

Chapter 4

The Scope of the Zoning Power

4-100 Introduction

If effectively used, the zoning power is broad, but it is not unlimited. This chapter explores the reach of that power. Chapters 5, 6 and 7 examine the limitations on the zoning power.

4-200 The extent of the zoning power over uses, structures and areas of use

Virginia Code § 15.2-2280 is the key enabling statute that establishes the scope of the zoning power over uses, structures, and areas of use. It authorizes a locality to regulate, restrict, permit, prohibit, and determine the following:

- *Uses:* The use of land, buildings, structures and other premises for agricultural, business, industrial, residential, flood plain and other specific uses.
- *Physical characteristics of structures:* The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures.
- *Areas of use:* The areas and dimensions of land, water, and air space to be occupied by buildings, structures and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures, including variations in the sizes of lots based on whether a public or community water supply or sewer system is available and used.
- *Excavation:* The excavation or mining of soil or other natural resources.

The Virginia Supreme Court has described the authority delegated to localities in Virginia Code § 15.2-2280 as “broad authority.” *Trible v. Bland*, 250 Va. 20, 24, 458 S.E.2d 297, 299 (1995). Under a Dillon Rule analysis, Virginia Code § 15.2-2280 authorizes a locality to zone and regulate the territory within its jurisdiction, but does not delineate *how* the locality is supposed to implement the broad powers granted. In this situation, the choice of implementation by the locality will be upheld as long as the method selected is reasonable. *Advanced Towing Company, LLC v. Fairfax County Board of Supervisors*, 280 Va. 187, 193, 694 S.E.2d 621, 624 (2010) (county enabled to impose territorial restriction in towing regulation); *Arlington County Board of Supervisors v. White*, 259 Va. 708, 712, 528 S.E.2d 706, 708 (2000) (county not enabled to extend coverage to the newly defined category of domestic partners under its self-funded health insurance benefits plan). This is known as the “reasonable selection of method rule,” discussed in section 5-522.

Understanding the scope of a locality’s zoning powers under Virginia Code § 15.2-2280 and other sections is critical.

4-300 The physical reach of the zoning power: territory and airspace

A county has jurisdiction over all of the unincorporated territory in the county; a city or town has jurisdiction over all of the territory within that municipality. *Virginia Code § 15.2-2281*; see *Board of Supervisors of Loudoun County v. Town of Purcellville*, 276 Va. 419, 438, 666 S.E.2d 512, 521 (2008) (although planning processes may be extra-territorial between counties and towns under Virginia Code § 15.2-2231, a locality’s zoning authority is limited to its own territory).

A zoning ordinance also extends to the superjacent airspace of any privately-owned land. *Virginia Code § 15.2-2293(A)*. *Superjacent airspace* includes any use or structure on top of (*e.g.*, a structure) or above (*e.g.*, an antenna affixed to a pole) the ground. For publicly owned land, a zoning ordinance applies to:

- *Public travelways*: Airspace that is superjacent or subjacent to any public highway, street, lane, alley or other way that is not required for the purpose of travel, or other public use, by the Commonwealth or other political jurisdiction owning it. *Virginia Code § 15.2-2293(B)*.
- *Other public land*: Airspace that is: (1) not associated with a public travelway; (2) superjacent to any land owned by the Commonwealth or other political jurisdiction; and (3) occupied by a nonpolitical entity or person. *Virginia Code § 15.2-2293(C)*.

Virginia Code § 15.2-2293 is an often overlooked regulation, even by the Commonwealth. The section is important because it provides that state-owned land not used for state purposes is subject to local zoning regulations. For example, if VDOT desired to allow a private wireless service provider to erect a pole, antennas and ground equipment within the public right-of-way, that private use would be subject to local zoning regulations.

