

MEMORANDUM

January 31, 2019

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz, Senior Legislative Analyst

SUBJECT: Zoning Text Amendment 18-14, Farm Alcohol Production – Residential Zones

PURPOSE: Worksession – develop recommendations for Council’s consideration

Expected to Attend:

Casey Anderson, Chair, Montgomery County Planning Board
Jason Sartori, Acting Chief, Functional Planning and Policy, M-NCPPC
Greg Russ, Planner Coordinator, M-NCPPC
Ehsan Motazed, Chief, Zoning and Enforcement, Department of Permitting Services

Staff Recommendation: Approve with amendments:

- Allow Farm Alcohol Production in the RE-1 and RE-2 zones as a conditional use only; or
- Allow it as a limited use if, in addition to other requirements, the use is only allowed when the site is accessed from a roadway classified higher than a secondary residential road.

Background

Zoning Text Amendment (ZTA) 18-14, lead sponsors Councilmembers Riemer and Rice, was introduced on December 11, 2018.¹ ZTA 18-14 would amend the recently-approved provisions for Farm Alcohol Production.² In addition to all other conditions applicable to accessory Farm Alcohol

¹ Key words: #FarmAlcoholProduction, residential zones.

² Section 3.2.10. Accessory Agricultural Uses

* * *

B. Farm Alcohol Production

1. Defined

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

2. Use Standards

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

Production, ZTA 18-14 would allow breweries, wineries, distilleries, tasting rooms, and events in the RE-1 and RE-2 zones if:

- 1) the site is at least 25 acres in size; and
- 2) the site is in sewer category 6 of the Ten-Year Comprehensive Water Supply and Sewerage Systems Plan.³

All the current conditions for Farm Alcohol Production as a limited use, approved in October 2018, are provided in the text of ZTA 18-14 to give the reader context for the proposed change. The ZTA would add the use in the Use Table as an “L/C” use in the RE-1 and RE-2 zones and conditions for the use in those zones (lines 99-104).

-
- i. The production capacity and associated activities of the alcoholic beverage must comply with the license issued by the State of Maryland Comptroller's Office.
 - (a) A brewery must have a Class 8 Farm Brewery License;
 - (b) A winery must have a Class 4 Limited Winery License; and
 - (c) A distillery must have a Class 1 Distillery License.
 - ii. Some ingredients used in the production process must be grown on site.
 - iii. Wineries and cideries must have at least 5 acres of fruit used in alcohol production grown on site or on abutting or confronting property rented by the producer, and:
 - (a) have at least 20 acres of grapes or other fruit in cultivation on property they own, rent, or control; or
 - (b) source a majority of their grapes or other fruit from Maryland.
 - iv. Breweries and distilleries must source a majority of their ingredients, if available at competitive prices, from Regionally-Grown Products. At least 1.0 acre of ingredients must be grown on site for use in the alcohol production process.
 - v. A plan with a schedule to increase the use of local Montgomery County agricultural products in the production process must be submitted to the Department of Permitting Services.
 - vi. The underlying land must be classified as agricultural by the State Department of Assessments and Taxation and the facility must be an accessory use of the farm.
 - vii. Subject to all licensing requirements, the facility may:
 - (a) operate an on-site tasting room for its products; and
 - (b) prepare and sell food to the extent allowed by the State alcohol manufacturing license.
 - viii. Events and activities that are normal and customary to the regular operations of a winery, cidery, brewery, and distillery, including membership-related events and traditional festivals related to agriculture or the business of alcohol production, are allowed without a limitation on the number of guests. A maximum of 5 days of events that require an entrance ticket or a cover charge is allowed each calendar year.
 - ix. Weddings, corporate retreats, and other events accessory to the production of alcohol are allowed:
 - (a) Except as allowed under subsection (c), the maximum number of participants at any event is 225. There is no limit on the number of events with 100 participants or fewer. The total maximum number of days of events in a calendar year is 50 for events with more than 100 participants.
 - (b) A written log of all events must be kept by the holder of the alcohol production license. That log must be available for inspection by the Department of Permitting Services.
 - (c) As a conditional use under Section 7.3.1, the Hearing Examiner may approve additional days of large public events and events with greater numbers of participants for either normal and customary events or other accessory events.
 - x. If any structure is used for activities under subsection vii, viii, or ix, the structure must satisfy all building, life safety, fire, and sanitation code requirements.
 - xi. Illumination at the property line must be limited to 0.1 footcandles or less.
 - xii. All parking must be accommodated on site.
 - xiii. Noise levels must satisfy Chapter 31B standards.
 - xiv. Any new building or surface parking area used for Farm Alcohol Production and related events must be located at least 100 feet from an existing dwelling unit on an abutting property.
 - xv. In the AR zone, except for sites where the property owner obtained a Maryland alcohol producer's license before October 2, 2018, the minimum site area for breweries and distilleries is 25 acres.

