



## Kent County Department of Planning, Housing, and Zoning

To: Comprehensive Rezoning Update Task Force

From: Carla Gerber, AICP, Deputy Director

Meeting: August 25: AZD

Subject: TF 2. Review elimination of the 10% rule (related to new agricultural subdivisions) [Under this rule, if two brothers were to inherit a 198-acre farm, and they decide to part ways, they are not allowed to divide the farm into two, 99-acre parcels. The best they're allowed is to divide a 19.8-acre parcel from the farm.] (Article V, Section 1.5 – Density, Area, Height, Width, and Yard Requirements – see page 17 of the LUO)

### STAFF REPORT

#### Background

The previous Land Use Ordinance Work Group decided to include a maximum percentage of a property that can be subdivided into lots, also known as the “10% Rule,” as a way to address goals and strategies in the 1996 Comprehensive Plan. By 1996, large lot “farmette” subdivisions were becoming prevalent, and they were seen as detrimental to traditional agricultural operations. The Comprehensive Plan, then and now, encourages the use of agricultural land for farming and other agricultural businesses. Non-farm construction is not appropriate, and in particular, housing development should be limited and consideration given in subdivision design to the potential effects on neighboring agricultural operations. Many of those same goals are still present in the 2018 Comprehensive Plan.

#### **Goal: Support Agriculture as a Permanent and Preferred Land Use**

*Strategy: Promote Kent County as an agriculturally-friendly county.*

#### **Goal: Maintain Agricultural Land and Forests**

*Strategy: Retain the Agricultural Zoning District.*

Farming, animal husbandry and agribusiness are the primary and preferred uses in the Agricultural Zoning District. The district shall implement the following policies:

1. Construction that is not related to farming or agricultural support services is not appropriate. To minimize conflicts between land uses, such non-farm construction must be limited and that which is allowed must officially recognize the characteristics of an active agricultural community, i.e. odor, dust, and noise. In particular, housing development should be limited as such development in agricultural areas sets up conflicts between agricultural operations and their neighbors. In addition, as protection of rural character and view-scape, there can be no more than two new lots fronting on an existing public road; any additional lots would be served by a deeded private road.

4. Large contiguous areas of prime agricultural land are critical to an expanding and prosperous agricultural industry. The preservation of such areas reduces the potential for conflicts between farmers and their non-farm neighbors, allows the diversification of agricultural operations and reduces the need for regulations governing nuisances sometimes associated with agribusiness. It is therefore essential to minimize land consumption by non-farm related development and to target the Agricultural Zoning District for easement programs and farm retention policies.

*Strategy: Review the Rural Character Zoning District.*

1. The purpose of the Rural Character (RC) Zoning District is to satisfy the market demand for rural lots in a location that minimizes conflicts with agricultural operations while maintaining rural character. The Rural Character District may function as a transition between towns, villages, existing developments, and the Agricultural Zoning District.

### **Request**

A Task Force member submitted a request to eliminate the 10% Rule, as related to new subdivisions in AZD.

### **Review**

The 10% *Development* Rule can also be viewed as the 90% *Preservation* Rule. Subdivisions in the AZD require that 90% of the farm be left intact. There is a provision that subdivisions where all parcels remain over 100 acres are exempt from the 10% Rule, and those parcels do not count toward the maximum developed percentage of the property. There are no other exceptions.

Establishing a maximum percentage of a property in lots has resulted in subdivisions with smaller average lot sizes in AZD which has left large, contiguous tracts of land undeveloped. However, the 10% Rule has also limited the ability of some landowners to sell portions of their farms.

The goal of the regulation is to prevent the fragmentation of the AZD into 30-acre farmettes. Staff has been reviewing subdivisions in AZD since 1989. Although not fully completed, enough information has been gathered to enable discussion of how the 10% rule changed subdivision activity. Of course, other factors, such as the economic downturn in 2008 may have also affected subdivision activity over the last few years.

