

Agritourism Activities and Zoning

Examples from around the country

Factsheet

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From corn mazes to wedding barns, entertaining people on the farm with “agritourism” activities is an increasingly popular business opportunity for farmers and ranchers. But agritourism activities tend to look different from traditional agricultural production activities, raising questions about whether and how to regulate agritourism activities through zoning. For this reason, agritourism businesses can encounter obstacles with zoning, as evidenced by two surveys in which 13% and 50% of the agritourism operators reported difficulties with zoning.¹ Some state and local governments have responded to these challenges by enacting zoning laws and regulations that specifically address agritourism. We highlight several examples from around the country below, which offer different approaches to resolving the challenges presented by agritourism and zoning.

Zoning and agricultural land uses

The zoning power allows a local government to regulate land uses within its territory and set standards for the development of land parcels. Zoning typically establishes separate zoning districts for residential, commercial, industrial, and agricultural uses. Of these district designations, the purposes of agricultural districts can be the most varied. Purposes may range from protection of agriculture and agricultural soils, to reducing the impacts of agricultural activities on other properties, to serving as a “catch all” for land uses that would not fit in any other district.²

Some states preempt a local government’s ability to use zoning to completely prohibit agricultural activities, while others allow a

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local government to regulate which types of agricultural land uses can exist in a zoning district. For either approach, the purpose of the zoning district and the definition of “agriculture” are important. Whether a district aims to protect or contain agricultural land uses, if and how a zoning law defines agriculture, and whether a zoning regulation distinguishes between different types of agricultural activities play critical roles in determining the impact of zoning on the existence and location of “agriculture.”

How does “agritourism” relate to “agriculture”?

From a zoning perspective, the challenge with agritourism is defining whether and how it fits into state laws and local zoning regulations for agriculture. Is agritourism agriculture? Is it tourism? Is it a commercial activity? Does it have characteristics of more than one definition or zoning district? Does the locality want to encourage or discourage agricultural diversification and agritourism development? These uncertainties, combined with the growth of the agritourism industry, have led many state and local governments to and clarify how their zoning laws apply to agritourism with specific definitions, exemptions and conditions for agritourism land uses. We provide examples of four different approaches below: exempting agritourism land uses from zoning regulation, using an overlay district to address agritourism activities, establishing agricultural tourism zones, and addressing agricultural rentals halls as separate land uses.

Examples from the states

Ohio: The Agritourism Zoning Exemption

Ohio law confers zoning authority on its counties and townships, but at the same time strictly limits these jurisdictions from prohibiting the use of land for agriculture or requiring zoning certificates for buildings incident to the agricultural purpose of the land on which they are located.³ This legal protection also extends to “farm markets,”⁴ buildings used primarily for vinting and selling wine,⁵ and as of 2016, to “agritourism.”⁶ Three statutory definitions clarify the types of land uses that qualify for the agritourism exemption. The activity must fit within the definition of “agritourism” and must take place on a “farm” that is devoted to “agricultural production,” as follows:

“*Agritourism*” is “an agriculturally related educational, entertainment, historical, cultural, or recreational activity, including you-pick operations or farm markets, conducted on a farm that allows or invites members of the general public to observe, participate in. or enjoy that activity.”⁷

A “*farm*” is “land that is composed of tracts, lots, or parcels totaling not less than ten acres devoted to agricultural production or totaling less than ten acres devoted to agricultural production if the land produces an average yearly gross income of at least twenty-five hundred dollars from agricultural production.”⁸

“*Agricultural production*” means “commercial aquaculture, algaculture meaning the farming of algae, apiculture, animal husbandry, or poultry husbandry; the production for a commercial

purpose of timber, field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, or sod; the growth of timber for a noncommercial purpose if the land on which the timber is grown is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use; or any combination of such husbandry, production, or growth; and includes the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with such husbandry, production, or growth.”⁹

While local zoning regulations can’t prohibit agritourism activities that meet the definition of agritourism, Ohio law does allow limited zoning authority over several factors related to agritourism land uses. When necessary to promote the public health and safety, counties and townships may impose zoning requirements on agritourism operations for:

- Size of structures used primarily for agritourism
- Size of parking areas, but this does not include the power to require improvements like paving
- Setback building lines for structures used primarily for agritourism
- Egress or ingress¹⁰

Cass County, Nebraska: Agritourism Overlay Districts

The zoning code issued by Cass County, Nebraska creates an overlay district for agritourism that may apply to lands zoned as Agriculture, Transitional Agriculture, or Recreational/Agriculture.¹¹ An overlay district is not a separate district, but rather one that adds specific pre-determined requirements to a zoning designation that still applies to the land. For example, while a use might be a conditional use in the underlying zone that would require a normal zoning review and permit, if the requirements are met for the overlay district, the use could be a permitted use that would not require as lengthy of a review.

The stated intent of the agritourism overlay district captures the challenges and opportunities presented by agritourism and provides strong guidance for other communities dealing with agritourism and zoning:

INTENT: Cass County Agritourism implementation states that to be successful depends upon the quality of the natural and built environments. Cass County's distinct character and quality resources provide the foundation for developing appropriate types of authentic tourism products that would ensure the county remains a unique and competitive destination in the future. Therefore, any tourism venture or experience which would be permitted in the agriculture and rural areas of the county must be directly related to the supporting primary agricultural use of the farm by interpreting the agricultural heritage of the county and providing a distinctly Cass County experience. This overlay district is intended for the Agriculture, Trans Agriculture and Rec/Agriculture Districts. Based on that foundation, certain types of uses are more appropriate than others in an agricultural or related zoning district because of the direct nexus to experiencing Cass County's agricultural heritage. Other uses that do not meet this basic threshold

or are not incidental to the primary agricultural use should not be permitted uses. In other words, in the agritourism related uses identified below, the visitor to the attraction, event or experience must leave the enterprise with a better understanding and appreciation of Cass County agricultural heritage, processes and culture. Benefits include: 1. Enhancing the economic viability of the farm and providing onsite employment opportunities. 2. Generating additional income or off season income 3. Interacting and educating locals and visitors about the importance of farming in Cass County 4. Increasing awareness of local agricultural products 5. Developing a new consumer market niche.¹²

In Cass County, the overlay district creates an expedited permitting process whereby an agritourism operator with land in one of the required zones may apply for “over the counter” permits. The resolution states that “agritourism as it is most broadly defined involves any agriculture based operation or activity that brings visitors to a farm, ranch or acreage.” The zoning code distinguishes between “minor over the counter permits” and “major over the counter permits” for agritourism. Minor permits involve a “walk-in, first come first served, case-by case” review “without the necessity of public notice or public hearing.”¹³ Major permits require a conditional use permit obtained through a notice and hearing procedure.¹⁴

Minor over the counter permits are available for agritourism activities such as camping sites, farmers markets, pumpkin patches, vineyards, Christmas tree farms, corn mazes, and other activities that are traditional agritourism activities or involve little food processing. Their inclusion in the overlay district provides these activities with a reduced burden to obtaining a permit, but still allows a local official to ensure that the activity is being conducted in a safe manner.¹⁵

Major over the counter permits still require a conditional use permitting process with a notice and hearing procedure. Activities in this category include bed and breakfasts, food manufacturing and sale, candle making and sale, small animal husbandry operations, antique dealers, wineries, and “other.” Most of these activities would require a conditional use permit even without the overlay district. Specifying them in the overlay districts provides clarity that these activities are not eligible for the expedited process for minor over the counter permits.¹⁶

Forsyth County, North Carolina: Agricultural Tourism Zones

Rather than use an overlay district, Forsyth County and the City of Winston-Salem, North Carolina allows landowners to apply as an independent Agricultural Tourism Zone. An independent zone means that a property owner would have to seek a zoning change, which generally requires a notice and hearing process. One benefit of an independent zone includes the clarity of having one streamlined set of rules as opposed to having to reconcile an underlying zone with an overlay district. However, the process to change the zone could be more intensive than a minor permitting process allowed through an overlay district.