Submerged lands also present an interesting issue. In *Jennings v. Board of Supervisors of Northumberland County*, 281 Va. 511, 708 S.E.2d 841 (2011), a landowner with riparian rights challenged the county's zoning authority on those portions of proposed commercial piers and wharves that would lie beyond the mean low-water mark of a tidal, navigable waterway which, by law, was owned by the Commonwealth. The court held that the county's zoning authority applied to the landowner's proposed piers and marinas, and concluded that the county's authority was not pre-empted by the Commonwealth's authority under Virginia Code § 28.2-1204 to issue permits for uses of "State-owned bottomlands." In *1985-86 Va. Op. Atty. Gen. 108*, the Attorney General discussed in a footnote the question of whether private wharves, piers and docks were subject to local zoning regulations where the subaqueous beds of bays, rivers, creeks and shores were the property of the Commonwealth. Recognizing that private landowners had riparian rights, the Attorney General concluded that "the State's use of State-owned bottom is not subject to local regulation, but the exercise of a riparian landowner's property rights which encroach on State-owned bottom is validly subject to local regulation."

4-400 The enabled subject matter of a zoning ordinance

The following is a list of the key elements that may be included in a zoning ordinance:

- *Water protection*: Reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and ground water as defined in Virginia Code § 62.1-255. *Virginia Code § 15.2-2283*.
- *Variations*: Variations, which are reasonable deviations from those provisions of a zoning ordinance regulating the size, shape, or area of a lot or parcel of land, or the size, height, area, bulk, or location of a building or structure. *Virginia Code § 15.2-2286(A)(1)*.
- *Special use permits*: Special use permits, subject to suitable regulations and safeguards. *Virginia Code § 15.2-2286(A)(3)*. This authority is also subject to limitations on the uses for which special use permits may be required and the scope and effect of the conditions that may be imposed. *Virginia Code §§ 15.2-2288, 15.2-2288.1*. For example, although a special use permit may not be required for production agriculture on agriculturally zoned lands, one may be required for the storage or disposal of nonagricultural excavation material, waste and debris on agriculturally zoned lands if the excavation material, waste and debris are not generated on the farm, subject to the provisions of the Virginia Waste Management Act. *Virginia Code § 15.2-2288*. A governing body may delegate the responsibility to act on special use permits to the board of zoning appeals. *Virginia Code § 15.2-2309(6)*.
- *Modifications*: Modifications issued by the zoning administrator pertaining to the size, height, location or features of any building on a parcel. *Virginia Code § 15.2-2286(A)(4)*.
- *Administration and enforcement*: Administering and enforcing the zoning ordinance, and appointing a zoning administrator. *Virginia Code § 15.2-2286(A)(4) and (5) (authority to seek criminal fines); Virginia Code § 15.2-2208 (authority to enjoin violations); Virginia Code § 15.2-2209 (authority to seek civil penalties)*.