Staff has reviewed over 200 subdivision plats – almost 150 for the years 1989-2003 and just over 60 for 2004-2019. From 1989-2003, more subdivisions were for multiple lots at one time, and lots tended to be larger. Since 2004, only one landowner has used the entire 10% for a single lot, thereby leaving development potential on the remainder that cannot be utilized, and five subdivisions were exempted because all parcels were over 100 acres. In at least one of the 100-acre subdivisions, the landowner had to sell more than desired in order to be exempt. The 10% rule has also prevented at least one partial sale of a farm that was split by a road. The tract on one side of the road was more than 10% of the property but less than 100 acres, and subdivision was not permitted.

In addition, staff conducted a quick analysis of parcel data. There are over 3,000 unimproved parcels in the unincorporated areas of the County. Almost half of the unimproved lots are in recognized subdivisions or communities. Of the remaining parcels, over 520 have a land use of “Agricultural” and range in size from 1 acre to almost 400 acres. Approximately 180 of these parcels are 5 to 30 acres, and

another 80 are 31 to 50 acres. There doesn't appear to be a lack of smaller, agricultural parcels, although there may be a lack of willing sellers.

Setting a maximum percentage of a parcel that can be developed without providing other incentives isn't common. Sean Suder, our consultant, wasn't aware of any other similar regulations and also opined that a limit of 10% is low. For example, Queen Anne's County has an Open Space Ratio of 0.85 for cluster and non-contiguous subdivisions on its ag areas, which means for certain types of subdivisions, only 15% of the property can be developed in lots and 85% remains open.

### **Recommendation**

Staff recommends that the 10% Rule be retained but regulations allowing lot size to be waived by the Planning Commission should be drafted. Standards for the waiver could include allowing lines of division to follow natural boundaries or roadways; specialized agricultural operations that do not require 100 acres to be successful, or other unique circumstances, such as estate settlements.

Also, expansion of the Rural Character district could be considered during remapping if there is a desire to have additional land available for large lot subdivisions.

c: file



## Kent County Department of Planning, Housing, and Zoning

To: Comprehensive Rezoning Update Task Force

From: Carla Gerber, AICP, Deputy Director

Meeting: August 25: AZD

Subject: TF5. Review concept of a reset in AZD to allow building sites up to 1 unit per 30 acres as of the approval of new zoning regardless of what has been subdivided previously.

### STAFF REPORT

#### Background

With the 1989 Zoning Ordinance, Kent County approved a significant downzoning of the Agricultural Zoning District. During the last comprehensive rezoning, the workgroup recommended that the date of density determination remain August 1, 1989, for all non-Critical Area zoning districts.

#### Request

A Task Force member submitted a request to reset the date for determining density in the Agricultural Zoning District as of the date of approval of a new Land Use Ordinance.

#### Review

Since August 1, 1989, over 300 new lots have been created in AZD through more than 200 subdivision applications. At least 30 of the new lots, were created with a provision in the prior Zoning Ordinance that allowed parcels less than 60 acres to be subdivided once so long as both parcels could meet the minimum lot size of 2 acres. This provision was not included in the current Land Use Ordinance. Approximately 20 other landowners have “used” their allowable density. These tend to be smaller 60-120-acre parcels where there are only 1-3 development rights in addition to the remainder.

#### Recommendation

Staff recommends that the date of determining density remain August 1, 1989. However, staff would suggest consideration of a waiver to be granted by the Planning Commission to allow additional density/subdivisions up to 7 lots (6 lots plus the remainder). Major subdivision regulations are triggered at the creation of the eighth lot subdivided from a parcel after December 23, 1969. A waiver would allow a case-by-case review of a request for additional density. Possible reasons may include additional lots for family members or property constraints such as slopes or wetlands that limit agricultural capability but where areas are still suitable for home sites.

Staff is concerned that resetting the date of density determination could jeopardize the exemption to Tier IV restrictions on major subdivisions. Kent County is one of three counties in the State that has been granted an exemption which allows the County to approve major subdivisions on private septic in Tier IV areas, essentially all of the Agricultural Zoning and Resource Conservation Districts. Without the exemption, major subdivisions in Tier IV areas would be prohibited. Following the adoption of a new Land Use Ordinance, the County will have to reapply for the exemption, and the Maryland Department will have to verify that any new subdivision and zoning requirements will result in a yield of not more than one dwelling unit per 20 acres.

