

**BOARD OF ZONING APPEALS  
JUNE 26, 2024**

THE REGULAR MEETING OF THE GREENE COUNTY BOARD OF ZONING APPEALS WAS HELD  
ON WEDNESDAY, JUNE 26, 2024, AT 6:30 P.M.

Those present were: Lyle Durrer (Chair)  
Mark Kelpé (Vice Chair)  
Charles Covington  
Arthur B. Morrill, III

Staff present were: Jim Frydl, Planning, and Zoning Administrator  
Earl Keys, Zoning Officer  
Cristy Snead, Secretary

**BZA Special Meeting:**

**Mark Kelpé**

I move the Board enter into a closed meeting under the provisions of Section 2.2-3711(A)(8) for consultation with legal counsel regarding specific legal matters requiring the provision of legal advice. The subject matters are the jurisdiction of the BZA, statute of limitations issues related to an appeal to the BZA, and state and local zoning codes related to farm wineries.

Lyle Durrer  
I'll second

**Motion made to come out of closed session:**

I move that the Board certifies to the best of each member's knowledge, only public business matters lawfully exempted from open meeting requirements under Section 2.2-3711.A.8 of the Virginia Freedom of Information Act, and only such public business matters, as were identified in the motion by which the closed meeting was convened, were heard discussed or considered in the meeting by the public body.

**Jim Frydl**

Alright, that's the motion and I'll call your name and just say I certify.

**Jason Ham**

We need a second.

**Jim Frydl**

Oh, I am sorry. Thank you.

**Chuck Covington**

I'll second.

**Lyle Durrer**

Motion's been made and a second, call for the vote, please.

**Jim Frydl**

We have a motion and a second by Mr. Covington. So just say I certify when I call your name. Mr. Covington.

**Chuck Covington**

I certify.

**Jim Frydl**

Mr. Durrer

**Lyle Durrer**

I certify.

**Jim Frydl**

Mr. Kelp

**Mark Kelp**

I certify.

**Jim Frydl**

Mr. Morrill

**Art Morrill**

I certify.

**Jim Frydl**

Thank you.

## **CALL TO ORDER**

Mr. Durrer called the meeting to order.

## **PLEDGE OF ALLEGIANCE & MOMENT OF SILENCE**

Mr. Durrer led the Pledge of Allegiance and offered a moment of silence to begin the meeting.

## **DETERMINATION OF QUORUM**

**Jim Frydl**

Thank you, and then I will help establish or determine a quorum. So, I'll call your name and please just state your name after all.

Mr. Covington

**Chuck Covington**

Charles Covington

**Jim Frydl**  
Mr. Durrer

**Lyle Durrer**  
Lyle Durrer

**Jim Frydl**  
Mr. Kelp

**Mark Kelp**  
Mark Kelp

**Jim Frydl**  
Mr. Morrill

**Art Morrill**  
Arthur Morrill.

**Jim Frydl**  
We do have a quorum of four people present. And just as a reminder as a BZA hearing, any vote that you take has to be a majority of the members of the board. We don't have five full-time members right now, but we're set up for five full-time members. So, any vote that's taken has to have three affirmatives or negatives in order to be a correct vote.

### **Appeal**

**Lyle Durrer**  
We have one public hearing tonight. Kennon and Linda Copeland, Victor and Janice Rosenberg, William and Diane Zutt, and Scott Mingledorff request an appeal of the determination made by the zoning administrator, ZC24-012 regarding the by-right uses allowed at a farm winery in article 16-21 of the Greene County Zoning Ordinance. This parcel is zoned C-1 Conservation and A-1 Agriculture. It's approximately 183.9 acres and is located at 12955 Dyke Road, Stanardsville, Virginia and identified on county tax maps as 35-A-16 and the BZA application number is 24-001.

**Lyle Durrer**  
Mr. Frydl are you going to be presenting?

**Jim Frydl**  
I will be.

**Jim Frydl**  
Oh, surprisingly, that power, the power button has a meaning. So, if you don't press it to the on position, it doesn't work I learn something new every day. So, I do want to just cover that this is a BZA meeting, a BZA hearing. It's different than a general public meeting. So, it's not a Board of Supervisors meeting, it's not a Planning Commission Meeting. So we'd like to welcome everybody, we have a room full of folks. This meeting is live currently on the Greene County website, also via

Zoom. And it will also be posted as a recording for people to refer to in the future. It's a public hearing for the Board of Zoning Appeals. And we'll talk about what that means in a second, there's a sign-in sheet up front. So if anybody wishes to speak, would sign their name and address on the sheet. So, we have a permanent record. And this is a quasi-judicial body. So it means it acts a lot more like a court than it does a general public meeting. So, you know, no behavior clapping hands, you know, show of hands, this is about receiving testimony of facts related to the BZA case. It's not about anything other than presenting facts one way or another. So, no standing headcounts or other things each speaker will step up and speak to the appeal in a factual manner. And, like I said, this is being recorded for the archiving of minutes. So if people come up and speak, if they'll repeat their name and address for the record for the recording, and after everybody wishes to speak is heard, then it'll be the chairman's discretion. You can ask for clarification, offer additional time for rebuttal. etc., as deemed appropriate by the chairman and the board. So that's the background.

**Jim Frydl**

So, we've already talked about this. This is an appeal. There is multiple, I'm not going to read all the names, but multiple appellants. The chairman did read those recently, appealing the determination or decision and the vote of the zoning administrator. The property owner is Carl Beard, a representative for the revocable trust, the Beard Revocable Trust. And this is a property that's tax map parcel 35-A-16 12955 Dyke Road. That's the location outlined in red. And as you can see the bottom of the screen the red bottom screen is Dyke Road, 810. And the parcel in question is shown in an aerial view. This is the zoning map. This is a parcel that is in our agricultural zones, it is in our rural area of our Comprehensive Plan. The yellowish color is A-1 agriculture. When it gets further up, or at the very tippy top, it's C-1 conservation, which is our steep slope district.

**Jim Frydl**

So tonight, we're going to hear, the board will hear many thoughts. And of course, it is the duty and the responsibility of the board to hear the facts related to the appeal. And based on the Code of Virginia and the zoning ordinance of Greene County, you will make a decision to either agree with or overturn the zoning administrator's decision. And what we're going to hear is the case presented by the appellants, and basically, the entire appeal is based upon their perception of fairness. And in that perception. Property owners are able to control other property owners' rights and activities, even those that are listed as by-right by the codes. So, we're going to walk through that and just look at it, whether it's a by-right activity, whether there's any discretion in the code. So that's what the presentation will be tonight, and we'll just start at the very beginning. The Greene County Zoning Ordinance Article 7-14, 17-4 excuse me, says very clearly, any appeal shall be taken within 30 days. So, the Greene County ordinance says that we shouldn't be taking any appeal after a 30-day period. The Code of Virginia article 15.2-2311 goes a step further. It says that if it's not appealed within 30 days, it becomes unappealable. And final. So, just simple math, when we look at the calendar, a zoning determination or decision was requested, and a letter went out to the owner of the property on March 21. The 30 days after that was April 19. This appeal came in on May 10. That was 51 days after the letter went out. So, 51 days is greater than 30 days.

**Jim Frydl**

And the code addresses the fairness with the thought of time. If something's not appealed, in a timely manner, then the property rights of a particular owner are always in jeopardy. So, the other aspect of the appellants' claim is that they claim that they should receive or should have received individual personal notice. And if you'll note the Code of Virginia 15.2-2204. lists who are entitled by law to receive a notice. And in this type of decision, it is the owner or the agent of the owner. Those are the

only two required to receive notice. And those are the ones that we sent notice to and if you'll note on the application for a zoning determination, the appearance of the appellants' names, not one appellant's name appears on there, because it's only the owner who acted as their own agent in the application. They did receive the notice.

**Jim Frydl**

So why is this important? In the appellants' claim, they state basically that if anyone feels aggrieved, they may at any time now or in the future, appeal any decision. Let's use a real-life example. If anybody's been on route 29, they've seen the Harley Davidson construction, Harley Davidson applied for a zoning use determination in March of 2023. About a year and a half ago, they received that certification that vehicle sales and service is a by-right use. Under the sense of fairness that the appellants want us to work with that \$2-\$3 million investment is continuously forever in jeopardy because anyone, at any time, for any reason can appeal, if they don't like Harley Davidson coming to Greene County. So, and what does that do? In our ordinance, if you appeal the zoning administrator's determination, then that stays activity and construction on that site. So, we would go if they wanted to, and they felt aggrieved under the way that we're approaching this, we would go issue a stop work order to Harley Davidson to stop work for a by-right use because the sense of grievances. I don't think...I just made up a word there by the way. But the Code of Virginia, it's written to protect these property rights. And if not, there would be no security for any owner to make an investment in their property. Because it's at jeopardy based on the whim of the public. And this is described. The appellants use this resource in their letter, Greg Kamptner is an attorney that writes a legal land use handbook that's used for training for zoning officers. And he describes it pretty succinctly. He says the 30-day appeal period may run against someone who may not have received or may not have been entitled to receive notice of the decision or determination. In other words, third parties do not have an unlimited period of time to appeal a decision. Even if they assert that they are aggrieved. Otherwise, there would be no finality to a decision or determination. That's why case law and the Code of Virginia and the Greene County Ordinance support that timeliness.