- *Fees*: Collecting fees to cover the cost of making inspections, issuing permits, advertising notices and other expenses incident to the administration of the zoning ordinance or to filing or processing any appeal or amendment thereto. *Virginia Code § 15.2-2286(A)(6)*. Virginia Code § 15.2-108.1 prohibits localities from charging any fee, other than fire prevention inspection fees, “to any church, synagogue, or other place of worship unless authorized by general law or special act of the General Assembly.” The fees enabled by Virginia Code § 15.2-2286(A)(6) are fees authorized by general law and, therefore, would not be subject to the prohibition in Virginia Code § 15.2-108.1.
- *Amending or repealing zoning text and maps*: Amending or repealing the regulations or district maps from time to time. *Virginia Code § 15.2-2286(A)(7)*.
- *Plans of development*: Requiring the submission and approval of a plan of development prior to issuing building permits to assure compliance with regulations contained in the zoning ordinance. *Virginia Code § 15.2-2286(A)(8)*.
- *Mixed use and planned unit districts*: Designating areas and districts for mixed use or planned unit developments. *Virginia Code § 15.2-2286(A)(9)*.
- *Incentive zoning*: Administering incentive zoning. *Virginia Code § 15.2-2286(A)(10)*. *Incentive zoning* means using bonuses in the form of increased project density or other benefits to a developer in return for the developer providing certain features or amenities desired by a locality, including but not limited to, site design incorporating principles of new urbanism and traditional neighborhood development, environmentally sustainable and energy-efficient building design, affordable housing creation and preservation, and historical preservation, as part of the development. *Virginia Code § 15.2-2201*. Incentive zoning is different from conditional (proffered) zoning.
- *Consensual downzoning*: Entering into a voluntary agreement with a landowner that would result in a downzoning of undeveloped or underdeveloped lands in exchange for a tax credit equaling the amount of excess real estate taxes paid because of the higher zoning classification. *Virginia Code § 15.2-2286(A)(11)*.
- *Clustering single family dwellings to preserve open space*: Requiring localities to allow clustering of single family dwellings and the preservation of open space developments in at least 40% of its undeveloped territory, subject to standards, conditions and criteria established by the locality, and which must be approved by the locality’s staff as a ministerial decision. Clustering regulations in effect on June 1, 2004 that allowed by-right clustering are grandfathered. *Virginia Code § 15.2-2286.1*.
- *Airport safety zoning and airport noise attenuation*: Localities having an airport or which are within the approach slope or safety zone of an airport must regulate the height of structures and natural growth in accordance with the rules of the Virginia Aviation Board. *Virginia Code § 15.2-2294*; see *Virginia Code § 15.2-2295 for airport noise attenuation*.
- *Mountain ridge construction*: Localities having mountain ridges over a certain elevation may regulate the height and location of tall buildings on those ridges. *Virginia Code § 15.2-2295.1*. Note that localities also have this authority under Virginia Code § 15.2-2280 (express authority to regulate the height of structures).
- *Conditional zoning*: The rezoning of land with proffers is referred to in Virginia Code § 15.2-2296 as *conditional zoning*. *Virginia Code §§ 15.2-2296 through 15.2-2303.3*. Proffers consist of reasonable conditions that are in addition to the regulations of the zoning district. See, e.g., *Virginia Code § 15.2-2298(A)*.
- *Affordable dwelling units*: Establish an affordable housing dwelling unit program. *Virginia Code §§ 15.2-2304 (applicable to a limited number of localities, including Albemarle County) and 15.2-2305*. Under both sections, the program must address housing needs, promote a full range of housing choices, and encourage the construction and continued existence of moderately priced housing by providing for optional increases in density in order to

reduce land costs for moderately priced housing. A developer's participation in an affordable dwelling unit program is voluntary. *1998 Va. Op. Atty. Gen. 35*. However, once a developer decides to enter the program, a locality may impose mandatory requirements. *1998 Va. Op. Atty. Gen. 35*; e.g., Virginia Code § 15.2-2305(B)(3) authorizes a locality to require “up to 17 percent of the total units approved . . . to be affordable dwelling units.”