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## Kent County Department of Planning, Housing, and Zoning

To: Comprehensive Rezoning Update Task Force

From: Mark Carper, Associate Planner

Meeting: August 25: Agriculture

Subject: A. Request to add agritourism, as defined by the State of Maryland, as a permitted use in the Agricultural Zoning District

B. Inclusion of Weddings as Special Exceptions within the Agricultural Zoning District

### STAFF REPORT

#### A. Request to add agritourism, as defined by the State of Maryland, as permitted use in the Agricultural Zoning District

##### Background

Current Land Use Ordinance does not specifically address agritourism as a separately defined use, but it is permitted.

##### Request

A request has been made from the public to include agritourism, as defined by the State of Maryland, as a permitted use in the Agricultural Zoning District.

##### Review

On May 15, 2018, Maryland Governor Larry Hogan signed House Bill 252, establishing a model definition for agritourism in the Land Use Article for county governments to adopt, if they should so choose, through their respective legislative processes. The model definition is:

[A]n **activity** conducted on a farm that is offered to a member of the general public or invited guests for the purpose of education, recreation, or active involvement in the farm operation.

Includes: (1) farm tours; (2) hayrides; (3) corn mazes; (4) seasonal petting farms; (5) farm museums; (6) *guest farms*<sup>1</sup>; (7) pumpkin patches, (8) “pick your own” or “cut your own” produce; (9) classes related to agricultural products or skills, and (10) picnic and party facilities offered in conjunction with any agritourism activity.

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<sup>1</sup> For example, Kittitas, Washington, has the following definition of "Guest ranch or guest farm:" a business or an organization providing overnight lodging, dining and recreational facilities in a rural setting. The purpose of a guest ranch or guest farm shall relate primarily to vacation, recreation and similar pursuits, and does not include rehabilitation centers, group homes, clinics, nursing homes, churches and church camps, and other similar uses. Events such as auctions, barbecues and similar gatherings which do not provide overnight lodging or which are not conducted on a continuous basis shall not be considered as guest ranches or guest farms. Enhanced agricultural sales are allowed.

As stated by Maryland Secretary of Agriculture, Joseph Bartenfelder,

Agritourism attractions have become an important source of income for many Maryland farmers. This bill creates a level playing field for agritourism across the state and ensures that our family farms have the clarity they need if or when they choose to diversify their farming operations.

For comparative purpose, the National Agricultural Law Center (NALC) defines agritourism as

... a form of **commercial enterprise** that links agricultural production and/or processing with tourism in order to attract visitors onto a farm, ranch, or other agricultural business for the purposes of entertaining and/or educating the visitors and **generating income** for the farm, ranch, or business owner.

A comparative review of [agritourism policies](#) cites the nationwide changes of the agricultural economy, particularly in areas with significant urban/rural interface where access to markets and more discriminating food preferences results in more intense and varied use of farmland.

While this new diversification of the rural economy offers the opportunity to enhance the economic potential of its agricultural land, it also poses the challenge of how to regulate these activities while protecting the core agricultural, natural and scenic assets of these lands along with the residential communities that surround them.

The 2018 Kent County Comprehensive Plan includes the following strategies to support agriculture as a permanent and preferred land use:

*Strategy: Promote Kent County as an agriculturally-friendly county.*

The County will promote itself as an agriculturally-friendly place through its land use policies, as well as **economic and tourism development efforts**. There is no one kind of agriculture the County intends to support. Agriculture is a changing industry and farmers need to be able to change and adapt to stay in business. With an ethic of stewardship for our lands and waters guiding decisions, the County will continue to support all types of agricultural operations (p. 43).

As stated in the current Land Use Ordinance, the intent of the AZD is to ...

