



Staff Report

Board of Zoning Appeals March 15, 2023

Case #: ZA-23-1
Appellant: Yost Living Trust, c/o David A. Yost & Caryn L. Yost, Trustees
Property Location: Leonards Lane, Sutherland
Tax Map Parcel(s): 7-14, 7-14A, 7-15 & 7-15A
Acreage: 164.92 +/- acres
Current Zoning: Residential, Conservative, District R-R

SUMMARY OF CASE

The appellant, Yost Living Trust c/o David A. Yost and Caryn L. Yost, Trustees, and their agent, John P. O'Malley, Esq., are appealing the determination of the Zoning Administrator that a proposed winery/tasting room is a permitted use on the property located at 3415 Leonards Lane, Sutherland, Virginia, and further identified as Tax Map Parcel No. 7-15A. The property is zoned Residential, Conservative, District R-R which permits agricultural activities in connection with a legal nonconforming agricultural use existing as of November 16, 2010 as enumerated in Sec. 22-84 of the County Code.

ATTACHMENTS

The following are included:

- A. Application
- B. Location Map
- C. Zoning Determination dated December 15, 2022 with Attachments
- D. Building Permit #21-338 for 3415 Leonards Lane, Sutherland, VA, May 2021

ZONING ADMINISTRATOR'S ANALYSIS

The properties subject of the zoning determination, including Tax Map Parcel Nos. 7-14, 7-14A, 7-15 and 7-15A, together comprise a century farm that has been known as Riverside Farm (hereafter "the Farm"). The Farm was acquired by Thibault Enterprises LLC on August 23, 2019 from Doris L. Pritchett and Linda L. Barker, both heirs of former owner William M. Leonard. Below is a table that summarizes the parcels as owned by Thibault Enterprises LLC.

Tax Map No.	Address	Approx. Acreage
7-14	4112 & 4114 Leonards Lane	112.00
7-14A	4108 Leonards Lane	3.00
7-15	No Address	39.92
7-15A	3415 Leonards Lane	10.00

It is important to note that the Farm was under common ownership in 1903, and, after various real estate transactions related to the eventual formation of Lake Chesdin, the Farm again came under common ownership in 1971 and has remained under such until the present day.

The Farm is zoned Residential, Conservative, District R-R. The majority of R-R zoning in Dinwiddie County is located along Lake Chesdin generally west of Olgers Road (Route 632) and north of River Road (Route 601) and Namozine Road (Route 708). The R-R zoning district was originally adopted and identified as the Agricultural, Conservative, District A-3 when the County instituted zoning in 1964. The A-3 District permitted agricultural (including accessory buildings and uses incidental thereto), dairying (including the raising of milk cows and wholesale sale of milk) and beef cattle and horse raising as by right uses. In June 1993, the A-3 District was renamed to Residential, Conservative, District R-R with no change to permitted uses. However in June 1999, agricultural, dairying and beef cattle were removed as permitted uses in R-R rendering existing such uses as legal nonconforming uses. In accordance with Sec. 22-246 of the Dinwiddie County Code, *“If, at the time of enactment of the ordinance from which this chapter derives [August 5, 1964], and any subsequent ordinance amendments of this chapter, any legal activity which is being pursued, or any lot or structure legally utilized in a manner or for a purpose which does not conform to the provisions of this chapter, such manner of use or purpose may be continued as herein provided, as long as the existing or more restricted use continues”*.

In 2010, the County adopted regulations to address the growing industry of agricultural tourism (“agritourism”) as outlined in Article VIII of the County Code. The regulations designated agritourism as a by right use in agriculturally-zoned areas (including Agricultural, Limited, District A-1 and Agricultural, General, District A-2). In recognition that certain residentially-zoned areas could also contain existing agricultural uses, agritourism was also identified as a permitted use in the R-R and Residential, Limited, R-1 districts if it was in connection with a legal nonconforming agricultural use existing as of November 16, 2010 (see Dinwiddie County Code Sec. 22-84(25) and 22-114(19)). The agritourism regulations were amended and updated in 2021.