- *Preservation of historical sites and architectural areas*: Regulations for certain historic sites and surrounding areas, as well as areas contiguous to arterial streets or highways found by the governing body to be significant routes of tourist access to the locality or to designated historic sites and areas. *Virginia Code § 15.2-2306(A)(1)*. The regulations may require that structures and signs in the district be considered by a review board to determine architectural compatibility with the historic sites and areas. *Virginia Code § 15.2-2306(A)(1)*. A locality is also enabled to adopt regulations prohibiting a historic landmark, building or structure within a district from being razed, demolished or moved until the proposed action is approved by the review board and certain other procedures are complied with. *Virginia Code § 15.2-2306(A)(2) and (3)*. Prior to establishing a historic district, a locality is required to identify and inventory all structures being considered for inclusion in such a historic district and to establish written criteria to be used in making the determination. *Virginia Code § 15.2-2306(C)*. However, districts composed of parcels contiguous to arterial streets or highways found by the governing body to be significant routes of tourist are not subject to this requirement. *Virginia Code § 15.2-2306(C)*. One circuit court has described Virginia Code § 15.2-2306 as “a broad grant of legislative authority for localities to enact zoning provisions tailored to preserving the unique character of their historic areas.” *Owens v. City Council of the City of Norfolk*, 78 Va. Cir. 436 (2009) (upholding validity of district regulation allowing buildings taller than 35 feet with “authorized variations” determined to be architecturally compatible with the building’s surroundings).
- *Nonconformities*: Regulations providing that land, buildings, and structures and the uses thereof which do not conform to the zoning prescribed for the district in which they are situated may be continued only so long as: (1) the then existing or a more restricted use continues; (2) the use is not discontinued for more than two years; and (3) so long as the buildings or structures are maintained in their then structural condition. *Virginia Code § 15.2-2307*. A locality also may require that the uses of buildings or structures conform to the current zoning regulations whenever they are enlarged, extended, reconstructed or structurally altered, and may prohibit a nonconforming building or structure from being moved on the same lot or to any other lot that is not properly zoned to permit the nonconforming use. *Virginia Code § 15.2-2307*.
- *Transfer of development rights*: Allowing the transfer of development rights from a parcel located in the locality (from a *sending area*) to another parcel located elsewhere in the locality (to a *receiving area*). *Virginia Code §§ 15.2-2316.1 and 15.2-2316.2*. See *Johnson v. Arlington County*, 292 Va. 843, 794 S.E.2d 389 (2016) (holding that Arlington County could tax a transferable development right only if it enacted an ordinance that complied with the specific requirements of Virginia Code § 15.2-2316.2).
- *Impact fees*: Localities with a population of 20,000 or more and a growth rate of 5% or more (between the next to last and last decennial census) or in localities with a growth rate of 15% or more may adopt regulations imposing transportation impact fees within impact fee services areas identified in the comprehensive plan. *Virginia Code § 15.2-2319*. Before an impact fee ordinance may be adopted, the locality must assess road improvement needs benefiting an impact fee service area and adopt a road improvements plan showing necessary road improvements and a schedule for those improvements. *Virginia Code § 15.2-2321*. The impact fees are “to fund or recapture all or any part of the cost of providing reasonable road improvements benefiting new development.” *Virginia Code § 15.2-2322*. The amount of the impact fees imposed on a specific development or subdivision must be determined before or at the time the site plan or subdivision plat is approved, and the fee must be “collected” when the building permit is issued, which may be paid in a lump sum, over a period of years, or as provided in an agreement between the owner and the locality. *Virginia Code § 15.2-2323*. The enabling legislation also provides the methodology for determining the maximum impact fees (*Virginia Code § 15.2-2323*), credits against the impact fees (*Virginia Code § 15.2-2324*), the use of proceeds (*Virginia Code § 15.2-2326*), and the refund of impact fees (*Virginia Code § 15.2-2327*). Counties having a population of more than 90,000 (2000 census) may establish urban transportation service districts and impose impact fees under separate impact fee enabling legislation. *Virginia Code § 15.2-2328 et seq.*

- *Collection of delinquent fees and charges before processing application.* Virginia Code §§ 15.2-2286 and 58.1-3700 authorize localities to require an applicant to pay all nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property before issuing a local business license or initiating an application for a rezoning, special use permit, special exception, building permit, erosion and sediment control permit, or any other land disturbing permit.

A zoning ordinance that includes matters not included in sections 4-200, 4-300 and 4-400 may be subject to a claim that the regulation is not enabled.

4-500 Overlay districts

A zoning ordinance may provide for overlay districts. An overlay district is a zoning district in which the requirements of the overlay district must be complied with, as well as the requirements of the underlying “base” zoning district; thus, one district overlays another. *Beacon Hill Farm Associates v. Loudoun County*, 875 F.2d 1081, *fn.1* (4th Cir. 1989).

