

Zawitoski, John

To: Criss, Jeremy
Subject: RE: Follow Up from the August 26, 2015 Sub-committee of the AAC meeting-Homework assignments

Attachment B

John P. Zawitoski
Director of Planning and Promotions
The Office of Agriculture
18410 Muncaster Road
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CONNECT WITH The Office of Agriculture



From: Criss, Jeremy
Sent: Wednesday, October 14, 2015 3:15 PM
To: 'jessica@waredaca.com'; 'Rob Work'; 'John Muth'; 'Phil Muth'; 'Brookeville beer farm'; 'Steven Fistere'; 'Sjoybutler (sjoybutler@aol.com)'; 'Paul Poto'; 'WADE BUTLER'; 'Greg Glenn' (greg@rocklandsfarmmd.com); 'Soleado Lavender'; 'robert@windridgefarm.com'; 'Tim McGrath' (timmm@machomes.com); 'Janis Glenn'; 'jeffreynrmn@gmail.com'
Cc: 'Charles Schuster'; Zawitoski, John; 'Caroline Taylor' (caroline@mocoalliance.org); 'Barbara Weitzer' (weitzer@starpower.net); 'weitzer@erols.com'; Beall, Mark; Bradshaw, Laura; 'Penn, Joshua'; Welch, Kenneth; Matthews, Catherine; Bradshaw, Laura; 'Ellen Gordon' (ellen@gordonballard.com); 'Beth Daly'; 'Steve.silverman@ssgovrelations.com'; 'E Spates' (ecspates@yahoo.com); 'Boyd, Fred'; 'weitzer@erols.com'; 'Barbara Weitzer' (weitzer@starpower.net); 'Aliza Fishbein'; 'lisa.staley@maryland.gov'; Durbin, Kathie; 'Ellen Letourneau'; 'annets1@aol.com'; henryw@stifel.com; 'Sarah L. Rogers'
Subject: Follow Up from the August 26, 2015 Sub-committee of the AAC meeting-Homework assignments

Hello Everyone,

I am following up from our August 26, 2015 meeting of the Sub-Committee of the AAC.

Since our meeting I received the attached article from Susan Butler that questions whether weddings count as agriculture?

Susan also provided some comments on the items in the agenda surrounding private events on farms.

Paul Poto provided suggestions on standards for private events that he plans to discuss at the next sub-committee meeting.

I am also attaching a follow up message surrounding the use of food trucks-trailers that we discussed with County and State Health agencies.

The last attachment is what I provided to you with several different options for defining Micro-Alcohol Production Facilities in the County.

During our meeting it was suggested that each of you should select the best definition for the Sub-Committee to recommend.

Once I receive your input on which definition we should go with I will schedule our next Sub-committee meeting.

Please let me know if you have any questions.

Thanks J

Jeremy V. Criss
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CONNECT WITH Agricultural Services



DOES HOSTING WEDDINGS COUNT AS AGRICULTURE? ONE STATE SAYS NO

ATTACHMENT B

August 12, 2015 Paul Goeringer



Photo by Edwin Remsberg

This post should not be construed as legal advice (or marriage counseling)

According to the most recent Census of Agriculture, Maryland had 307 farms reporting income from agritourism operations. These activities can include everything from corn mazes, petting zoos, u-pick, hayrides, facilities for weddings, etc. The question can often arise: ***should all agritourism activities on the farm be considered agriculture?*** For example, if you put in facilities to hold outdoor concerts on your farm, is this still agriculture? The answer to these questions can often be found in zoning ordinances as one Christmas tree producer in New Hampshire recently found out.

In *Forster v. Town of Henniker*, the Supreme Court of New Hampshire ruled that hosting weddings was not an accessory use of a Christmas tree farmer's farm and not allowed in his zoning district. The facts of the case are fairly simple. Farmer owned and operated a Christmas tree farm which included an event space with an altar made of balsam fir boughs. The property was located in a rural residential district which allowed agriculture. The town planner informed the farmer that weddings were not permitted in a rural residential area and the zoning board of adjustment agreed.



Photo by Edwin Remsberg

The farmer made two arguments as to why weddings should be allowed on his farm: 1) the proposed uses were allowed in a rural residential district and 2) holding weddings on the farm was an accessory use. The New Hampshire Supreme Court found that weddings were not allowed in a rural

residential district. The court found that state statutes defining “agriculture” did include a “Christmas tree farm” but “agritourism” was not included in the definition of “agriculture.” Nothing in the legislative history (what members of the state’s legislature had to say when approving the legislation) supported the argument that weddings and other events should be included in the definition of “agriculture.” Finally, the court found the town zoning ordinance was not preempted by state law from preventing certain activities from going on.

