



Montgomery
County Council

Committee: PHED

Staff: Livhu Ndou, Legislative Attorney
Pamela Dunn, Senior Legislative Analyst

Purpose: Final action – vote expected

Keywords: #subdivision exemptions, #Alcohol Production,
#Agritourism

AGENDA ITEM #4B

July 27, 2021

Action

SUBJECT

SRA 21-01, Exemptions – Alcohol Production and Agritourism

Lead Sponsor: Council President at the request of the County Executive

EXPECTED ATTENDEES

The following individuals will be available for questions:

Casey Anderson, Chair, Montgomery County Planning Board

Robert Kronenberg, Deputy Planning Director, Montgomery Planning

Jason Sartori, Chief, Countywide Planning and Policy, Planning Department

Benjamin Berbert, Planner Coordinator, Countywide Planning and Policy, Planning Department

Dale Tibbitts, Special Assistant to the County Executive

Jeremy Criss, Director, Office of Agricultural Services

Mike Scheffel, Agricultural Land Preservation Program Administrator, Office of Agricultural Services

Victor Salazar, Division Chief, Zoning, Well & Septic and Code Compliance, Department of Permitting Services

Mark Beall, Zoning Manager, Division of Zoning, Well & Septic and Code Compliance, Department of Permitting Services

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

The Planning, Housing, and Economic Development (PHED) Committee voted 3-0 to move the SRA forward.

The Committee requested a joint memorandum from the Office of Agriculture (OAG) and the Department of Permitting Services (DPS). Planning Staff submitted a memorandum in response.

DESCRIPTION/ISSUE

The intent of SRA 21-01 is to exempt buildings used for Alcohol Production and Agritourism and for Farm Alcohol Production from the requirement to record a plat before the Department of Permitting Services can issue a building permit.

SUMMARY OF KEY DISCUSSION POINTS

Under current law, before the Department of Permitting Services can issue a commercial building permit, the building must be on a lot shown on a record plat or be on property that is exempt from

the subdivision of land process. It is the experience of the Office of Agriculture that the subdivision process is cost-prohibitive for most agritourism businesses looking to diversify operations.

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Worksession

MEMORANDUM

July 22, 2021

TO: County Council

FROM: Livhu Ndou, Legislative Attorney
Pam Dunn, Senior Legislative Analyst

SUBJECT: SRA 21-01, Exemptions – Alcohol Production and Agritourism

PURPOSE: Action

Introduction

Subdivision Regulation Amendment (SRA) 21-01, lead sponsor Council President at the request of the County Executive, was introduced on January 26, 2021. SRA 21-01 would exempt agricultural land used for farm alcohol production or agritourism from the requirement to record a plat before issuance of a building permit.

Background

SRA 21-01 was introduced at the request of the County Executive with the support of the Office of Agriculture (OAG). The request for introduction explained that when property owners add an agritourism accessory use, they may need to obtain a commercial building permit for the building that will house that use. The building must be on a lot shown on a record plat or be on property exempt from the subdivision process before the Department of Permitting Services (DPS) can issue the commercial building permit. According to the OAG, the subdivision process is cost-prohibitive for most agritourism businesses that are looking to diversify their operations. The exemption to platting allowed by SRA 21-01 would further support agritourism uses by removing these prohibitive costs. Efforts to support agriculture and agritourism not only promote the County's economy, but they also provide opportunities for venues designed to encourage residents of Montgomery County to experience the Agricultural Reserve and connect with the County's agricultural community.

Public Hearing

A public hearing was held on March 2, 2021. Casey Anderson, Chair, Planning Board, testified that the Planning Board supports providing regulatory flexibility for agribusiness. However, the

Board questioned whether waiving the platting requirement was an appropriate way to achieve that goal since the subdivision process is what creates sidewalks and the dedication of rights-of-way. Without subdivision, any structures on the sight would not have to provide those public infrastructure needs.

The remaining testimony was in support of SRA 21-01 and came from five owners of farms of various sizes throughout Montgomery County who operate wineries, distilleries, and tasting rooms. Several testified that the current County process is expensive, requiring hundreds of thousands of dollars not just to the County but for legal fees, surveying, and civil engineers. This was emphasized by testimony that there are already many barriers to entry in these businesses, including federal and state regulations. They testified that these costs do nothing to benefit the customer experience and that while some regulation was expected, the current process is cost prohibitive. Testimony noted that removing permit barriers would improve agritourism and agribusiness in the Agricultural Reserve, as it would help unlock its economic potential, specifically that these operations would provide dozens of jobs and attract visitors—and their spending money—from Washington, D.C. and surrounding counties. Lastly, one property owner testified that agricultural land used for farm alcohol production or agritourism in the RE-1 and RE-2 zones should be included in SRA 21-01, as they were included in a 2018 Zoning Text Amendment (ZTA) that allowed Farm Alcohol Production in these zones.

Planning Board and Planning Staff Recommendation

While the Planning Board is in support of providing relief to farmers and farm businesses, the Board is concerned that the exemption as drafted is too broad and does not allow for the impact of certain projects to be mitigated. By a unanimous vote, the Board transmitted the following comments:

- General support for streamlining the review process for Agritourism uses;
- A suggestion that a distinction be made between the production of Farm Alcohol and the commercial ancillary uses such as tasting rooms, on-site food production and consumption, special events and weddings;
- A suggestion that the Administrative Subdivision process may be appropriate rather than an exemption; and
- A suggestion that this SRA be delayed to establish a workgroup or committee that would collaboratively and comprehensively review all aspects of county code for ways to reduce costs and streamline regulations.

The background on these comments is discussed in the “Issues” section below.