Forsyth County’s Agricultural Tourism Zone does not apply to land uses defined as “agritourism” by the State of North Carolina’s agritourism immunity law,¹⁷ but does include such other land uses that fit within the zoning resolution’s definition of “agricultural tourism,” which means:

“Any recreational, educational, entertainment, or limited business activity operated in association with and located on the same zoning lot as a Voluntary Agricultural District. Agricultural Tourism includes, but is not limited to the following uses: restaurant (without drive through service), retail store, weddings, bed and breakfast.”¹⁸

The resolution limits Agricultural Tourism Zones to lots over 20 acres that are designated as a “Voluntary Agricultural District” through a separate program administered by Forsyth County.¹⁹ The Agricultural Tourism Zone establishes standards for building setbacks, maximum seating capacities and floor areas in buildings, parking areas, and outdoor special events.²⁰ The resolution does not apply landscape and streetyard requirements for Agricultural Tourism Zones,²¹ but does require building code compliance.²²

Tippecanoe County, Indiana: Agricultural Rental Halls

The popularity of on-farm weddings has created perhaps the most difficult quandary for agritourism operators and zoning officials: navigating the different concerns of barns used for events versus barns used for agricultural production. Some jurisdictions have chosen to address “wedding barns” separately as a specific land use, as Tippecanoe County, Indiana did in 2013. Its zoning code defines an “agricultural rental hall” as:

“An establishment (either with or without an outdoor component) where private parties, weddings, and/or receptions limited to attendance by invitation or reservation are held. Additionally, hosting public events, open to the public without the requirement of an invitation or reservation, at which entertainment is provided as the main attraction, may also be part of such business. [...]”²³

The ordinance allows agricultural rental halls as a “use permitted by right” in General Business Zones, and as a “use permitted by special exception” requiring Board of Zoning Appeals approval in two agricultural districts: Agricultural Zones and Agricultural and Wooded Zones.²⁴ In a General Business Zone agricultural rental halls may serve food made on the premises but only food prepared by an off-premises caterer may be served in the two agricultural zoning districts.²⁵ Additionally, agricultural rental halls in the agricultural districts may host no more than four public events per calendar year.²⁶ The ordinance also contains provisions for the size of parking areas, and in the rural zones requires grass or gravel overflow parking of sufficient size to accommodate all vehicles.²⁷

The county’s zoning code does not otherwise regulate agritourism activities. Without special designations, other agritourism activities would require a normal permit if such activities do not fall under the permitted use lists of the applicable zone for the agritourism operation.

Agritourism and zoning: insights

The above examples generate several insights that may be helpful to agritourism operations and local governments seeking solutions for addressing agritourism as a land use. An important first step is to assess the different types of activities that “agritourism” could bring to the community. Does the existing agricultural zoning district address these uses, or is there need for additional zoning provisions that clarify how agritourism activities fit within the zoning resolution? If changes are necessary, consider the following:

- If the goal is little or no zoning oversight over agritourism activities, an agricultural exemption could be an appropriate solution.
- An “umbrella” approach would encompass all agritourism activities that fit within a definition of agritourism, such as in Ohio’s example. Conversely, a categorization approach could address agritourism land uses separately based on type or intensity of use, such as in Cass County’s overlay district and Tippecanoe County’s “agricultural rental hall” use classification.
- If differentiating between agritourism land uses, consider whether the zoning approval procedures should also vary, such as in Cass County’s major/minor permits approach.
- Our examples suggest that parking areas, building sizes, and setbacks from property lines are common concerns raised by agritourism land uses.
- Tippecanoe’s “agricultural rental hall” designation encourages higher intensity wedding/event facilities to locate in general business zones while reserving the agricultural zones for lesser intensity wedding/event facilities.

References and Resources

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- “The Unified Zoning Ordinance,” THE AREA PLAN COMMISSION OF TIPPECANOE COUNTY, INDIANA (3rd ed.) <http://in-tippecanoe-county.civicplus.com/DocumentCenter/View/553/Unified-Zoning-Ordinance-PDF?bidId=>.