The following are four common elements of an overlay district: (1) it affects lands that have common characteristics or features for which regulation beyond that provided by the underlying zoning district is desired; (2) it is a product of a long study and careful consideration to identify lands to be subject to the requirements of the overlay district; (3) it imposes requirements that are additional to those already required by the underlying zoning district; and (4) it may involve amendments to the ordinance text and/or the zoning map. These elements are similar to those of a comprehensive downzoning, discussed in section 10-320.

Albemarle County has established several overlay districts including the Airport Impact Area Overlay District (*Albemarle County Code § 18-30.2*), the Flood Hazard Overlay District (*Albemarle County Code § 18-30.3*), the Natural Resource Extraction Overlay District (*Albemarle County Code § 18-30.4*), and the Entrance Corridor Overlay District (*Albemarle County Code § 18-30.6*).

4-600 Statutory limitations on the zoning power

The Dillon Rule (chapter 5), the United States and Virginia Constitutions (chapter 6), and preemptive federal and state laws (chapter 7) impose limitations on a locality’s zoning power. In addition, the Virginia Code imposes a number of statutory limitations on the zoning power. Every zoning regulation pertaining to the subject matter below must be analyzed to be certain that the regulation complies with the applicable state law.

4-610 Uses that must be allowed by right; special use permit prohibited

The General Assembly has created a number of classes of uses or structures which a locality must allow by right rather than by special use permit or, in some cases, any other restrictions, provided that the use or structure meets the statutory requirements for eligibility. Some of these classes of protected uses are designed to further broad public policies, such as policies against discrimination in housing. Another group of classes exist solely to promote a particular industry or to exempt it from some or all local regulation.

4-611 Production agriculture or silviculture activity

A locality may not require a special use permit for any production agriculture or silviculture activity in an agricultural zoning district. *Virginia Code § 15.2-2288*; see also *Virginia Code § 3.2-300 et seq. (the Right to Farm Act)*. *Production agriculture and silviculture* is the bona fide production or harvesting of agricultural or silvicultural products. This term does not include the processing of agricultural or silvicultural products or the above-ground application or storage of sewage sludge. *Virginia Code § 15.2-2288*.

A locality may impose setback requirements, minimum area requirements and other requirements that apply to land used for agricultural or silvicultural activity. *Virginia Code § 15.2-2288*.

4-612 Residential uses; no special use permit

A locality may not require a special use permit as a condition of approval of a subdivision plat, site plan or building permit for the development and construction of residential dwellings at the use, height, and density permitted by right under the zoning ordinance. *Virginia Code § 15.2-2288.1.*

However, special use permits may be required for: (1) a cluster or town center as an optional form of residential development at a density greater than that permitted by right, or otherwise permitted by ordinance; (2) use in an area designated for steep slope mountain development; (3) use as a utility facility to serve a residential development; or (4) nonresidential uses including, but not limited to, home businesses, home occupations, day care centers, bed and breakfast inns, lodging houses, private boarding schools, and shelters established for the purpose of providing human services to their occupants. *Virginia Code § 15.2-2288.1.*

4-613 Manufactured housing

Virginia Code § 15.2-2290(A) imposes a limitation on a locality's zoning power by requiring that, in all agricultural zoning districts and other zoning districts where agricultural, horticultural, or forestal uses are the dominant use, manufactured houses on permanent foundations and on individual lots must be permitted as a matter of right. However, a manufactured house is subject to all of the development standards applicable to site-built single family dwellings within the same or equivalent zoning district.

