

Ordinance No.: 18-51
Zoning Text Amendment No.: 18-03
Concerning: Farm Alcohol Production
– Standards
Draft No. & Date: 7 – 10/2/18
Introduced: April 10, 2018
Public Hearing: May 15, 2018
Adopted: October 2, 2018
Effective: October 22, 2018

**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.*

OPINION

Zoning Text Amendment No. 18-03 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 participants. 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 Council's public hearing was conducted on May 15, 2018. Doug Lechliden, 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. He recommended distinguishing the approval process for large “beer halls” (300 participants) 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.

The Council referred the text amendment to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession on July 23, 2018. The Committee recommended approving ZTA 18-03 with amendments.

The Committee (3-0) reaffirmed its recommendation from July 9, 2018 and recommended adding the following provisions that state:

- 1) the use must be accessory to the farm on which the alcohol production facility is located;
- 2) the specific alcohol producers’ licenses must be approved and complied with;
- 3) the majority of the ingredients used in the alcohol production process must be grown in the County or from regionally-grown products (as defined by the Committee’s recommendation), if available at competitive prices; and
- 4) a long-range plan to increase the use of local Montgomery County agricultural products in the production process must be submitted to the Department of Permitting Services.

The Council, in the course of 2 meetings on September 14 and October 2, 2018, revised the recommendations of the Committee by:

- 1) further limiting events (ordinary and customary events are limited to 5 ticketed or events with a cover charge; non-farm related events are limited to 225 people a maximum of 50 times per year; a log of events must be maintained; and the number of events may increase with conditional use approval);
- 2) requiring that agricultural products grown on site be used in the alcohol production process (5 acres on site or on abutting property for wineries and one acre of ingredients grown on site for breweries and distilleries);
- 3) requiring a schedule with the plan to increase Montgomery County products in the production process;
- 4) requiring a minimum site size for breweries and distilleries (25 acres for sites that have not been issued an alcohol producer’s license);
- 5) requiring a 100-foot setback from a dwelling unit on an abutting property; and
- 6) a schedule to increase the use of products grown on site.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 18-03 will be approved as amended.

ORDINANCE

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

Sec. 1. Division 1.4 is amended as follows:

Division 1.4. Defined Terms

Section 1.4.2. Specific Terms and Phrases Defined

* * *

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

* * *

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

Farm Alcohol Production: See Section 3.2.10.B.1

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

* * *

Regionally-Grown Products: Grains, fruits, vegetables, flowers, or honey

harvested within the 5-state area of Maryland, Virginia, West Virginia, Delaware,

and Pennsylvania and the city of Washington, DC.

* * *

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

* * *

[Winery: See Section 3.2.10.A]

* * *

Sec. 2. Division 3.1 is amended as follows:

Division 3.1. Use Table

* * *

Section 3.1.6. Use Table

The following Use Table identifies uses allowed in each zone. Uses may be

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
AGRICULTURAL																											
* * *																											
[Winery]	[3.2.10]	[L/C]	[L/C]	[L/C]	[C]																						
Accessory Agricultural Uses	[3.2.11] 3.2.10																										
Farm Airstrip, Helistop	[3.2.11.A] 3.2.10.A	C		C																							
Farm Alcohol Production	3.2.10.B	L/C	L/C	L/C	L/C																						
Farm Market, On-site	[3.2.11.B] 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	L
Temporary Agricultural Uses	[3.2.12] 3.2.11																										
Agricultural Vending	[3.2.12.A] 3.2.11.A					L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L
Seasonal Outdoor Sales	[3.2.12.B] 3.2.11.B	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	L
* * *																											

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

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

27 **Division 3.2. Agricultural Uses**

28 * * *

29 **[Section 3.2.10. Winery**

30 A. Defined

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

35 B. Use Standards

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

38 a. In the AR zone:

39 i. A maximum of 9 days of events that require an entrance
40 ticket or a cover charge is allowed each calendar year.
41 Additional events require conditional use approval by the
42 Hearing Examiner under Section 7.3.1.

43 ii. The maximum lighting level at any lot line is 0.1
44 footcandle.

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

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

52 a. The minimum lot area is 10 acres.

- 53 b. The minimum setback for any structure from any lot line is 75
- 54 feet, except that the minimum front setback may be reduced to
- 55 50 feet if the Hearing Examiner finds the reduced setback is
- 56 compatible with abutting and confronting agricultural uses.
- 57 c. The lot must front on and have access to a road built to primary
- 58 residential or higher standards.]

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

60 * * *

61 B. Farm Alcohol Production

62 1. Defined

63 Farm Alcohol Production means the transformation of agricultural

64 products into alcoholic beverages. Farm Alcohol Production includes

65 wineries, cideries, breweries, or distilleries on farms. Farm Alcohol

66 Production may include other activities unrelated to the production

67 and sale of alcohol or farming under certain circumstances.

68 2. Use Standards

69 a. Where Farm Alcohol Production is allowed as a limited use, it

70 must satisfy the following standards:

71 i. The production capacity and associated activities of the

72 alcoholic beverage must comply with the license issued

73 by the State of Maryland Comptroller's Office.

