



FAYETTE ALLIANCE

603 W. Short Street
Lexington, Kentucky 40508
info@fayettealliance.com
fayettealliance.com

Board of Directors

Ann Bakhaus
James G. Bell
Price Bell, Jr.
Elisa Bruce
Sandra Noble Canon
Kip Cornett
Melody Flowers
Greg Goodman
Stan Harvey
Matt Hovekamp
Mary Catherine Jones
Sue Masson
Chauncey Morris
Orrin Ingram
Tom Poskin
Don Robinson
Bill Shively
Ken Silvestri
Holly Wiedemann
Anthony Wright

Executive Director

Brittany M. Roethemeier, J.D.

August 24, 2022

Chair Forester and Members of the Planning Commission:

Please accept this letter on behalf of the Fayette Alliance with respect to the PLN-ZOTA-22-00011: Amendment to Agricultural Rural (A-R) Zone to Allow Small Farm Micro-Distilleries.

Founded in 2006, Fayette Alliance is a non-profit dedicated to achieving sustainable and equitable growth in Lexington-Fayette County through land use advocacy, education, and research. We believe that preserving our unique and productive Bluegrass farmland, advancing smart growth, innovative development, and improving our infrastructure are all essential to Lexington's continued success.

In furtherance of this mission, we respectfully submit the following with regard to our recommendation of disapproval for PLN-ZOTA-22-00011, but also our recommendations for additional discussion and consideration of expansion of conditional uses such as a small farm micro-distillery in the A-R zone in the near future. Fayette Alliance believes that with additional discussion and revised language, a requirement of an agricultural-nexus (agricultural connection between permitted uses and the land on which they occur) and additional consideration of the impacts of introducing industrial uses into our A-R zone, there is an opportunity to include uses like a small farm micro-distillery in our A-R zone while ensuring we do not weaken our agricultural economy and our unique brand.

Overview

It is crucial to our city's brand, identity, economic development and overall success that we both protect and support the productive farmland and agricultural businesses that make our community financially strong and incredibly unique. Lexington-Fayette County has much to be proud of in the way we have embraced agribusiness and agritourism, our City's commitments to building the ag-tech business sector, and as we watch tourism bounce back post-pandemic. The future is bright as a result of all that Lexington-Fayette County and the surrounding Bluegrass region has to offer to its own residents and visitors from around the globe; and our landscape, and the agricultural economy it supports, are the anchor of that success. As a result, we should be forward-looking as well as cautious about the changes we make to our ordinance, how and why we make them, and the unintended consequences of those policy decisions for our future.

Fayette Alliance supports identifying and evaluating ways to expand opportunities to grow and support agribusiness and agritourism in our agricultural zones, and believes it should be done comprehensively as it relates to the Zoning Ordinance, with an eye towards the future of our agricultural economy. As we do so, and to protect the factory floor of our community, we should ensure there are significant requirements around the direct connection between the use contemplated and the agricultural land on which that use is located; **a threshold “agricultural-nexus”**. This nexus will protect our core agricultural land, the businesses that are supported by it, and the unique identity Lexington-Fayette County and prevent new contemplated uses from threatening the land and economy that sustains us.

In addition, careful limitations should be put on auxiliary uses for retail and commercial entertainment purposes associated with any new or expanded uses in our A-R zone, to ensure the intent of the zone is not undermined, and our productive farmland is not adversely impacted. Most importantly, any expansion of uses in our most sensitive agricultural zone be done comprehensively; that new and/or expanded uses in the A-R zone be examined together, at one time, and by a robust committee to ensure feedback from across the community, as opposed to adding uses by changing the text of the zone ZOTA by ZOTA.

PLN-ZOTA-22-00011 proposes to permit a use which has been, up to this point, **solely classified as industrial** in a zone primarily intended for production agriculture. It does not include any requirements for an agricultural-nexus between the small farm micro-distillery use and the land on which it is located, nor any limitations on accessory activities associated with that use that would also have no connection to agriculture or to the land itself. As a result, Fayette Alliance strongly recommends disapproval at this time. We would, however, welcome an opportunity to be a part of a community stakeholder group who can work together, in conjunction with others in the rural community, the Rural Land Management Board, tourism experts, and more to look at uses permitted in the A-R zone and evaluate new and/or expanded uses to promote agribusiness and agritourism in a comprehensive way in the future. We have provided recommendations below for your consideration and what we hope will be further discussion on this important topic.

