

November 12, 2024

Robert E. Hornik, Jr.  
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RE: Advisory Opinion Regarding the Farm Uses of the Properties Collectively Known as “Union Grove Farm”

Mr. Hornik,

In a letter dated June 13, 2024, you requested an advisory opinion on behalf of Bandit Farms II LLC, Bandit Farms III LLC, and Harper Grace, LLC/Eastwest Organics, LLC, regarding six (6) proposed uses and whether they may be considered a bona fide farm uses under NCGS 160D-903 on properties with the following Parcel Identification Numbers (PINs): 9851-71-4716, 9851-81-3226, 9851-62-2001, and 9851-50-8662. The letter describes the activities on Union Grove Farm and Inn, including regenerative farming and its ownership structure, and is accompanied by a detailed Master Plan and accompanying illustrations, and a “Menu of Proposed Experiences at Union Grove Farm”, all of which were considered in formulating this opinion. The proposed uses of inquiry and opinion may be described in the following general descriptions:

- 1) A 3-acre culinary farm with a 2,000-square foot (s.f.) fruit and vegetable growing pavilion;
- 2) Ten (10) “casitas”, five (5) described as “Farm cottages” and five (5) described as “lake cottages”;
- 3) A farm stay center with forty (40) rooms with overnight accommodations, a 70-seat restaurant, an outdoor pool and bar, and a 1,000-s.f. event space;
- 4) A regenerative distillery and associated parking;
- 5) A 2,500-seat amphitheater near the distillery and working farm; and
- 6) A Center for Regenerative Agriculture at Union Grove Farm that will host education programming.

The Orange County Unified Development Ordinance (UDO) does not regulate “agricultural uses” but defers to the North Carolina General Statute 160D-903 on said uses, which explicitly states that “[c]ounty zoning regulations may not affect property used for bona fide farm purposes”. It defines bona fide farm purposes to “...include the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture”; and notes that, among other uses, “[a] building or structure that is used for agritourism is a bona fide farm purpose if the building or structure is located on a [farm] property.”

Agritourism is defined, as you note in your letter, with the following language: “[A]ny activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, hunting, fishing, equestrian activities, or natural activities and attractions. A building or structure used for agritourism includes any building or structure used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting.”

For the six (6) proposed uses of the properties with PINs 9851-71-4716, 9851-81-3226, 9851-62-2001, and 9851-50-8662, and in consideration of submitted materials and exhibits, staff hereby offers the following **Advisory Opinion** on each of the uses identified above:

- 1) The 3-acre culinary garden with a 2,000-square foot (s.f.) structure (“pavilion”), as shown in the “Union Grove Inn Master Plan” in Attachment A, is established as a location where both a) fruits and vegetables will be grown year-round; b) agritourism is provided in the forms of i) an educational experiences; ii) farm-to-table agricultural experiences; and iii) hosting “programmed events... revolving around the regenerative farming experience.”

These uses fulfill the statutory language for both the definition of a bona fide farm for producing fruits and vegetables and and the following language defining “agritourism”: “[an] activity carried out on a farm or ranch that allows members of the general public, for... educational purposes, to view or enjoy rural activities, including farming [and] harvest-your-own activities.” As presented and described, they are not subject to Orange County zoning regulation.

- 2) The ten (10) “casitas”, five (5) described as “Farm cottages” and five (5) described as “lake cottages”, and as displayed in the site plan of Attachment C and illustrated in Attachment D of the letter show structures that are distributed throughout the landscape of the properties in question and adjacent to lands and structures that are integral to the farming operations. The letter also describes them as being sited “...adjacent to or among the vineyards”.

As such, this use fulfills the statutory language defining “agritourism”: [A]ny activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming... A building or structure used for agritourism includes any building or structure used for... events that are taking place on the farm because of its farm or rural setting.” Staying in any of these casitas will present visitors with accommodations that are part of the farm, particularly the vineyards, and is inextricable from the farm experience to being “adjacent to or among the vineyards”. As presented in Attachments C and D, which are not binding documents, the casitas are a form of the agritourism use not subject to Orange County zoning due to their integration into the farm setting and among the vineyards, which is critical to this opinion. This advisory opinion will not apply if there is any substantial change

of the location of these casitas from the submitted materials, especially Attachments C and D.