Issues

Agritourism: Definition and Existing Exemptions

Since SRA 21-01 would exempt both agricultural land used for farm alcohol production and agritourism, understanding the distinction between those two uses is helpful. Agritourism is, in the

Zoning Ordinance, called “Accessory Agricultural Education and Tourism.” The definition of this term, listed in Section 3.2.6.F. under the definition for “Farming”, is:

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.

Section 3.3 of the Montgomery County Subdivision Regulations, which are Chapter 50 of the Montgomery County Code, already exempts the following from recordation of a plat before issuance of a building permit:

1. Agricultural land used for residential dwellings;
2. Public transfer;
3. Adjoining property;
4. Certain property for single-unit living;
5. Certain residential property in the City of Takoma Park;
6. Certain commercial properties adjoining State highways;
7. Certain commercial properties adjoining State highways in Rural Village Overlay zones; and
8. Certain non-residential properties.

As noted by Planning Staff, providing an expedited path to allow farmers to open the activities listed in the definition of Accessory Agricultural Education and Tourism is merited because it increases the public’s accessibility to the Agricultural Reserve, with a cap of 10% of the site’s total structure footprint as noted in the definition. This is especially true when considering Chapter 50 has an exemption from platting for residential dwellings on agricultural land. In other words, adding up to 10% new structure area to the exemption for platting is a logical extension of the existing exemptions.

Farm Alcohol Production

Farm Alcohol Production, however, has a much broader definition. That definition is provided in Section 3.2.10.B.1. under Accessory Agricultural Uses and is:

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.

While the definition itself does not specify what “other activities unrelated to the production and sale of alcohol or farming” are, some clarity can be gleaned from Section 3.2.10.B.2. “Use Standards”. Many ancillary operations are noted, such as: on-site tasting rooms; the preparation and sale of food; and weddings, corporate retreats, and “other events” accessory to the production of alcohol. These tend to be large uses, without the size limits associated with other agritourism uses. These uses can require commercial uses and building permits and are associated with a need for larger water and septic systems on-site, an increase in delivery truck traffic, and larger parking lots. The addition of more visitors and delivery trucks may necessitate improvements to the frontage of a property along with other transportation upgrades. These issues are of the type often resolved by the platting—and therefore the subdivision process.

Councilmembers’ Proposed Amendment

Councilmembers Riemer, Rice, and Glass proposed an amendment to SRA 21-01. Zoning Text Amendment (ZTA) 18-14, lead sponsors Councilmembers Riemer and Rice, was introduced on December 11, 2018 and adopted on February 12, 2019. In addition to all other conditions applicable to accessory Farm Alcohol Production, ZTA 18-14 allowed 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. The amendment proposed to SRA 21-01 by Councilmembers Riemer, Rice, and Glass would include agricultural land used for farm alcohol production or agritourism in the RE-1 and RE-2 zones in the platting exemption. At the time of its passage, ZTA 18-14 had the support of the Montgomery County Planning Board and the PHED Committee.

PHED Committee Recommendation

The Planning, Housing, and Economic Development (PHED) Committee had a worksession on this ZTA on June 23, 2021. The PHED Committee voted 3-0 to move the SRA forward. However, Councilmembers Friedson and Jawando noted for the record that they may vote for amendments based on the joint memorandum requested by the Committee from OAG and DPS. Planning Staff was also advised that they may submit a supplemental memorandum in response.

During the worksession, Planning Staff expressed concern over exempting Farm Alcohol Production, given its similarity to bars and restaurants and the intensity of the use. Council Staff recommended limiting the exemption from platting to an occupancy of 100 persons, and having larger occupancies go through the administrative subdivision process. The PHED Committee agreed that a 100-person occupancy limit was too low, and that if an occupancy limit were to be put in place, 2 out of 3 Committee members believed 200 persons was a more appropriate limit. However, testimony from both Planning Staff and the Office of Agriculture indicated that many of the concerns regarding loss of oversight if a full exemption was applied could be resolved via procedures already in place within OAG and DPS. The PHED Committee therefore voted 3-0 to move the SRA forward and requested a joint memorandum from OAG and DPS that outlined the current process and what it would look like if SRA 21-01 was enacted.

The PHED Committee also voted 3-0 for approval of the amendment to include RE-1 and RE-2 properties. However, the PHED Committee requested this amendment be expanded to all zones that allow Farm Alcohol Production or Accessory Agricultural Education and Tourism.

OAG and DPS Joint Memorandum

The joint memorandum from OAG and DPS was submitted on July 7, 2021. Per the PHED Committee's request, it outlines both the current process and what the approval process would be should SRA 21-01 be enacted.

Current Process

The memorandum noted that all commercial building permits going through the subdivision process are reviewed for:

- Forest conservation;
- Historic review;
- Transportation, master plan conformance;
- Stormwater management and sediment control;
- Department of Transportation (DOT)/State Highway Administration (SHA) access, rustic roads;
- Well and septic;
- Agricultural preservation easements;
- Fire Department access; and utilities.

The following agencies are currently involved in the subdivision process as part of the Development Review Committee (DRC):

- Maryland National Capital Park and Planning Commission (M-NCCPC)
 - Subdivisions review and approval
 - Forest conservation trees
 - Planning procedures
 - Historic resources preservation
- Department of Permitting Services
 - Building structural design and construction
 - American Disabilities Act
 - Green building certification
 - Electricity
 - Erosion and sediment control and stormwater management
 - Fire safety code
 - Individual water supply and sewage disposal
 - Plumbing and gas fitting
 - Development impact tax
 - Tree canopy
 - Zoning
- Department of Environmental Protection (DEP)
 - Noise control
- Department of Transportation
 - Streets and road dedication

In addition, all proposed Farm Alcohol Production or Accessory Agricultural Education and Tourism facilities must initially contact OAG and submit an application to be reviewed and approved by both OAG and DPS. This application illustrates for the applicant the review and approval process and lists necessary steps for property owners. Applicants must also develop a business plan that shows how the use will meet the limited use requirements.