Intent and Impact of Uses in the A-R Zone

The primary intent of the A-R zone, which constitutes the core agricultural lands of Fayette County, is to encourage production agriculture and protect the rural character of the Bluegrass. Further, it is meant to discourage all forms of urban development except for a limited number of conditional uses.¹

Our farmland is the factory floor of our community. 1 out of every 12 jobs in Lexington-Fayette County is directly or indirectly supported by agriculture, which contributes \$2.3B to our local economy annually, and an additional \$1.3B in income, profits and dividends; money that goes directly into our community

¹ LFUCG Zoning Ordinance, Section 8-1(a).

members' pockets.² This significant economic impact depends on our most finite resource: our nationally significant, prime soils, which are carefully protected by our A-R zone. This resource also anchors a \$2B tourism industry, which continues to grow, and which is essential to connecting our community members with our productive farmland.³

In 2012, an effort to expand recreation and tourism in our agricultural zones was begun. It was robust and comprehensive, incorporating input from a diverse group of stakeholders, and which carefully and intricately analyzed and evaluated additional uses in our most sensitive areas. This was a multi-year process - and for good reason. Lexington-Fayette County has much at stake, and once our farmland is gone, it's gone. Our diverse economy, brand and identity depend on protections of our rural area being upheld.⁴

In 2016, the recreational use ZOTA was unanimously adopted by Council and with the full support of Fayette Alliance. The adopted version allowed for new agritourism and ecotourism opportunities in a way that balanced the needs and protections of agricultural and natural resource areas with economic interests and public access. The ZOTA upheld the intent of the A-R zone, and worked to ultimately strengthen it. In total, over 50 agribusiness and ecotourism activities were added to our zoning ordinance, with the full support of the community.⁵

If we add more permitted uses to our agricultural zone without robust community conversation, like which took place for the last update, we risk threatening future investment in our A-R zone for uses that are the primary permitted uses: for agricultural production. We must consider the impact of any new use on surrounding existing agricultural operations, as well as on how it will impact new ag operations considering locating nearby. If by allowing a new use in our AR zone we deter other agricultural operations, we weaken the intent of the AR zone, its ability to act as our factory floor, to support ag related jobs, as well as our identity and brand.

Distillery in the A-R Zone

For the duration of the history of our zoning ordinance, a distillery operation has only been permitted in industrial zones. Simply put, permitting a distilling operation, even one that doesn't produce more than 1,000 gallons of distilled spirit annually, introduces an industrial use of land into the A-R zone. Regardless of the amount of distilled spirit produced, it's still a process that qualifies as an industrial one. Further, if permitted in the A-R zone as proposed, it would do so without requiring any direct connection to the land on which it operates, which is zoned for production agriculture and to preserve our rural character. In order for a traditionally industrial use to be considered appropriate in the agricultural zone,

² "The Influence of the Agricultural Cluster on the Fayette County Economy", University of Kentucky, Community and Economic Development Initiative of Kentucky (CEDIK), May 2017.

³ Id.

⁴ Fayette Alliance, Recreation and Tourism ZOTA history, <https://fayettealliance.com/recreation-tourism-zota-2/>

⁵ Id.

there must be a significant agricultural-nexus requirement for the use, ensuring that it is specifically tied to the land on which it occurs, and a thoughtful limitation on auxiliary uses of the distillery for retail/commercial entertainment purposes.

While a distillery of a certain size and type might fit these requirements, it requires additional exploration, evaluation and input from community stakeholders. In addition to the distillery itself, pursuant to KRS this use also permits commercial operations associated with the distillery license including product sampling, souvenir package sales, retail drink sale, and bottling, among others.⁶

Despite the scale of a distillery, it still involves a distilling process that is industrial in nature. In light of the increase in craft distilleries around the country, and the rise of industrial scale hazards associated with them, the National Fire Protection Association published an article speaking to concerns around regulation of these new small-scale distilleries, noting importantly that “[i]t’s not just the storage of spirits that’s a hazard. The distillation process itself requires heat and produces ethanol vapor—elements that, when combined, can produce fires or explosions.”⁷ Further, they note that “[t]hese concerns have taken on a particular urgency in recent years, during which small-scale distilling has become immensely popular around the country. Like the craft brewing movement before it, craft distilling is expected to keep growing. There are over 1,000 so-called craft distilleries—where liquor is made in typically small spaces by equally diminutive staffs, often just a few people—scattered across the country, and experts worry the production and storage of spirits at some of these facilities could be occurring with little regard for fire safety.”⁸