With the exception of Tax Map 7-14A, all of the parcels acquired by Thibault Enterprises LLC participate in the County’s land use program which is indicative of agricultural or forestal use of the property. Both Tax Map Parcels 7-14 and 7-15 have been enrolled in the program since 1997, while Tax Map 7-15A was enrolled in 2011. Prior to 2018, the Farm had been utilized for various crop production including cotton and hay or perennial grass. Thibault Enterprises LLC began conducting viticulture on the Farm in 2018. Following acquisition of the Farm in 2019, Thibault Enterprises LLC then obtained permits to renovate the existing homes on Tax Maps 7-14 and 7-14A including permit #19-446 for 4112 Leonards Lane; permit #19-523 for 4108 Leonards Lane; and permit #19-524 for 4114 Leonards Lane. Permit #21-338 to remodel an existing building on Tax Map 7-15A for a winery was obtained in May 2021, and was approved in accordance with ongoing agricultural activity on the property and Sec. 22-84(25) of the County Code which identifies agritourism as a permitted use in the R-R zoning district.

Thibault Enterprises LLC submitted a business license application to the Commissioner of the Revenue on December 7, 2022 proposing a winery/tasting room on Tax Map 7-15A. Zoning approval of the business license was given on December 13, 2022, after which a zoning determination letter dated December 15, 2022 was prepared utilizing records from the USDA Farm Service Agency (FSA) and Google Earth Maps aerial imagery to determine that agricultural activity was occurring on the property in 2010. Based on FSA records, Maxwell W.

Watkins planted upland cotton in May 2010 which precedes the adoption of the agritourism regulations on November 16, 2010.

In response to the appellant's Grounds For Appeal identified in the application, staff offers the following comments:

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.

In a letter opinion dated February 27, 2023, Circuit Court Judge Joseph M. Teefey, Jr. held "[t]he Court finds that the August 21, 2021, ordinance amendments defining land zoned agricultural to include land zoned residential, conservative R-R does not violate the limiting provision of Va. Code Section 4.1-100 included in the farm winery definition."

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.

The overall Farm has been enrolled in the land use program since 1997 which indicates ongoing agricultural activity inclusive of the date November 16, 2010. Additionally, FSA records show that Maxwell W. Watkins planted upland cotton in the 2010 production year.

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.

The use "agriculture" is defined in Sec. 22-1 of the Dinwiddie County Code as (underlined portion for emphasis) "the tilling of the soil, the raising of crops, horticulture, forestry and gardening, including the keeping of animals and fowls, and including any agricultural industry or business, such as fruit packing plants, dairies or similar uses". A change from growing cotton or perennial grass to grapes does not constitute as a change of use and still classifies as agriculture.

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.

The Farm's ongoing participation in the land use program to the present day does not reflect that the agricultural use of the property has been abandoned for a period of more than two years.

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.

Staff has not found record of any recent changes to lot lines. According to Instrument No. 1900002149 as recorded with the Clerk of the Circuit Court, the last plat recorded is a

survey titled “Compiled Plat Showing The Estate of W.M. Leonard Located on the Southern Shore of Lake Chesdin, Situated in Namozine District, Dinwiddie County, Virginia”, dated August 20, 2012, as prepared by Irving H. Pritchett, III, Land Surveyor. Any changes to lot lines is considered irrelevant as the determination is based on the use of the entire Farm and not individual parcels used for taxation purposes.

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

The purpose of the entire zoning ordinance is identified in Sec. 22-2 as for promoting the health, safety and general welfare of the public. This purpose is inclusive of nonconforming uses for which provisions are outlined in Chapter 22, Article VI of the Dinwiddie County Code.