**Jim Frydl**

The appellants do mention in their case, one case which is listed as an exception Ripol versus Westmoreland. And that case is unique and it disregards the Code of Virginia and other established case law. In Voohees versus the County of Fairfax, that court established that the 30-day appeal period cannot be extended and that only those required by code are entitled to receive notice. So, go on from there. The next thing that's asserted or stated by the appellants is that certain activities in this determination cannot be allowed by right. They claim there must be a public hearing before the owner is allowed certain by-right activities. But I've highlighted for your ease, this is the Greene County Zoning Ordinance article 16-21. And it clearly lists the things that are allowed by right. Everything in yellow is by right. The top column says by right. We don't get to ignore the plain written language if we don't like something. It just clearly says by-right, go a step further within the ordinance 16-21.2 says the following uses are permitted at a farm winery: weddings and wedding receptions of not which are not more than 400 persons, sound from amplified music. These are listed in the by-right column and they're uses that are established by the Board of Supervisors and the zoning ordinance of Greene County as by-right activities.

**Jim Frydl**

Additionally, the appellant incorrectly asserts that farm wineries are not allowed by code. In contrary, according to 15.2-22-8.3 farm wineries are protected by the Code of Virginia, and local regulation is discouraged and limited. So it isn't a right that we have the ability to say we aren't going to allow in

our zoning ordinance, because the state code trumps the Greene County Ordinance and it is clearly a protected use in the Code of Virginia. Additionally, in the recent letter, there was a comment that corporate events are not allowed by right. The Greene County Article 22 definitions of a farm winery event explicitly lists corporate luncheons and Chamber of Commerce activities. So it can't not be a by-right license, it's part of the definition. And then, additionally, so the Code of Virginia has established very clearly who has standing to appeal a decision. And what standing just means is that you must prove factually that you have a harm, a financial harm. They use Latin words, I'll let the lawyers worry with those, a financial harm, and that harm has to be greater than the general public. So and it can't be speculative. I can't feel like this is going to be bad for me, I have to prove factually that it is financially bad for me. And then additionally if an activity is by-right, it is deemed by code to affect or impact everyone the same way. So I can't say that a by-right activity has greater impact naturally on me than it does on a neighbor. The perfect example. I live in an R-1 neighborhood. If someone builds on a lot next to me, and I don't like their house, and I feel aggrieved, I would have to prove that I'm more aggrieved than the neighbor on the other side. And it's a by-right activity. Neither of us by code are aggrieved because it's a property right. It's protected by the local code.

**Jim Frydl**

So really quick, I'll run through, that is the meat of the presentation. I just want to do a quick summary. The appellants before us, as we've established, they're not the applicant for the determination or decision and they're not the owner of the property. Therefore, by code, they were not entitled to individual notice. The appellants did not apply until 51 days after the termination decision was sent to the owner. The Code of Virginia says that if it's not appealed within 30 days, it is final and unappealable. It's commonly referred to as a thing decided. Articles 16-21, 16-21.2 to 16-21.4 of the Greene County Zoning Ordinance clearly list the uses and activities allowed by-right. It is not acceptable or allowed for the BZA to add conditions or change regulations that were created by the Board of Supervisors. That is the legislative body. According to then, also, according to the Code of Virginia, farm wineries are protected, and local regulation is restricted, and they cannot be permitted *sic. prohibited* by local code. And finally, the appellants have not demonstrated any factual financial harm, nor that they are impacted in a way that exceeds the general public. They have no demonstrated standing to make the appeal. The last thing that was brought up is a challenge to the zoning administrator and the Planning Commission recommendation.

**Jim Frydl**

So, the Planning Commission doesn't make decisions. The Zoning Administrator has no authority to make a decision on a special use permit. That authority and that decision-making only rests with the Board of Supervisors. The Board of Supervisors has not acted. After the Board of Supervisors acts in a public meeting their decision may be appealed. It is appealed to the circuit court it is not appealed to the BZA. In Greene County, the BZA has no appointed role, or code-based role when it comes to special use decisions or Planning Commission recommendations. So, it isn't something that's even appealable by law. Additionally, it's not part of the zoning administrator's decision, they are different bodies and different organizations. So even if it were something that was appealable, it's a second appeal. The appellants have only applied for a single appeal, one form, one fee. And so this, this body just doesn't have any purpose or authority to hear that part of it. That's the presentation of the case by staff. The appellants are here, and they have an attorney that's signed up. And I'll be available if there's questions later.

**Lyle Durrer**

Thank you Mr. Frydl. Anyone that wishes to speak would you please stand up and be sworn in?

**Lyle Durrer**

Please raise your right hand. Do you swear that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth? So help you, God? Thank you

**Lyle Durrer**

Are you representing them?

**Elliott Harding**

I think first on that list?

**Lyle Durrer**

Yeah.

**Elliott Harding**

My name is Elliot Harding. I'm attorney representing the appellant in this matter. And I don't know if Mr. Frydl would be open to this. But those last few slides where it said the response to the appellants. If he wouldn't mind putting that second to last, or not, just because as a kind of summary of the various points I think the board needs to consider. So if you could go back one more. So I'm here on behalf of Kennon and Linda Copeland, Victor and Janice Rosenberg, William and Diane Zutt, and Scott Mingledorff. I believe they're all here. And I think they're signed up to speak or at least one representative on this is here to sign up to speak. And as to the impact of this property versus their property, I'll let them speak more to that. But I think I want to note that it's the Copeland's that are directly across the street. So if we're talking proximity, and radius for traffic noise, light, zoning purpose, I think at a minimum, looking directly across the street is going to give you as close to proximity and standing as it's going to get, but I'll let them speak to the impact that they think it will have on their property. It's the first thing and I think a majority of what the administrator referenced in this matter is the idea of standing if not standing, the ability of timeliness. And we, I hope, and in fact, I've got a copy to enter into the record, I don't know a few minutes in the quasi-judicial nature, I emailed a copy to the entire board as well as the administrator, if I need to pass one up, in order to get it into a record, I'll do it. But I think you should do that, I would like to do that. So here's a copy of a memorandum that we submitted prior to today's hearing, I don't know who would like to take?

**Jim Frydl**

All of those are added to the agenda that you can access with one of your computers

**Elliott Harding**

I hope you had a chance to look at it. I'm not going to read every word from it. But the timeliness issue was a big portion of it. And this appeal isn't about fairness. I think this appeal is about the merits of the determination that was issued. I think a majority, if not all of this, the administrator's response in the report is about timeliness rather than the merits of the issue. And I'm just going to really highlight these three cases the Ripol case, which is effectively directly on point, the Granada Homeowners Association case, and the Heflin case. And though the actual cases themselves were attached to a pre-hearing email as well. The idea that an impacted owner of a surrounding property if we take the administrator's position, so that they can't appeal it. The idea that there's some Kafkaesque, closed-off kangaroo court star tribunal, where a letter goes out to one guy who gets granted what he's asking

for, and no one else hears about it. There's no other way to get it other than to sit there and FOIA the administrator's office every day, all the time hoping that they'll get a response within 30 days. The idea that a Harley Davidson case down on 29 is somehow similar to this is just so far off. If today was the first day that the administrator publicly announced that Harley Davidson got the determination that they sought, he would be correct as anyone who's surrounding that area that's impacted by that area that wants to challenge that determination to do so within the next 30 days. But the issue that it's been a public determination for a very long time. We're not arguing that anyone who's impacted can just challenge it at any time and go ask for a stop work order. It requires some degree of public announcement. My clients aren't saying that their timeliness issue required the county to send every landowner in a, I don't know, some arbitrary radius, some notice that it did. That's what special use permits are for. That's why there's signs that go on the ground. We recognize that there's a big difference between the determination and a clearance than a special use permit. We're not asking for that. But what we are saying is there was a public declaration that a determination letter had been issued in April. That was the first public recognition of such. It wasn't on the website, wasn't in an email, wasn't in the mail. Wasn't on a sign. Wasn't disclosed at some other meeting that had had been taken place prior to that. It happened at the Planning Commission in April, and my clients acting within 30 days, filed a timely appeal. And that's the exact issue that the Ripole case took under consideration, as well as the Grenada case and effectively the Heflin case. And all those circuit courts said there's a certain degree of notice that's required. And so unless this board wants to say that you just generally don't have a right to notice, which would be struck down. And I think any attorney representing this body would recognize this much. My clients acted within the timely fashion that the code requires.

#### **Elliott Harding**

And so I don't want to belabor the point about whether or not we can or cannot discuss the merits of the challenge to this matter. I hope that this Court, I mean, this body recognizes the degree of fundamental fairness, equity, and what the body is meant to do. And that is hear challenges to final decisions. That's why you're here. That's why we're here. It's why the code exists in the way that it does. And so with that, again, I'm not going to read it verbatim, I hope that you all have read the issue about timeliness. But at the end of the day, it's sad to us that that is the majority of the weight that the decision is being defended on is whether or not we can even talk about what took place. But I'm about to do that. The administrator's position is that they think my clients think that they needed to be told about it and that anybody should be able to challenge, that my clients believe that anybody should be able to challenge by-right uses. These are not by right uses, and that's a misnomer. If it was up there, all the highlighted verbiage, said by-right. You notice that though in the second column, and it's in the letter that's at issue here. It says there's Column A on the left says by-right. Column B says by-right with a zoning clearance. And then column C says special use permit. The administrator would just like you to read away the middle column as if it didn't exist. With a clearance really matters. If that wasn't the case, we should just take the middle one and shove it left or to the right. The administrator says shove it to the left. We're telling you, that's not what the code says. He said in his presentation, you don't get to ignore the plain language of the code. I agree. The plain language says by right with a clearance. The word clearance is referenced one time in the letter that was issued by the administrator's office. And it's something that has not been secured, and references, audio, it references the amplified music. In order to do what it is that we're telling you, you're now allowed to do, you have to go do something else. That's not a clearance. That's just a reminder to the landowner of steps that they actually should have to take in order to get said clearance. And that's why we're here today. The letter was premature.

