

Dick Woods Project Tests Limits of Farm Winery Rules

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Hillcrest Vineyard and Winery, under construction in western Albemarle county. Photo: Malcolm Andrews.

A new “farm winery” is under construction in western Albemarle, one of more than two dozen of the popular agritourism destinations already studding the county. Dubbed Hillcrest Vineyard and Winery, perched atop Turk Mountain on Dick Woods Road in Afton, the project has been underway for over a year with few publicly available details. As Hillcrest’s plans finally begin to take shape both on the ground and in required county filings, the property’s neighbors are unsettled by what they’ve seen so far.

“It’s very disturbing that the nature of the entire mountaintop, a big wildlife habitat covered in trees, was utterly changed in the blink of an eye,” said

Alice Scruby, 30-year Dick Woods Road resident. Hillcrest's nearest neighbors have been taken aback by the sheer scale of the project, from the extensive clearcutting and flattening of the property's topography to the massive stone buildings that now overlook the valley below.

"I don't think the project is consistent with an agricultural/forestal district designation," added Scruby's husband, Timothy. "They should be rezoning that property and the owner should have to get permission from the Board of Supervisors. It's clearly a commercial enterprise."



The tasting building under construction at Hillcrest Vineyard and Winery on Dick Woods Road in Afton. Submitted photo.

Little is known about the owner of Afton's newest vineyard. In February of 2018, a real estate company called Augusta Professional Park, LLC bought two parcels totalling of 167 acres for \$4 million. Augusta Professional Park is owned by Michael McGinnis, Jr., who is president of Innovative Refrigeration Systems, Inc., headquartered in Lyndhurst, and whose wife owns Little

North Mountain Vineyard in Swoope. Mr. McGinnis did not respond to multiple requests for an interview for this story.

Hoping for not awful

Crews began clearing land in 2018 and planted a few grapevines in the spring of 2019, and local residents assumed it would be another vineyard in the vein of Pollack or Cardinal Point, or even the small, family-owned Turk Mountain vineyard next door. Hillcrest's neighbors have an independent streak—they appreciate the beauty and simplicity of rural living and are quick to defend property rights. When the new winery began cutting down trees and laying foundations, some locals emailed county officials to check the rules, but they understood that agricultural regulations allow wide latitude for farm wineries.

"We concluded there was nothing to be done," said neighbor Don Fender, who can see the Hillcrest tasting room building from his porch, "and we hoped it wouldn't be awful." But problems began to arise, and they were hard to ignore.

"In February of 2019 they started clearcutting on the east side of the property, working their way from Dick Woods Road up to the ridgeline," said Fender. "They hauled dirt from that site [the eventual location of the wine processing center] for months on end, and the dump trucks were just destroying the road. There was no attempt at all to control the runoff." Smaller waterways such as Stockton Mill and Andersons Creek filled with silt, spilling into the roads in a muddy mess. VDOT officials told Fender that as long as they were within the appropriate weight limit, those trucks could roll.

After dozens of acres of mountaintop and critical slopes were clearcut, nearby Ortman Road resident Leah Stearns filed a complaint in May with Virginia's Department of Environmental Quality (DEQ) about the water issues, which included large-scale erosion problems, the damming of

streams, and bulldozers running back and forth through creeks. A DEQ representative agreed to inspect the site but noted in his response that “[t]he clearing of timber/forest for the purposes of planting and growing grapes or viticulture is exempt from both erosion and sediment control and stormwater management regulations.”

The construction of two buildings—a 7,200 square foot tasting room and a 9,000 square foot event venue, each three stories tall—began in the fall of 2019. “When they started building the venue space, I called the county and left a complaint, noting there were no building permits filed and a significant erosion problem,” said Ginny DeVries, whose property borders Hillcrest at the top of the mountain. “When the county called back four weeks later, they said they couldn’t do anything about it. That’s what I’ve realized in all of this—there’s really nobody in charge of any of it.”