As a threshold matter, consideration should also be given to § 15.2-2311.(C) of the Code of Virginia which states that “In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after 60 days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer”. The determination dated December 15, 2022 is consistent with decisions of previous administrators and more specifically that of Building Permit #21-338 issued in May 2021 (attached as Exhibit D). The permit, signed by Mark Bassett who at that time was Acting Zoning Administrator, was clearly marked “R-R, Agritourism” and was a decision and determination by the zoning administrator. Thibault Enterprises LLC relied in good faith by moving forward with work on the property after obtaining the permit. As such, it would appear that the December 15, 2022 zoning determination letter cannot be overturned in this appeal because doing so would be inconsistent with Virginia Code § 15.2-2311.(C).

BOARD OF ZONING APPEALS ACTION

In accordance with § 15.2-2309 of the Code of Virginia, one of the powers and duties of boards of zoning appeals is to hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The code states:

“The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.”

To assist the Board of Zoning Appeals with its decision as relates to this appeal, Staff has prepared and identified the following Determinations of Facts:

1. Tax Map Nos. 7-14, 7-14A, 7-15 and 7-15A are located at 4108, 4112, 4114 and 3415 Leonards Lane and known as Riverside Farm, which is presently zoned Residential, Conservative, District R-R.
2. Riverside Farm was under common ownership in 1903 and again came under common ownership from 1971 until the present.
3. Agriculture is defined in Sec. 22-1 of the Dinwiddie County Code as “The tilling of the soil, the raising of crops, horticulture, forestry and gardening, including the keeping of animals and fowls, and including any agricultural industry or business”.
4. Riverside Farm has continuously been used for agriculture from 1971 to the present. During the 1970s Tax Map 7-15A was utilized for multiple purposes including perennial grass, forestry, campsites and agritourism activities.
5. Dinwiddie County Code Sec. 19-16 et seq. allows real estate devoted to agricultural, horticultural, forest and open space uses within the county to be enrolled in a land use taxation program. Tax Map Nos. 7-14 and 15 have been enrolled in the land use taxation program from at least 1997 to the present. Tax Map No. 7-15A applied for inclusion in the program in 2010 and was approved for inclusion in the program beginning in January 2011.
6. During the 2010 production year, Riverside Farm was farmed by Maxwell and Susan Watkins, Jr. who grew cotton and perennial grass on all tillable acres according to confirmation by the Watkins and the USDA Farm Service Agency records.
7. Riverside Farm was purchased from Leonard Family heirs in 2019 by Thibault Enterprises LLC, who had leased the farm and planted initial grape vines in 2018.
8. The Residential, Conservative, District R-R allows agritourism activities in connection with a legal conforming agricultural use existing as of November 16, 2010. County zoning administrators have historically interpreted this use as “if agriculture was occurring on a District R-R farm during the 2010 production year, agritourism is presently an allowed use” and “if a property consists of more than one parcel for real estate tax or any other purposes, the property shall be considered one parcel for purposes of interpreting if an agricultural use existed in 2010”.
9. A commercial building permit was applied for by Thibault Enterprises LLC relating to Tax Map 7-15A. The permit was approved by the county zoning administrator on May 21, 2021. The zoning administrator determined and listed the zoning of the property as “R-R, Agritourism”.

The final statement of action should be similar to the following. If a BZA member chooses to make this motion, it should be read aloud:

I move that the Board of Zoning Appeals adopts the following resolution:

WHEREAS, the Code of Virginia, specifically § 15.2-2309, states that the Board of Zoning Appeals shall hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto, and:

BE IT RESOLVED that the Board (DETERMINES AS TRUE or DOES NOT DETERMINE AS TRUE) the factual statements Numbers 1 through 9 and rationale set forth in the staff report; and

BE IT FURTHER RESOLVED that pursuant to Virginia Code Section 15.2-2309, after full examination of the determinations of facts and law related to the case, the Board of Zoning Appeals finds the determination of the administrative officer by letter dated December 15, 2022 and as provided in appeal request ZA-23-1 (IS or IS NOT) correct.