



Agritourism and Zoning

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Introduction



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Examples of Agritourism

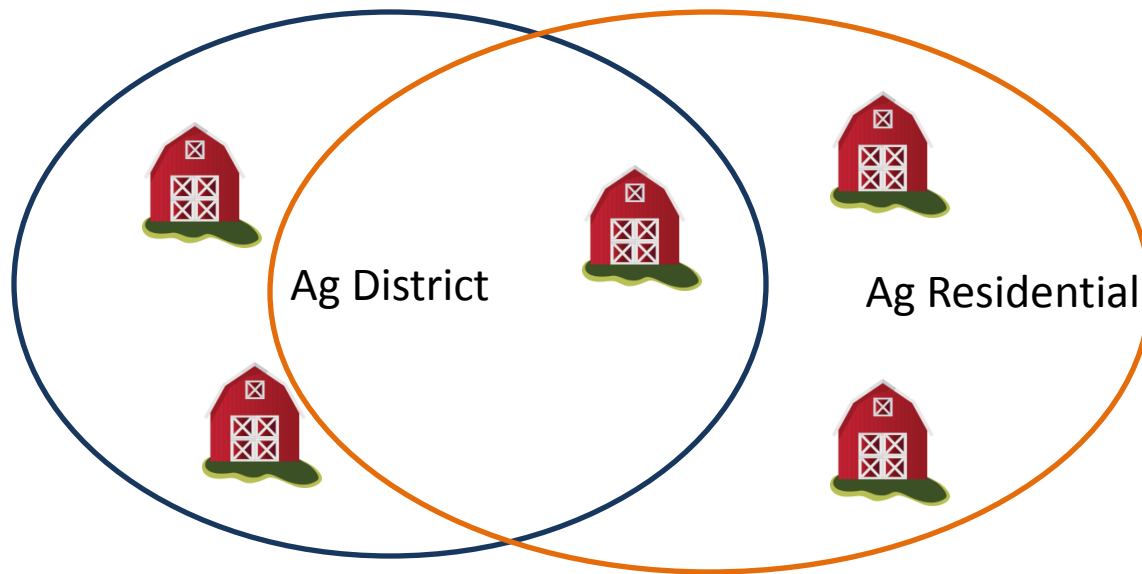
- Roadside stands
- U-pick operations
- Wineries / Breweries with tours and tasting operations
- Corn mazes
- Bed and Breakfasts

Agricultural Districts

- Referring to districts created under Ag & Markets Law Article 25AA
- Districts created by State Agriculture Commissioner
 - Towns do not have authority to create Ag Districts subject to 25AA



Agricultural Districts



Agricultural Districts

- What does it mean to have an Ag District under 25AA
 - Different tax assessment
 - Limitations on local gov't ability to regulate land use
 - Limited liability for nuisance claims



Agricultural Districts

- Ag and Markets Law § 305-a(1)(a)
- “Local governments . . . shall not unreasonably restrict or regulate farm operations within agricultural districts. . . unless it can be shown that the public health or safety is threatened.”



Agricultural Districts

1. Is the farm affected by law / ordinance located within 25AA agricultural district?
2. Does regulated activity encompass farm operations?
3. Is local law or ordinance reasonable?
4. Is public health or safety threatened by the regulated activity?



Agricultural Districts

How to evaluate “reasonableness”

1. Is law reasonable “on its face”

- is law so vague it may inhibit farmers from doing certain activities out of concern they may be violating the law?



Agricultural Districts

How to evaluate “reasonableness”

2. Is law reasonable as applied to a particular situation?

This means what’s reasonable in one town might not be reasonable in another.

Ex: A setback requirement might be reasonable in Town A, but in Town B there is a farmer who wants to build a structure on a dead end street near the only available water source



Agricultural Districts

“Reasonable” Example #2

- A town requires a 75 foot setback for buildings along town roads. There is no specific impact on any farmer in the district. The setbacks apply equally to farmland and other land, and the town says the law will lessen congestion on roads and help visibility.