Agriculture creep

Though state laws and guidance dictate much of the regulation of modern rural wineries, counties do have some leeway to tailor local zoning ordinances to control growth. To understand the Hillcrest Vineyard neighbors’ frustrations, one must first recognize the set of broadly defined and sometimes ambiguous rules that govern farm wineries, breweries, and distilleries in Virginia.

Albemarle county defines a “farm building” as a non-residential structure that is used to store, produce, or sell farm products, animals, or equipment. The state of Virginia allows a licensed “farm winery” to use its farm buildings to sell wine to the public, and has loosened permitting and regulatory requirements so that farmers face fewer obstacles than purely commercial enterprises do in getting their wares to buyers. In recent years, large stand-alone “event venues” on vineyard properties have been swept into the category of farm buildings, though observers question how such venues qualify under the county’s stated definition or original intent for farm structures.



Tim and Alice Scruby, Dick Woods Road residents and neighbors to Hillcrest Vineyard and Winery. Photo: Lisa Martin.

Alice Scruby pointed to the looming buildings at Hillcrest as an example of a clear category error. "It seems to us that the spirit of these regulations was to help preserve existing or even new farm operations that were truly community farms, family farms," she said, "but this is a multimillion-dollar corporate effort. I'm a property rights advocate, but this is beyond the pale. The scope is inappropriate for such a rural road and neighborhood, and it's going to have a life-altering impact on neighbors."

Farm wineries are allowed to offer tastings and sell their products by right, but they need a county zoning clearance to hold events on the property if there will be more than 50 vehicle trips per day or outdoor amplified music at the events. The right to hold large events with more than 200 people in attendance requires a Special Use Permit from the county Board of Supervisors. Hillcrest is not currently asking to go beyond the 200-person limit, but under either type of permit a farm winery may hold an unlimited

number of events per year in any of its buildings.

Basic safety



Dick Woods Road at its western end is a narrow track, partly paved before transitioning to gravel, both hilly and curvy as it passes Hillcrest. "My number one concern [about the vineyard project] is neighborhood safety," said Fender. "I've already concluded that I can no longer walk or ride my bicycle or walk my dog between our house and Rt. 151—that'll be gone for all of us." Neighbors say the road is already tricky to negotiate when two SUV's try to pass each other or when the school bus is running its route. Now they worry about intoxicated drivers from the winery trying to navigate unfamiliar country roads, especially given the limited sight lines at the Hillcrest entrance.

DeVries, who among all of the neighbors is closest to the event venue, said her concerns run the gamut. "I am worried about noise, light pollution, water pollution, and running out of water," she said. "We're on a well here. If they get a permit like at Veritas [a nearby Afton winery], how will that work? Veritas has thousands of people over there for Starry Nights."

While Veritas is in Nelson county and is thus subject to different ordinances, Albemarle zoning officials have confirmed that there is nothing stopping Hillcrest from allowing many more than 200 visitors to assemble in and around its tasting room, which would not count as an "event" if people are not in the event space proper. The county's required zoning clearance only limits attendance at "events," and the normal business of the winery (such as tastings) does not factor into that limit.



Hillcrest Vineyard and Winery, under construction in western Albemarle county. Photo: Malcolm Andrews.

As if anticipating this potential loophole, a Hillcrest project manager inquired (in publicly available county correspondence) whether the winery might, for instance, host 200 people at an event in the venue space and another 100 in the tasting room simultaneously, and principal planner Rebecca Ragsdale replied that it could.

Now that the immense scale of the project is clear, DeVries also wonders about basic safety. “My biggest concern moving forward is that these enormous buildings don’t have to be regulated as normal buildings—they don’t have to have an appropriate number of exits, sprinkler systems, fire alarms, or to be within a certain distance of fire hydrants. If there’s a fire in the kitchen of the entertainment hall with 200 people in there, that could be a serious problem.”

In fact, none of the usual state-mandated building inspections—intended to check things like the structure’s concrete footings, foundation integrity, and

electrical, mechanical, plumbing, and fire safety—are required for the event space since the county considers it a farm building. Farm buildings are exempt from regulation by the Virginia Uniform Statewide Building Code, so they require neither USBC building inspections nor a Certificate of Occupancy.

