | | | | | |
| Seasonal Outdoor Sales | [3.2.12.B] <u>3.2.11.B</u> | p1 | p1 | p1 | p1 | p1 | |

117 **Key:** P = Permitted Use L = Limited Use C = Conditional Use Blank Cell = Use Not

118 Allowed

119 **1** Limited to the sale of Christmas trees between December 5 and December 25.

120 * * *

121 **Sec. 5. Effective date.** This ordinance becomes effective 20 days after the
122 date of Council adoption.

123

124 This is a correct copy of Council action.

125

126

127 _____
128 Megan Davey Limarzi, Esq.
Clerk of the Council



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

May 14, 2018

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 18-03

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 18-03 (ZTA 18-03) at its regular meeting on May 3, 2018. By a vote of 5:0, the Planning Board supports the overall intent of the ZTA, to add Farm Alcohol Production as a use allowed in certain zones; and establish the standards for Farm Alcohol Production. As such, we support the idea of creating some level of uniformity amongst the various types of alcohol production while also supporting the idea that there be some threshold where additional review is required. The Planning Board believes that the table provided by technical staff describing the equestrian use process (in the technical staff report) should not be taken necessarily as the approach for establishing the number of events, size of the property, etc., but should be used as a guide in determining limited use standards that define hours of operation, acreage minimums, etc. The Board believes that the limited use standards should not be so restrictive that the use is forced into a discretionary process requiring additional review.

Currently, wineries are allowed as a limited use in Agricultural and most Rural Residential zones (allowed only as a conditional use in the Rural Neighborhood Cluster zone). ZTA 18-03 would incorporate many of the standards that were applicable to wineries and apply those standards and others to breweries, cideries, and distilleries and combine these uses into one accessory agricultural use category called Farm Alcohol Production. In addition to the manufacture of alcoholic beverages, ZTA 18-03 would allow tasting rooms and, to the extent allowed by the state manufacturing license, the sale of food. It would also allow up to nine events a year with more than 300 people. A larger number of events of this size could only be allowed if the use is approved as a conditional use.

As proposed, ZTA 18-03 does the following:

- Establishes a new accessory agricultural use called "Farm Alcohol Production" with standards for the use and the accessory activities allowed;
- Farm Alcohol Production would be a limited/conditional use in the AR (Agricultural Reserve), R (Rural), RC (Rural Cluster), and RNC (Rural Neighborhood Cluster) zones and must be accessory to farming or another allowed principal use in the zone. A farm alcohol producer would have to source some ingredients grown on-site for use in production. Farm Alcohol Production would be allowed to have an on-site tasting room which would be required to comply with the food,

hours of operation, production limits, and other requirements stipulated in their state manufacturing license;

- ZTA 18-03 specifies the scope and number of events and activities allowed for a farm alcohol producer. As stated by the sponsors of the ZTA, these events and related activities are critical to the viability and profitability of a farm alcohol producer, while also recognizing that these events and activities have impacts on the infrastructure and surrounding communities. ZTA 18-03 attempts to balance these priorities.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Silver Spring, Maryland, on Thursday, May 3, 2018.


Casey Anderson
Chair

CA:GR



Zoning Text Amendment (ZTA) No. 18-03, Farm Alcohol Production – Standards

- Gregory Russ, Planner Coordinator, FP&P, gregory.russ@montgomeryplanning.org, 301-495-2174
- Pam Dunn, Chief, FP&P, pamela.dunn@montgomeryplanning.org, 301-650-5649

Completed: 04/26/18

Description

Zoning Text Amendment (ZTA) 18-03 would add Farm Alcohol Production as an accessory use allowed in the Agricultural and Rural Residential zones; and establish the standards for Farm Alcohol Production.

Summary

Staff has no objection with the overall intent of ZTA No. 18-03, to add Farm Alcohol Production as a use allowed in certain zones; and establish the standards for Farm Alcohol Production. However, Staff is concerned with the overly broad allowance for the number of events accessory to the production of alcohol where 300 or fewer participants are anticipated. Staff believes that additional discussion is necessary to address this issue. Staff suggests reviewing the breakdown of events for Equestrian Facilities (Section 3.2.4.B) as a starting point for discussion. The requirements for an Equestrian Facility provide a table that specifies restrictions for equestrian events based on parcel size, hours of operation, and number of participants. It would be helpful if this type of table could be adapted and incorporated into the limited use standards for farm alcohol production.