The farmer’s final argument was that weddings and other events was an accessory use, or use which is incidental to the primary use. The court rejected holding events or weddings as an accessory use. Looking at previous decisions, the court found the test to determine if a use was accessory to be a use which is commonly, habitually, and through long practice been established as reasonably associated with the primary use in the local area. The farmer did not present enough evidence to prove a long history of these types of events being a part of agriculture in the area.



Photo by Edwin Remsberg

The decision did have one justice dissenting. The dissent would have included the definition of “agritourism” in the definition of “agriculture.” This justice found enough evidence to support the claim that agriculture did include agritourism. The state’s definition of agritourism was “enjoyment of the farm

environment.” To this justice, hosting a wedding or an event overlooking the Christmas tree farm would constitute enjoyment of the farm. Finally, the justice would have found hosting events to be an accessory use.

Why Should You Care?

Agritourism continues to grow in popularity and there are concerns that not every activity an operator wants to adopt will fall under “agriculture” or even “agritourism” for that matter. Before adopting a new activity, make sure you talk it over with zoning and planning officials in your county to make sure it qualifies and you do not need additional permits. Sticking your head in the sand may seem like a good choice but when it comes to adopting new practices to keep your farm profitable, it is probably not the best course.

References

Forester v. Town of Henniker, No. 2013-893, 2015 WL 3638597, at *1 (N.H. June 12, 2015).

U.S. Department of Agriculture – National Agricultural Statistics Service. *2012 Census of Agriculture, Maryland*. Washington D.C., 2014.

Zawitoski, John

To: Criss, Jeremy
Subject: RE: Food Trucks

Attachment B

From: Criss, Jeremy
Sent: Tuesday, September 22, 2015 5:40 PM
To: Hoffman, Daniel; Matthews, Catherine
Subject: RE: Food Trucks

Hello Dan and Cathy,
Thank you for the notes taken during the CE briefing regarding food trucks.
The AAC subcommittee discussed food trucks providing services in the Agricultural Reserve during their August 26, 2015 (attached) along with Lisa Staley of the MD-DHMH.
The discussion focused on the request from Rocklands Farm as outlined in the second attachment.
Last Friday I met with Mark Beall and Laura Bradshaw from DPS along with Kenny Welch from the DHHS.
I believe the zoning code 3.1.5 (attached) will need to be amended to make sure properties encumbered by TDR easements like Rocklands Farm will allow Transitory uses that includes food service truck?
Mark Beall was going to run this issue up the chain of command in the DPS and report back to us.
We need to discuss this further.
J

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CONNECT WITH Agricultural Services



From: Hoffman, Daniel
Sent: Tuesday, September 22, 2015 2:01 PM
To: Matthews, Catherine; Criss, Jeremy
Subject: RE: Food Trucks

Hi Jeremy!

Cathy, Jeremy and I know each other. We work on various projects together. Jeremy, let me know if I can answer any questions you may have about food trucks!

Thanks!

Dan

Dan Hoffman
Chief Innovation Officer
Montgomery County, MD
daniel.hoffman@montgomerycountymd.gov
@mocodanhoffman

From: Matthews, Catherine
Sent: Tuesday, September 22, 2015 12:44 PM
To: Criss, Jeremy
Cc: Hoffman, Daniel
Subject: Food Trucks

Jeremy,

First, let me say that the Agricultural Advisory Committee (AAC) always has interesting meetings. From a follow-up email, I understand that the ACC will soon discuss food trucks' ability to serve in the Ag Reserve. You should know that the Regional Directors discussed the challenges and opportunities concerning food trucks a couple of years ago and worked with a small group that consisted of the County Attorney, the CAO's office, Permitting Services, Zoning, Health & Human Services, and representatives from the local food truck association. We focused primarily on parking issues and hours of operation. That discussion was then transferred to Dan Hoffman who manages the Thinkstitute Innovation Center for the Offices of the County Executive.

Dan has extensively researched and analyzed the issues around food trucks in order to make sure that they are assets to the county's community. He briefed the County Executive just yesterday and I have attached his notes for your reference. Until they are finalized, they're for your reference only and not to be considered public yet.

Finally, I suggest that you and Dan speak before the ACC discusses the topic of food trucks operating in the Ag Reserve so that you'll have the latest information and clarification of any legislation that might be proposed. I have copied Dan on this message and if I can be of help, let me know.

Take care,

Catherine Matthews

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... *Bringing the County Closer to You!*

Attachment B

Subcommittee of the Agricultural Advisory Committee

August 26, 2015 Meeting Agenda

Introductions

Discussion on the Food Protection regulations of the State of Maryland and County

Lisa Staley

Chief, Center for Facility and Process Review

Office of Food Protection

Maryland Department of Health & Mental Hygiene

6 St. Paul Street, Ste. 1301, Baltimore, MD 21202

Phone: 410-767-8407

Fax: 410-333-8931

Follow up discussion on the proposed definitions of Micro-Alcohol Production Facilities
(Please refer to the attached Draft Definitions prepared by staff)

Follow up discussion on the proposed limited use standards for private events on farms:
Private Events Weddings, Birthday Parties, Bar mitzvahs, Corporate Retreats, etc.