### **Elliott Harding**

And this and the Board of Supervisors has an issue governing standards for farm wineries as to in order what type of clearances they need to get. And so going back to the memo that we prepared, there are no standards. And it's not the administrator's fault that there are no standards. He's trying to do his job, as is his office, and it's a pro-business County. And it's a noble goal. The Beards have a noble goal. The problem is it the board hasn't dictated what's necessary to get there. And so the administrator has actually usurped what it is that can be granted at this point by saying well, as long as you do these things that we hope that you do, you can actually go beyond your by-right use. Problem is, is you're in a middle ground, and at the end of the day, you're limited. Now the idea that the farm winery definition that was amended, is now somehow encapsulated in the Greene County code, is just plainly wrong. If the Greene County code had defined textually, what a farm winery is, meaning just copy and paste the language from the pre-existing code, you might be able to get away with it. But at the end of the day, the pre-existing code was section four. And now we're looking at a completely different section. It was 4.1-207. Now we're looking at 15.2-22 88.3. And one big pre-qualifier in the new section is that you have to be a licensed farm winery, in order to get what it is you're asking for. Licensed farm winery has a specific term with the Virginia ABC, the Agricultural Department. You don't just get to call yourself prospective and have an idea. It's a nice business plan. My clients recognize that there are by-right uses that can and maybe should be satisfied in that far left column. Right. But there's no proof of concept. There's no licensure. There's nothing that makes you a licensed farm winery pursuant to the Virginia code. It's just this is what we hope we can do, and therefore give us an expanded use beyond our by-right use. And that's what the administrator did. I understand why they did it. Problem is they're not allowed to do it. And by doing it, they're exercising something that is an arbitrary and capricious, undefined, unlimited set of terms.

### **ELLIOTT HARDING**

One precedent this board will set by denying this appeal is effectively saying anyone who writes a prospective business plan in an agricultural use, that wants to be a farm winery and wants to go beyond their by-right use, but under the special use permit limit, has to get it. Because if they don't get it, you're going to be subject to a lawsuit. And you will lose. Because there are no defined terms. That letter that was submitted by the applicants, though noble in it's vision is a business plan. With no proof of concept, no licensure, no audio and ambulatory certification. Something that this code actually already requires. No VDOT approval, no Department of Health approval, no licensure by the ABC, agriculture, nothing. That's nothing against them trying to get there. And there is a by-right use my clients concede and hope that they actually consider doing. Because there are pieces to this, there are steps to scaling in the A-1 use, out of the middle of nowhere to drop 46,000 square feet of commercial use. Now, the administrator says well, actually the code allows them to do other events, other than just traditional agricultural stuff. It's luncheons, charities, and Chamber of Commerce events. I don't know how arbitrarily limited those three things are. But what happens if they want a corporate event that's not at lunch? What if it's supper? What if it's dinner, or if it's breakfast? What if it's on the weekend? They didn't limit themselves. It's not a luncheon. They didn't say anything about the Chamber of Commerce. And they certainly didn't say charity. These are arbitrarily three other things outside of agritourism that the county code is allowing for farm wineries. All of this is to say it's premature to give them this determination. The Board of Supervisors we hope, and we encourage them to further define what it is that they want. We encourage the Beards to go get the licensure. But the Virginia State Code that the administrator pointed to, the new one 15.2-2288.3 says they shall consider the financial impact on proximate neighbors. There's no showing of that. My clients are here to talk to you about that. But you're not the one who's making the clearance decision. It's the administrator who already did it. And that's what we're challenging, right? They didn't ask about the

local... there was nothing in the letter about my clients, or about anybody in the vicinity. It's just telling them what they want to do. The code says that a farm winery pursuant the new code, not the code referenced in this ordinance, but the new code, they shall consider it. There's no-showing by the administrator today that they considered it. I don't think he wants to consider it. In fact, he's saying that they have no right to consider it. And the code says otherwise. Again, it's 15.2.-2288.3. It's at the very end of the code section, says you shall consider it. Nothing about these folks makes them a statutory farm winery yet. They'll get there probably. And there are by-right uses that they can do. But the determination, not a clearance because again, that's not what it was. The clearance was issued... the determination was issued prematurely. These are not by right uses, according to Greene County code, or Virginia code. And the timeliness issue here is fundamental. If this body just wants to pass on it and call it, kick it for timeliness, we've got a much bigger problem down the road, honestly for the Beards as well. Because what you don't want is folks to get halfway through construction get a stop order from a court saying you're enjoined from building your 46,000 square feet because guess what the determination was issued prematurely.

**Elliott Harding**

The special use permit was built on a determination that was premature. And again, I understand that y'all aren't the body for special use permits, but you can rescind the determination. And that determination was a material factor in the referral from the Planning Commission, to the Board of Supervisors. So if you all grant the first part of the appeal and effectively render the determination having been premature. It'll probably send a signal to the board to send it back to the planning commission to reconsider before they make their referral. And pursuant to the Taylor case out of Greene County Circuit Court has said we effectively have to challenge it at the earliest stage possible. And for all things considered, all of this just came to light for the first time at that Planning Commission hearing. And so that's why we're here today. So I'm going to sit back and let my clients come up and speak about the impact that they believe it'll have on their property, among other things that they might want to address. And I'm going to sit tight and should the body have questions or issues, happy to address it. Thank you.

**Lyle Durrer**

Thank you. Ken Copeland. Remember, please state your name and address.

**Ken Copeland**

My name is Ken Copeland, my wife and I live at 185 Lexington Way Stanardsville, and own an adjoining property to the proposed Beard Mountain Vineyards. I thank the Board of Zoning appeals for the opportunity to express my thoughts on the issues at hand, of which there are issues you should no doubt realize by now many layers and at times complex. We are in opposition to the planning administrator issuing zoning certificate certification ZC24-12. I will further delineate our rationale. Trust we may have a dialogue with questions and responses, as are allowed to clarify and explore what I and my fellow appellants will be sharing with you. First and foremost, my wife and I are in favor of a farm winery at 12955 Dyke Road, meeting current state definitions proportional to the surrounding homes and buildings and in character with the real rural environment. However, on April 17 of this year, we learned of the plans for the property as part of the planning commission hearing on SUP24-2, which requested approval for a total of 46,000 square feet of buildings. The first time we learned of a zoning certificate having been issued to Beard Mountain Vineyards was at that April 17 Planning Commission SUP hearing. There we heard in Ms. Stephanie Golon's presentation that the zoning administrator had granted extensive rights without seeking the input of adjoining property owners and the community at large as required by law. I'd like to first walk you through the calendar

event that has led us to be before you tonight. I have copies for the record and to share, so that there's copies for everybody.

**Ken Copeland**

Oh, thank you. This begins, to pick a time of beginning, February 19. Beard submits a letter of justification for a special use permit and zoning clearance. On February 21 Beard submitted an SUP application for 46,000 square feet of buildings. March 13. Beard submits the zoning certification application. March 21, the zoning administrator issues a zoning certification letter to Beard. Some point in March, I don't have the exact date, the planning commission hearing on SUP24-2 was advertised in that advertisement. The zoning certification letter was not included in the pre-hearing package. It was not provided to the planning commission. March 27 Planning Commission planning department mailed a letter to adjoining property owners. My wife and I received one, informing them of the April 17 planning commission hearing on SUP24-02. There was no mention of the zoning certification. In that letter, another opportunity which the planning administrator chose not to take to inform people of the zoning certification. On the April 17 Planning Commission meeting, Ms. Golon reveals the existence of the zoning certification letter at the Planning Commission SUP24-2 hearing. This was the first that the planning commission had heard that there had been additional rights provided to Beard. This was 27 days following the issuance of the zoning certification letter. In that presentation, Ms. Golon presented two slides touching on the zoning certification letter, but not detail in particular. These slides were not included in the pre-hearing package of the presentation. They were missing. They have not been added subsequently. So they have continued to not even provide a record of the zoning certification letter notification on April 19. Mr. Frydl claims the 30-day appeal window closed, or he claims that it closed on that date. Having attended the April 17 meeting, we began to act. Mr. Rosenberg on April 22, requested from Ms. Golon a copy of the zoning certification letter and Ms. Golon provided it that same day. On May 10, Mr. Zutt and Mr. Rosenberg attempted to submit our BZA appeal. They were denied. This was 23 days after the existence of the zoning certification letter became known to the public. It was rejected first by the assistant zoning administrator and then by the zoning administrator himself as being not timely. The next week there was a Board of Supervisors meeting on May 14, at which I and my fellow appellants spoke and expressed our frustration. As a result, the Board of Supervisors passed a resolution requiring acceptance of BZA appeals. Two days later, my wife and I appeared here again, asking to have our appeal accepted submitted to the BZA. Mr. Frydl refused to accept the appeal. We contacted Ms. Schafrik who interceded on our behalf and accepted the BZA appeal. That's a timeline that Mr. Frydl didn't add to his calendar.