The situational placement of the casitas is fundamental to the conclusion that they are “building[s] or structure[s]... located on a [farm] property” and a form of agritourism not subject to Orange County zoning regulation. Should they be placed such that they cannot offer a farm experience, these structures would be found to be the land use “Short Term Rental – Non Host Occupied” (Use 62(K) in UDO Section 5.2 “Table of Permitted Uses”). This use is permitted in “Master Plan Development – Conditional Districts” and “Non-Residential – Conditional Districts” and would require rezoning and possibly subdivision from the subject properties.

As provided for in NCGS 160D-903(a), these residential structures must conform with the NC State Building Code: “Activities incident to the farm include existing or new residences constructed to the applicable residential building code situated on the farm occupied by the owner, lessee, or operator of the farm and other buildings or structures sheltering or supporting the farm use and operation.”

- 3) The farm stay center with forty (40) rooms with overnight accommodations, a 70-seat restaurant, an outdoor pool and bar, and a 1,000-s.f. event space, is described as being “...available for individuals and groups participating in the educational and cultural activities and programs conducted on site”. The farm stay center is also stated to feature “...art and artifacts and furnishings connected with the history of the Farm and its surroundings”, and, “to the extent possible”, building materials will be “repurposed” from the farm or resourced from trees on the farm. The restaurant and bar also noted to “...feature food and beverages grown or processed from the surrounding community”.

The farm stay center and its features all are described with caveats that allow them to be constructed, decorated, and consumed without ever integrating farm products from Union Grove Farm. The accommodations are not exclusive to the individuals and groups who might stay there, nor is there any requirement for paying visitors to participate in the farm. All education materials require individual visitor behavior to compel interaction and can be ignored and disregarded. The “surrounding community” that may be the resource for supplying restaurant, bar, and decorative materials is never identified and could be broadly defined to include a large area, including sourcing from locations out of the State of North Carolina.

Both the site plan in Attachment C, “Union Grove Inn Master Plan” shown in Attachment A shown the farm stay center at locations separate from the rest of the farm and its operations, with separate points of access. The locations shown in Attachments A and C are different but both offer overnight stay accommodations that are separate from the farm. As such, it would be possible for a visitor to pay to stay at this structure and have no direct or

incidental interaction with” ...rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, hunting, fishing, equestrian activities, or natural activities and attractions.”

As presented, there is no compelling evidence that this proposed use fulfills the statutory definition of a bona fide farm purpose: “[t]o include the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture” as defined in NCGS 160D-903. Rather, the Assembly Use, as permitted in the UDO Section 5.2 “Table of Permitted Uses” could be defined as a “Retreat Center” (Use 80), defined by the Orange County UDO as “[a]n assembly land use operated as a commercial activity”; or the Service Use “Short Term Rental – Non-Host Occupied” (Use 62(K)), defined as “[a] building or group of buildings which provides guestrooms for rental or lease but is not occupied by a Host.” Per Orange County UDO Section 5.2, a “Retreat Center” is permitted as a special use in “Rural Buffer” zoning districts, the zoning district for all of the properties in question. The special use permit application process is detailed in Section 2.7 of the Orange County UDO. “Short Term Rental – Non-Host Occupied” is not permitted in this zoning district and would require rezoning to either “Master Plan Development – Conditional Districts” and “Non-Residential – Conditional Districts” and likely subdivision of the subject properties.

- 4) The regenerative distillery described will feature products made from grapes, “...many or most of which will be grown on the Farm,” and that “[t]here will be regular tours and classes at the distillery where guests can learn the distilling process from the vine to the wine glass”. It is also noted that the distillery may process “...other fruits and grains... grown on the Farm and others from local or regional sources”.

This use satisfactorily fulfills the statutory language defining “agritourism”: “...[A]ny activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes,” and featuring structures that will provide for “...demonstrations of farm activities”. NCGS 160D-903 states that “bona fide farm purposes include the production and activities relating or incidental to the production of crops, grains, fruits,” making this regional resource a qualifying use, as described, and not subject to Orange County zoning regulation. The County may require further documentation of the sources of materials originating offsite, should that become a primary purpose of distilling operations onsite to verify that it continues to satisfy this language.

