



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

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Completed: 02/18/21

Description

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

Summary

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

Background

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

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

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

Analysis

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

Division 50.3. GENERAL REQUIREMENTS

Section 3.3. Exemptions to the Requirements of this Chapter

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

Agritourism

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

Accessory agricultural education and tourism activities conducted as a part of a farm's regular operations, with emphasis on hands-on experiences and events that foster increased knowledge of agriculture, including cultivation methods, animal care, water conservation, Maryland's farming history, the importance of eating healthy, and locally grown foods. Allowed activities include corn mazes, hay rides, and educational tours, classes, and workshops. The maximum footprint for any structure and the total footprint of all structures primarily used for education or tourism is limited to 10% of the total footprint square footage of all structures on the site used for agriculture. The property must have DPS approved sanitation facilities for this accessory use.

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

Farm Alcohol Production

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

Farm Alcohol Production means the transformation of agricultural products into alcoholic beverages. Farm Alcohol Production includes wineries, cideries, breweries, or distilleries on farms. Farm Alcohol Production may include other activities unrelated to the production and sale of alcohol or farming under certain circumstances.

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

Alternatives

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

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

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

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

Conclusion

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

Attachment

1. SRA 21-01 as introduced with Council Packet



Committee: PHED
Staff: Jeffrey L. Zyontz, Senior Legislative Analyst
Purpose: To introduce agenda item – no vote expected
Keywords: #subdivision exemptions, #Alcohol Production, #Agritourism

AGENDA ITEM #9A
January 26, 2021
Introduction

SUBJECT

SRA 21-01, Exemptions – Alcohol Production and Agritourism

EXPECTED ATTENDEES

NA

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

NA

DESCRIPTION/ISSUE

The intent of the amendment is to add an exemption from the requirements to subdivide agricultural land and record a plat before the Department of Permitting Services can issue a building permit to construct a building used for Alcohol Production and Agritourism.

SUMMARY OF KEY DISCUSSION POINTS

Under current law, before the Department of Permitting Services can issue a commercial building permit, the building must be on a lot shown on a record plat or be on property that is exempt from the subdivision of land process. It is the experience of the Office of Agriculture that the subdivision process is cost-prohibitive for most agritourism businesses looking to diversify operations.

This report contains:

SRA 21-01
Executive Request for introduction

Pages

©1-3
©4

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Subdivision Regulation Amendment No.: 21-01
Concerning: Exemptions – Alcohol Production
and Agritourism
Draft No. & Date: 1 - 1/19/2021
Introduced: January 26, 2021
Public Hearing:
Adopted:
Effective:
Ordinance No.:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

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

AN AMENDMENT to:

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

By amending

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

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

ORDINANCE

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

Sec. 1. Chapter 50 is amended as follows:

* * *

Division 50.3. GENERAL REQUIREMENTS

Section 3.3. Exemptions to the Requirements of this Chapter

* * *

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

1. *Agricultural land used for residential dwellings.*

* * *

2. *Public transfer.*

* * *

3. *Adjoining property.*

* * *

4. *Property for Single-Unit Living:*

* * *

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

* * *

6. *Certain commercial properties adjoining State highways.*

* * *

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

* * *

8. *Certain non-residential properties.*

* * *

9. Agricultural land used for farm alcohol production or agritourism.
An unplatted parcel in the Agricultural Reserve Zone used for farm alcohol production or for accessory agricultural tourism as defined by Chapter 59.3.2.6.F, as amended.

Sec. 2. Effective Date. This amendment takes effect when it becomes law.

Approved:

Marc Elrich, County Executive

Date

This is a correct copy of Council action.

Selena Mendy Singleton, Esq.
Clerk of the Council

Date




OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Marc Elrich
County Executive

MEMORANDUM

January 19, 2021

To: Tom Hucker, Council President

From: Marc Elrich, County Executive 

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

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

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

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

ME/dt