The article speaks to the different types of uses that come along with craft distilling: “[a] feature common to almost every craft distillery is a tasting room, where visitors of legal drinking age can sip free or inexpensive samples of the business’s products. Some distilleries offer tours as well, where participants can get face to face with the equipment used in the distillation process. These different uses create a mashup of occupancy types and classifications, like an assembly occupancy merged with an industrial occupancy containing hazardous materials.”⁹ Acknowledging the industrial nature and hazards associated with the same is critical as we evaluate its appropriateness in the A-R zone and the language required to mitigate impacts created by an industrial process.

Another important consideration for the distilling process is waste. How is that dealt with and what impact might it have in our agricultural area? Wastewater and stillage, which result from the distilling process, must be taken into account. As noted by a small craft distillery operator, “[a]lthough distillery wastewater is sometimes used as a fertilizer, it can have toxic impacts on the environment, and it is most often discarded in water treatment facilities where it is expensive and difficult to treat. When we first got into business, learning how to deal with the

⁶ KRS 243.0305 and KRS 243.035.

⁷ National Fire Protection Association Journal, “Small Scale, High Proof”, March 1, 2018, <https://www.nfpa.org/News-and-Research/Publications-and-media/NFPA-Journal/2018/March-April-2018/Features/Safe-Distilling>.

⁸ Id.

⁹ Id.

waste was a major learning curve,” David Grasse, director of operations at New Hampshire’s Tamworth Distilling, recently told Wine Enthusiast.¹⁰ “You would think that it being an organic material, like corn, that it couldn’t hurt anybody, but because it’s very acidic and has high chemical oxygen demand and bio-oxygen demand, you just can’t run it into a septic system.”¹¹

Treatment of distillery waste products is also a critical consideration, and another reason distilling is categorized as an industrial use. It can have significant environmental implications, and while regulated, the intensity of the processes associated with distilling, packaging and more and its industrial nature must be considered if we are to consider it as an appropriate use in the AR zone. Research done by the [Beverage Industry Environmental Roundtable \(BIER\) on the carbon footprint of spirits](#) found that, on average, a 750-milliliter bottle of liquor produces 6.5 pounds of carbon dioxide, the majority of which comes from the distillation process and glass packaging. Distilleries are highly water-intensive — [12 times as much wastewater](#) is produced as the amount of alcohol produced — which can include an estimated eight to 15 liters of waste materials per liter of alcohol.¹²

If there is no requirement that the distillery operation has ties to the land on which it operates, i.e. that a percentage of distilled ingredients must be produced on the property itself, we risk setting a precedent that permits industrial and commercial uses on A-R land so long as that land is also an “active farm” as suggested by Planning Staff (which itself is not defined¹³ and needs clarification; see below), **but requires no connection between the two.** There are a multitude of uses that an active farm might want to engage in that are completely unrelated to the farming operation, and unrelated to agriculture in general. If we set a precedent to approve this proposal, before we take the time to look at the A-R zone as a whole to see what might be compatible, we risk opening the door to non-ag uses that will be hard to close.

Using this logic, a restaurant, or a retail store, and more could be argued to be permitted in the A-R zone so long as it was on an “active farm”, without any connection between the use and the farm. As those uses become more prevalent, it becomes more and more difficult to evaluate which is the primary use: the industrial, commercial or retail use, or the agricultural use for which the property is designated? Without further clarification, the “active farm” aspect of the agricultural property could become the smallest, simply justifying the commercial and industrial uses that exist on the property completely independent of the agricultural use.

Additional work is needed to determine the most effective and enforceable definition of agricultural-nexus. But it is critical in order to strike the delicate balance necessary between industrial and/or commercial uses and those that are

¹⁰ “The Distilleries Working to Reduce the Footprint of Spirits”, December 28, 2020, <https://foodprint.org/blog/sustainable-spirits/>.