Process Should SRA 21-01 Be Enacted

Given the responsibilities that DPS has, OAG suggests using the DPS pre-design consultation process to review and approve commercial buildings used for Accessory Agricultural Education and Tourism. The process is free and would serve as a clearinghouse, a function that the Planning Department now serves as part of the platting and subdivision process. Currently, OAG, DPS, and Planning meet once a month to discuss Farm Alcohol Production applications. If SRA 21-01 were to be enacted and therefore an exemption from the platting process be in place, the steps for approval would be as follows:

1. OAG advises applicant whether an Agricultural Preservation Easement exists on the property.
2. OAG refers the applicant to the Historic Preservation Committee, if applicable.
3. OAG refers the applicant to the Rustic Road Committee, if applicable.
4. OAG instructs the applicant to contact Planning for forest conservation, transportation, master plan conformance, and adequate public facilities.
5. OAG instructs the applicant to schedule a pre-design consultation with DPS to address permit requirements.

Currently, new or addition commercial building permits require a sediment control permit; a right-of-way permit; a well and septic permit; and trade permits. These reviews will still be required under SRA 21-01. They will be reviewed as follows:

- DPS Water Resources Section will review the Sediment Control permit for stormwater management and request a forest conservation plan through Planning; an agricultural use exemption may apply to the forest conservation requirements.
- The DPS Right of Way Section or SHA will review access to the property and refer the applicant to the Rustic Roads Committee (staffed by DOT) if necessary.
- DPS Zoning Review will refer the applicant to the DPS Fire Department Access Section.
- DPS Well and Septic will review well and septic permit compliance.
- The Fire Marshall will review fire code compliance.

Planning Department Response

The Planning Department submitted its response on July 13, 2021. Planning noted that other than the subdivision itself and associated dedications, none of the other requirements will go away with the proposed SRA, but rather will be deferred to the building permit or sediment and erosion control plans. Planning noted that plans and reviews for forest conservation and adequate public facilities (APF) may still need approval from the Planning Board and changes to historic resources will need approval by the Historic Preservation Commission (HPC). In addition, the only trigger

for identifying and flagging potential burial grounds and cemeteries is through subdivisions, so whoever serves as the new clearinghouse will need to coordinate with HPC to identify any potential burial grounds and cemeteries.

Planning's response noted that while removing the subdivision process may save time and application fees, the structure to assess which laws apply to a particular project would need to be recreated by OAG and DPS. Planning noted that the Pre-Design meeting proposed by OAG and DPS is currently not as formal as the DRC meetings. Planning expressed its willingness to help OAG and DPS establish this process were SRA 21-01 to be adopted and subdivision no longer occurs. To start, Planning has the following recommendations:

- Establish mandated timelines,
- Establish a more detailed agenda,
- Establish a broader group of participants, including the State Highway Administration and the Department of Transportation,
- Distribute plans in advance along with an outline of the requirements, applicable fees, and process by each agency for individual plan types, and
- Clarify the role of the applicants in the Pre-Design meeting.

This packet contains:

SRA 21-01	© 1-5
Planning Board recommendation	© 6-7
Planning Staff memorandum	© 8-11
County Executive request for introduction	© 12
DPS and OAG joint memorandum	© 13-18
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Subdivision Regulation Amendment No.: 21-01
Concerning: Exemptions – Alcohol Production
and Agritourism
Draft No. & Date: 3 – 7/8/2021
Introduced: January 26, 2021
Public Hearing: March 2, 2021
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 at the request of the County Executive

AN AMENDMENT to:

- Exempt agricultural land used for farm alcohol production or agritourism from the requirement to record a plat before the issuance of a building permit.

By amending

Montgomery County Code
Chapter 50. “Subdivision of Land”
Division 50.3. “General Requirements”
Section 50.3.3 “Exemptions to the Requirements of this Chapter”

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by introduced Subdivision Regulation Amendment.</i>
[Single boldface brackets]	<i>Deleted from existing law by introduced Subdivision Regulation Amendment.</i>
<u>Double underlining</u>	<i>Added to the Subdivision Regulation Amendment by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the Subdivision Regulation Amendment by amendment.</i>
* * *	<i>Existing law unaffected by Subdivision Regulation Amendment.</i>

OPINION

Subdivision Regulation Amendment (SRA) 21-01, lead sponsor Council President at the request of the County Executive, was introduced on January 26, 2021.

SRA 21-01 would exempt agricultural land used for farm alcohol production or agritourism from the requirement to record a plat before issuance of a building permit. Currently, when property owners add an agritourism accessory use, they need to obtain a commercial building permit for the building that will house that use. The building must be on a lot shown on a record plat or be on property exempt from the subdivision process before the Department of Permitting Services (DPS) can issue the commercial building permit. The subdivision process is cost-prohibitive for most agritourism businesses that are looking to diversify their operations.

In its report to the Council, the Montgomery County Planning Board and Planning Staff noted that they were in support of providing relief to farmers and farm businesses, but that the exemption as drafted was too broad based on the intensity of the Farm Alcohol Production use. By a unanimous vote, the Board transmitted the following comments:

- general support for streamlining the review process for Agritourism uses;
- a suggestion that a distinction be made between the production of Farm Alcohol and the commercial ancillary uses such as tasting rooms, on-site food production and consumption, special events and weddings;
- a suggestion that the Administrative Subdivision process may be appropriate rather than an exemption; and
- a suggestion that this SRA be delayed to establish a workgroup or committee that would collaboratively and comprehensively review all aspects of County Code for ways to reduce costs and streamline regulations.