In an unusual move, Hillcrest is operating as its own contractor, using Innovative Refrigeration Systems equipment and employees for construction. There's no specific limit on how big a building can be, nor how many can be constructed on the property, as long as they comply with erosion and water protection and setback rules. Hillcrest submitted building applications to the county in mid-April of 2020, more than six months after beginning construction and only after neighbors began asking pointed questions of county officials.

A 2018 committee convened by the Virginia General Assembly reviewed whether a special, commercial-type building code ought to be applied to "agritourism enterprises" such as event venues (separate from other farm buildings), but the group failed to provide clarity on the issue. The committee was unable to reach even a consensus on a definition of a "farm structure that is used for public gatherings," and expressed concern that the cost of complying with commercial building codes may be prohibitive for most Virginia farms. They recommended that stakeholder group discussions continue in the future.

A good neighbor

Beyond the land disturbances, neighbors are most put off by Hillcrest's lack of transparency and apparent disregard for the rules. "What really bothers us is that they started doing all this building with no permitting and no communication to the neighbors whatsoever," said Fender's wife, Katherine. "Why not make a flyer and stick in the mailboxes, saying 'hello, this is our plan,' and then maybe we would have been less anxious about it." As recent county filings have been made public, local residents have learned snippets

of new information such as a plan for a 25- to 50- foot tall water tower to be built on the mountaintop next to the tasting room, and the mention, in passing, that the property intends to be called Hazy Mountain Vineyard instead of Hillcrest.



Hillcrest Vineyard and Winery, under construction in western Albemarle county. The tasting building is in the center, the event venue to the right. Photo: Malcolm Andrews.

Stearns has served as voluntary point person to convey news and research with other neighbors of the Hillcrest project. “The reason I got involved is because I was seeing a certain irreverence for the process,” she said. She checked county records early on and learned that permits had not been filed for some of the buildings already under construction, and she read neighbors’ concerns on social media about creek runoff and erosion from clearcutting.

“I know that growth is inevitable, but when I went over [to the property] in April I was horrified,” she said. “I knew I had to do something.” After she

consulted with local land use attorney Maynard Sipe, Sipe launched a petition on Change.org calling for the Alcoholic Beverage Commission to deny Hillcrest's February 2020 application for a brewery license (on top of the winery license they already hold). The petition has garnered over 300 signatures so far, and Sipe has filed a formal objection to the ABC on behalf of a specific resident as well.

"Maybe if this owner turns out to be a good neighbor, maybe in a couple of years this community would consider whether we can tolerate a brewery up there," said Tim Scruby, "but so far it doesn't inspire confidence."

Stearns hopes that lessons learned from Hillcrest might help the next community facing this problem. "We might be able to temper [the Hillcrest project] somewhat, but the larger issue of broadly written farm winery rules needs to be examined because it's out of control," she said. "State-supported agriculture is a great, strong, good thing, but the regulations for it should not be bent into obviating or circumventing the permitting, inspection, and regulation processes for commercial endeavors. Event spaces appear to be commercial, not agricultural."

Addendum: Board of Supervisors White Hall representative Ann Mallek's comments regarding the Hillcrest Vineyard and Winery development: *The County staff has been engaged from the first neighbors' complaints to explain to the owners about their responsibilities and to explain to the neighbors the areas of exemption. Under current Virginia law, agricultural practices such as timbering or laying out new vineyards are exempt from local permits and jurisdiction but must abide by rules of erosion and sedimentation control overseen by the Department of Forestry (DOF), Virginia Department of Agriculture and Consumer Services (VDACS), and the Department of Environmental Quality (DEQ). Buildings used for the agricultural operation are also exempt from the building code at this time, but are not exempt from Virginia Stormwater Management Program permitting with the County and DEQ. There may also be applicable zoning*

regulations that apply.



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