¹¹ Id.

¹² Id.

¹³ Staff Report for PLN-ZOTA-22-00011: Amendment to Agricultural Rural (A-R) Zone to Allow Small Farm Micro-Distilleries.

actually agricultural, and which strengthen the agricultural intent. We must be wary of permitting uses which are not tied to the land on which they occur so we don't allow our zoning ordinance to serve as a loophole for businesses that actually undermine the primary agricultural intent of our A-R zone.

Proposed Text and Staff Alternative Text

Planning Staff's review and reasoning for their recommendation of approval of Staff Alternative Text recognizes that micro-distilleries have agricultural connections (the materials used for the distilling process being fruits or grains) and that this proposal seeks to allow a small-scale distillery to operate in the A-R zone "in conjunction with an existing agricultural use".¹⁴ Further, it is noted that "distilled spirits created by the proposed small farm micro-distillery uses are an agriculturally related, value-added product that increases the financial feasibility of the farm operation," meeting Theme C, Goal #1b of the Comprehensive Plan to strengthen policies that propel the agriculture economy.¹⁵

While the intent for and understanding of the importance of the agricultural-nexus for this use in the A-R zone seems to be reflected in the Staff Report, and this particular applicant's context for the operation related to on site agricultural production is outlined in the justification letter, there are no requirements within the proposed text that connect the subject farm to the industrial use in any way. A distillery in the A-R zone is only related to production agriculture and the preservation of rural character if the products utilized in the distilling process are grown on the subject property and directly tied to the land at issue in the zone. In order to ensure this connection, it must be outlined in the text of our zoning ordinance.

Reviewed under that context, this proposal may ultimately meet the goal of an agricultural-nexus to tie the small farm micro-distillery to the land where it operates. But, without the zoning ordinance language requiring it to do so, our community risks that the next proposal will not be agriculturally related to the land on which it operates at all, but may still be approved anyway. Under different circumstances, there may not be an agricultural connection, no creation of a product associated with the Fayette County agricultural economy because it was created with products shipped in from far beyond our Fayette County's borders. Under those circumstances, we are simply permitting an industrial use on property zoned A-R, unrelated to our local agricultural economy.

The importance of the agricultural-nexus for any future conditional uses in the A-R zone extends to the definitions of the uses themselves. Staff suggests the definition of a small farm micro-distillery "means a distillery located on an active farm".¹⁶ It then proposes that in the conditional use language, small farm micro-distillery be expanded to not only an "active farm", but an agricultural, horticultural or agribusiness operation".¹⁷ It is unclear, however, how "active farm"

¹⁴ Staff Report for PLN-ZOTA-22-00011: Amendment to Agricultural Rural (A-R) Zone to Allow Small Farm Micro-Distilleries.

¹⁵ Id.

¹⁶ Id., Staff Alternative Text, Article 1-11.

¹⁷ Id., Staff Alternative Text, Article 8-1(d).

is defined. Further, a horticultural operation may differ greatly from an active farm, and extend the permitted use of a micro-distillery to property including a plant nursery or greenhouse on a given piece of property. Under those circumstances, any agricultural-nexus is even further diluted. Once again, we face a situation where we've permitted industrial and commercial uses with no agricultural tie on property zoned A-R.

Other states around the country have looked to boost local agricultural operations through permitting of craft distilleries. Called "*farm to flask*" laws, numerous states require distilleries to use local produce: the way to truly connect and support the farm community and the distillery operation.¹⁸ As evidenced by these various ordinances, the agricultural nexus requirement is not a new one to the distilling industry, and for an agricultural community like Lexington-Fayette a county should be a natural one. Requiring this nexus can support our local agricultural operations and our agricultural identity, strengthening the intent of our A-R zone instead of weakening it. Once again, more research is needed to determine how best to craft language permitting this type of small-scale distillery to ensure this nexus is appropriate for the zone, but we are encouraged there are national examples that can assist.

While it is difficult to anticipate all of the unintended consequences the language of the proposed ZOTA may have, it is precisely these consequences that must be considered when our community evaluates ZOTAs, especially to a zone protecting our most finite resource: our productive and prime soils.