- 1) Consumption of products produced at the farm in connection with the private event
- 2) Must be engaged in farming as the principal use of the farm
- 3) Ensuring that activity-event is subordinate to permitted use of farming in the agricultural environment --
 - a) Must be catered by an off-site licensed caterer
 - b) Must use portable toilet facilities that cannot remain on-site more than 96 hours
 - c) Must not be a public event
 - d) Must impose requirements to minimize the number of vehicles attending the private event and provide department with a plan that reflects how vehicles are to be limited on rustic roads (such as encouraging use of buses and multiple passengers/vehicle) and how parking is to be handled
 - e) If indoors, must not exceed occupancy load of building
 - f) Cannot occur on area that is actively farmed and
 - g) Must incorporate agricultural promotion at the event such as education on agriculture; and
 - h) Must be clearly subordinate as evidenced by limited number of events 20 per year –
 - i) Light and noise must not exceed allowable limits at the property boundary.

Discussion on the agenda for the next Sub-Committee meeting

Adjourn

Attachment B

Section 3.1.5. Transferable Development Rights

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

1. Agricultural

Agricultural Auction Facility

2. Residential

- a. Attached Accessory Apartment
- b. Detached Accessory Apartment
- c. Residential Care Facility (Up to 8 Persons)
- d. Residential Care Facility (9 - 16 Persons)
- e. Residential Care Facility (Over 16 Persons)
- f. Guest House
- g. Home Health Practitioner (Low Impact)
- h. Home Health Practitioner (Major Impact)
- i. Home Occupation (Low Impact)
- j. Home Occupation (Major Impact)

3. Civic and Institutional

- a. Ambulance, Rescue Squad (Private)
- b. Charitable, Philanthropic Institution
- c. Group Day Care (9 - 12 Persons)
- d. Day Care Center (13 - 30 Persons)
- e. Day Care Center (Over 30 Persons)
- f. Private Club, Service Organization
- g. Religious Assembly

4. Commercial

- a. Veterinary Office/Hospital
- b. Bed and Breakfast (if not accessory to Farming)
- c. Cemetery
- d. Funeral Home, Undertaker
- e. Lawn Maintenance Service
- f. Rural Antique Shop
- g. Shooting Range (Outdoor)

h. Transitory Use

5. Industrial

Mining, Excavation

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

C. Transitory Use

1. Defined

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

2. Use Standards

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

- a. A Transitory Use must be registered under Chapter 47.
- b. A Transitory Use may be located in the public right-of-way where it satisfies Chapter 47.
- c. A Transitory Use may be allowed on private property only if it would be allowed as a permanent use in the applicable zone under Section [3.1.6](#).
- d. A Transitory Use is prohibited on any portion of the open space required by the zone in which the property is located.
- e. In the AR zone, this use may be prohibited under Section [3.1.5](#), Transferable Development Rights.

Zawitoski, John

To: Janis Glenn
Subject: RE: Follow up request about Food Trucks/Trailers in the Ag Reserve

Attachment B

From: Janis Glenn [mailto:janisglenn@me.com]
Sent: Tuesday, September 22, 2015 10:00 AM
To: Criss, Jeremy
Cc: jessica@waredaca.com; Rob Work; John Muth; Phil Muth; Brookeville beer farm; Steven Fistere; Sjoybutler (sjoybutler@aol.com); Paul Poto; WADE BUTLER; 'Greg Glenn' (greg@rocklandsfarmmd.com); Soleado Lavender; robert@windridgefarm.com; 'Tim McGrath' (timm@machomes.com); jeffreynrmn@gmail.com; Charles Schuster; Zawitoski, John; 'Caroline Taylor' (caroline@mocoalliance.org); 'Barbara Weitzer' (weitzer@starpower.net); weitzer@erols.com; Beall, Mark; Penn, Joshua; Welch, Kenneth; Matthews, Catherine; Bradshaw, Laura; Ellen Gordon (ellen@gordonballard.com); Beth Daly; Steve.silverman@ssgovrelations.com; E Spates (ecspates@yahoo.com); Boyd, Fred; Aliza Fishbein; lisa.staley@maryland.gov; Durbin, Kathie; Ellen Letourneau; annets1@aol.com
Subject: Follow up request about Food Trucks/Trailers in the Ag Reserve

Jeremy, I am following up on an item from our last meeting. You said that you would try to get together with Health and Human Services and Zoning with regards to Food in the Ag Reserve, specifically Food Truck/Food Trailer and their ability to serve food in the Ag Reserve. I look forward to hearing from you. Thanks

Janis Glenn
240 813 5285

Rocklands Farm

On Aug 26, 2015, at 11:52 AM, Criss, Jeremy <Jeremy.Criss@montgomerycountymd.gov> wrote:

Hello Everyone,
The Sub-Committee of the AAC will meet tonight at 7:00 pm.
I have reserved room A at the Up County Regional Services Center.
The agenda for the meeting is attached.
The second attachment is draft definitions for Micro-Alcohol Productions Facilities that you requested.
The third attachment is selected sections from the County Zoning Regulations for your reference and assistance.
The fourth attachment is the beer licenses in Maryland that we discussed at our last meeting.
Some of you have already told me that you cannot attend our sub-committee meeting tonight.
If you cannot attend the sub-committee meeting tonight, please let me know.

