



MEMORANDUM

TO: Deschutes County Board of County Commissioners

FROM: Nathaniel Miller, Associate Planner

DATE: April 10, 2024

RE: Public Hearing: A Commercial Activity in Conjunction with Farm Use (Winery) in the Multiple Use Agricultural Zone.

The Board of County Commissioners (Board) will conduct a Public Hearing on April 10, 2024, to consider a request for a Commercial Activity in Conjunction with Farm Use to establish a winery. The applications and appeal are identified as file nos. 247-22-000464-CU, 466-SP, 24-018-A. The subject property is approximately 5.5 acres in size and is about 750 feet northwest of the City of Bend. Highway 97 is approximately 1,500 feet directly to the east. The property is addressed at 20520 Bowery Lane, Bend, and is further identified on County Assessor's Map 17-12-09B as Tax Lot 1000. A location map is included as **Attachment A**.

I. BACKGROUND

The Applicants, Duane and Dina Barker, have requested a Conditional Use Permit for a Commercial Activity in Conjunction with Farm Use to establish a Winery with associated uses in the Multiple Use Agricultural Zone (MUA10). The request also includes a Site Plan Review for the Winery and associated uses. The property owner proposes to convert a portion of an existing accessory building into a tasting room and office space. The proposal also includes the conversion of an existing barn for small-scale wine production and wine storage. The approval would include the production of up to 2,000 cases of wine annually as well as hosting wine related events on the property, wine tastings, wine dinners, and other wine marketing events directly related to the sale and promotion of wine produced from the vineyard. No new buildings or structures are included in the proposal.

The applications were submitted on June 7, 2022. An Incomplete Letter was mailed on July 7, 2022. On December 4, 2022, the applicants requested that the applications be deemed complete and 150-day clock be extended. The applications were referred to a Public Hearing on August 4, 2023. On September 15, 2023, the applicants then waived the 150-day clock.

The initial public hearing before the Hearings Officer was scheduled on Wednesday, October 10th, 2023. On October 6, 2022, the Applicant requested a 2-week continuance of the Public Hearing pursuant to DCC 22.24.140(A)(1). The Hearings Officer opened the initial hearing, but no testimony was received, and the new hearing date was set for October 24, 2023.

During the second hearing on October 24, 2023, Hearings Officer Brooks conducted a full hearing and testimony was received in support and in opposition to the proposal. An Open Record Period was set for 7 days of New Evidence and Testimony, 7 days for Rebuttal, and 7 days for the Applicant's Final Legal Arguments. The record was closed 21 days after the hearing on November 14, 2023.

II. HEARING OFFICER DECISION

The Deschutes County Hearings Officer rendered a decision approving the Applicant's request for a Conditional Use Permit for the Winery on January 2, 2024.

Staff notes the following salient elements of the Hearings Officer Decision:

- The Hearings Officer addressed issues raised in the Staff Report specific to Title 22 and the Deschutes County Procedures Ordinance. These include:
 - The appropriate signatures on the application form
 - The open Code Enforcement Case on the property
 - The noticing requirements for the application
- The proposal meets the requirements of DCC 18.32.030(C) and qualifies as a Commercial Activity in Conjunction with Farm Use.
- The proposal likely conforms to the Site Plan Review standards of DCC 18.116 and DCC 18.124, however more detail is required. The Hearing Officer included 33 conditions of approval in the decision.
- The proposal meets the suitability requirements of DCC 18.128.015

III. APPEAL

The Appellant (Toby Bayard) submitted a timely appeal to the Hearings Officer's Decision on January 9, 2024. The Appellant requests the Board initiate a review and conduct a hearing to evaluate the following issues:

- Whether wineries can only be cited on property in the Exclusive Farm Use Zone pursuant to ORS 215.452, and not in any other zone.
- Whether the Hearings Officer erred in finding that a winery can be approved on MUA10-zoned property as a Commercial Activity in Conjunction with Farm Use.

- Whether there is inconsistency from the Hearings Officer between the subject applications and the previous approval under Deschutes County File nos. 247-22-000024-CU, 22-025-SP, 22-757-A, 22-914-A (Commercial Activity in Conjunction with Farm Use for a Meadery in the EFU Zone).
- Whether the Hearings Officer erred in the incorporation of testimony placed into the public record.