... encourage the use of agricultural land for farming and other agricultural businesses and to **limit the use of these lands for non-agricultural purposes**. ... In addition, the District is to provide for farm, *home occupations*, and *cottage industries* that are **compatible with agriculture** as a means to further diversify the County's economy.

Although not stated within the text associated with the intent of the AZD, the term Farm-Based Business may be relevant and is defined within the Land Use Ordinance as follows:

A family run business **accessory and secondary to the primary agricultural use of the property**. A farm-based business does not interfere with the on-site or adjacent farm operations and does not generate large volumes of traffic.

The American Planning Association, in addressing the challenges to traditional farming economies – encroaching development, rising costs, and falling prices – recognizes the usefulness of diversifying into agricultural tourism, such as direct marketing of products as well as attracting visitors to on-site recreation, education, and involvement in farm activities. Most agritourism ordinances limit such activities to accessory uses that support and promote

working farms to avoid commercial development of tourist or recreational facilities incompatible with rural character that could undermine the viability of agricultural operations. With increasing popularity of “barn” or “rustic” weddings, efforts to include such activities as agritourism have met with resistance from neighbors and jurisdictional administrators, and jurisdictions that do allow them on farms do so as Special Events or Conditional Use (see below for further discussion).

Maryland’s newly offered model definition is unmandated, and counties in Maryland have defined agritourism in various manners (see supplementary document). From those examples, as well as from the agritourism definitions stated above, four considerations come to light:

1. Intensity:
  - a. Demand – clientele proximity, direct marketing, nearby destination sites, ease of access (road quality, directions)
  - b. Use – frequency, discrete event client numbers, allowed portion of property
2. Enterprise Focus: clearly defines agritourism as income generating activity
3. Accessory Role: clearly states required accessory function to on-site agricultural production
4. Scope of Services: number of allowable use categories, such as farm-based (fb), natural resources (nr), touring (tr), educational (ed), picnic & party (pp), farm-to-table (ft), and lodging (L).

The following table is a summary of select counties in Maryland and their respective agritourism related conditions and activities.

County	% Farmed	# Farms	Avg. Size (ac)	Size Category			# Agritourism Operators (2012)	Avg. \$ / Agritourism Operation (2012)*	Enterprise Focus	Accessory Role	Scope of Services**
				Small	Medium	Large					
Frederick	45%	1,373	137	77%	18%	5%	14	27,216	√	√	fb, tr, ed, L, pp
Howard	20%	321	101	85%	11%	3%	7	-	√	√	fb, tr, ed, pp
Montgomery	21%	558	117	84%	11%	5%	10	131,000	Ed, Tour (1)	√	fb, ed, tr
Anne Arundel	10%	390	69	91%	7%	2%	10	26,700	√	√	fb, nr, tr, ed, ft
Cecil	33%	533	138	77%	18%	5%	8	32,625	Tour (2)		tr (fb, nr)
Queen Anne's	66%	483	337	58%	20%	22%	21	12,476	Tour (3)	√	tr (fb, nr)
Kent	76%	346	388	58%	25%	16%	44	7,205	-	-	-

\* Includes income from recreational services such as hunting, fishing, farm or wine tours, hay rides, etc.

\*\* (fb) farm-based, (nr) natural resources, (tr) touring (ed) educational, (pp) picnic and party, (ft) farm-to-table, (L) lodging

√ Indicates greater emphasis on activity as supportive to on-site agricultural operations

(1) accessory agricultural and tourism activities, (2) tourism of agricultural farms, (3) agricultural support

Sources: John Hopkins Center for a Livable Future – [Maryland Food Systems Map](#); USDA National Agricultural Statistics Service, Census of Agriculture

What may be divined from this information in regards to the considerations listed above are that 1) counties with lower portions of their land in farms (Frederick, Howard, Montgomery, Anne Arundel, and Cecil) have greater share of small farms and generally higher average agritourism earnings per operation, 2) those counties with larger portions of their land in farms generally have greater numbers of agritourism operations, 3) emphasizing commerce in a definition of agritourism does not strongly correlate with larger average agritourism earnings per operation, 4) counties with greater emphasis on tourism promotion (i.e., Montgomery) have the best average



agritourism earnings per operation, and 5) higher average agritourism earnings per operation are not strongly correlated with scope of services.