³ Properties designated as category S-6 are intended to develop using individual sewerage systems; community service is not permitted.

The Council conducted a public hearing concerning ZTA 18-14 on January 15, 2019. The Planning Board and Planning staff have “no objections” to the Council’s approval of ZTA as introduced. They expressed that view given the limited number of 25-acre properties that are agriculturally assessed in the subject zones. The Council also received positive testimony from brothers who may wish to pursue a Farm Alcohol Production use on RE-1 zoned property. In their view, the ZTA would have the benefit of reducing the number of rural single-unit subdivisions. The Council did not receive any other testimony in the legislative record.

Issues

Is Farm Alcohol Production within the intent statement of the RE-1 and RE-2 large lot residential zones?

Currently, the Farm Alcohol Production use is allowed only in the AR (Agricultural Reserve) and Rural Residential zones. The use is listed in a subcategory as “Accessory Agricultural Uses”.⁴ The statutory intent of these zones includes promoting agricultural uses.⁵

The legislative intent statements for the establishment of both the RE-1 and RE-2 zones are identical:

The intent of the [RE-2 and RE-1] zone is to provide designated areas of the County for large-lot residential uses. The predominant use is residential in a detached house.⁶

What is absent in these zones is any intent to promote agriculture. Farming is allowed as a permitted use in these zones, even in the absence of any intent statement about agriculture in those zones. There are agriculturally-assessed properties in the RE-1 and RE-2 zones. (Properties above 20 acres in size must have at least 5 acres in agricultural use.⁷)

If the Council thinks that the use may harm residential uses in the zone, it might consider only allowing the use as a conditional use. On the other hand, the Council may be satisfied that the limitations of the use in ZTA 18-14 sufficiently avoid harm to large lot neighborhoods.

⁴ Section 3.1.6 Use Table.

⁵ “The intent of the R zone is to **preserve rural areas of the County for agriculture** and other natural resource development, residential uses of a rural character, extensive recreational facilities, and protection of scenic and environmentally sensitive areas.” Section 4.3.3

“The intent of the RC zone is to provide designated areas of the County **for a compatible mixture of agricultural uses and very low-density residential development, to promote agriculture**, and to protect scenic and environmentally sensitive areas. The RC zone permits an optional method Cluster Development alternative to provide greater flexibility in achieving a compatible mixture of agricultural and residential uses and to protect scenic and environmentally sensitive areas without jeopardizing farming or other agricultural uses.” Section 4.3.4

“It is also the intent of the RNC zone to implement the recommendations of the applicable master plan, such as **maintaining broad vistas of open space, preserving agrarian character**, or preserving environmentally sensitive natural resources to the maximum extent possible, and to ensure that new development is in harmony with the policies and guidelines of the applicable master plan and is compatible with existing development in adjoining communities.” Section 4.3.5.A.2.

⁶ Section 4.4.4 and Section 4.4.6.

⁷ Code of Maryland Regulations; Title 18. Department of Assessments & Taxation; Subtitle 02. Real Property Assessments; Chapter 18.02.03. Agricultural Use Assessments.

How would ZTA 18-14 limit potential sites for the Farm Alcohol Production use in the RE-1 and RE-2 zones?

There are 2 significant criteria for the Farm Alcohol Production use specific to the use in the RE-1 and RE-2 zones:

- 1) The site must be at least 25 acres in size; and
- 2) The site must be located in an area classified as sewer category 6 in the Ten Year Comprehensive Water Supply and Sewerage Systems Plan.

The minimum size allows for the required minimum on-site activity associated with the use. Wineries and cideries must have at least 5 acres of fruit used in alcohol production grown on site or on abutting or confronting property rented by the producer.⁸ Breweries and distilleries must source at least 1.0 acre of ingredients on site for use in the alcohol production process. All sites with the Farm Alcohol Production use must be agriculturally-assessed.

The category 6 sewer classification goes to assure that the use will be located in a rural area. In addition, a reliance on septic sewer treatment has the effect of limiting the potential size of the alcohol production and tasting room uses allowed by the zone.

How many sites are in sewer category 6 in RE-1 or RE-2 zone and are at least 25 acres?

There are 19 sites that satisfy these conditions.⁹ The Planning Department has mapped these sites. Of these sites, one is not in category 6 on the Ten-Year Water and Sewerage Plan: <http://arcg.is/0WivHj>. There are 14 sites east of I-270. Most of those sites are near Route 108. Five of the possible sites are accessible only from secondary residential roads. Fourteen of the possible sites have direct access to a primary road or a higher classified road.