**Ken Copeland**

The Code of Virginia 15.2-228.8.3 states, "in authorizing outdoor amplified music at a farm winery, the locality shall consider the effect on adjacent property owners and nearby residents ". We were not consulted. And I don't believe that that consideration was made. The zoning administrator appended to his staff report to you the Albemarle land use law handbook, which states "The Thing decided rule will apply if the zoning administrator has made the basis of the determination clear." Zoning certification letter ZC24-12 provides no basis for the decision that was supposedly made. In his staff report to the BZA, the zoning administrator states that "while staff could argue against the veracity of the claims made in the appeal letter, there is no point". He provided no evidence of such a staff report and chose not to provide any basis for the decision to grant the zoning certification. I don't believe he has of yet. My wife and I are adjoining property owners. We were not consulted as to the potential effect on us and our neighbors as well, as required. We travel route 810 daily. Zoning certifications ZC24-12 by allowing this, that's 365 days a year. And daily vehicular traffic, unlimited for the winery

will definitely increase the risk of vehicle accidents, noise, and pollution and our safety and the impact on our home value. We enjoy sitting outside our house taking in the scenery and the ambience of the mountains. My wife and I are definitely aggrieved by this improper zoning certification and request it be reversed.

**Lyle Durrer**

Thank you

**Bill Zutt**

Good evening. I'll be a little more cryptic.

**Lyle Durrer**

Can you state your name?

**Bill Zutt**

Yeah, I feel that yeah, we live at 211 Lexington Way. My wife is here with me tonight. We live immediately next door to Ken and Linda Copeland within a stone's throw of the Beard property. And as you'll see from the remarks I'm about to give, we will be directly and adversely affecting should this project proceed as contemplated. At the outset, Mr. Frydl said this case is about a perception of fairness. I'm all in favor of fairness. What the case is really about is the application of simple common sense. What I mean by that, the argument is being made by the zoning administrator, that no one should be able to challenge an action he takes once 30 days have expired, even though those who might be in a position to challenge and need to challenge it, don't even know about it. Don't even know about it. Put yourself in your fourth-grade classroom, teacher hands out a math test. You put your name down on the test and she said to pass it back. Your time is up. But teacher, aren't you going to give us time to complete? No, your time is up. That's essentially what is being argued here by the zoning administrator. An action was taken about which no one knew except for Mr. Beard. And because 30 days went by, no one in the world can challenge it. Now, the analogy to the Harley Davidson site is a false analogy. There is I believe, and the attorney will correct me on this a vested rights provision in the law as applied to a situation like this. Where a property owner relies upon an action of the zoning administrator and invests in good faith in furtherance of that decision. And 60 days passed without a challenge. They now have a vested right to complete that construction. I can't cite the statute.

**Jason Ham**

Sir, I'm not going to challenge or interrupt you. So my silence is not necessarily going to be assent or lack of assent sir. If you've got your you've got your opportunity to talk out. I've...

**Bill Zutt**

Just mentioned it in passing because we heard it for the first time from Mr. Frydl tonight. Okay, so, we've got a secret decision that's made and once 30 days passed, the decider says, aha, I'm protected. No one can challenge it, no matter how outrageous the decision may be. Does that make any sense to anybody? I hope not. I hope not. Now, what about this zoning certification letter? According to the zoning administrator, by this simple stroke of a pen, and the number and type of events, the number of people, the number of cars, the amount of noise that can be generated on this hillside, could be unlimited. But if I happen to own a house across the street, and then we'll want to build a garage, a foot closer to the property line, and I'm permitted to by zoning, where do I have to go? To come to you. We got to notice a hearing and notify my neighbors. All over a one-foot

variance. But by the stroke of a pen, Mr. Frydl could approve development of an entire hillside for a winery and all these associated uses, does that make any sense? I hope not. I hope not. Now, anecdotally, I'll tell you why we have already been directly affected by this, this project, or will be. The intersection for the proposed road link to route 810 from this piece of property is on a blind curve and a steep slope. And the VDOT stopping distance for a 55-mile-an-hour vehicle under those conditions is at least 500 to 600 feet. Recently, out of curiosity. I was traveling northbound on route 810 and mentally tried to figure what if I'm making a left turn into the winery site right now. So I proceeded up, slowed put on my turn signal. What do you think was coming the other way? Great big old dump truck. 55 miles an hour. If I had attempted to make that turn, I wouldn't be here tonight. That's the situation that you have out there. And yet, there was no intersection analysis, no safety analysis of any kind conducted before the zoning certification letter was issued. And I doubt that, if any, that it was done in connection with the SUP recommendation, either. So those are two examples of impacts to which my wife and I want to give you. The other one a second, I'm getting ahead of myself, at least one and that is the intersection safety. This one is maybe even a little humorous. It involves Mr. Copeland. My wife and I took a walk the other night, as I said, we live right next door. And it was about 8:30 ish, nine o'clock. I hear rap music coming from Ken's garage, and I didn't even know he liked rap music. And he's certainly not the kind of guy to put loud music in his garage. Well, as we finally reached out to Lexington Way, we realized it wasn't coming from Ken's garage. It's coming from Lydia's barn. Lydia's barn is more remote from us than the Beard property. So out of curiosity, I got in my car and I told her and I think it'd be 1000 people here. There are no more than 50 cars in the parking lot, 50. Yet the zoning certification issued by the zoning administrator would allow upwards of 200 cars and 400 people. So try to imagine the impacts that would result if this zoning certification letter is allowed to stand. The one other point, and our attorney mentioned it, the planning commission resolution. It has been claimed by Mr. Frydl that we're not permitted to challenge it. What we're really challenging is the decision that he made that farm wineries remain a permitted use in spite of the fact that the code definition is no longer valid. Under that situation, the Taylor versus Greene County case says that we must challenge the action of the planning commission based upon Mr. Frydl's Decision, his determination, that farm wineries were a permitted use. So it's a little bit obscure. And y'all weren't party to that case. But that's what the case holds. It's still binding here at Greene County. I'm done. Thank you very much. Please, uphold this appeal. It's the right thing to do.

**Lyle Durrer**

Thank you, Victor Rosenberg.

**VICTOR ROSENBERG**

Good evening, members of the board. My name is Victor Rosenberg. My wife and I are two of the seven appellants in this matter. We are long-term residents of Greene County having lived here over 40 years in the western viewshed of the Blue Ridge Mountains facing the viewshed of Shenandoah National Park and High Top Mountain, in some map. The view shed of the Blue Ridge Mountains in the Shenandoah National Park extends for almost 30 miles from Crozet to Route 33. By 810, or Dyke Road, which was designated recently as a Virginia Scenic Byway on October 28, 2021. Greene County's comprehensive plans beginning in 2010, and updated in 2023, clearly state one of the most important wishes of the residents of Greene County, both new and old is to maintain its rural character, natural beauty, and sense of agricultural community and identity, to carry out that vision of the residents and encourages three things, one conservation easements which substantially reduces in perpetuity, housing, development, and other structures in the A-1 and C-1 zones. Putting property in land use and sponsoring programs that support current and past agricultural communities. Greene County is only 100,000 acres The second smallest county in Virginia, of which 15,000 acres are in the

Shenandoah National Park. More than 10,000, as of 2022 are in conservation easements. So 25,000 acres out of 100, in our view shed needs protection from development inconsistent with the comprehensive plan. That is only 25% of the total reach in the county. While we support tourism, and by-right wineries in Greene County, it does not mean that economic tourism trumps the Comprehensive Plan. All tourism opportunities should be consistent with the plan and any deviation should be decided by the Board of Supervisors through the SUP process, and not one individual. Viewing the foregoing through the lens of common sense. Why would the Board of Supervisors in 2015 knowingly adopt an ordinance granting unfettered discretion, ostensibly to the zoning administrator, using an undefined term called zoning clearance with no guidelines or standards, so that one individual could grant effectively an SUP to the Beard Winery? Who has no ABC license has not harvested any grapes, to conduct potentially unlimited wedding and other events, to have unlimited visitor trips to and from the site and allow amplified outdoor music, subject to few restrictions. The answer is the board would not have knowingly adopted such a provision that could severely impact in so many different ways, this western viewshed of the Blue Ridge Mountains. Obviously, the provision was not properly vetted at the time that it was adopted. In fact, this is the first time in nine years since its enactment, that zoning clearance has been used for a winery in Greene County, and possibly for any other zoning matter. Prior to 2015 wineries were approved only through the SUP process. In conclusion, it is respectfully requested that a favorable decision be issued in this manner for all of the residents in Greene County, for the following reasons. One, it will transfer the authority, for such decisions back to the board of supervisors, who has the authority to issue the SUPs, subject to established standards and are always accountable to the residents through the electoral process. Second, eliminate the potential, and I say potential abuse of power by the zoning administrator in any future zoning clearance request, removing it from the Greene County ordinance. And lastly, validate those perpetual contributions made by those landowners, who placed conservation easements on more than 10,000 acres of properties. Two-thirds the size of the acreage in Shenandoah National Park in Greene, promoted by the comprehensive plan to preserve the predominant rural character of Greene County, for all of the current and future generations of residents. Thank you. Thank you.

**Lyle Durrer**

Scott Mingledorff.