The Council's public hearing was conducted on March 2, 2021. There were six speakers. The Planning Board Chair testified that while the Board supported regulatory flexibility for agribusinesses, it questioned whether a full exemption was an appropriate way to achieve that goal. Five owners of farms of various sizes testified in support of SRA 21-01, testifying that the current process required hundreds of thousands of dollars not just in County fees but for legal fees, surveyors, and civil engineers.

The Council referred the text amendment to the Planning, Housing, and Economic Development (PHED) Committee for review and recommendation. The PHED Committee held a worksession on June 23, 2021. After discussion that included Planning Staff, the Office of Agriculture (OAG), and DPS, the Committee requested a joint memorandum from OAG and DPS describing the current process and what the process would look like if this SRA were adopted. Councilmembers Riemer, Rice, and Glass proposed an amendment that would include additional zones where Accessory Agricultural Education and Tourism and Farm Alcohol Production were permitted. The Committee unanimously recommended approval of SRA 21-01 with amendment.

In its joint memorandum to the PHED Committee, OAG and DPS suggested that the Pre-Design Consultation Meeting could serve as the clearinghouse for these applications. Planning Staff expressed willingness to help with this process, including a recommendation that OAG and DPS formalize the meetings by establishing mandated timelines, creating a detailed agenda,

establishing a broader group of participants from across the relevant departments, distributing plans in advance, and clarifying the role of applicants.

The Council agreed with the recommendation of the Committee. 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, Subdivision Regulation Amendment No. 21-01 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:

1 **Sec. 1. Chapter 50 is amended as follows:**

2 * * *
3 **Division 50.3. GENERAL REQUIREMENTS**

4 * * *
5 **Section 3.3. Exemptions to the Requirements of this Chapter**

6 * * *
7 B. Recordation of a plat before issuance of a building permit is not required for:

8 1. *Agricultural land used for residential dwellings.*

9 * * *
10 2. *Public transfer.*

11 * * *
12 3. *Adjoining property.*

13 * * *
14 4. *Property for Single-Unit Living:*

15 * * *
16 5. *Certain residential property in the City of Takoma Park.*

17 * * *
18 6. *Certain commercial properties adjoining State highways.*

19 * * *
20 7. *Certain commercial properties adjoining State highways in Rural*
21 *Village Overlay zones.*

22 * * *
23 8. *Certain non-residential properties.*

24 * * *
25 9. *Agricultural land used for farm alcohol production or agritourism.*

26 An unplatted parcel [[in the Agricultural Reserve Zone]] used for

27 [[farm alcohol production]] Farm Alcohol Production or for



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

March 1, 2021

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: Subdivision Regulation Amendment No. 21-01

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Subdivision Regulation Amendment (SRA) No. 21-01 at its regular meeting on February 25, 2021. By a vote of 5:0, the Planning Board recommends transmission of comments on the SRA. These comments include:

- the Planning Board’s general support for streamlining the review process for Agritourism uses,
- a suggestion that a distinction be made between the production of Farm Alcohol and the commercial ancillary uses such as tasting rooms, on-site food production and consumption, special events and weddings,
- that the Administrative Subdivision process may be appropriate rather than an exemption, and
- a preference that this SRA be delayed to establish a workgroup or committee that would collaboratively and comprehensively review all aspects of county code for ways to reduce costs and streamline regulations.

The SRA as introduced would amend the Subdivision Regulations 50.3.3 Exemptions to the Requirement of this Chapter to fully exempt parcels in the AR zone from platting, and subsequently the subdivision review process, if they are obtaining building permits for uses relating to Agritourism or Farm Alcohol Production. The Board recognizes that providing relief to farmers and farm businesses is an important component of promoting and enhancing the Agricultural Reserve, however the Board is concerned the outright exemption for these uses may be too aggressive and that there are impacts from certain projects that could be mitigated through a formal review process.

Agritourism uses as defined in the Zoning Ordinance at section 59.3.2.6.F support a wide variety of events and establishments that are intended to increase knowledge and exposure to agriculture and include activities like corn mazes, hayrides, tours, classes and workshops. The footprint of these activities is limited to 10% of the footprint of all on-premise agricultural buildings. Exempting these activities from platting is more supportable because they directly act to expand access and awareness of the Agricultural Reserve to county residents and are clearly limited in scope and impact.

The Honorable Tom Hucker

March 1, 2021

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Farm Alcohol on the other hand is regulated in 59.3.26.F. The definition identifies wineries, cideries, breweries and distilleries on farms as possible production venues. The definition continues suggesting other activities unrelated to the production and sale of alcohol or farming may be allowed. These other uses are not clearly defined but are inferred to mean tasting rooms, on-site preparation and sale of food, special events, and weddings based on the subsequent regulations. Exempting these other activities concerns the Board due to their ability to greatly increase traffic and impacts on the surrounding community, and the commercial nature of their operations and permit requirements.

The Board proposes multiple options for the Council to consider before adoption of SRA 21-01 as discussed in the introduction, but most strongly supports the option of establishing a working group to comprehensively review all county codes and regulations to find efficiencies and cost savings for the review of Agritourism and Farm Alcohol Production uses. This recommendation came directly from the recently completed Agritourism Study and should result in the regulatory relief all parties would like to provide to the agricultural community without completely eliminating the important functions that subdivision and platting provide.