Regarding the applicability of these considerations to Kent County, as reflected in the higher portion of farmland, the greater number of large farms, and the lower ratio of average agritourism income per operator, the intensities of demand and use are the lowest of the above examples. The causes of this are the lower population density, the greater distance and difficulties of access from major urban centers, and the limited number of additional destination attractions. The considerations of strength of enterprise focus, level of support to on-site agricultural production, and scope of services and service platforms are integrated into our recommendation.

### **Recommendation**

**Enterprise Focus:** While the definition of agritourism by the National Agricultural Law Center has a strong emphasis on resultant income generation, the model definition from the state does not and simply alludes to activities that provide for education, recreation, or active involvement in farm operations. The Kent County Comprehensive Plan includes economic and tourism development efforts as part of its strategy to promote itself as an agriculturally-friendly county. That goal, as indicated in the above comparative analysis, is not impacted by whether the activity is described as commercial.

**Accessory Role:** As stated in the Land Use Ordinance, the intent of the AZD is to “...encourage the use of agricultural land for farming and other agricultural businesses and to limit the use of these lands for non-agricultural purposes. ... [and] to provide for [industries] that are compatible with agriculture as a means to further diversify the County’s economy.” A clear statement within a definition of agritourism that such an activity be related to agriculture and incidental or accessory to the primary agricultural operations onsite is in alignment with the intent of the AZD.

**Scope of Services:** As indicated in the above comparative analysis, counties with a greater portion of their land in agriculture generally have a greater number of agritourism operations. The assumption behind this is that such lands, which are more rural and remote, can be utilized for hunting, fishing, and wildlife viewing. Given the rural nature of Kent County, a scope of allowable activities that preserve open spaces is in alignment with the Comprehensive Plan.

Therefore, Staff recommends adoption of the Maryland State model definition of agritourism with modifications to reflect the conditions and goals of Kent County:

Agritourism - Activities conducted on a farm and offered to the public or to invited groups for the purpose of education, recreation, or active involvement in the farm operation. These activities must be related to agriculture or natural resources and incidental to the primary operation on the site. The term shall include hayrides; corn mazes; seasonal petting farms; pumpkin patches; “pick your own” or “cut your own” produce; classes related to agricultural products or skills; harvest festivals; field trips; farm tours; farm museums; picnic and party facilities offered in conjunction with any agritourism activity; food services, including farm to table meals; fishing; hunting; wildlife study; guest farms; and activities or events related to agriculture or natural resources, agricultural products, or agricultural skills.

## **B. Inclusion of Weddings as Special Exceptions within the Agricultural Zoning District**

### **Background**

Currently, the Land Use Ordinance does not outrightly permit weddings within the AZD.

### **Request**

The Department of Planning, Housing, and Zoning has been receiving increasing numbers of inquiries regarding the allowance for weddings in the AZD, and Staff request consideration of directly addressing this issue in our Land Use Ordinance.

### **Review**

As a well-established practice, special events, such as weddings, may be hosted at Country Inns, which may be established by Special Exception. If done responsibly and with mitigation of possible nuisance, allowance of weddings as Special Exceptions within the AZD may help in meeting the growing demand while subsequently stimulating the economy. Examples of how other counties in Maryland address this are as follows:

With Development Standards in its Resource Conservation Areas within Agricultural and Countryside zoning, Queen Anne's County includes weddings as Special Events, which it defines as,

Personal or business social engagement or activities conducted at a bed-and-breakfast, single-family residence, or on a farm where quests assemble for parties, wedding events, reunions, birthday celebrations, or similar uses for compensation, during which food and beverages may be served to guests and music and other entertainment is provided to quests. This definition shall not include places of worship. [Added 3-26-2013 by Ord. No. 13-01]

In Howard County, weddings may be permitted in its Rural Conservation (RC) District under Conditional Use as a Limited Outdoor Social Assembly (Section 131.N.32). The provisions for such include that the property is the site of an historic structure; that it be 5 acres or larger; that access will not infringe on roads or other drives; that no permanent structures are to be erected; that surrounding properties are to be shielded from noise and nuisance; that the assembly will have a maximum number of attendees, limited number of events pre year, and restricted operating hours; and that catered or on-site prepared foods meet food safety requirements and are subject to food safety inspections.