**Scott Mingledorff**

Chairman, members of the board, as the chair noted My name is Scott Mingledorff. I have been a resident of Virginia and this County for over 50 years, and I've seen considerable changes to our zoning laws. I have observed that they change for reasons, often to correct abuses. A current county code concerning farm wineries is based on Virginia law passed nine years ago. By 2018, a committee was convened by the General Assembly to close a loophole that was being abused by non winery businesses. At that time, the Afton mountain area of Albemarle was being challenged by a vendor testing the limits of farm winery rules, a large tasting room, and an even larger event venue. All three stories tall, were under construction in 2019. By comparison, the Beard project devotes three times the square footage to production tasting and event venues than the Afton project. The 46,000 square feet of proposed structures exceeds by more than 10 times that allowed by-right, 4000 square feet. The committee chartered in 2018 by the General Assembly was not able to reach a consensus and pass the action to a stakeholder group. Key players in that group were the Virginia Wineries Association, and the Virginia Vineyards Association who were both supported by the Virginia Alcoholic Beverage Control Authority. Any allegations that they weren't concerned with farmers should be dismissed out of hand. Their stated aim was to rewrite the law and put the farm back in

farm winery. The General Assembly approved their rewrite and in 2022 and repealed the old law. The new law took effect on July 1, 2023. The revised Virginia code wasn't passed in time for Albemarle, but thankfully has been in effect for us for almost a year. I can think of two excuses, not really valid reasons, to ignore Virginia law. The first being that one simply wasn't paying attention. And the second being that one didn't think it applied to them. Prior to the Planning Commission's meeting on April 17, Mr. Zutt, pointed out that the zoning administrator had failed to cite the current law on farm wineries, blaming excuse one, they weren't paying attention, then they dutifully change the references they cited. And the problem with that was that the law really had changed. So the fallback position had to become that the new law really didn't apply to them. Nonetheless, updates in the new law provided greater protection for property owners and that no variances shall be authorized except after notice and hearing, and also, in authorizing outdoor amplified music, the locality shall consider the effect on adjacent property owners and nearby residents. My first point would be the zoning administrator's clearance authorizing an unlimited number of events as opposed to 24 per year by-right and an unlimited amount of traffic. Anything greater than 200 vehicle trips per day, was a rather significant variance that should have triggered a notice and a hearing. Similarly, outdoor amplified music is not a by-right activity and under the 2015 law since repealed, would have only been granted to a new establishment with a zoning clearance. A totally undefined term. But when coupled with \$100 would buy you that right. And granting that clearance, there was no consideration or consultation with adjacent property owners or nearby residents. As a citizen, I'm required to obey federal, state, and local laws. If I am found speeding in a school zone, I may offer the feeble excuse that I wasn't paying attention. If that fails to get me out of a ticket, I may offer the excuse that even though I saw the school zones, flashing light, I didn't think the school was in session and it really didn't apply to me. Should these sorts of excuses work for the zoning administrator, to apply the law that was repealed two years ago and replaced with one that took effect a year ago? I don't think so. Thank you for your time.

**Lyle Durrer**

Thank you.

**Lyle Durrer**

Everyone so far spoke has been an applicant and I would like to open it up to them public hearing for the citizens. I don't have anybody signed up to speak. So if there is none, and we'll close the...

**Chuck Covington**

Is there anybody online?

**Jim Frydl**

If there's any speakers joining us online, that would like to provide testimony regarding this hearing, please use the raise your hand feature, we'll give me a moment to indicate your desire to speak, you can find the Raise Your Hand speak feature under the reactions button on Your screen.

**Jim Frydl**

We not have any remote hands that are raised.

**Lyle Durrer**

We'll close the public hearing. For Mr. Harding, do you have anything to add, before we discuss it and maybe have some questions for you.

**Elliott Harding**

Happy to entertain questions. You know, I think my clients argue arguably did a better job of getting to the point that I was trying to make. We all have different ways of presenting it. I do want to continue to reiterate the timeliness of this issue is something that, I understand why the administrator wants to rely on that point, because I think everything else falls away. But at the end of the day, the cases that are cited, I can tell you that the Circuit Court in Greene County, I feel very confident, if not them a higher court, will follow suit. And the only case that was effectively cited by the administrator, the Lilly case, was a case where the aggrieved parties were present many times. It'd be one thing if our clients had been here at that Planning Commission hearing and heard it, and waited for months to bring in this issue. We wouldn't be here. I wouldn't be here. I would told them they have a loser. I would have, because they would have. I think they know that they would have, but they acted as fast as they effectively could. And this party wants to throw it out on timeliness. Yeah, I believe you'll actually be agrieving both parties.

**Chuck Covington**

I think we can lay it to rest that it's here. It's before the BZA. We're going to hear it.

**Elliott Harding**

I'll let you get to that.

**Chuck Covington**

It's a moot point now

**Mark Kelp**

My biggest question for you, weren't you here last year talking about agritourism too? Just one question.

**Elliott Harding**

Hey man, I was, okay. The Right to Farm Act is a real thing. I appreciate the buy-right use of the farm wineries. My clients do as well. I've actually represented people in the applicant's position now in Albemarle County, they got a clearance. But I had to walk them through that process. They spent over \$60,000 Trying to get an SUP and had a whole hearing it at Jack Jouett Middle School with 40 neighbors that didn't want it. And I got hired. And I thought, and guess what guys, you don't need a SUP you just need a clearance for what you're trying to do. But there's a big difference between a clearance with standards and an SUP. Albemarle has standards. No offense this county, just give it, just accept the appeal. Vacate the letter. I pity the VA the drafting process, but the Board of Supervisors needs to give the administrator their proper the appropriate things to work with, particularly in light of the new code. And what I mean by that is he has no governable standards. He gave a blank check on what is effectively a napkin wish of a farm winery. I don't even think a grape has been crushed off of that place, much less a license granted by the State and all the other things you've heard that they need. And you're right. I was here last year arguing on behalf of agritourism and agricultural development. And if the applicants were acting pursuant to... I kind of pity it in a certain...

**Mark Kelp**

I was just asking a question.

**Elliott Harding**

No, no, no, but I pity them, because they don't have a governable standard. They're asking for

something, but they can't get it right now. Because the way that the code is written, if your by-right, and that's what they can do. And guess what? If they could do it, they would do it. But at the planning commission, they said, we need the 46,000 square feet to get where we need to go. Because we don't even know if we can do the project that we want to do, and generate the revenue we want to generate off of the backs of a farm winery. That's not agritourism. That's not a primary use of farming. That's a commercial use. If they want to get an SUP, go get it. There's a whole process for it. Maybe the board grants it. They want to upzone on it? Go through that. Using the clearance with no defined terms, no accountability, pursuant to an outdated code, with no compliance in accord with the neighbors, isn't the way to do it. It's premature. We respect what they're trying to do, but they just can't do it. And we would ask for this court to accept and sustain the appeal. Reverse the determination letter. Let them do what they can do by right on the left side of the column and reverse the determination that will have subsequent impacts perhaps with the planning commission and the Board of Supervisors for the SUP. We understand the SUP is not before this board, but we hope that this body will sustain all the appeals. I'm happy to answer any other questions, but you're right. I was here last year. If you have anything else?

**Chuck Covington**

I have a question for Mr. Frydl. Could you walk us through the process of approving zoning certification?

**Jim Frydl**

Absolutely, it's stated. In the Greene County Zoning Ordinance. Again...

**Chuck Covington**

Which ordinance the...

**Jim Frydl**

Greene County Ordinances 16-21 farm wineries. One quick clarification. So the code of Virginia for farm wineries isn't a new code. It hasn't been revised since 2020. That was the last revision and it wasn't presented accurately. It actually says the locality, in imposing regulations. That's not the zoning administrator. That's the Board of Supervisors, when they create the law, the zoning ordinance for Greene County, so when they create a zoning ordinance, they shall first consider the economic impact of any local regulation on the farm winery. The only consideration that is given regarding adjacent property owners, is it does say as stated they shall consult about amplified sound with the adjoining property owners. However, we ignored the entire fact that no regulation on farm winery amplified sound can exceed or be more restrictive than the general noise ordinance. The condition or the sound that we've provided in the certification. It was called clearance. It's clear in the ordinance that if you want sound, you get a zoning certification, which was part of the process that zoning certification has the exact same hours as our general noise ordinance. And the consideration again wasn't by the zoning administrator. They very aptly pointed out which gets to your question, Mr. Covington that there are no restrictions that were imposed by the supervisors for any performance standards. These are by right and by right with a zoning clearance. And then...

**Chuck Covington**

I think that's what I'm trying to get at is a process for determining zoning clearance.

**Jim Frydl**

They requested a zoning determination, a zoning certification of the by-right uses. We reviewed the ordinance. The ordinance lists two columns of by-right applications. One with a zoning clearance. Outdoor music is listed as one of those things in the zoning clearance. 16-21-4 says outdoor amplified music shall be subject to the following a zoning certification. So they applied for that and received that clearance/certification for outside amplified music. And additionally...

**Chuck Covington**

What's the due diligence for outside amplified music?

**Jim Frydl**

The due diligence is simply that our general noise ordinance, is what it is outside amplified music can't be restricted in a way that's greater than our general noise ordinance. That was the certification.

**Mark Kelp**

More to the question that you're asking is, is there a mechanism outlined in our code for you to deny zoning clearance?

**Jim Frydl**

There is no mechanism to deny any of the by-right uses in either column.

**Mark Kelp**

Right, so if I came to you, there's no, unfortunately, however, you want to look at it, there's no guidance. The code does not provide you with the guidance with which to deny a clearance letter in this case.

**Jim Frydl**

Correct And I don't have the authority

**Chuck Covington**

Why are there two different columns?