⁸ Section 3.2.10.B.2.

⁹ ACCT	Street Number	Street Name		Mailing Address		ACRES
01874213	0	HOWARD CHAPEL	RD	DAMASCUS		29.0
00001243	8630	BRINK	RD	GAITHERSBURG	20882	25.7
00002156	0	LAYTON RIDGE	DR	LAYTONSVILLE		46.5
00003377	0	OLNEY/LAYTONSV	RD	GAITHERSBURG	20882	35.6
00391827	12200	STONEY CREEK	RD	POTOMAC	20854	28.2
01682742	0	BOWIE MILL	RD	ROCKVILLE		36.4
00943577	8501	GARFIELD	DR	GAITHERSBURG	20882	113.7
00266962	219	EDNOR	RD	SILVER SPRING	20905	32.8
02675720	19501	MUNCASTER	RD	DERWOOD	20855	51.5
00019486	21510	CLARKSBURG	RD	BOYDS	20841	36.3
02680896	71	NORWOOD	RD	SILVER SPRING	20905	27.3
00390652	11900	GLEN	RD	GAITHERSBURG	20878	28.8
00387574	14300	SENECA	RD	GERMANTOWN	20874	46.0
00708977	18405	MUNCASTER	RD	ROCKVILLE	20855	215.5
00936025	0	DAMASCUS	RD	DAMASCUS		28.0
00706980	17800	BOWIE MILL	RD	ROCKVILLE	20855	52.7
03384271	24228	PRIMULA	CT	GAITHERSBURG	20882	40.1
00705746	0	BOWIE MILL	RD	ROCKVILLE		45.8
00717790	5000	OLNEY/LAYTONS	RD	OLNEY	20832	28.8

Should this use be only a conditional use?

A large part of RE-1 and RE-2 property is in use for large lot single unit houses. There few uses permitted in those zones. The permitted uses are similar to other residential zones.¹⁰ Four of the commercial uses allowed are allowed as a limited use.¹¹ The other 9 commercial uses allowed in those zones require conditional use approval.¹² Is a Farm Alcohol Production use (which allows a tasting room and events) more like a Country Market (conditional use approval required to determine if the use would be harmful to neighbors) or like a Bed and Breakfast (allowed as a limited use)?

Staff recommends requiring conditional use approval. This is different from how the use is approved in more rural zones, but the underlying zones are different.¹³ Conditional use approval allows for the possibility that the Farm Alcohol Production use can be accommodated without harm to the quiet enjoyment of residential neighbors. If the Committee does not agree with this recommendation, Staff recommends one additional provision to the standards for an allowable limited use.

Should access to a road classified higher than a residential secondary road be required?

Customers and event participants will get to a Farm Alcohol Production use by car. As compared to the trip generation of single-unit uses, the trip generation rate of the tasting room and events of a Farm Alcohol Production use will be much greater. The smaller the street, the more annoying that traffic will be. Five of the 19 possible RE-1 and RE-2 sites are only accessible by a secondary residential street. In Staff's opinion, access from secondary residential roads will be a problem.

Staff recommends revising lines 99 to 104 as follows:

In the RE-1 and RE-2 zones, for breweries, distilleries, and wineries:

- (a) the minimum site area is 25 acres; [and]
- (b) the site must be located in an area classified as sewer category 6 in the Ten Year Comprehensive Water Supply and Sewerage Systems Plan; and
- (c) access must be directly from a roadway classified in the approved Master Plan of Highways and Transitways as a primary residential or higher roadway.

This packet contains
ZTA 18-14

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¹⁰ Farming, Single Unit Living, Residential Care for 8 Persons or Less, Family Day Care, Private Playgrounds, Cultural Institutions, Religious Assembly, Public Use.

¹¹ Country Inn, Bed and Breakfast, Surface Parking for other uses allowed in the zone or in a Historic District; this list excludes accessory or temporary commercial uses.

¹² Animal Boarding and Care, Veterinary Office, Cable Communications System, Telecommunications Tower, Country Inn, Funeral Home, Golf Course, Antique Shop, Country Market.

¹³ "A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land use project addressed to family needs." Justice William O. Douglas, *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974).

Zoning Text Amendment No.: 18-14
Concerning: Farm Alcohol Production
– Residential Zones
Draft No. & Date: 2 – 12/4/18
Introduced: December 11, 2018
Public Hearing:
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: Councilmembers Riemer and Rice

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

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

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

Division 3.1.	“Use Table”
Section 3.1.6.	“Use Table”
Division 3.2.	“Agricultural Uses”
Section 3.2.10.	“Agricultural Accessory Uses”

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*

Underlining indicates text that is added to existing law by the original text amendment.