In summary, the Board does support the intent of SRA 21-01, but does not support it as introduced. The Board and its staff are committed to working through these complicated issues to provide meaningful relief to the agricultural and agritourism community and welcome further involvement in these discussions moving forward.

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 Wheaton, Maryland, on Thursday, February 25, 2021.



Casey Anderson
Chair

CA:BB:aj



Subdivision Regulation Amendment (SRA) No. 21-01, Exemptions – Alcohol Production and Agritourism

BB

Benjamin Berbert, Planner Coordinator, CP&P, benjamin.berbert@montgomeryplanning.org, 301-495-4644

JS

Jason Sartori, Chief, CP&P, jason.sartori@montgomeryplanning.org, 301-495-2172

Completed: 02/18/21

Description

SRA 21-01 modifies Section 3.3 of Chapter 50 – Exemptions to the Requirements of this Chapter, exempting Agricultural land use for farm alcohol production or agritourism uses from platting before obtaining building permits.

Summary

Staff recommends providing comments to the County Council for its Public Hearing on March 2, 2021. Staff support the intent of SRA No. 21-01, however a more collaborative and comprehensive approach such as the one mentioned in the Agritourism Study is favored to find ways to reduce the time and economic burden on agritourism operations without fully exempting the process and requirement to obtain a plat. A distinction should also be made between the production of Farm Alcohol versus the operation of on-site tasting rooms and food service operations. Staff does not support exempting platting before building permit for buildings used for the sale or consumption of alcohol or food on these properties given the commercial nature of the operations.

Background

Subdivision Regulation Amendment (SRA) 21-01 was introduced January 26, 2021 by the Council President at the request of the County Executive. The Council Hearing Date is scheduled for March 2, 2021. This SRA would modify Section 50.3.3 to exempt a property owner from having to plat their property (and go through the Preliminary Plan process) before the Department of Permitting Services (DPS) could issue a building permit for a building used for Farm Alcohol Production or for an Agritourism use. Currently, all properties where construction requires building permits, except for those specifically exempt in 50.3.3, must plat their land before being issued that permit. For properties not currently platted, Chapter 50 lays out the process for obtaining a plat, typically through the subdivision process with a Preliminary Plan, an Administrative Preliminary Plan, or a Minor Subdivision. If SRA 21-01 is enacted as written, any farm owner wishing to construct buildings for Farm Alcohol Production or Agritourism uses as described in Chapter 59 would no longer need to provide proof of a platted property before the permit could be issued.

The memorandum from the County Executive’s office, dated January 19, 2021 states that the subdivision process is cost-prohibitive for most agritourism businesses. This is an issue that has been raised before, specifically as part of the development of the Agritourism study completed in 2019. That study set a specific goal for supporting agritourism through improved processes for businesses and

promotional tools, and included solutions such as developing and documenting a process for review and permitting, and also establishing an interagency workgroup that would look for opportunities to refine or modify county codes and policies as it relates to agritourism. This SRA appears to be addressing these issues, but is circumventing the desired collaborative process laid out in the Agritourism Study.

Analysis

SRA 21-01 as introduced makes on change to Chapter 50 section 3.3.B, adding a ninth exemption as shown below:

Division 50.3. GENERAL REQUIREMENTS

Section 3.3. Exemptions to the Requirements of this Chapter

- * * *
 - B. Recordation of a plat before issuance of a building permit is not required for:
 - 1. *Agricultural land used for residential dwellings.*
 - * * *
 - 2. *Public transfer.*
 - * * *
 - 3. *Adjoining property.*
 - * * *
 - 4. *Property for Single-Unit Living:*
 - * * *
 - 5. *Certain residential property in the City of Takoma Park.*
 - * * *
 - 6. *Certain commercial properties adjoining State highways.*
 - * * *
 - 7. *Certain commercial properties adjoining State highways in Rural Village Overlay zones.*
 - * * *
 - 8. *Certain non-residential properties.*
 - * * *
 - 9. *Agricultural land used for farm alcohol production or agritourism. An unplatted parcel in the Agricultural Reserve Zone used for farm alcohol production or for accessory agricultural tourism as defined by Chapter 59.3.2.6.F, as amended.*

Agritourism

There are two separate uses as defined in Chapter 59 that this SRA would exempt. The proposed text cites Section 3.2.6 of the Zoning Code, which is a sub-section for the definition of Farming as a use and provides a definition for Accessory Agricultural Education and Tourism. This definition states:

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.

Staff does find merit in providing an expedited path to allowing farmers to open such activities because they implement a major goal of increasing accessibility of the Agricultural Reserve to the general public, while being capped at 10% of a sites total structure footprint. The exemption section of Chapter 50 already has an exemption for residential dwellings on agricultural land, as shown above as exemption 1, and barns used solely for agricultural purposes do not require a building permit. Therefore adding only up to 10% new structure area on a property that has been exempt from platting before is a logical extension of existing exemptions.

Farm Alcohol Production

The other use that the SRA would exempt from needing a plat before being issued building permits is Farm Alcohol Production. The SRA lacks a reference to the definition of Farm Alcohol Production, which Staff recommends be added. Chapter 59 does provide a use definition as a subsection of 3.2.10 Accessory Agricultural Uses:

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.