IV. BOARD CONSIDERATION

The Board has agreed to hear the appeal *de novo*. The Board will hear and consider the report by staff, the applicant's presentation and written submittal, the appellant's presentation, and any member of the public that wishes to give testimony or provide written comments. The record is available on the project website listed below.

V. STAFF RECOMMENDATION

As noted in the Consideration to Hear, a public hearing before the Board allows for additional testimony and application materials which could confirm compliance with the criteria of DCC 18.116 and DCC 18.124. In the approval issued from the Hearings Officer, there were a number of conditions of approval which require exercising discretion. In addition, other conditions of approval could be considered significant in the Board's decision-making process. Staff recommends that the Board request additional testimony and application materials which demonstrate compliance with, or acknowledgement of, these specific conditions of approval as they pertain to DCC 18.116 and DCC 18.124. They are identified as:

Conditions of Approvals which Require Exercise of Discretion

J. Clear Vision Areas on the Site Plan.

Prior to the issuance of building permits, a revised and final site plan shall be submitted to the Planning Division which correctly illustrates the clear vision areas at all access points.

L. Available Parking.

This approval is conditioned upon the unqualified continuance and availability of the amount of parking and loading space required by DCC Title 18 as set forth in this Decision. The Applicant shall submit a revised and final site plan showing where the required parking spaces will be located, including the size of each parking stall.

Q. Parking Area Landscaping.

Prior to the issuance of building permits, the property owner shall submit a revised site plan depicting the parking area landscaping required by this Decision, which must note whether any trees are to be planted under overhead utility lines and, if so, show that the height of those trees has been taken into consideration.

S. Access Aisles.

Prior to the issuance of building permits, the property owner shall submit a revised site plan depicting access aisles at a minimum width of twenty-four (24) feet for all two-way traffic and a minimum width of twelve (12) feet for all one-way traffic.

T. Service Drive Width.

Prior to the issuance of building permits, the property owner shall submit a revised site plan depicting service drives at a minimum width of twenty-four (24) feet for all two-way access aisles and a minimum width of twelve (12) feet for all one-way access aisles.

U. Service Drive Boundaries.

Prior to the issuance of building permits, the property owner shall submit a revised site plan depicting service drive boundaries which are clearly and permanently marked and defined through the use of rails, fences, walls or other barriers or markers.

V. Off-street Parking Lot Design.

Prior to the issuance of building permits, a revised and final site plan shall be submitted to the Planning Division which illustrates the parking aisles and spaces and demonstrates compliance with DCC 18.116.030(G)(1-4).

W. Bicycle Parking Spaces.

Prior to the issuance of building permits, a revised and final site plan shall be submitted to the Planning Division which illustrates the location of the required bicycle parking spaces.

Additional Conditions of Approval for Board Consideration

B. General Division Permitting.

The property owner shall obtain any necessary permits from the Deschutes County Building Division and Onsite Wastewater Division.

X. Confirmation from Bend Fire & Rescue.

Prior to the issuance of building permits, Receipt of approval will be provided to the Planning Division from Bend Fire & Rescue that the access and site design for emergency vehicles are acceptable.

EE. Evacuation of the Right of Way.

Prior to the issuance of building permits, the property owner shall cause for the removal of all private property, including fences, posts, walls, crops, landscaping, and other features, from the existing public right of way for Bowery Lane along the frontage to the subject property.

GG. Ingress and Egress via Hunnell Road.

At all times, once Hunnell Road construction is complete, wayfinding or directional messaging provided by the property owner to vendors and patrons of the proposed commercial activities shall

direct vendors and patrons to utilize Hunnell Road and the western section of Bowery Lane for ingress and egress to the subject property.

VI. 150-DAY LAND USE CLOCK

As noted above, on September 15, 2023, the applicants then waived the 150-day clock.

VII. RECORD

The record for file nos. 247-22-000464-CU, 466-SP, (Appeal file No. 247-24-000018-A) is as presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-22-000464-cu-247-22-000466-sp-lava-terrace-cellars-winery-vinyard>

VIII. NEXT STEPS

At the conclusion of the Public Hearing, the Board can choose one of the following options:

- Continue the hearing to a date and time certain;
- Close the oral portion of the hearing and leave the written record open to a date and time certain;
- Close the hearing and commence deliberations; or
- Close the hearing and schedule deliberations for a date and time to be determined.

ATTACHMENT(S):

Attachment A: Subject Property Location Map

Attachment B: Hearings Officer Decision (22-464-CU, 466-SP)

Attachment C: Appeal Application (24-018-A)