**Jim Frydl**

It was the way that it was written when it was adopted. But there isn't... if you go through the zoning ordinance when the board intended for there to be performance standards, there are performance standards.

**Mark Kelp**

I guess in the case of a code like this, would there be? What would be the opportunity for in the future? Like? Because, like, I think that there's a lot of opportunity for that code to get fixed. We're judiciary though not legislative. So we can't fix the code here. But what would, you know, I think it'd be a good recommendation of this board. Although I don't know if we can make that recommendation that I think there's ...

**Chuck Covington**

It's already been stated in other areas where you talk about amplified music that you have to take into consideration the adjoining properties.

**Art Morrill**

Right!

**Chuck Covington**

So to simply limit it to...

**Jim Frydl**

The Locality. The Board of Supervisors has to take that in consideration. And they did that when they made the law.

**Chuck Covington**

That's a poor interpretation I think

**Art Morrill**

Right!

**Jim Frydl**

So the one thing I want to state, it's been brought up that, and Mr. Kelpé just artfully said it and correctly said it. There is an opportunity to change this law. But the law is written the way that it is, was written by the Board of Supervisors, and the Board of Supervisors is the only body that has the authority to change this. The BZA has no authority to change the law that is currently written...

**Chuck Covington**

Because there's ambiguity and vagueness here. Clearly, we talked about zoning clearance, zoning certification, those terms are interchangeable sometimes throughout this thing. So in lieu of that, I think the BZA is perfectly with its right to interpret what it means. Absent specific information included...

**Jim Frydl**

I would argue that the code gives the BZA the authority to interpret things that are black and white not fill in things that aren't stated anywhere.

**Chuck Covington**

But they're not stated, exactly.

**Mark Kelpé**

Right, yes, they are not stated

**Jim Frydl**

They're not stated because the legislative body that created the ordinance chose not to state any of those.

**Art Morrill**

Well, intent is an interesting concept...

**Jim Frydl**

There is no, and I'm not speaking about intent. The appellants have. And the conversation is veering towards intent. I'm speaking of black and white. So the law has been created. It's been printed. It's

been adopted by the Board of Supervisors and it has no performance standards.

**Art Morrill**

We're looking at his criteria here. And at least in this, it's vague, if not absent.

**Chuck Covington**

So in looking at black and white in the background is listed on March 21, 2024. The Deputy Zoning Administrator Stephanie Golon issued a zoning certification, I won't read the number, confirming the by-right uses is allowed by the Greene County zoning ordinance. Black and white here, you have a column that's by-right. And there's another one is by-right with zoning clearance. Zoning clearance is not mentioned here on the background. So it's not. I'm left the think, by-right uses is column A, not column B. And if there's ambiguity and there's stuff left out, and it's up to interpretation, which I think it clearly is. We have to look at outdoor amplified music and the conditions that are on it everywhere else. But not here. But not for the certification. I mean, that just doesn't make sense.

**Jim Frydl**

What conditions exist elsewhere?

**Chuck Covington**

To take into consideration the adjoining properties. Absent that you don't want to consider the adjoining properties unless it gets into an SUP.

**Jim Frydl**

There's nothing in the Greene County ordinance that requires that amplified sound during those hours have to have any consultation. That actually amplified sound isn't addressed in most cases in the Greene County Zoning Ordinance, because the general county ordinance has a law for amplified sound. The approval here does not exceed that law. And there is no requirement in the county code that the sheriff invite, or are poll the neighbors on what their opinions are about sound. It's a law.

**Chuck Covington**

They take into consideration the surrounding neighbors in any way shape or form?

**Jim Frydl**

No, it's a black-and-white law. If you're in a residential area, and you're creating noise that beyond this, this level, and these areas, then you're violating the county code.

**Jim Frydl**

The only thing that was mentioned in again, in the state code. It's in your packet, I could read it verbatim. But again, it says when the locality is establishing regulations for farm wineries, they shall consider impact on neighbors. It doesn't say that, who specifically it is, it's saying that when they're establishing a local regulation, they're establishing a law, they'll consider the impacts of that law that they're creating. And then also, if they create a law for outdoor amplified sound when it comes to farm wineries, it cannot be more stringent than the general quote. Then again, it's not the zoning administrator. It's not the staff. It's the locality establishing regulations, which is a legislative act by the Board of Supervisors.

**Jim Frydl**

So to your point, the process is we go through the book and again, by-right with zoning clearance. Is

the column in question when you go further in 16, I have it in the staff report, but it specifically mentions weddings, and weddings up to 400 people as a by-right activity for an activity that is permitted at a farm winery. And it lists that activity, with that amount of people. So the zoning column is by right followed and referred to further and in the zoning ordinance as an event that is allowed by right. And in the second appearance for 400 people at a wedding. It does not say that there are arbitrary or unspoken restrictions. It simply says this is a use the following uses are permitted at a farm winery. And it lists weddings up to four hundred...

**Mark Kelp**

Other than potentially amplified sound, there's no other mechanism for you to reject it.

**Jim Frydl**

And our zoning clearance restricts the amplified sound to the greatest capacity that we're allowed to by the state code, which is equal to our local ordinance.

**Chuck Covington**

And zoning clearances that's written down someplace?

**Jim Frydl**

Zoning clearance is not listed anywhere in our ordinance. It does under, amplified sound. It says that to get to have amplified, outdoor amplified sound at a farm winery, you need a zoning certification. When you look at the zoning certification criteria, it says that they have to meet all local, state, and federal requirements. And there are no local requirements regarding sound.

**Mark Kelp**

There's no specific item that you would point to?

**Chuck Covington**

Well, it just seems peculiar that it's codified. It's written by-right with zoning clearance outdoor amplified music.

**Art Morrill**

If its so generic then why bother?

**Chuck Covington**

if it's already covered, then why is it mentioned? And why is it mentioned in one and not the other one? I think. I don't remember who said it but it almost sounds as if this is pseudo SUP light.

**Jim Frydl**

Now let's be clear. None of this has anything to do with the Special Use Permit. The Special ?Use Permit is a completely different thing. And let's be also clear. So we're not confused. This is an agricultural property, they grow hay, they have grapes. They can build any kind of agricultural building to an unlimited size today without a permit. Because that's the way the law works in Greene County. We don't restrict agricultural buildings. Just down the street, there's an 11,000-foot chicken coop. They can build whatever they want there as an Ag building. A wine production building is listed in the state code as an agricultural use. So we don't, and our ordinance doesn't limit that. Again, that's a special use permit. But we do not limit in our winery regulation or any of our agricultural regulations, the size of an agricultural building.

**Chuck Covington**

So why request certification? Why would the applicant request zoning certification in the first place? If they...

**Jim Frydl**

They asked for the zoning certification so that they could invest money in their property and start to build agricultural buildings and plant vines and grapes.

**Chuck Covington**

I'll show my own ignorance here. I don't understand what it is that a zoning certification does for them to allow them to do more than they could without it.

**Jim Frydl**

The certification for?

**Chuck Covington**

You just said that they can do what they want without a zoning certification.

**Jim Frydl**

Zoning certification is a tool, and we recommend it to people regardless, that they get a zoning certification, so that they have documented proof that at that moment in time when they start their investment, and they rely on that determination or certification, that they are protected in their rights, because they've gotten an official decision that these are by-right uses today. So tomorrow if the Board of Supervisors, the legislative body could change the law. But if they've already made investments and move forward based on a decision of the zoning administrator, they're protected in that right.

**Mark Kelp**

Yeah, they become a non-conforming use. And so more or less, right,

**Jim Frydl**

If they don't get that letter, then they have no proof that they've invested money, they have no proof that they had a reason to invest money, relying upon the decision of a zoning administrator. And, they could lose that right that they had the day before. Based on that, that's why they get the letter.

**Art Morrill**

Based upon rules at the time the decision was made.

**Jim Frydl**

Yes. And we have several, well, a lot of general commercial uses, McDonald's, etc., whatever it is, shoe store, they get a zoning use certification. They're required to get it in most cases, by licensing, by their lenders, by everybody else so that they're protected in that right, in that decision.

**Mark Kelp**

Would it be fair to say that a zoning certification letter like that, ah, basically, that's a way in effect of time stamping the laws by which you... like, exactly, I will follow. These are the laws that I'm going to work on, right, even if they are similar, I guess put it in terms that we understand like a Roth IRA, where it's like, Hey, I'm paying taxes on my credit before it goes in. So I got to pay when it comes out,

right

**Art Morrill**

You're protected from a change that would adversely affect what you're trying to do.

**Jim Frydl**

In this specific example. They asked for the certification of the by-right uses. And based on that certification, they went out and spent several hundred thousands of dollars. They planted five acres of grapes, and all the hardware that goes with grapes. I don't know a lot of our planting grapes, and they've spent a significant amount of money on engineering designs for their proposed buildings. They've made a significant investment. And again, that's what timeliness, that's what the zoning ordinance, that's what the state code is designed to protect. It's to protect those people that are making an investment in their property. Because it is by-right. It is something that's listed. And they've gone through the fact to get official county proof that what they're doing is within the ordinance.

**Art Morrill**

See timeliness is connected to knowledge. Right. So you can't be timely without having knowledge first.

**Jim Frydl**

I would argue again, that yes, in a general sense of fairness, everybody should be able to get notice and their notice only starts when they hear it. But I didn't make the rules. The state code says that timeliness is based on a 30-day appeal period.

**Art Morrill**

Well, at the very least there would seem to be work to do. But you can't be timely if you don't have knowledge that there is even a need to be timely.