The definition itself does not clearly define what “other activities unrelated to the production and sale of alcohol or farming” means. Looking deeper into the use standards for Farm Alcohol Production, limits are given for many ancillary operations including tasting rooms, the sale of food and alcohol, and special events such as weddings or corporate events. It is these “other activities” that have staff concerned about the scope of this SRA as these operations are much larger, more intensive and commercialized, and not size limited like the agritourism uses. It is Staff’s recommendation that clarification be provided whether the intent is to exempt Farm Alcohol Production including tasting rooms and the sale of food and beverages, or if the exemption is just the physical production of the alcohol. Staff does not support exempting tasting rooms and the sale of food or beverage for on-premise consumption. These sorts of uses tend to require commercial use and building permits, generate the need for larger on-site water and septic systems, bring additional delivery truck traffic, and have large parking lots with additional stormwater management needs. The additional vehicle trips associated with these uses also sometimes warrant frontage improvements or other transportation upgrades.

Alternatives

The first alternative to this SRA as introduced has been indirectly suggested above; clarify the SRA to only exempt the direct operation of Farm Alcohol Production, but not exempt operations that include the onsite tasting facilities, the sale of food or beverage for on-site consumption, or that includes special event and wedding venues. This modification would keep much of the SRA language intact and would allow the agritourism uses and the alcohol production only exemptions to move forward. This approach would not provide regulatory relief to operations that do wish to include on-site tasting rooms, to sell product for on-site consumption or to host large special events. This modified version could still move forward as SRA 21-01 and would just require clarification to the inserted language in the exemptions section.

Another alternative would be to amend the Administrative Subdivision provisions under 50.6 to include Agritourism and Farm Alcohol Production as a use that qualifies for the Administrative review. This cuts down on the review time and the filing requirements of the Application but still provides for the review of the site for compliance with county codes and plans, and any necessary road dedication or

improvements. This would result in a quicker process, but may not have a significant reduction in total costs associated with the plan preparation, platting, and any required public improvements. A new SRA would need to be introduced as this is outside the scope of the current proposal.

Staff's preferred alternative is to pause this SRA and look to the Agritourism Study. The study identified that there may be a real need and purpose to provide some amount of regulatory certainty and relief to the larger operations associated with Farm Alcohol Production, or even Agritourism uses larger than 10% of a site, but this should be discussed as part of a multi-agency workgroup rather than given a blanket exemption through an SRA. This approach does delay taking action but hopefully would yield the best and most comprehensive outcome that would provide the county review and permitting agencies a modified process that meets their needs while yielding regulatory and financial relief to the farmers and producers.

Conclusion

Staff believes that SRA 21-01, as introduced, may be a good policy for smaller Agritourism uses, but has concerns relating to the full exemption for Farm Alcohol Production operations that include other activities including tasting rooms, the selling on alcohol and food for on-site consumption and the ability to host corporate or wedding events. Staff recommends the Planning Board transmit comments to the County Council requesting a distinction between farm alcohol production from the associated commercialized uses, and emphasizing our commitment to work with the Ag community to find a mutually agreeable process consistent with the vision outlined in the Agritourism Study.

Attachment

1. SRA 21-01 as introduced with Council Packet




OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Marc Elrich
County Executive

MEMORANDUM

January 19, 2021

To: Tom Hucker, Council President

From: Marc Elrich, County Executive 

Subject: SRA 21-XX, Subdivision of Land – Section 50.3.3. Exemptions to the Requirements of Subdivision

I request that you introduce the attached subdivision regulation amendment. The intent of the amendment is to add an exemption from the requirements to subdivide agricultural land and record a plat before the Department of Permitting Services can issue a building permit to construct a building used for agritourism.

When property owners want to add an agritourism accessory use, they may be required to obtain a commercial building permit for the building that houses the agritourism use. Under current law, before the Department of Permitting Services can issue a commercial building permit, the building must be on a lot shown on a record plat or be on property that is exempt from the subdivision of land process. It is the experience of the Office of Agriculture that the subdivision process is cost-prohibitive for most agritourism businesses looking to diversify operations. By exempting agritourism uses from the subdivision requirement, this proposed subdivision regulation amendment will encourage agritourism uses in Montgomery County, which in turn will expand the County's economy. It also will have the added benefit of providing opportunities for venues that help residents appreciate the farm experience and connect with the agricultural community.

Thank you for your consideration of this proposed amendment to Chapter 50 of County Law.

ME/dt



**OFFICE OF AGRICULTURE &
DEPARTMENT OF PERMITTING SERVICES**

Marc Elrich
County Executive

MEMORANDUM

July 7, 2021

TO: Hans Riemer, Chair, Planning, Housing, and Economic Development Committee
(PHED)

FROM: Jeremy Criss, Director, Office of Agriculture
Mitra Pedoeem, Director, Department of Permitting Services

SUBJECT: SRA 21-01, Exemptions – Alcohol Production and Agritourism

By and through this memorandum the Office of Agriculture and Department of Permitting Services replies to your joint memorandum request (PHED Committee ltr dtd: 1JUL21, attached).

I. Background:

During the June 23, 2021, Planning Housing and Economic Development Committee Work Session, the committee recommended that the Executive agencies Office of Agriculture (OAG) and Department of Permitting Services (DPS) prepare a memorandum outlining the process for reviewing and approving agritourism venues which include on-site farm markets and farm alcohol production.

When property owners want to add an agritourism accessory use, they may be required to obtain a commercial building permit for the building that houses the agritourism use. Under current law, before DPS can issue a commercial building permit, the building must be on a lot shown on a record plat or be on property that is exempt from the subdivision of land process. Currently, all commercial building permits going through the subdivision process, whether associated with Farm Alcohol Production-FAP or Ag Education/Tourism, are reviewed for the following requirements:

1. Forest Conservation
2. Historic Review
3. Transportation, Master Plan Conformance
4. Stormwater Management & Sediment Control
5. DOT/SHA Access, Rustic Roads

6. Well & Septic
7. Ag Preservation Easements
8. Fire Department Access
9. Utilities

It is the experience of the OAG that the subdivision process is cost-prohibitive for most agritourism business owners looking to diversify operations. The OAG suggests that the County needs to develop a new and more streamlined process for reviewing and approving commercial buildings used for agritourism and farm alcohol production by utilizing the Pre-Design Consultation process that DPS currently offers.