“Zoning and Health Consideration in Agritourism,” IOWA STATE UNIVERSITY AGRICULTURAL MARKETING RESOURCE CENTER, <https://www.agmrc.org/commodities-products/agritourism/agritourism-checklists/zoning-and-health-considerations-in-agritourism>.

Zoning Law Library, OHIO STATE UNIVERSITY EXTENSION FARM OFFICE, <https://farmoffice.osu.edu/our-library/zoning-law>.

¹ Megan Bruch and Rob Holland, “A Snapshot of Tennessee Agritourism: Results from the 2003 Enterprise Inventory.” UNIVERSITY OF TENNESSEE EXTENSION, Publication PB1747 (2005) and Jane Eckert, “Zoning Laws a Challenge to Farms Wanting to Grow,” ECKERT AGRIMARKETING (2007)(out of print).

² Jill K. Clark and Peggy Kirk Hall, “Policy Brief: Ohio Agricultural Zoning: Conditions and Recommendations,” THE OHIO STATE UNIVERSITY (2007), available at <https://farmoffice.osu.edu/sites/aglaw/files/site-library/Ohio%20Ag%20Zoning.pdf>.

³ Ohio Revised Code § 303.21(C)(4)(for counties) and Ohio Revised Code § 519.21(C)(4) (for townships).

⁴ *Id.* § 303.21(C)(1)(for counties) and § 519.21(C)(1) (for townships).

⁵ *Id.* § 303.01 (for counties) and § 519.01 (for townships).

⁶ *Id.* § 303.21(C)(4) (limiting county zoning authority over agritourism activities) and § 519.21(C)(4) (limiting township zoning authority over agritourism activities).

⁷ *Id.* § 901.80(A)(2).

⁸ *Id.* § 901.80(A)(4).

⁹ *Id.* § 929.01(A).

¹⁰ *Id.* § 303.21(C)(4)(for counties) and § 519.21(C)(4) (for townships).

¹¹ Cass County Zoning Regulations Reprint June 2017 § 5.17.

¹² *Id.*

¹³ *Id.* § 3.02.

¹⁴ *Id.*

¹⁵ *Id.* § 5.17(A).

¹⁶ *Id.* § 5.17(B).

¹⁷ *Id.* § 5.17(H) states that “Agritourism Uses as Defined in the North Carolina General Statutes Agritourism uses as referenced in NCGS 106-581.1 and defined in North Carolina General Statute 99E-30 shall not be subject to the requirements of Section B.2-5.5.1.” NCGS 99E-30 defines “agritourism activity” as any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity. “Agritourism activity” includes an activity involving any animal exhibition at an agricultural fair licensed by the Commissioner of Agriculture pursuant to G.S. 106-520.3 .

¹⁸ Unified Development Ordinances of Winston-Salem/Forsyth County, North Carolina, Ch. A, Art. II

¹⁹ *Id.* § 2-5.5.1(A). According to Forsyth County, the purpose of the county’s “Voluntary Agricultural District” ordinance is “to promote the preservation of farmland in Forsyth County so that development and growth will be accompanied by protection of farms from non–farm development and other negative impacts on properly managed farms, recognizing the importance of agriculture to the economic and cultural life of the county.

Forsyth County’s Voluntary Agricultural District Program enhances the identity of the agricultural community by encouraging the voluntary preservation and protection of farmland from non-farm development.” “Voluntary Agricultural District (VAD),” FORSYTH COUNTY, NORTH CAROLINA, <https://www.forsyth.cc/CES/Conservation/VAD.aspx> (last accessed Jan. 27, 2019).

²⁰ Unified Development Ordinances of Winston-Salem/Forsyth County, North Carolina § 2-5.5.1(B) to (F).

²¹ *Id.* § 2-5.5.1(E).

²² *Id.* § 2-5.5.1(G).

²³ Unified Zoning Ordinance, The Area Plan Commission of Tippecanoe County, Indiana, § 1-10-2.

²⁴ *Id.* § 3-2.

²⁵ *Id.* § 1-10-2.

²⁶ *Id.*

²⁷ *Id.* § 4-6-3 group 30.

See our other Factsheets in this series for more resources on legal issues in agritourism.