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ROCKINGHAM COUNTY

BOARD OF SUPERVISORS OF ROCKINGHAM COUNTY, VIRGINIA,

RESOLUTION REGARDING

THE INTERPRETATION OF BUILDING CODE TERMS

ASSEMBLY BUILDING AND FARM BUILDING

The Board of Supervisors of Rockingham County, Virginia, has long supported, endorsed and encouraged the economic vitality of true agricultural activities in its jurisdiction. This support historically has taken the form of both protecting the farmer's right to do those activities necessary to successfully operate a farm and encouraging the farmer to exercise imagination and creativity to explore alternative and innovative projects to make the farm more productive and profitable. Rockingham County was so engaged before the General Assembly passed statutes such as the farm winery bill (Virginia Code Section 15.2-2288.3) or the agricultural operation bill (Virginia Code Section 15.2-2288.6). An example of this was Rockingham County's Farm First Ordinance.

The Board of Supervisors is also mindful of its duties to protect the land use rights and expectations, and property values, of all its real estate owners; and to protect the health, safety and welfare of all its citizens and members of the public who visit the County.

The Board of Supervisors requires County staff to administer all regulatory systems, whether federal, state or local in origin, in a good sense, even-handed and equitable manner.

RECITALS:

1. The Virginia Uniform Statewide Building Code (Va. USBC), also known as the Virginia Construction Code, defines Assembly Group A-2 buildings or spaces as those intended to be used for the consumption of food or drink, or both, and include, but are not limited to, banquet halls, casinos, nightclubs, restaurants, cafeterias and other dining facilities, taverns and bars. Va. USBC Section 303.3.

2. The International Building Code Commentary (IBC Commentary), at Section 303.3, elaborates that Group A-2 "includes occupancies in which people congregate in high densities for social entertainment, including drinking . . . and food and drink consumption." The Commentary continues by pointing out that Group A-2 uses have such characteristics as low light levels, entertainment by a live band or recorded music, tables arranged so as to create ill-defined aisles, and high occupant load densities.

3. The IBC Commentary, Section 303.3, further states that,

The fire records are very clear in identifying that the characteristics listed above cause a delayed awareness of a fire situation and confuse occupants regarding appropriate response, resulting in an increased egress time and sometimes panic. Together, these factors may result in extensive life and property losses. [Emphasis added.]

4. The Virginia USBC definition for “small assembly spaces” includes the criteria that the room or space in question be “used for assembly purposes with an occupant load of less than 50 persons and accessory to another occupancy.” Va. USBC Section 303.1.2.

5. The Virginia USBC, in its Definitions Section, (and Virginia Code Section 36-97) defines a “farm building” as,

A building or structure not used for residential purposes, located on a property where farming operations take place, and used primarily for any of the following uses or combination thereof:

1. Storage, handling, production, display, sampling or sale of agricultural . . . products produced on the farm.
2. Sheltering, raising, handling, processing or sale of agricultural animals or agricultural animal products.
3. Business or office uses relating to the farm operations.
4. Use of farm machinery or equipment or maintenance or storage of vehicles, machinery or equipment on the farm.
5. Storage or use of supplies and materials used on the farm.
6. Implementation of best management practices associated with farm operations.

6. It is noted that both the Virginia Uniform Statewide Building Code and the Virginia Statewide Fire Prevention Code are regulations controlled by the General Assembly of Virginia through the Department of Housing and Community Development, and are not local regulations.

7. Virginia Code Section 15.2-2288.6 (Agricultural Operations) provides that “[n]o locality shall regulate” certain activities carried out at an agricultural operation “unless there is a substantial impact on the health, safety, or general welfare of the public.” Section 15.2-2288.6 further states that “[n]o locality shall require . . . permit[s] not required by state law . . . unless there is a substantial impact on the health safety, or general welfare of the public.”

8. Virginia Code Section 15.2-2288.3 (Farm Wineries) balances the Commonwealth’s policy of “preserv[ing] the economic vitality of the . . . wine industry” with “maintaining appropriate land use authority to protect the health, safety, and welfare of the citizens of the Commonwealth” Continuing, the General Assembly stated that “[l]ocal restriction upon such activities and events on farm wineries . . . to market and sell their products shall be reasonable and shall take into account” certain factors, including “the agricultural nature of such activities and events.” Virginia Code Section 15.2-2288.3:1 (Limited, or Farm, Breweries) contains identical provisions.

9. It is noted that neither 15.2-2288.6, 15.2-2288.3 nor 15.2-2288.3:1 prohibit local regulation of activities on agricultural operations, farm wineries or farm breweries. Rather, these statutory sections anticipate local regulation. They give guidance regarding certain elements that must be taken into consideration by localities when they enact regulations. Chief among those elements to be considered is public safety.

10. It is again noted that the Virginia Uniform Statewide Building Code and the Virginia Statewide Fire Prevention Code are not local regulations.

DISCUSSION:

11. With the advent of farm-based retail activities in agricultural districts has come the construction of buildings and structures for the purpose of accommodating large numbers of people to participate in commercial activities such as sampling and purchasing farm products. In addition, it is the intention of the owners to rent out their buildings for other business activities, such as conferences and retreats, and for social activities such as music and other entertainment events, weddings and wedding receptions. Land use issues that may be raised by these activities are not addressed in this Resolution.

12. Local government has not only been authorized and empowered to protect public safety within its jurisdiction; it has been given the duty to protect public safety. Administration and enforcement of the Building Code and the Fire Prevention Code are fundamental examples of this duty:

13. Activities conducted at farm-based retail sites that include inviting large numbers of people into buildings resemble in every aspect similar activities conducted in a commercial or business district. Most important to this discussion, such activities present all the same public safety concerns when carried out on a farm as they present when carried out in a more urban setting – with one notable exception. When carried out on a farm they are that much farther from public services and facilities that could be called upon to assist during emergencies.