**Jim Frydl**

That's why the state code specifies exactly who gets notified

**Art Morrill**

But what that does is that's a very narrow, aperture, and so whereas in other areas, we consider the broadest application, for example, protecting the rural nature as was mentioned, but at the same time, that broader knowledge is not permitted.

**Jim Frydl**

We say it all the time. In daily business. We don't have to like the code. We don't have to agree with the code. But we do have to follow the code.

**Art Morrill**

And we do have to improve the code.

**Jim Frydl**

Not on staff

**Art Morrill**

Not this body, right? You pick the we. Somebody has to improve the code.

**Jim Frydl**

The state legislature or the county legislature.

**Jason Ham**

Mr. Chairman, can I say something? What I hear you kind of scratch your head about is that if it says you can do it anyway, why in the world do you need to come see me? And I can tell you that that is pretty common. There's a lot of by-right uses, you know, not just farm wineries, lots of other stuff observed in zoning permits are required for. And so you know, why would the locality make someone do that? Taxes, notice as to what's going on. So this is not uncommon for a zoning official to be put in a situation where I've applied for this. And it has to be given. And there isn't any option there, which again, is so on the face. So it's like, on the face of it, why even go through that process? It isn't much of a process, it's really more of a notice to the locality. And that would apply not just to this, to some other things, too. I mean, you want to build a shoe store in a B1 downtown, we're absolutely entitled to do that. Still have to go to the zoning office before you start building and get the permit, if they deny you, they can't deny it, you got a cause of action against the locality.

**Chuck Covington**

But still, with the appellant, I think there's a by-right. And everybody accepts the by-right? When you say by-right by zoning clearance, or with zoning clearance, that's a by-right plus. That's a by-right with an increased amount of capability and allowance, and at that point, you are starting to creep towards SUP. There's language in here that's also an SUP that you have to approve. And I think at that point in time at tips towards the public does have a right to know. And I know like building permits are posted online, are zoning certifications posted anywhere where people can see them? So the only way is that it's FOIA-able.

**Mark Kelp**

Unless the ordinance gets changed.

**Chuck Covington**

We're not trying to change, We can't change the ordinance.

**Jason Ham**

I agree this could be definitely written better. But if you look at 16-21.2, for example, I think he might have already recognized this, that you know, you've got this second column of by right with zoning clearance, which is less than 400 attendees. And then you have 16-21.2, it says the following uses are permitted, which is the same for repeat persons, and it makes no reference back to the zoning clearance. So the zoning administrator's interpretation of this is that they don't have the discretion to do different things. And you might disagree with that. But that's their interpretation of this. You know, I agree with that. And I also agree with the sentiment of the board because it's not clearly written. If you don't agree with me, I can see why.

**Mark Kelp**

Yeah, there's no. The way that I look at as there's no. They don't have a clear mechanism by which to reject it. So they have no choice but to accept whenever somebody asked for, in this case for

clearance.

**Chuck Covington**

Right. And I would agree with that if there wasn't already verbiage in other areas addressing the same thing. Like absent it actually being codified here. We do have stuff over here that we can lean on, that is codified. And then we fix this later on. The other question I had is the application that came in, came in with the entire SUP attached to it. If you scroll through their application, it gives their map it gives all their outbuildings and it says at the bottom there SUP. How appropriate is it that they're presenting their SUP as part of the package for this zoning certification? And how appropriate is it to accept it and approve it?

**Jim Frydl**

The SUP?

**Chuck Covington**

The SUP itself is attached to the application for the zoning certification.

**Jim Frydl**

So anyone that fills out the form and pays the fee can apply for an SUP and nothing has been granted. The Board of Supervisors is the only one that can grant it and they haven't heard it.

**Chuck Covington**

Agreed. But I'm just saying it's part of the package for the zoning certification.

**Jim Frydl**

Their package they included their application for a zoning certification. They included their map of what they intended to do with the buildings they wanted to build the location of those and they included a common justification letter for both certification and the SUP. None of that is against the ordinance. None of it's actually even..the map and that information wasn't even required. They provided as input...

**Chuck Covington**

I'll go one step further. It wasn't appropriate, they should have never included it because what you're approving now is that packet in its entirety.

**Jim Frydl**

No we approved the uses that are listed by-right in the code. We didn't approve the SUP. We can't approve the SUP.

**Chuck Covington**

I understand you can't approve it. And I'm just saying there is confusion, there's ambiguity, there's poor writing.

**Art Morrill**

It does cloud the issue. It wasn't required for the purposes.

**Chuck Covington**

So I'm just suggesting at that point in time, when they tried to turn it in that it be given back to them

and say, this isn't appropriate to be included in this package. We're not making a determination on the SUP, we're making it on a zoning certification. Come back to us with just the information about zoning certification. That's, that's all I'm saying. I think it was, I think the whole thing offers a little bit of confusion. And I would hate for them to then take that approval back and say, well, they improved this whole thing. Let me do what I want.

**Jim Frydl**

They can feel we approved something, but the law doesn't allow us to approve it. We did not approve it. What we simply approved the request for 16-21 farm wineries and the by-right and by-right with a zoning clearance. If they think we included the SUP, we don't have the authority to include the SUP. If they are confused, they should consult with their attorneys.

**Art Morrill**

I think the point has been made and so there's several opportunities that we pick the way greater clarity can be had, through a variety of mechanisms. One to say, as example, you don't need this. Another one would be in another form another body, this needs to be improved. It's not clear. So there's, I think that's one of the takeaways that we're wrestling with is that there are those opportunities to be clear to the benefit of government and also to the benefit of people.

**Jim Frydl**

And I'm not arguing that perception in any way, shape, or form. I will remind you that the state code requires that the appellant prove factually, that they are correct. And that there are other criteria that are not printed in the zoning ordinance. There is another review, that's not printed in zoning ordinance. The neighbors get to weigh in, even though the zoning ordinance doesn't include that information. So I have heard personally no facts that show that any of the things that they would like to be in the ordinance are currently in the ordinance.

**Elliott Harding**

I think hear where the bodies at. You hear the consternation you hear the confusion, but y'all have to make a decision. So you're stuck with a bunch of language.

**Mark Kelp**

We're trying to talk our way through it.

**Elliott Harding**

You're trying to figure out where to go. So here's the position. You heard my client saying something we mentioned in our brief, Greene County hasn't updated the code since Virginia did. Now, in theory, you can throw out the entire thing on that premise. And I say that because Greene County doesn't approve farm wineries to do anything above by-right, until they update the code to reflect Virginia code. The administrator's position is well they just weren't paying attention. They haven't updated it. That's an obtuse and hyper-conservative way to look at it. How dare you? That's fine. I'm just saying that is one position. That is the easiest position. But that is one position. The next position is you just randomly adopt and read into the Greene County Code 2020 amendments to the Virginia code. It's probably the most equitable way to go about it. Because you see the intent of the Greene County Board of Supervisors, they wanted to allow for farm wineries in general, hence the old code. So let's do that. If you read into the 2020 version of the code, in light of what is on the books here in Greene County, certain things have to be done that have not been done, such as local restriction upon such activities and events of farm wineries licensed in accordance with title 4.1 to market and sell their

products shall be reasonable. Let's just start there. Greene County ordinance outdatedly references 4.1.

**Mark Kelp**

Mr. Chairman didn't we close public comment?

**Lyle Durrer**

I thought we did.

**Jason Ham**

I think you did too. I think that you're on item eight which is action of the board. Board asked questions.

**Mark Kelp**

And then we're going to have a conversation among ourselves and we're going to talk and make up our mind.

**Lyle Durrer**

He can be brief and have the rebuttal

**Elliott Harding**

I'll be quick.

**Mark Kelp**

Great! We've been working on this since 5:30. That'd be great.

**Elliott Harding**

It says no local ordinance regulating noise. And then it goes on and says authorizing noise shall consider the effect. There is a regulation governing noise.

**Mark Kelp**

I got a question. Can you point to a mechanism by which that's in the law that Mr. Frydl can deny the use?

**Elliott Harding**

Yeah, he is in 15.2-2288.3. You don't have a licensed farm winery. You don't have a licensed farm winery. It's not in their letter of justification.

**Mark Kelp**

Who gives the license I've got a question on that, like what board grants that license in Virginia?

**Elliott Harding**

Virginia title 4.1. It's under the ABC. As they don't have it. It's not their letter of justification. They haven't even pulled a grape out of the ground.

**Mark Kelp**

Am I the ABC board?

**Elliott Harding**

No, but you're also asking, we are asking you to reject a clearance that was granted to an entity that is not licensed pursuant to title 4.1. It's in violation of state and code, whether Greene County updates that code or not. It's not licensed

**Chuck Covington**

Is the clearance dependent upon having a license first?

**Elliott Harding**

Yes. Because when it says local restriction be granted...

**Mark Kelp**

Can we grant a business license, without an alcohol license?

**Elliott Harding**

Yeah, he can get a business license.

**Mark Kelp**

Okay. Do we grant a business license?

**Elliott Harding**

No.

**Mark Kelp**

Okay, Who grants a business license, that the zoning board?

**Elliott Harding**

Not the ABC. Okay. But farm wineries are governed differently. You have restrictions in Greene County code that regulate farm wineries. They have to be licensed pursuant to state code. In fact, the applicants thought that the clearance letter that they got made them a farm winery according to Virginia code. They're not. They asked them. They said okay, are we good now? No, they're not.

**Lyle Durrer**

We can't really speak to what their thoughts.