Should it be determined that the distillery is not part of farm activities, as described in the letter and attachments, this “Manufacturing, Assembly, Processing, and Distribution Uses – Food” use would be permitted as a “Winery” (Use 27(F), UDO Section 5.2) and further defined as a “Winery with Major Events: A facility utilized for making wines for consumption on- or off-site with tours of the facility, tastings of the products produced on-site, and periodic events that are expected to attract more than 150 people to the site. Food

services may be permitted under the conditional district or special use permit approval.” This use is a permitted special use in the Rural Buffer zoning district of the subject properties, or could be a featured element of a rezoning to any of the following zoning districts: “Master Plan Development”, “Agricultural Support Enterprise”, or Non-Residential”.

- 5) A 2,500-seat amphitheater near the distillery and working farm is situated, as described and illustrated, as an “open air venue” in immediate proximity to “...barns, farm equipment, the vermicompost labs and other features of the working regenerative farm”, and states that “[e]very event scheduled at the amphitheater will include an educational component describing regenerative farming practices and the benefits derived from them” (emphasis in original text). Furthermore, Attachments C, E, and F shows structures, seating, and a stage fully integrated among the historic farm buildings and among the working farm operations.

This use satisfactorily fulfills the statutory definition of “agritourism” as follows: “...**[A]ny activity** carried out on a farm or ranch that allows members of the general public, for **recreational, entertainment**, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, hunting, fishing, equestrian activities, **or natural activities and attractions**” (emphasis mine). The applicable statute also states that “[a] building or structure used for agritourism includes any building or structure used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and **other events that are taking place on the farm because of its farm or rural setting**” (emphasis mine).

The amphitheater described is a permitted Assembly Use (Theater, Use 84) in the Orange County UDO Section 5.2 and is defined as “A building or outdoor area in which performances are performed or shown. The term does not include structures primarily constructed to support the holding and/or staging of sporting events where outdoor performances may be held as an accessory use.” It is not permitted in Rural Buffer zoning districts and would require rezoning and likely subdivision from the subject properties as a primary use. However, as presented, the described amphitheater is a form of the agritourism use is not subject to Orange County zoning due to its integration into the farm setting and among the historic farm buildings is critical to this opinion. This advisory opinion will not apply if there are any substantial change in layout, placement, and use of the proposed amphitheater from the submitted materials.

- 6) The Center for Regenerative Agriculture at Union Grove Farm that will host education programming related to the farm and its products. The programming that will be centered and focused upon at this structure is described in both the letter and in more detail in the “Menu of Proposed Experiences at Union Grove Farm”.

The proposed use and activities satisfactorily fulfill the statutory definitions of a bona fide farm use, as follows: “activities relating or incidental to the production of crops, grains,

fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture”, and is “an activity that allows members of the general public, for... educational purposes, to view or enjoy rural activities, including farming... historic, cultural, harvest-your-own activities... or natural activities and attractions. A building or structure used for agritourism includes any building or structure used for public or private events, including, but not limited to... meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting.”

Any changes in use not discussed in this advisory opinion will require the appropriate review and permitting by Orange County, including those required by other departments. This advisory opinion applies to the letter and materials provided to staff as detailed herein and substantial changes from those materials will require additional review and a new opinion.

As eligible bona fide farm uses, most of the activities described in this letter do not require zoning approval, nor building permits unless otherwise noted. However, the activities represent a significant change in use of the farm in ways that are anticipated to affect the surrounding area, with potential changes in traffic volumes and patterns, noise levels, and the number of individuals coming to the farm. Staff appreciates the courtesy of you and your client to share any information as realization of the farm activities detailed in this opinion proceed. This letter does not replace the need to submit applications for applicable permits in the future but does reflect the Planning Department’s opinion regarding the use of these subject properties being allowed, as permitted by the Orange County UDO.

Please let me know if you have any further questions or concerns in this matter.

Sincerely,

  
Cy Stober  
Director  
Planning and Inspections

CC: Travis Myren, Deputy County Manager  
Patrick Mallett, Deputy Director, Development Services  
Perdita Holtz, Deputy Director, Long-Range Planning and Administration  
Taylor Perschau, Current Planning & Zoning Supervisor  
James Bryan, Orange County Attorney Office