Agricultural Districts

1. Is farm affected by law / ordinance located within 25AA agricultural district?
2. Does regulated activity encompass farm operations?
3. Is local law or ordinance reasonable?
4. Is public health or safety threatened by the regulated activity?



Agricultural Districts

What is a farm operation?

Ag & Markets Law § 301(11)

“Land and on-farm buildings, equipment . . . and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise”



Agricultural Districts

Ag & Markets Law § 301(15)

“ ‘Agricultural tourism’ means activities . . . conducted by a farmer on-farm for the enjoyment and/or education of the public, which primarily promote the sale, marketing, production harvesting or use of the products of the farm and enhance the public’s understanding and awareness of farming and farm life”



Agricultural Districts

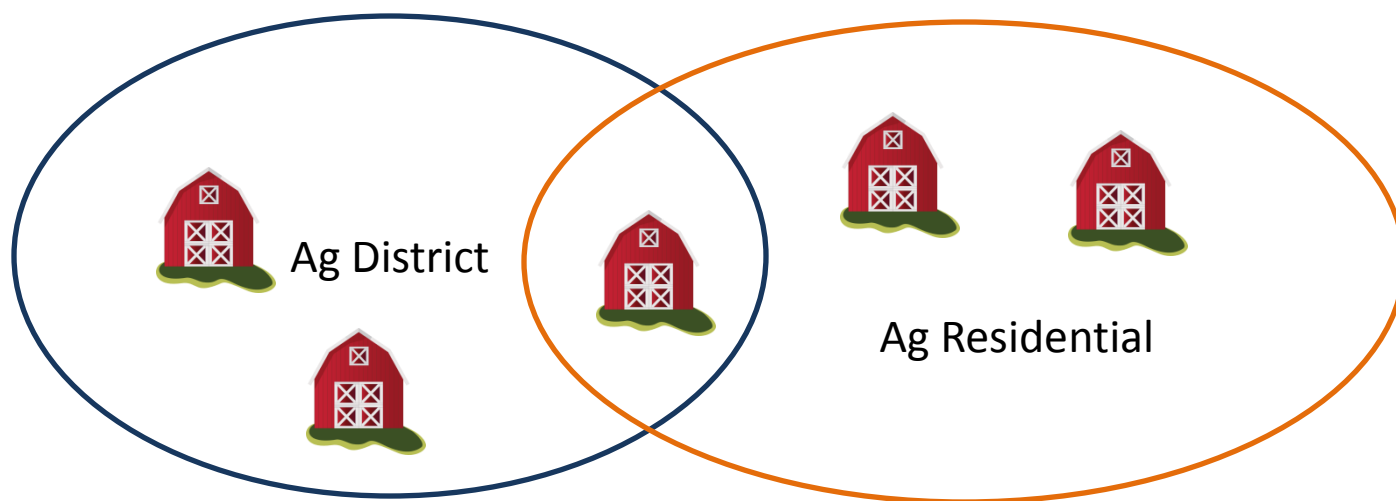
Agricultural tourism and farm operations are not mutually exclusive

- Agricultural tourism activities may be considered “farm operations” if such activities “contribute to the production, preparation and marketing of crops, livestock, or livestock products as a commercial enterprise”
- Means that towns can’t pass local laws that “unreasonably restrict” agritourism activities that constitute “farm operations” and fall within an Ag District



Zoning and Agritourism

Remember – not all farms fall within a State Ag District, and the “unreasonable restriction” rule only applies to farms in a State Ag District



Zoning and Agritourism

Examples of what town can regulate through zoning

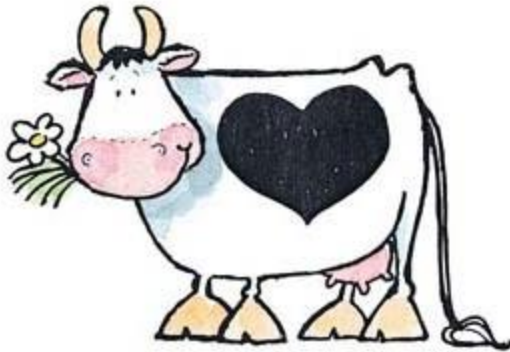
- setbacks
- hours of operation
- signage
- parking
- minimum size requirement for farms allowed to engage in agritourist activities



Zoning and Agritourism



Remember – if you're not in a State Ag District, the town does not need to allow agritourist activities!