In its ordinance for Agriculture and related uses, Talbot County allows for Farm-based recreation, for which there are minimum size, use, setback, landscape type requirement, and site plan approvals and which it clarifies as, "... activities that predominately use agricultural products, buildings or equipment, such as corn mazes, hayrides, pony rides, petting zoos, farm museums and similar activities. The facilities may be available as venues for weddings, receptions and similar uses," subject to specific conditions. Those particular limitations include maximum number of attendees per event, no outdoor music before or after certain times, and a maximum number of events per year, for which an operator is not required to apply for use certificate for each even through the year.

### **Recommendation**

Staff recommends that the Task Force consider suggesting the inclusion of weddings as Special Use and that they carry additional standards to address maximum event size, frequency of events, hours of operation, nuisance control, and public safety.

## Select Examples of Agritourism Definitions in Maryland Counties

### **Frederick County:**

Agritourism Enterprise: Activities conducted on a farm and offered to the public or to invited groups for the purpose of education, recreation, or active involvement in the farm operation. These activities shall be related to agriculture and shall be accessory to the primary agriculture operation on the site. This term shall include farm tours, hayrides, corn mazes, seasonal petting farms, farm museums, guest farm, pumpkin patches, "pick your own" or "cut your own" produce, classes related to agricultural products or skills, picnic and party facilities offered in conjunction with the above.

### **Howard County:**

Agritourism Enterprise: Activities conducted on a farm and offered to the public or to invited groups for the purpose of recreation, education, or active involvement in the farm operation. These activities must be related to agriculture or natural resources and incidental to the primary operation on the site. This term includes farm tours, farm stays, hayrides, corn mazes, classes related to agricultural products or skills, picnic and party facilities offered in conjunction with the above, and similar uses.

### **Montgomery County:**

\*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. \* *Farming (Section 3.2.6)*

### **Anne Arundel County:**

"Agritourism" means a business enterprise on a farm related to agriculture or natural resources that is offered to the public or invited groups. Agritourism shall be accessory to a principal use of farming and shall be located on land that qualifies for an agricultural use assessment pursuant to the Tax-Property Article, § 8-209 of the State Code or that is covered by a current and active soil conservation and water quality plan approved by the Anne Arundel Soil Conservation District. Agritourism includes fishing; wildlife study; corn mazes; pumpkin patches; harvest festivals; field trips; hayrides; pick-your-own operations; farm tours; food services, including farm to table meals; farm museums; educational classes; and activities or events related to agriculture or natural resources, agricultural products, or agricultural skills.

### **Cecil County:**

\*Tourism of agricultural farms and buildings by members of the general public for recreational, entertainment or educational purposes for which tourists may or may not pay fees. Agritourism includes the following activities when performed by a tourist: 1) Viewing rural activities, farming, ranching and wine making; 2) Viewing natural, historical, and cultural resources; and 3) Harvesting agricultural products. \**Adopted in 2019*

### **Queen Anne's County:**

Agricultural Support: A. A commercial facility that stores or sells only agricultural equipment or products (e.g., fertilizer, grain, or seed) or processes agricultural products not grown on site. B. Includes, but is not limited to, agricultural tourism (e.g., farm tours, summer camps and bird watching), grain elevators, seed-drying operations, heavy farm equipment sales, and seed, fertilizer, and agricultural chemical supply stores.

Sources: Anne Arundel Co.; Cecil Co.; Frederick Co.; Howard Co.; Montgomery Co.; Queen Anne's Co.; Kent Co.