Thanks J

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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.

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

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

a. The minimum lot area is 10 acres.

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

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

It is my understanding that your proposed operations are not clearly defined in the code with respect to the production of beer, hard cider, and distillery spirits including the associated tasting rooms and private events you want to hold at your farm.

The definition of agricultural processing as outlined below includes the production of these products but it does not include standards for the tasting room like the winery has above.

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).

B. Use Standards

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

1. The minimum lot area is 10 acres.

2. The minimum setback for an Agricultural Processing structure from any lot line is 75 feet.

3. The lot must front on and have access to a road built to primary residential road or higher standards unless processing materials are produced on-site.

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

Under the definition of Farming 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.

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Subcommittee of the Agricultural Advisory Committee

August 26, 2015 Meeting Agenda

Introductions

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Follow up discussion on the proposed limited use standards for private events on farms:
Private Events Weddings, Birthday Parties, Bar mitzvahs, Corporate Retreats, etc.

- 1) Consumption of products produced at the farm in connection with the private event
While most of us would like to serve our own produce or beverages, what would we do in the off season?
- 2) Must be engaged in farming as the principal use of the farm *Yes we agree*
- 3) Ensuring that activity-event is subordinate to permitted use of farming in the agricultural environment --*yes*
 - a) Must be catered by an off-site licensed caterer, *Perhaps some of us would like to establish ourselves as licensed caterers*
 - b) Must use portable toilet facilities that cannot remain on-site more than 96 hours
 - c) Must not be a public event
 - d) Must impose requirements to minimize the number of vehicles attending the private event and provide department with a plan that reflects how vehicles are to be limited on rustic roads (such as encouraging use of buses and multiple passengers/vehicle) and how parking is to be handled *I don't believe we can "impose requirements" How can anyone limit vehicles on a public road?*
 - e) If indoors, must not exceed occupancy load of building *This should be understood as a given.*
 - f) Cannot occur on area that is actively farmed and *Many farm to table dinners would be right in the field. Please omit.*

- g) Must incorporate agricultural promotion at the event such as education on agriculture; and [How would we do this for a wedding?](#)
- h) Must be clearly subordinate as evidenced by limited number of events 20 per year –
- i) Light and noise must not exceed allowable limits at the property boundary.

Discussion on the agenda for the next Sub-Committee meeting

Adjourn

Draft Definitions-Micro Alcohol Production Facilities

Any place or premises wherein any fruit based liquors (wines and cider) or grain based liquors (beer and distilled spirits) are manufactured for sale, not to Exceed _____ gallons per year, generally referred to as a micro-winery, micro-ciders micro-brewery or micro-distillery.

Micro-Alcohol Production Facilities may or may not include an on-site tasting room, and may or may not operate in conjunction with an on-site restaurant or bar. For operation of an on-site tasting room or in conjunction with an on-site restaurant or bar additional permitting may be required. All relevant federal, state, and local regulations apply.

Micro-Alcohol Production Facilities may involve a combination retail, wholesale, and small-scale artisan manufacturing business that produces and serves liquors and food on the premises.

A Micro-Alcohol Production Facility does not have its own production capacity (vineyard, hops field, or grain barley field) and instead sources its production from outside suppliers. Micro-Alcohol Production Facilities produce liquors for sale on- or off-site.

A facility with no more than _____square feet of floor area, for the production and packaging of alcoholic beverages for distribution, retail, or wholesale, on- or off-premises and which meets all alcohol beverage laws and regulations.

An establishment for the manufacture, blending, fermentation, processing, tasting, packaging and sale of alcoholic beverages with a floor area of _____square feet or less that takes place wholly inside a building. A facility that only provides tasting or retail sale of alcoholic beverages is not a Micro-Alcohol Production Facility.

An establishment with an accessory use as a table service for alcoholic beverages manufactured on the premises in a limited quantity subordinate to the primary use of farming. A tasting room or taproom may exist in a micro-winery micro-brewery, or micro-distillery, or where patrons may sample the manufacturer's products.

A micro-winery, micro-brewery, or micro-distillery may include off-site distribution of its alcoholic beverages consistent with State and County law.