Recommendations

Pursuant to the above, Fayette Alliance would recommend consideration of the following recommendations for continued discussion about permitting a craft micro-distillery as a conditional use in the A-R zone:

- Define and establish the term and enforceability of "agricultural-nexus", which must be required for expanded/and or additional uses in the A-R zone. Any proposed conditional use must have a direct connection to the agricultural land on which the use occurs. Uses without genuine ag connection threaten the intent of A-R zone and are more likely to introduce commercial activity that negatively impacts our agricultural area and identity.
- Define the term "active farm" to better describe a working agricultural operation appropriate in the A-R zone, to which a use such as a small farm micro-distillery may be tied should there be an agricultural-nexus between the use and the farm.

¹⁸ "Farm to Flask Laws Give Craft Distilleries a Boost", USA Today, October 28, 2017, <https://www.usatoday.com/story/news/2017/10/28/farmers-markets-could-get-new-goods-tha-farm-flask-laws-let-farmers-distill-spirits-their-own-produc/807318001/>

- There should be a direct connection between the distilled spirits generated by the small farm micro-distillery use and the land on which the distilling process occurs. Without this agricultural-nexus between the products created by the use and the land itself, this micro distillery is simply a stand-alone industrial use no different from the distilleries permitted only in industrial zones or other industrial and commercial uses throughout the community. Without this connection, our rural area, our agricultural economy, and our unique brand is negatively impacted, and the intent of the A-R zone undermined.
- Thoroughly evaluate the impact of industrial uses such as distilling, and the product/waste created by this use in agricultural areas regardless of amount of distilled spirit produced.
- Consider expansion of agribusiness and agritourism uses in the agricultural zones comprehensively, as part of the 2045 Comprehensive Plan process and/or a separate effort similar to the Recreation and tourism ZOTA, instead of ZOTA by ZOTA. Establish a diverse stakeholder committee to evaluate these uses while maintaining the intent of the A-R and other agricultural zones, including rural landowners, the Rural Land Management Board, Fayette Alliance, Kentucky Thoroughbred Association/Kentucky Thoroughbred Owners & Breeders, Fayette County Farm Bureau, and others.

Without consideration of the recommendations above, the ZOTA proposal, and the Staff Alternative Text proposal encourages the emergence of non-agricultural, industrial, and commercial uses throughout our rural area. Left unchecked, these uses will weaken the agricultural intent of the A-R zone, discourage investment in our signature agricultural industries, and open the door to additional ZOTAs and zone changes outside our Urban Service Boundary.

It is our understanding that Planning Staff intends to re-visit permitted uses in our Agricultural zones in the coming year, which would involve public input and thoughtful consideration of the impacts of the policy changes Fayette Alliance is recommending now. There seems to be a great opportunity for robust discussion around all of these concerns in the near future, and Fayette Alliance recommends that evaluation of expanded conditional uses in the A-R zone, like the proposal here, be considered at one time. Otherwise, we risk policy changes now that are inconsistent with a more comprehensive review in the future; putting at risk our sensitive and productive rural area as a whole.

Conclusion

Fayette Alliance welcomes the opportunity to further evaluate and discuss permitted uses in our A-R zone that further support agritourism and agribusiness in ways that are compatible with the intent of our most protective zone. We appreciate your consideration of our recommendations. This is a complex effort, but we believe can be executed in a way that advances our agricultural economy, offers opportunities to expand it, and ultimately strengthens the foundation of our unique identity. More work is needed, however, to responsibly do so, and Fayette

Alliance requests that work be done before any proposal for small farm craft micro-distilleries is approved.

Without important protections in place for our A-R zone, we risk enabling the emergence of non-agricultural, industrial and commercial uses in our rural area, undermining the intent of the zone, weakening our brand, and jeopardizing the important agricultural economy that forms the foundation of our community.

We must balance the protection of the agricultural intent of our rural zone and the preservation of the natural resources that are the foundation of our community - our land - with the growth of agribusiness and agritourism that promote these resources. It can be done - it just takes intention, thoughtful planning, and broad community conversation. These efforts are essential to achieving our vision of responsible and sustainable growth in Lexington-Fayette County.

Thank you for your consideration and for all you do for our community.

Respectfully submitted,



Executive Director
Fayette Alliance

CC: Jim Duncan, Director of Planning
Silver Springs Farm Eqwine & Vineyard LLC, Applicant