II. What the Current Collaboration Looks Like and Department Responsibilities:

The agencies listed below are involved in the current Subdivision process as part of the Development Review Committee (DRC) and we have referenced the specific Chapter of the County Code each agency is responsible for.

Maryland National Capital Park and Planning Commission (M-NCCPC):

Subdivisions review and approval	Chapter 50
Forest Conservation Trees	Chapter 22A
Planning Procedures	Chapter 33A
Historic Resources Preservation	Chapter 24A

Department of Permitting Services (DPS):

Building structural design and construction	Chapter 8
Americans Disabilities Act	Chapter 8
Green Building Certification	Chapter 8
Electricity	Chapter 17
Erosion and Sediment Control and Storm Water Management	Chapter 19
Fire Safety Code	Chapter 22
Individual Water Supply and Sewage Disposal	Chapter 27A
Plumbing and Gas Fitting	Chapter 34
Development Impact Tax	Chapter 52
Tree Canopy	Chapter 55
Zoning	Chapter 59

The Department of Environmental Protection (DEP):

Noise Control	Chapter 31B
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The Department of Transportation (DOT):

Streets and Road Dedication	Chapter 49
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Currently, all proposed Farm Alcohol Production or Ag Education/Tourism facilities must initially contact OAG and submit a Farm Alcohol Production application to be reviewed and approved by both the OAG and DPS. The FAP application helps to illustrate the review and approval process including necessary steps that property owners must take as they propose agritourism and FAP

venues. Anyone who wants to open a FAP business must also develop a business plan that shows how the FAP business and use fulfill the limited use requirements of an accessory use to farming under Chapter 59.3.2.6.

III. The Approval Process for Exempt Properties Should SRA Be Enacted:

Under Section II above, DPS is listed as having more responsibilities and County Code requirements than the other agencies that are listed. This type of environment helps to demonstrate why the OAG suggests using the DPS pre-design consultation process for reviewing and approving commercial buildings used for agritourism. The DPS pre-design consultation process is free and can be the clearinghouse for this proposed process.

The OAG, DPS and MNCPPC meet once a month to discuss FAP applications within the county and upcoming projects. This new process would not have the specific review time constraints that the current Subdivision process has now. The following outlines what the review and approval process would look like for any exempt properties if SRA 21-01 were enacted:

- The OAG will advise the applicant whether an Ag Preservation Easement exists on the property.
- OAG will refer the applicants to the Historic Preservation Committee, if applicable.
- OAG will refer applicants to the Rustic Road Committee, if applicable.
- OAG will inform the applicants to contact MNCPPC for Forest Conservation, Transportation, Master Plan Conformance, and APF.
- OAG will inform the applicants to schedule a Pre-Design Consultation with DPS to address permit requirements. Currently, New or Addition Commercial Building Permits are required to have a Sediment Control Permit, a Right of Way Permit from either DPS ROW or SHA, a Well & Septic Permit, and any trade permits. The following reviews will still be required UNDER SRA 21-01:
 - DPS Water Resources Section will review the Sediment Control permit for stormwater management in addition to requesting that the applicant obtain a Forest Conservation Plan through MNCPPC. An agricultural use exemption may apply to the Forest Conservation requirements.
 - The DPS Right of Way Section or SHA will review access to the property when applicants file for the appropriate access permit. If on a Rustic Road, then DPS ROW can refer applicants to the Rustic Roads Committee that is staffed by DOT.
 - DPS Zoning Review will refer the applicants to the DPS Fire Department Access Section to obtain an approval.
 - DPS Well & Septic will review well and septic permit compliance requirements.
 - The Fire Marshal will review fire code compliance.

In closing, by exempting agritourism uses from the subdivision requirement, the proposed subdivision regulation amendment-SRA 21-01 will encourage agritourism uses in Montgomery County, which in turn will expand the County's economy and job base. It also will have the added benefit of providing

opportunities for venues that encourage resident's appreciation of the Agricultural Reserve, the farm experience, and connection with the agricultural community.

Attachment: PHED Committee Letter to Executive Agencies

cc:

Andrew Friedson, Councilmember, Montgomery County Council
Will Jawando, Councilmember, Montgomery County Council
Livhu Ndou, Legislative Attorney, Land Use & Zoning, Montgomery County Council
Dale Tibbitts, Special Assistant to County Executive Mark Elrich, Office of the County Executive
Mitra Pedoeem, Director, Department of Permitting Services
Ehsan Motazed, Deputy Director, Department of Permitting Services
Casey Anderson, Chair, Montgomery Planning Board
Gwen Wright, Director, M-NCPPC
Robert Kronenberg, Deputy Director, M-NCPPC
Patrick Butler, Chief, M-NCPPC
Jason Satori, Chief, Countywide Planning and Policy, M-NCPPC
Benjamin Berbert, Planner Coordinator, Countywide Planning and Policy, M-NCPPC
Tommy Heyboer, Chief of Staff, Office of Councilmember Hans Riemer, Montgomery County Council
Cecily Thorne, Chief of Staff, Office of Councilmember Will Jawando, Montgomery County Council
Cindy Gibson, Chief of Staff, Office of Councilmember Andrew Friedson, Montgomery County Council
Seamus McNamara, Senior Legislative Aide, Office of Councilmember Will Jawando,
Montgomery County Council

