

DINWIDDIE COUNTY PLANNING & ZONING DEPARTMENT
Appeal of Zoning Administrator



Appellant's Name and Address:

Yost Living Trust, dated May 29, 2018
c/o David A. Yost and Caryn L. Yost, Trustees
3601 Leonards Lane, Sutherland, VA 23885
Phone: 804-379-4034
Email: jomalley@t-mlaw.com

Agent/Representative's Name and Address:

John P. O'Malley, Esq. (VSB No. 92439)
100 Shockoe Slip, Third Floor
Richmond, VA 23219
Phone: 804-379-4034
Email: jomalley@t-mlaw.com

Subject Property Tax Parcel Number(s): Tax Map Nos. 7-14, -14A, -15, and -15A Current Zoning: Residential, Conservative, District, R-R

Subject Property Address: 3415 Leonard's Lane, Sutherland, Virginia, 23885

Describe the order, requirement, decision or determination of the Zoning Administrator that you wish to appeal.

By letter dated December 15, 2022, Senior Planner/Zoning Administrator Brad Robinson issued a letter to Thibault Enterprises LLC regarding the subject property in which he determined that a proposed winery/tasting room on parcel 7-15A was a permitted use under Residential, Conservative, District, R-R zoning based on alleged agricultural activities existing as of November 16, 2010.

How was the appellant aggrieved or injured by that order, requirement, decision or determination?

Appellant is the owner of a neighboring parcel at 3601 Leonard's Lane, Sutherland, Virginia, 23885, on which the owners and Trustees of the Trust reside. The proposed business use of a farm winery has begun to, and will further, reduce accessibility of public waterways used by the Appellant, impact the well water needed by the Yosts to enjoy their home, result in chemical and noise pollution to their property, increase water table pollution, and impair the right to the quiet use and enjoyment of their property.

What is the basis of the appeal? (Was there a mistake of fact, or an erroneous application of law? Additional pages may be attached as needed.)

See Attached.

OFFICE USE ONLY


Date Received: 1-17-23
Fee Amount: \$ 500.00
Election District: 2
Case No: ZA-23-1

Received By: Robinson
Receipt No: 34771
BZA Hearing Date: March 15, 2023

1. The required fee must accompany this application. A fee schedule is available from the Planning Department located in the Dinwiddie County Government Center at 14010 Boydton Plank Road, Dinwiddie, Virginia 23841, or at Dinwiddie Code § 22-8. All checks must be made payable to: "Treasurer, County of Dinwiddie".
2. Enclose with the application a copy of the order, requirement, decision or determination being appealed.
3. I/We hereby certify that to the best of my/our knowledge all the above statements and the statements contained in any exhibits are true:

Date: January 17, 2023

SIGNATURE OF AGENT\*

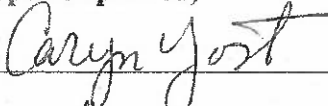


(Name of person other than, but acting for, the Appellant and responsible for this application)

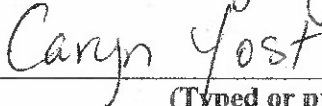
AGENT'S NAME John P. O'Malley, Esq.

(Typed or printed)

SIGNATURE OF APPELLANT\*\*



APPELLANT'S NAME



(Typed or printed)

I authorize you, the merchant, to initiate an electronic debit to my account for the amount rendered on this check plus a returned check fee in accordance with Dinwiddie Code § 2-1, if the item is dishonored. The use of a check for payment is my acceptance of this policy.

Signature \_\_\_\_\_

Notes:

- 1) Incomplete application will not be accepted. Any request that requires plans must be accompanied by those plans at the time submission of the application.
- 2) Any appeal must be in accord with Va. Code § 15.2-2311 which requires a notice of appeal to be filed with the zoning administrator and the board of zoning appeals within 30 days of a written notice of a zoning violation or a written order.

\*Agent must file power of attorney from the Appellant giving the agent authority to submit this application.



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Direct Dial: (804) 379-4034  
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January 17, 2023

**By Mail and Hand Delivery**

Brad Robinson  
Sr. Planner/Zoning  
Administrator  
14010 Boydton Plank Road  
Dinwiddie, VA 23841

Board of Zoning Appeals  
c/o Brad Robinson  
P.O. Drawer 70  
14010 Boydton Plank Road  
Dinwiddie, VA 23841

Secretary of the Planning  
Commission  
P.O. Drawer 70  
14010 Boydton Plank Road  
Dinwiddie, VA 23841

Re: *Zoning Determination – Tax Map Nos. 7-14, 14A, 15, and 15A*

Dear Mr. Robinson:

I represent David and Caryn Yost, as well as the Yost Living Trust dated May 29, 2018. Enclosed please find their appeal of the zoning determination regarding the above-referenced properties dated December 15, 2022 as well as the appropriate filing fee.

Should you have any questions or concerns, do not hesitate to contact me.

Sincerely,

John P. O'Malley

JOM

cc: William K. Thibault, Registered Agent, Thibault Enterprises, LLC  
Michael H. Drewry, Asst. County Attorney

DINWIDDIE COUNTY BOARD OF ZONING APPEALS  
(Attachment 1)

IN RE: APPEAL OF ZONING ADMINISTRATOR )  
 DETERMINATION DATED DECEMBER 15, 2022 )  
 REGARDING 3415 LEONARD'S LANE, )  
 SUTHERLAND, VIRGINIA 23885 )

**GROUND FOR APPEAL**

Appellant Yost Living Trust, dated May 29, 2018, by and through David and Caryn Yost as Trustees and Beneficiaries (the "Yosts" or "Petitioners"), by counsel, note the following mistakes of fact and erroneous applications of law as the basis for its appeal of the December 15, 2022 Zoning Determination regarding 3415 Leonard's Lane, Sutherland, Virginia, 23885, otherwise identified as Tax Map Nos. 7-14, -14A, -15, and -15A by the Zoning Administrator (the "Administrator"):

1. Virginia law explicitly states that "'land zoned agricultural' does not include land zoned 'residential conservation'" such that a farm winery may not operate on land zoned for residential conservation. Va. Code § 4.1-100.

2. The Administrator failed to cite any evidence that showed what agricultural activities were taking place on the date of November 16, 2010. Rather, each of the USDA and Google Earth Maps utilized in making his determination failed to show agricultural activities on the specific date required by Sec. 22-84 of the Dinwiddie County Code. No other evidence was included in the determination such that there is no evidence that the proposed use is a permitted use by right.

3. Even if the evidence cited were sufficient to show an agricultural use of each of the lots as of November 16, 2010, the proposed winery/tasting room is not an agritourism activity "in connection with a legal nonconforming agricultural use existing as

of November 16, 2010.” No evidence shows the growing or fermentation of grapes, production of wine, or any activity that could be termed “in connection” with the uses cited in 2010 of cotton and hay farming.

4. Any legal, nonconforming use existing as of November 16, 2010 was abandoned for a period of more than two years and the current use must conform to the existing ordinance regulations, pursuant to Sec. 22-246 of the Dinwiddie County Code.

5. The Administrator’s determination is based on current, and recently changed, lot lines and not on the existing lot lines as of November 16, 2010.

6. The Administrator has not considered the substantial impact to the health, safety, and welfare of the Trustees.