14. The Rockingham County Board of Supervisors endorses the Uniform Statewide Building Code and the Statewide Fire Prevention Code as being well developed and effective tools that assist the effort to ensure public safety in a reasonable and cost-effective manner.

15. When comparing the descriptions of the Building Code terms Assembly Group A-2 and Farm Building, and attempting to arrive at a reasonable understanding of the intent of the authors, the Board takes into account the guidance provided by the IBC Commentary, and applies the practical wisdom of County staff members who deal with building, fire and agricultural issues every day.

16. The Board notes that everything about the description and commentary concerning Assembly Group A-2 is consistent with the uses and practices actually occurring in these large farm-based retail buildings, particularly when the intended number of people reaches or exceeds fifty (50). In contrast, nothing in the description of farm buildings is consistent with such uses and practices except the two words “sampling” and “sale” included in a long list of examples of the sort of activities that might occur in a farm building.

CONCLUSION:

17. The Board of Supervisors of Rockingham County concludes that, when a building or structure is built, or an existing building or structure is modified, to accommodate fifty (50) or more members of the public at one time for purposes otherwise consistent with the description of an assembly building or structure, including marketing activities on farm-based retail properties, the building or structure is an Assembly Group A-2 building or structure under the Virginia Uniform Statewide Building Code and must be permitted, designed, built and inspected accordingly.

18. Comprehensive legislative and regulatory systems such as the Uniform Statewide Building Code often contain provisions that can, at first glance, appear to be in conflict with one another. When that occurs, it becomes the task of those charged with the administration of the code to reconcile the apparently conflicting language in a manner that best serves the intent of the drafters while giving full effect to all the language, and not construing any of the language in a manner that supersedes, effectively repeals, or contradicts any of the language.

19. The need for regulation for the benefit of public safety when dealing with buildings and structures built to accommodate large numbers of the public is well established. Unfortunately all too numerous are the examples of tragic incidents caused by failing to provide for adequate load-bearing capacities of floors and balconies, or sufficient time and means for a building to be self-evacuated and verification of evacuation by fire and rescue personnel.

20. It is therefore unreasonable, and irresponsible, to read into a mere two words found in the lengthy description of "farm building" an intent to exempt from decades of public safety wisdom deposited in the regulations for assembly buildings, a few assembly buildings simply because they are located on farms. Not when the activities taking place in those buildings are entirely consistent with the activities described in the Building Code's Assembly Group A-2.

21. It is far more reasonable to understand those two words in the farm building description as referring to the sort of farm-to-consumer activity that has taken place for years on farms in Rockingham County. Such activities include using an existing farm building, or part of a farm building, to display and sell farm products to a relatively small number of customers. Of course, sales activities could also take place in newly constructed farm buildings. Such buildings, however, do not include those constructed from the ground up, or later modified, to accommodate uses and crowds historically associated with assembly buildings.

22. The Building Code supplies the threshold of fifty or more occupant load in its description of small assembly spaces.

23. Code compliant assembly buildings have been constructed at little or no additional cost over noncompliant buildings. Several developers have demonstrated that building to code is not cost prohibitive. Talking to the Fire Marshal and Building Official early is one key to keeping the cost down.

24. Providing fire flow can be the one truly difficult cost issue. Because these buildings are often built far from public services, meeting Code expectations for fire flow can, at times, be challenging. However, the fact that it can be challenging to provide adequate flow to protect both the public and rescue personnel is not a reason to artificially force an assembly building into the farm building description. Rather, it is all the more reason for public and private entities to work together at the beginning of construction to solve a very real public safety issue.

25. The Building Official and Fire Marshal are granted considerable discretion when applying the respective codes to specific situations. The Rockingham County Building Official and Fire Marshal have a long standing history of working with owners of assembly buildings, such as the numerous church buildings found throughout the County, to solve fire flow issues. These officials will conduct themselves no differently with farm-based retail enterprises.

IT IS THEREFORE

26. RESOLVED THAT buildings and structures built or modified to accommodate fifty (50) or more occupants and that otherwise are consistent with the Building Code description of an Assembly Group A-2 building shall be designed, permitted, built and inspected as required by the Virginia Uniform Statewide Building Code and the Virginia Statewide Fire Prevention Code no matter where in the County such buildings or structures are located.

27. It is further RESOLVED THAT the Building Official and the Fire Marshal shall use the discretion at their disposal to the greatest reasonable extent to assist the developer to comply with the intent of their respective codes in the most cost-efficient manner possible.

28. It is further RESOLVED THAT the action taken herein by the Board of Supervisors is the reasonable and proper interpretation and application of the statewide codes discussed, and not the exercise of any local regulatory authority. However, should this action be interpreted as an act of local regulation, it is the understanding of the Rockingham County Board of Supervisors that it has sufficient local regulatory authority, as reiterated in the several agritourism-agribusiness statutes, to provide for public health, safety and welfare.

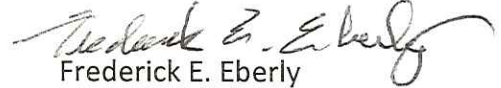
Given under our hand this 9th day of August
in the year two thousand seventeen, A.D.



Rick L. Chandler, Chairman
Supervisor, District 3



Pablo Cuevas
Supervisor, District 1



Frederick E. Eberly
Supervisor, District 2



William B. Kyger, Jr.
Supervisor, District 4



Michael A. Breeden
Supervisor, District 5

Attest:



Stephen G. King, County Administrator