74 (a) A brewery must have a Class 8 Farm Brewery

75 License;

76 (b) A winery must have a Class 4 Limited Winery

77 License; and

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

- 79 ii. Some ingredients used in the production process must be
80 grown [[on-site]] on site.
- 81 iii. Wineries and cideries must have at least 5 acres of fruit
82 used in alcohol production grown on site or on abutting
83 or confronting property rented by the producer, and:
84 (a) have at least 20 acres of grapes or other fruit in
85 cultivation on property they own, rent, or control;
86 or
87 (b) source a majority of their grapes or other fruit from
88 Maryland.
- 89 iv. Breweries and distilleries must source a majority of their
90 ingredients, if available at competitive prices, from
91 Regionally-Grown Products. At least 1.0 acre of
92 ingredients must be grown on site for use in the alcohol
93 production process.
- 94 v. A plan with a schedule to increase the use of local
95 Montgomery County agricultural products in the
96 production process must be submitted to the Department
97 of Permitting Services.
- 98 [[iii]]vi. The underlying land must be classified as
99 agricultural by the State Department of Assessments and
100 Taxation and the facility must be an accessory use of the
101 farm.
- 102 [[iv]]vii. Subject to all licensing requirements, the facility
103 may:
104 (a) operate an on-site tasting room for its
105 products; and

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

108 ~~[[v]]~~viii. Events and activities that are normal and
109 customary to the regular operations of a winery, cidery,
110 brewery, and distillery, including membership-related
111 events and traditional festivals related to agriculture or
112 the business of alcohol production, are allowed without a
113 limitation on the number of guests. A maximum of 5
114 days of events that require an entrance ticket or a cover
115 charge is allowed each calendar year.

116 ~~[[vi]]~~ix. Weddings, corporate retreats, and other events
117 accessory to the production of alcohol are allowed if the
118 number of guests is equal to or lower than the capacity
119 allowed by the Department of Permitting Service's Use
120 and Occupancy Permit for on-site buildings:

121 (a) ~~[[A maximum number of 9 events or activities~~
122 ~~with more than 300 participants is allowed in a~~
123 ~~calendar year. Additional events with more than~~
124 ~~300 participants require conditional use approval~~
125 ~~by the Hearing Examiner under Section 7.3.1.~~
126 ~~Except as provided in Subsection (b), the~~
127 ~~maximum number of participants at any event is~~
128 ~~150. The total maximum number of days of events~~
129 ~~in a calendar year is 50 including larger events~~
130 ~~allowed under subsection (b).]]~~ Except as allowed
131 under subsection (c), the maximum number of
132 participants at any event is 225. There is no limit

- 133 on the number of events with 100 participants or
134 fewer. The total maximum number of days of
135 events in a calendar year is 50 for events with
136 more than 100 participants.
- 137 (b) [[All parking must be accommodated on site.]]
138 [[c) Noise levels must satisfy Chapter 31B standards.]]
139 A written log of all events must be kept by the
140 holder of the alcohol production license. That log
141 must be available for inspection by the Department
142 of Permitting Services.
- 143 (c) As a conditional use under Section 7.3.1, the
144 Hearing Examiner may approve additional days of
145 large public events and events with greater
146 numbers of participants for either normal and
147 customary events or other accessory events.
- 148 [[vii]]x. If any structure is used for activities under
149 subsection [[iv, v, or vi]] vii, viii, or ix, the structure must
150 satisfy all building, life safety, fire, and sanitation code
151 requirements.
- 152 xi. Illumination at the property line must be limited to 0.1
153 footcandles or less.
- 154 xii. All parking must be accommodated on site.
- 155 xiii. Noise levels must satisfy Chapter 31B standards.
- 156 xiv. Any new building or surface parking area used for Farm
157 Alcohol Production and related events must be located at
158 least 100 feet from an existing dwelling unit on an
159 abutting property.

160 xv. In the AR zone, except for sites where the property
161 owner obtained a Maryland alcohol producer’s license
162 before October 2, 2018, the minimum site area for
163 breweries and distilleries is 25 acres.

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

166 C. Farm Market, On-site

167 * * *

168 **Section [3.2.12] 3.2.11. Temporary Agricultural Uses**

169 * * *

170 **B. Seasonal Outdoor Sales**

171 * * *

172 2. Use Standards

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

175 * * *

176 d. Evergreen trees may only be sold beginning the first Saturday
177 following Thanksgiving Day through December 24th, and are
178 exempt from Section [3.2.12.B.2.b] 3.2.11.B.2.b and Section
179 [3.2.12.B.2.e.ii] 3.2.11.B.2.e.ii.

180 * * *

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

182 **Division 8.2. Residential Floating Zones**

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

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

185 B. The following Use Table identifies uses allowed in each zone. Uses may be
186 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>	P ¹	P ¹	P ¹	P ¹	P ¹	

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

188 Allowed

189 1 Limited to the sale of Christmas trees between December 5 and December 25.

190 * * *

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

193

194 This is a correct copy of Council action.

195

196 _____

197 Megan Davey Limarzi, Esq.

198 Clerk of the Council