Background/Analysis

Currently, wineries are allowed as a limited use in Agricultural and most Rural Residential zones (allowed only as a conditional use in the RNC zone). ZTA 18-03 would incorporate many of the standards that were applicable to wineries and apply those standards and others to breweries, cideries, and distilleries and combine these uses into one accessory agricultural use category called Farm Alcohol Production. In addition to the manufacture of alcoholic beverages, ZTA 18-03 would allow tasting rooms and, to the extent allowed by the state manufacturing license, the sale of food. It would also allow up to nine events a year with more than 300 people. A larger number of events could only be allowed if the use is approved as a conditional use.

As proposed, ZTA 18-03 does the following:

- Establishes a new accessory agricultural use called "Farm Alcohol Production" with standards for the use and the accessory activities allowed. "Farm Alcohol Production" is defined as 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 (as described in the use standards). (Lines 57-63)

- Farm Alcohol Production would be a limited/conditional use in the AR, R, RC, and RNC zones and must be accessory to farming or another allowed principal use in the zone. A farm alcohol producer would have to source some ingredients grown on-site for use in production **although the standards do not specify how much** (Currently, a winery must harvest a minimum of 5 acres of fruit onsite). Farm Alcohol Production would be allowed to have an on-site tasting room which would be required to comply with the food, hours of operation, production limits, and other requirements stipulated in their state manufacturing license. (Line 20- Use Table, Lines 64-78)
- ZTA 18-03 specifies the scope and number of events and activities allowed for a farm alcohol producer. As stated by the sponsors of the ZTA, these events and related activities are critical to the viability and profitability of a farm alcohol producer, while also recognizing that these events and activities have impacts on the infrastructure and surrounding communities. ZTA 18-03 attempts to balance these priorities as follows:
 - The current Zoning Ordinance restricts wineries to 9 public ticketed events a year in the AR zone and to 2 events of any kind in the R or RC zones, although in practice, wineries in the AR zone can have unlimited events and activities (weddings, for example) of any size if they are private and no tickets are sold. The current Zoning Ordinance is not clear about the kind and size of events breweries, cideries, and distilleries can have. (Lines 31-44)
 - ZTA 18-03 would allow two categories of events and activities. First, events and activities that are "normal and customary" to the regular operations of a winery, cidery, brewery and distillery are allowed without restriction. According to the sponsors of the ZTA, this would include activities like tasting room operations, product-release parties, tours, and seasonally-themed festivals. The common thread for these events and activities is that they are part of the standard business practice for a winery, brewery, cidery, or distillery. Establishing what is considered "normal and customary" would be determined by the Department of Permitting Services. (Lines 79-81)
 - Second, ZTA 18-03 would also allow farm alcohol producers to have accessory events, (weddings and corporate retreats, etc., for example). These events and activities are not directly related to the production of and sale of alcohol. As introduced, where 300 or fewer participants are anticipated, an unlimited number of these events is allowed. Where more than 300 participants are anticipated, a farm alcohol producer could have a maximum of nine accessory events a year. For both categories of events and activities, the ZTA requires onsite parking and adherence to the noise ordinance and all building, life safety, fire, and sanitation code requirements. **Staff is concerned with the overly broad allowance for the number of events accessory to the production of alcohol where 300 or fewer participants are anticipated. Staff believes that additional discussion is necessary to address this issue. Staff suggests reviewing the breakdown of events for Equestrian Facilities (Section 3.2.4.B) as a starting point for discussion. The requirements for an Equestrian Facility provide a table that specifies restrictions**

for equestrian events based on parcel size, hours of operation, and number of participants. It would be helpful if this type of table could be adapted and incorporated into the limited use standards for farm alcohol production. (Attachment 2)

Attachments

1. ZTA No. 18-03 as introduced
2. Equestrian Facility Table