A *manufactured house*, as used in Virginia Code § 15.2-2290, has the same meaning as a manufactured home under Virginia Code § 36-85.3. *1996 Va. Op. Atty. Gen. 66.* A *manufactured home* is a structure subject to federal regulation, which is transportable in one or more sections; is eight body feet or more in width and 40 body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single-family dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure. *Virginia Code § 36-85.3.* For zoning purposes, the language *subject to federal regulation* in the definition in Virginia Code § 36-85.3 means manufactured homes that satisfy the standards of quality, durability and safety established under federal law. *1996 Va. Op. Atty. Gen. 66.* One example of the effect of this limitation is that a locality is prohibited from allowing a site-built home to be located on a one-acre lot in an agricultural zoning district, while requiring a manufactured house to be sited on a five-acre lot. *1991 Va. Op. Atty. Gen. 67.*

The development standards for residential structures may not have the effect of excluding manufactured housing. *Virginia Code § 15.2-2290(B).*

4-614 Tents serving as temporary structures; no special use permit

A locality may not require a special use permit in order for a landowner to erect a tent on private property that: (1) is intended to serve as a temporary structure for a period of three days or less; and (2) will be used primarily for private or family-related events including, but not limited to, weddings and estate sales. *Virginia Code § 15.2-2288.2.*

4-615 Cemeteries

Effective January 1, 2013, Virginia Code § 15.2-2288.5 provides that cemetery buildings, including mausoleums, crypts and administrative buildings, are not subject to additional local legislative decisions, such as a special use permit, if the building or other structure was shown in a legislative approval for a specific cemetery previously obtained at the request of the owner.

4-620 Facilities to allow for the care of others

There are several classes of uses where varying types and levels of care are provided to others which a locality must allow by right as a residential use.

4-621 Group homes and small assisted living facilities of eight or fewer persons

Virginia Code § 15.2-2291(A) requires that a zoning ordinance consider a group home in which no more than eight persons with mental illness, mental retardation, or developmental disabilities reside with one or more resident counselors or other staff persons as a single family residential occupancy. To qualify for this treatment, the group home must be licensed by the Department of Behavioral Health and Developmental Services. *Virginia Code § 15.2-2291(A)*. *Mental illness* and *developmental disability* do not include the current illegal use of or addiction to a controlled substance as defined in Virginia Code § 54.1-3401. *Virginia Code § 15.2-2291(A)*. A zoning ordinance may not impose any conditions on a group home that are more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption. *Virginia Code § 15.2-2291(A)*. A group home serving eight unrelated adults who do not meet these criteria does not qualify under Virginia Code § 15.2-2291(A) for treatment as a single-family residence insofar as zoning is concerned. *1995 Va. Op. Atty. Gen. 286*.

Virginia Code § 15.2-2291(B) requires that a zoning ordinance consider an assisted living facility in which no more than eight aged, infirm or disabled persons with one or more resident counselors or other staff persons to be residential occupancy as a single family residential occupancy. To qualify for this treatment, the assisted living facility must be licensed by the Department of Social Services. *Virginia Code § 15.2-2291(B)*. Like group homes, a zoning ordinance may not impose any conditions on an assisted living facility that are more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption. *Virginia Code § 15.2-2291(B)*.

4-622 Family day homes of five or fewer children

Virginia Code § 15.2-2292 requires that a zoning ordinance consider a family day home serving up to five children, exclusive of the provider's own children and any children who reside in the home, as residential occupancy by a single family. A *family day home* is a child day program for children under the age of thirteen offered in the residence of the provider or the home of any of the children in care, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. *Virginia Code § 63.2-100* (also providing that only family day homes serving more than six children, who do not otherwise reside in the home, must be licensed). A zoning ordinance may not impose conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption. *Virginia Code § 15.2-2292(A)*.

4-623 Temporary family healthcare structures

Virginia Code § 15.2-2292.1 requires that a zoning ordinance allow by right *temporary family healthcare structures* of no more than 300 gross square feet as accessory uses in any zoning district permitting single family detached dwellings if the statutory prerequisites are satisfied. These structures are permitted to be used by a caregiver in providing care for a mentally or physically impaired person who occupies the structure, either alone or with his or her spouse, and may be located only on property owned or occupied by the caregiver as his residence.