If town does want to allow agritourist endeavours, accessory use permits and special use permits are tools town can use to regulate



Zoning and Agritourism

Accessory Use Permits

1. Must be subordinate / incidental to the primary use of the property
2. Incidental use must be reasonably related to primary use (can also think of as a use that's customarily found in connection with the primary use)



Zoning and Agritourism

Accessory Use Permits

- Tool that allows for more flexible use within a district without changing character of district
- Accessory uses must meet all requirements in zoning code, including setbacks, lot area requirements etc.
- Town code should define what constitutes an accessory use within a district



Zoning and Agritourism

Town of Opha Springs, NY

Article V. Agricultural (AG) Use Districts Regulations & Restrictions

§ 100-21. Accessory uses and structures.

Any of the following uses may be permitted in the Agricultural (AG) District as accessory and clearly subordinate to the principal agricultural use:

- A. Uses and structures customarily incidental to the principal permitted use.
- B. Farmhouse.
- C. Extended family units.
- D. Agricultural barns, silos, sheds, buildings and related accessory agricultural structures.
- E. Roadside stand of up to 500 square feet and set back at least 25 feet from the road right-of-way, for the sale of farm products



Zoning and Agritourism

Opha Springs code may consider

- defining what constitutes “farm products”
 - Do you want to limit to products produced on the land or the product itself, maybe town wants to keep definition broad
- defining “Roadside stand”

Clear definitions help avoid confusion down the road!



Zoning and Agritourism

- **§ 101-21. Roadside stands.**
- Roadside stands, as defined in Article X of this chapter, shall be permitted in the Ag and RA Districts as an accessory use, provided:
 - A. Such stand shall not exceed 200 square feet in gross floor area.
 - B. Such stand shall be located not less than 20 feet from the edge of pavement, and there shall be a suitable area provided where vehicles can safely park while visiting the roadside stand.
 - C. Such stand shall be solely for seasonal display and sale of agricultural products grown principally on the premises or, in limited quantity, elsewhere by the operator of the roadside stand.
 - D. Signage shall be limited to a single sign, not greater than three square feet in sign area per side and located not less than 15 feet from the edge of pavement.



Zoning and Agritourism

Special Use Permits

- An authorization to use land which is allowed within a zoning district, but which may have the potential to exhibit characteristics or create impacts incompatible with the purposes of such district
- Town may impose reasonable conditions and restrictions that are directly related to and incidental to the proposed special use permit



Zoning and Agritourism

- Special Use Permit vs Accessory Use Permit

- Special use permits do not need to tie proposed use to anything (stand alone)
- Accessory use permits tie use to principal use

Example: Under a special use permit, a farm stand can exist without being connected with a farm. Under an accessory use permit, a farm stand would be subordinate to the farm on the property

- Can impose conditions not listed in code for special use permits
- Accessory use has to be subordinate, special use permit structure can be principal



Zoning and Agritourism

- Special Use Permit language that ties use to farm:
 - **Article VI. Special Conditions and Special Permit Uses**
 - **§ 300-49. Roadside stands.**
 - A. Roadside stands shall only be allowed in connection with a farm operation for the purpose of display and sale of products raised on such farm at the farm location.
 - B. All structures associated with a roadside stand, whether permanent or temporary, shall be set back at least 25 feet from the edge of the road right-of-way.
 - C. Before a roadside stand is constructed on any state road, the owner of the stand must verify the required setback with the New York State Department of Transportation.



Zoning and Agritourism

Prior Non-Conforming Use & Variances



Questions?

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