



CITY OF CONCORD
New Hampshire's Main Street™
Community Development Department

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REPORT TO THE MAYOR AND CITY COUNCIL

FROM: Beth Fenstermacher, Assistant City Planner
DATE: February 23, 2018
SUBJECT: Ordinance Amending the CODE OF ORDINANCES, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-2, Zoning Districts and Allowable Uses, Article 28-5, Supplemental Standards and the Glossary

Background

RSA 21:34 pertaining to Farm, Agriculture, Farming, was amended in June 2016 to permit Agritourism, which includes events and activities accessory to the primary farm operation such as “eating a meal, making overnight stays, enjoyment of the farm environment, education about farm operations, or active involvement in the activity of the farm.” These are uses that are not currently regulated in the agricultural districts in Concord.

RSA 672:1, III-b was also amended to state that Agritourism shall not be unreasonably limited by use of municipal planning and zoning powers. The law does allow Agritourism to be regulated by special exception, building permit, or other local land use board approval, and to be regulated to prevent traffic and parking from adversely impacting adjacent property, streets and sidewalks, or public safety (RSA 674:32-b, II).

Enactment of the new statute has posed several challenges for staff, including determining whether certain uses associated with Agritourism should be regulated under the current zoning as accessory to agriculture or should be considered principal uses, and how the uses should be regulated. After meeting multiple times over the past several months, staff determined that the most appropriate strategy is to regulate certain uses as principal uses permitted by Conditional Use Permit (CUP) in the Open Space Residential (RO) and Medium Density Residential (RM) Districts, while limiting the impacts to current practices enjoyed on existing farms.

Discussion

There has been much debate at the legislative level and in the courts as to what events and activities are accessory uses relating to the primary farm operation, and what uses are separate “principal uses” that are not subordinate to or dependent on farm operations. Uses that have

been the subject of these disputes include events such as weddings and receptions, bed and breakfast establishments, and outdoor concert venues among others, which are not currently regulated in agricultural districts in Concord.

Staff agrees that these uses can be compatible with the rural character of the City's RO and RM Districts, though there may be impacts due to parking, noise, traffic, and insufficient buffers. Staff also feels that these uses may not be accessory to an agricultural use, but that they should still be permitted in the RO and RM Districts, as is the intent of the revised statute. In order to allow the uses in question, even though there may not be an active agricultural use on the property, and to allow appropriate review of potential adverse impacts, Staff proposes they be permitted as primary uses by Conditional Use Permit. This approach should also help the City avoid contentious legal battles such as the ongoing Supreme Court case involving the Town of Henniker, by clearly permitting the uses in question while also providing appropriate regulation.

Staff notes that agriculture and farming activities including pick your own farms, farm stands, classes relating to agricultural activities, and hay rides among others, are already clearly defined and permitted as principal or accessory uses in the RO and RM Districts. Staff is not proposing any changes to these practices. Under the current proposal, these uses would continue to be permitted without additional review or CUPs.

The Planning Board reviewed the proposed amendment during a public hearing at their February 21, 2018 meeting. The Board unanimously recommended approval with one edit to the definition of Outdoor Recreation Facilities. Based upon the questions from the Planning Board, City staff further revised the definition to include clarification on the use of existing agricultural structures. The revisions resulting from the Planning Board discussion are reflected in this version presented to Council.

Analysis of Impacts

The changes will allow the City to regulate weddings, outdoor concerts, or other outdoor events that take advantage of the rural character in the RO and RM Districts, and provide opportunity for Planning Board and public input. By permitting the uses through a CUP, the Board can review the proposed additional uses to ensure they are compatible with adjacent properties and appropriate for the location to protect the public health, safety, welfare and rural character of the community.

This approach also expands opportunities for rural land by allowing landowners with large parcels to host outdoor events, even though they may not have any primary agricultural activity on the property. This approach supports the Master Plan recommendations to expand opportunities for rural enterprise. No change is anticipated regarding existing agricultural practices that are already permitted in the RO and RM Districts.

Recommendation

Recommend amendment to the Zoning Ordinance as follows:

Section 28-2-4, Allowable Principal and Accessory Uses in Zoning Districts, Paragraph J, Table

of Principal Uses, by amending Use # C-5, Privately owned outdoor recreation facility including golf courses, tennis courts, or swimming pools, Use # C-7, Campgrounds and youth camps, and Use #G-3, Bed and Breakfast to expand the allowable uses by Conditional Use Permit (CUP) in the Residential Open Space (RO) and Medium Density Residential (RM) Districts; Section 28-5-13, Campgrounds and Youth Camps, to include standards for Outdoor Recreational Facilities; and, the Glossary by adding a definition for Outdoor Recreational Facilities.

A draft ordinance that implements the proposed amendment is attached.