4-630 Farm wineries, limited breweries, limited distilleries, and activities at agricultural operations

A locality's regulation of the activities and events of licensed farm wineries designed to market and sell their products must be *reasonable*. *Virginia Code § 15.2-2288.3(A)*. The regulations must take into account the *economic impact* the regulations will have on the farm wineries, the *agricultural nature* of the activities and events, and whether the activities and events are *usual and customary* throughout the Commonwealth. *Virginia Code § 15.2-2288.3(A)*. If the events and activities are usual and customary throughout the Commonwealth, they may be regulated only if they impose a substantial impact on the health, safety or welfare of the public. *Virginia Code § 15.2-2288.3(A)*.

A locality may regulate noise, other than amplified music, arising from events or activities at a farm winery, only to the extent that the locality otherwise regulates noise. *Virginia Code § 15.2-2288.3(A)*. The regulation of amplified music at a farm winery must consider the effect on adjacent property owners and nearby residents. *Virginia Code § 15.2-2288.3(A)*.

A locality may not treat private personal gatherings held by the owner of a farm winery differently from private personal gatherings by other citizens if the owner resides at the farm winery or on property adjacent to the farm winery, the wine is not sold or marketed at the gathering, and if neither the farm winery or its agents received consideration for the gathering. *Virginia Code § 15.2-2288.3(D)*.

A locality also is prohibited from regulating any of the follow activities of a farm winery: (1) the production and harvesting of fruit and other agricultural products and the manufacturing of wine; (2) the on-premises sale, tasting, or consumption of wine during regular business hours within the normal course of business of the farm winery; (3) the direct sale and shipment of wine by common carrier to consumers under applicable state law; (4) the sale and shipment of wine to the Alcoholic Beverage Control Board, licensed wholesalers, and out-of-state purchasers under applicable state law; (5) the storage, warehousing, and wholesaling of wine in accordance with the law; and (6) the sale of wine-related items that are incidental to the sale of wine. *Virginia Code § 15.2-2288.3(E)*.

Virginia Code § 15.2-2288.3:1 restricts the authority of a locality to regulate *limited breweries* in agricultural zoning districts, and Virginia Code § 15.2-2288.3:2 restricts the authority of a locality to regulate limited distilleries in agricultural zoning districts. The regulatory schemes for limited breweries and limited distilleries are similar to that established for farm wineries.

Virginia Code § 15.2-2288.6 restricts a locality's regulation of a range of activities at agricultural operations, as that term is defined in Virginia Code § 3.2-300.

4-640 Helicopters

Virginia Code § 15.2-2293.2 prohibits localities from banning the departure and landing of private, noncommercial helicopters within their jurisdiction. However, a locality may require a special use permit for helicopter departures and landings subject to reasonable conditions for the protection or benefit of owners and occupants of neighboring parcels including, but not limited to, conditions related to compliance with applicable regulations of the Federal Aviation Administration.

4-650 Political signs

Virginia Code § 15.2-109 provides that:

No locality shall have the authority to prohibit the display of political campaign signs on private property if the signs are in compliance with zoning and right-of-way restrictions applicable to temporary nonpolitical signs, if the signs have been posted with the permission of the owner. The provisions of this section shall supersede the provisions of any local ordinance or regulation in conflict with this section.

The Attorney General has opined that localities may not limit political signs to a certain size while permitting larger signs, or impose any other burdens or restrictions, that do not apply to other categories of temporary signs under their zoning ordinance. *2012 Va. Op. Atty. Gen. LEXIS 23, 2012 WL 2063674*.

4-660 Registered commercial fishermen and seafood buyers

Virginia Code § 15.2-2307.1 provides that registered commercial fishermen and seafood buyers who operate their businesses from their waterfront residences may not be prohibited by a locality from continuing their businesses, notwithstanding the provisions of any local zoning ordinance. This section only applies to businesses that have been in operation by the current owner, or a family member of the current owner, for at least 20 years at the location in question. The protection granted by this section continues so long as the property is owned by the current owner or a family member of the owner.