[Single boldface brackets] indicate 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 3.1 is amended as follows:**

2 **Division 3.1. Use Table**

3 * * *

4 **Section 3.1.6. Use Table**

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

USE OR USE GROUP	Definitions and Standards	Ag	Rural Residential				Residential												Commercial/ Residential			Employment				Industrial		
							Residential Detached						Residential Townhouse			Residential Multi-Unit												
		AR	R	RC	RNC	RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40	TLD	TMD	THD	R-30	R-20	R-10	CRN	CRT	CR	GR	NR	LSC	EOF	IL	I M	IH
AGRICULTURAL																												
* * *																												
Accessory Agricultural Uses	[3.2.11] 3.2.10																											
Farm Airstrip, Helistop	3.2.10.A	C		C																								
Farm Alcohol Production	3.2.10.B	L/ C	L/ C	L/ C	L/ C	L/ C		L/ C																				
Farm Market, On-site	3.2.10.C	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L		
* * *																												

7 Key: P = Permitted Use L = Limited Use C = Conditional Use Blank Cell = Use Not Allowed

8 **Sec. 2. Division 3.2 is amended as follows:**

9 **Division 3.2. Agricultural Uses**

10 * * *

11 **Section 3.2.10. Accessory Agricultural Uses**

12 * * *

13 B. Farm Alcohol Production

14 1. Defined

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

20 2. Use Standards

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

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

26 (a) A brewery must have a Class 8 Farm Brewery
27 License;

28 (b) A winery must have a Class 4 Limited Winery
29 License; and

30 (c) A distillery must have a Class 1 Distillery License.

31 ii. Some ingredients used in the production process must be
32 grown on site.

- iii. Wineries and cideries must have at least 5 acres of fruit used in alcohol production grown on site or on abutting or confronting property rented by the producer, and:
 - (a) have at least 20 acres of grapes or other fruit in cultivation on property they own, rent, or control;
 - or
 - (b) source a majority of their grapes or other fruit from Maryland.
- iv. Breweries and distilleries must source a majority of their ingredients, if available at competitive prices, from Regionally-Grown Products. At least 1.0 acre of ingredients must be grown on site for use in the alcohol production process.
- v. A plan with a schedule to increase the use of local Montgomery County agricultural products in the production process must be submitted to the Department of Permitting Services.
- vi. The underlying land must be classified as agricultural by the State Department of Assessments and Taxation and the facility must be an accessory use of the farm.
- vii. Subject to all licensing requirements, the facility may:
 - (a) operate an on-site tasting room for its products;
 - and
 - (b) prepare and sell food to the extent allowed by the State alcohol manufacturing license.
- viii. Events and activities that are normal and customary to the regular operations of a winery, cidery, brewery, and

distillery, including membership-related events and traditional festivals related to agriculture or the business of alcohol production, are allowed without a limitation on the number of guests. A maximum of 5 days of events that require an entrance ticket or a cover charge is allowed each calendar year.

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

- (a) Except as allowed under subsection (c), the maximum number of participants at any event is 225. There is no limit on the number of events with 100 participants or fewer. The total maximum number of days of events in a calendar year is 50 for events with more than 100 participants.
- (b) A written log of all events must be kept by the holder of the alcohol production license. That log must be available for inspection by the Department of Permitting Services.
- (c) As a conditional use under Section 7.3.1, the Hearing Examiner may approve additional days of large public events and events with greater numbers of participants for either normal and customary events or other accessory events.

x. If any structure is used for activities under subsection vii, viii, or ix, the structure must satisfy all building, life safety, fire, and sanitation code requirements.

- xi. Illumination at the property line must be limited to 0.1 footcandles or less.
- xii. All parking must be accommodated on site.
- xiii. Noise levels must satisfy Chapter 31B standards.
- xiv. Any new building or surface parking area used for Farm Alcohol Production and related events must be located at least 100 feet from an existing dwelling unit on an abutting property.
- xv. In the AR zone, except for sites where the property owner obtained a Maryland alcohol producer's license before October 2, 2018, the minimum site area for breweries and distilleries is 25 acres.
- xvi. In the RE-1 and RE-2 zones, for breweries, distilleries, and wineries:
 - (a) the minimum site area is 25 acres; and
 - (b) the site must be located in an area classified as sewer category 6 in the Ten Year Comprehensive Water Supply and Sewerage Systems Plan.
- b. Where Farm Alcohol Production is allowed as a conditional use, it must satisfy the standards under Section 7.3.1.

* * *

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

This is a correct copy of Council action.

Megan Davey Limarzi, Esq.
Clerk of the Council