HANS RIEMER
COUNCILMEMBER AT-LARGE

100 Maryland Ave
Rockville, MD 20850

CHAIR
Planning, Housing, and Economic Development Committee (PHED)

MEMBER
Transportation and Environment Committee (T&E)



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

July 1, 2021

TO: Jeremy Criss, Director, Office of Agricultural Services
Mike Scheffel, Agricultural Land Preservation Program Administrator, Office of Agricultural Services
Mark Beall, Zoning Manager, Division of Zoning, Well & Septic and Code Compliance, Department of Permitting Services
Victor Salazar, Division Chief, Division of Zoning, Well & Septic and Code Compliance, Department of Permitting Services

FROM: PHED Committee

SUBJECT: Joint memorandum request

Re: SRA 21-01, Exemptions – Alcohol Production and Agritourism

On June 23, 2021, the Planning, Housing, and Economic Development (PHED) Committee held a worksession on the above-referenced Subdivision Regulation Amendment, which would exempt agricultural land used for farm alcohol production or agritourism from the requirement to record a plat before issuance of a building permit.

During that worksession, the Committee members requested a joint memorandum from the Office of Agricultural Services and the Department of Permitting Services. This joint memorandum would explain what the application and approval process would look like for any exempt properties, were this SRA to be enacted. This joint memorandum would include what current collaboration looks like, and which departments are responsible for which steps.

Please submit this joint memorandum by Tuesday, July 6, 2021. This will allow Planning Staff to respond by Monday, July 12, 2021; and for a full Council worksession and action before the end of July.

Thank you,



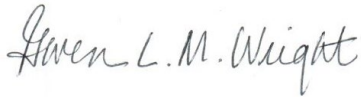
Hans Riemer
Chair, Planning, Housing & Economic Development Committee

CC: Councilmember Andrew Friedson
Councilmember Will Jawando
Casey Anderson, Chair, Montgomery County Planning Board
Jason Sartori, Chief, Countywide Planning and Policy, Planning Department
Benjamin Berbert, Planner Coordinator, Countywide Planning and Policy, Planning Department
Dale Tibbitts, Special Assistant to County Executive Marc Elrich

July 13, 2021

To: Councilmember Hans Riemer, Chair
Planning, Housing and Economic Development Committee (PHED)

From: Gwen L.M. Wright, Director, Montgomery County Planning Department



Re: SRA 21-01, Exemptions-Alcohol Production and Agritourism
Response to Office of Agriculture and Department of Permitting Services Revised Memorandum dated July 7, 2021

Thank you for the opportunity to comment on the referenced memorandum regarding department responsibilities and potential process should SRA 21-01 be approved by the County Council.

While we continue to support the Agritourism industry and a more streamlined process in the county, we have some comments about the structure being proposed.

We would like to provide some clarification on the current process, specifically with respect to the role of M-NCPPC during subdivision. The PHED Committee wanted clarity on the process and value gained or lost by exempting platting and subdivision. Currently, M-NCPPC is the “gatekeeper” or “clearinghouse” during the subdivision process for subdivision of land, right-of-way dedications, Adequate Public Facilities (APF), forest conservation, historic resources including cemeteries and burial grounds, as well as coordination and approval for Fire/Rescue, well and septic and zoning. Other than the subdivision itself and associated dedications, none of these other laws/requirements will go away with the proposed SRA, but rather will be deferred to the building permit or sediment and erosion control plans.

Plans and reviews for forest conservation and APF may still need approval from the Planning Board and changes to historic resources will need approval by the Historic Preservation Commission (HPC). The need for a Forest Conservation Plan, as applicable, is triggered by a Sediment Control Plan, whereas APF and historic resources are triggered by building permit through Chapter 8 and Chapter 24A, respectively. Currently, the trigger for identifying and flagging potential burial grounds and cemeteries is only through subdivision. Therefore, the new gatekeeper under the proposed process would have to coordinate with Historic Preservation staff to identify any applicable potential burial grounds and cemeteries.

Should the SRA be approved by the County Council, it appears the new gatekeepers would be the Office of Agriculture and DPS through a Pre-Design meeting. We meet regularly with the Office of Agriculture and DPS; however, the current interagency coordination meetings are informal and are not structured or organized in the same way as our Development Review Committee meetings. Some considerations in establishing this new process: there would need to be an effort to formalize this process and give it

structure. For example, M-NCPPC has mandated timelines under Chapter 50 to process applications, however there are no timelines for reviews during building permit or sediment control permit. Collectively, the agencies and departments would need to establish an acceptable timeline. A more detailed outline and broader group of participants would also need to be included in the Pre-Design meeting if a review is to be effective, including the State Highway Administration and Montgomery County Department of Transportation. Plans would need to be distributed in advance along with an outline of the requirements and applicable fees and process by each agency for individual plan types. Finally, applicants are formally included in the DRC process. The role of applicants in the Pre-Design meeting process would need to be clarified.

In essence, there are many laws that the State and County have enacted that could impact Alcohol Production Facilities. This SRA does not change or remove any of these existing laws. Removing the subdivision process may save some time and application fees; however, it also means that the structure to assess which laws apply to a particular proposal or project will need to be recreated in a duplicative way by the Office of Agriculture and DPS – as they are the new “gatekeepers.”

Thank you for the ability to comment on the memorandum and provide some additional clarifications. If SRA 21-01 is adopted, we are very willing to coordinate with the Office of Agriculture and Department of Permitting Services to establish a more streamlined and acceptable process for Alcohol Production Facilities where subdivision will not occur.