**Chuck Covington**

That gets into why asked about the process of a zoning certification

**Elliott Harding**

Right it's backwards, it has to be rejected until they jump through the proper setup.

**Chuck Covington**

If there is to go criteria, there's no checklist to go down through for a zoning certification, to say they meet all the criteria, there isn't one. And that's what I'm hearing is that there's no difference between column A and column B. And a zoning clearance is..

**Mark Kelp**

The staff has no tool to reject...

**Jim Frydl**

For example, McDonald's, they asked for a zoning clearance and yes, you're allowed by-right to have a restaurant, in your zoning district. They're building hasn't been built, they don't have health department approvals, they can't serve food, they can't do anything. They just have the right to build the building and go through the process of getting all the licensing and all the other things that before they can even open up their business. Another example, we get zoning requests and certifications for people that sell and do work on firearms in their house. The ATF will not issue that license until we've issued a zoning certification. So that they have the right to have farm activities on that property once they received their license. But the two are related but not as directly. They can't have a wedding, they can't have these activities as a farm winery until they have a license. But they are a property that and have those activities. They're growing grapes, they can build buildings, they have an agricultural operation right now, that will be a farm winery. And if it doesn't become a farm winery, they can't have these things that are by-right for a farm winery. That's one of the criteria that is required to be a farm winery.

**Art Morrill**

Even with the zoning, of course, they still have to go through...

**Jim Frydl**

Right, we don't regulate ABC we don't regulate business license...

**Art Morrill**

And so I don't think anybody believes that they have to have all that donate this moment in time all those other things. So I think we come back to the question before us really. I mean, there's a lot of other issues are out there floating around that could be addressed. Maybe ought to be addressed by various parties, but the matter before us is rather straightforward.

**Mark Kelp**

My opinion on things before us. Item one is whether or not we can hear the appeal. Right, which I think that's covered here in 15.2-2311 appeals to the board, and the appeal shall not commence until the statements given of the 30-day notice. Right? So we're good to listen to that. Then the next thing, just to decide whether we can listen to it or not, right? Yeah, that's just me thinking, is the Planning Commission's decision right? Now, I want to say that's covered under 15.2-2309. That our counselor provided for us. Right? That to hear and decide appeals from any decision or determination made by the administrative officer and the administration or enforcement of the article. It specifically says the decision or determination, which Planning Commission makes a motion and recommendation.

**Lyle Durrer**

Which we have no authority to rule on.

**Mark Kelp**

Right? Yeah, because it's not really, it could never be, a planning commission decision could never be the thing decided, because nothing is decided, right? Or just guidance. So I guess, in our discussion of us making up our mind, me choosing to go first. It's like, Obviously. We're okay.

Listening to it. I don't think I don't think we should make a decision on the planning commission decision, because we can't, it's outside our scope. Which I guess so. We'll start with two first and then work our way back to one right. And I think I think we're okay, there. And then which brings us to number one, and that's all right, well, we'll decide to listen to the appeal. I'll just, I'll share my thoughts, because I think it's important for people to know what decision gets made, right. And kind of the way I'm thinking right now, which, after you all shared your thoughts, I might change my mind. There's no mechanism for them to reject that zoning certification. It's not approving the use permit. The use permit is going to go before the Board of Supervisors, which already, in my opinion, be known that with the planning commission decision, and although I was in the minority, it still made a decision or a recommendation. But I don't, I don't see any reason. There's no mechanism for us to look at to decide whether or not that zoning determination or certification coverage determined here. Like no reason to overturn it, because there's no guidelines for it, right? Is just kind of my thought. It's like, um, I might not like, I might not like what I'll just call column 2 the by-right with zoning clearance. I might not like column two. But there's no...

**Art Morill**

You don't have the basis.

**Lyle Durrer**

You can't contradict it

**Mark Kelp**

Yeah, it's like, it might be something you're stuck with.

**Chuck Covington**

So I think we're in agreement that the zoning certification, as it was submitted, for lack of a better term was sloppy, and it's not past the 30 days. Now, the whole 30 thing, 30 days thing. It's unfortunate, you never put the statement at the bottom of the letter, therefore 30 days just doesn't exist. It's a moot point. And the fact there's no due diligence, to make a determination for that middle column is disheartening. I would hope that you all take steps to correct that, because I'm absolutely of the mindset that the by-right by zoning clearance is above and beyond what is just by-right, and therefore should have some mechanism for making that determination. I also feel because it's above and beyond what's by-right, that the neighbors around it, the public has a right to know about it, just like we would for an SUP. Absent that actually being the ordinance. Again, that's unfortunate. I don't what we can do about it.

**Mark Kelp**

Column two is Column 2. We can't...

**Lyle Durrer**

We have to rule on what we got. And there's no, nothing was wrong. You didn't not do your job by notifying them of the zoning, because it's not required by law to do it. Is it is I mean, it's unfortunate, but it's, you know, it's not required.

**Chuck Covington**

It is not required, but is there a law that says you can't do it?

**Jim Frydl**

No, it's just when you choose to do more than the law, where do you stop?

**Chuck Covington**

Well, I think it's reasonable. I think it's a reasonable thing to think that if you're going above and beyond what's by-right, then there's a little bit extra action you can take on your part. If the law says you can't do it, then that's fine, but it doesn't say you can't do it. So why not?

**Art Morrill**

Well, the zoning administrator makes a point, you know, how big is big you get into that discussion. But I would say, I essentially agree with you. I think better is clearly before us. And there's work to do. But that's not this body's function. It's other functions that have to take care of that. And they really should, so that we don't put ourselves at cross purposes with transparency, timeliness, and knowledge. And that, I think is the duty of any public servant

**Lyle Durrer**

Any more discussion? Anybody have a motion?

**Mark Kelpie**

I motion whereas a meeting of the Greene County Board of Zoning Appeals (the BZA) was held on June 26, 2024 at 6:30 pm, and whereas the BZA heard an appeal from appellants listed out, regarding by-right farm wineries allowed at a property comprised of approximately 183.9 acres C-1 and A-1 and located at 12955 Dyke Road Stanardsville. Virginia tax map 35-A-16 (The property) and memorialized in a decision by the Deputy Zoning Administrator dated March 21, 2024, (the zoning administrator's decision, and together the first appeal) and, whereas the BZA heard a second appeal from the appellant regarding a recommendation of approval for a special use permit for a farm winery on the property. (The SUP) that has structures greater than 4000 square feet, made by the Greene County Planning Commission on April 17, 2024. (the second appeal) the Greene County Board of Supervisors have not taken action on the SUP and, whereas the BZA after considering zoning administrator's decision, the first appeal, the second appeal, and all the records, comments, argument and evidence presented during the June 26, 2024 meeting, desires to adopt these decisions as the official record of the BZA's decisions and findings. Now therefore, it is decided by the Greene County Board of Zoning Appeals as follows: the BZA finds as a fact that zoning administrator's decision including the issuance of a zoning certification of zoning compliance pursuant to section 16-1-2 of the Greene County zoning code (the code) is correct that the farm winery use described in the zoning administrator's decision is a by-right use, that certification of zoning compliance made pursuant to the code was properly granted and therefore the BZA affirms the zoning administrator's decision and denies the first appeal and, The BZA finds that the code of Virginia 15.2-2309 does not provide the BZA with the jurisdiction to consider or decide an appeal from a recommendation of the Planning Commission for approval of a conditional use permit and therefore the BZA dismisses the second appeal due to lack of jurisdiction.

**Lyle Durrer**

I second.

**Art Morrill**

I second.

**Lyle Durrer**

The motion has been made. And seconded. Mr. Frydl, would you roll call for the vote?

**Jim Frydl**

Yes. All each of you, I'll call your name. Say aye or nay as appropriate. Mr. Morrill?

**Art Morrill**

Aye

**Jim Frydl**

Mr. Kelp

**Mark Kelp**

Aye

**Jim Frydl**

Mr. Durrer

**Lyle Durrer**

Aye

**Jim Frydl**

Mr. Covington

**Chuck Covington**

Aye.

**Lyle Durrer**

Thank you.

**Jim Frydl**

Thank you. For so it's four-zero in favor of Ayes

**Mark Kelp**

I would like to say that I really appreciate our old colleagues and all the folks that spoke tonight and the guidance from our counsel and the supervisors giving us the counsel.

## **OLD/NEW BUSINESS**

Mr. Morrill asked if staff would send out a copy of the by-laws for them to review.

Mr. Frydl stated that staff would.

### **APPROVAL OF MINUTES**

Mr. Kelpé motioned to approve the minutes as submitted on January 24, 2024.

Mr. Morrill seconded.

By roll call vote of 4-0, the January 24, 2024, minutes were approved as submitted.

Mr. Covington – Aye

Mr. Durrer – Aye

Mr. Kelpé – Aye

Mr. Morrill – Aye

### **OTHER MATTERS**

Mr. Frydl advised the BZA that the Board of Supervisors has requested that they hear any and all appeals, even if they are out of the thirty-day window.

### **ADJOURNMENT**

Mr. Covington made the motion for adjournment.

Mr. Morrill seconded.

With a roll call vote of 4-0, this meeting was adjourned.

Mr. Covington – Aye

Mr. Durrer – Aye

Mr. Kelpé – Aye

Mr. Morrill – Aye

Respectfully Submitted,  
Cristy Snead, Secretary

  
\_\_\_\_\_  
BZA Chairman/Vice-Chairman

Date 7-24-24