

Attention Property Owner: A land use proposal has been submitted for property near where you live or near property you own elsewhere. State law requires that the county notify property owners within a certain distance from this property. The proposal and address of the property is described in the "Application" section below. The decision in this case does not directly affect the zoning or use of your property. If you object to the decision, refer to the "Appeal" section. If you have questions, contact the staff person listed at the end of this report.

**NOTICE OF MODIFIED DECISION
CONDITIONAL USE CASE NO. 17-045**

APPLICATION: Application of Austin Smith, on property owned by Elaine Smith, for a conditional use to operate a brewery with a tasting room as a commercial activity in conjunction with farm use on an 83 acre parcel in an EFU (Exclusive Farm Use) zone located at 2187 Horseshoe Lake Road NE, St. Paul (T4S; Section 3W; Section 23; tax lot 300).

DECISION: The Planning Director for Marion County has **APPROVED a MODIFIED** request to operate a brewery with a tasting room as a commercial activity in conjunction with farm use on a 100 acre parcel in an EFU (Exclusive Farm Use) zone located at 2217 Horseshoe Lake Road NE, St. Paul (T4S; Section 3W; Section 23; tax lot 200) subject to certain conditions.

EXPIRATION DATE: This Conditional Use Permit is valid only when exercised by **January 5, 2020**. The effective period may be extended for an additional year subject to approval of an extension (form available from the Planning Division). **Additional extensions may not be granted if the regulations under which this decision was granted have changed since the original approval.**

WARNING: A decision approving the proposed use is for land use purposes only. Due to septic, well, and drain field replacement areas, this parcel may not be able to support the proposed use. To ensure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division, (503) 588-5147.

This decision does not include approval of a building permit.

CONDITIONS: The following conditions must be met before a building permit can be obtained or the approved use established:

1. Prior to any use of the property for brewery production, sales or tasting events, the applicants shall obtain all permits, including subsurface sewage disposal, required by Marion County Building Inspection Division.
2. Prior to or in conjunction with issuance of any building permits, the applicants shall provide a detailed site plan demonstrating compliance with the parking requirements of Chapter 17.118 of the Marion County Code (MCC).
3. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the use until the following condition has been satisfied:

***Condition A** – Prior to issuance of building permits associated with the proposed business, obtain an Access Permit, and under the Permit, repave the existing west access (on tax lot 200) with hot mix asphalt and install a drainage culvert under the east access, plus re-rocking.*

4. Customer tasting events at the brewery are permitted on the property.
5. The sale of beer from the property is permitted as part of this approval.
6. Incidental sales (less than 25% of total sales) of other items directly related to the brewery, such as product produced on the property, serving glasses, and beer from product not grown on the property, are permitted as part of this approval.
7. No limited service restaurant is approved through this decision.

8. No other events, such as weddings and receptions, are permitted as part of this approval.
9. The applicant shall sign and submit a Farm/Forest Declaratory Statement (enclosed) to the Planning Division. This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.

ADDITIONAL CONDITIONS: Once the approved use is established the following conditions must be continually satisfied:

10. Any sign placed on the property shall meet the standards in Chapter 17.191 MCC.
11. Failure to continuously comply with the Conditions of Approval may result in this approval being revoked. Any revocation can be appealed to a Marion County Hearings Officer for a public hearing.

OTHER PERMITS, FEES, AND RESTRICTIONS: This approval does not remove or affect covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits and/or fees from other local, State or Federal agencies. This decision does not take the place of, or relieve the responsibility for, obtaining other permits or satisfying any restrictions or conditions thereon. It is recommended that the agencies mentioned in Finding #6 be contacted to identify restrictions or necessary permits.

APPEAL PROCEDURE: The Marion County Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must condition or deny the application. Anyone who disagrees with the Director's decision may request that the application be considered by a Marion County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200) on the basis of new information subject to signing an extension of the 150 day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Requests for reconsideration, or consideration by a hearings officer, must be in writing (form available from the Planning Division) and received in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on **January 5, 2018**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **January 6, 2018** unless further consideration is requested.

FINDINGS AND CONCLUSIONS: Findings and conclusions on which the decision was based are noted below.

1. The property is designated Primary Agriculture in the Marion County Comprehensive Plan. The purpose of this designation and the corresponding EFU (Exclusive Farm Use) zone is to promote and protect commercial agricultural operations.
2. The property is located on the north side of Horseshoe Lake Rd NE approximately 1 ¼ miles west of its intersection with Riverside Dr NE. The property contains a 1988 manufactured home and several agricultural buildings, a well and septic system. The property was subject of an administrative review/floodplain development permit (ADM/FP97-27) that approved replacement of an existing 1970 manufactured dwelling on tax lot 300, however, that home was not replaced and the approval expired in 1999. In 2009, the property obtained a new approval to replace the 1970 manufactured home on tax lot 300 with Administrative Review 09-37 (AR09-37). It was determined in AR09-37 that the 1997 decision included both tax lots 200 and 300. A review of the deeds for the properties indicates that the two tax lots have been described separately on deeds going as far back as 1943 and the two lots are considered to be separate legal lots for land use purposes.
3. According to the Soil Survey for Marion County Oregon, 72% of the soils on the subject property are high-value soils.
4. Adjacent property in all directions consists of property zoned EFU in farm use.
5. The applicants are proposing to operate a brewery and tasting room in conjunction with farm use.

6. Public Works Land Development and Engineering Permits requested that Condition A be included in the land use decision. LDEP also commented on requirements that are not part of the land use decision and available for review in the planning file. LDEP will not approve the final use until the following conditions have been met:

“Condition A – Prior to issuance of building permits associated with the proposed business, obtain an Access Permit, and under the Permit, repave the existing west access (on tax lot 200) with hot mix asphalt and install a drainage culvert under the east access, plus re-rocking.

In accordance with Marion County Driveway Ordinance 651, driveways must meet sight distance, design, spacing, and safety standards. Access work, which is typically given as an Engineering Requirement, is being elevated to *Condition* status relative to its timing for completion prior to establishment of the proposed use. Nexus is the proposed change-in-use from residential to commercial, and the need to meet MCPW Engineering standards for driveways in terms of sight distance, design, spacing, and safety by authority under Marion County Driveway Ordinance #651. Note that repaving the west access will necessitate replacing some alligatored street pavement immediately adjacent to it.”

Building Inspection commented that a building permit is required. Contact Marion County Building Inspection at (503) 588-5147 to permitting requirements.

Marion County On-site Wastewater Specialist commented that the applicant should contact Marion County Building Inspection to discuss septic system and replacement area.

Marion County Tax Assessor provided comments regarding taxes on the subject property.

All other commenting agencies stated no objection to the proposal.

7. In order to approve a commercial activity in conjunction with farm use the applicants must demonstrate compliance with the specific criteria listed in Marion County Code (MCC) 17.136.060(D). These include:
- (a) *The commercial activity must be primarily a customer or supplier of farm uses.*
 - (b) *The commercial activity must enhance the farming enterprises of the local agricultural community to which the land hosting that commercial activity relates.*
 - (c) *The agricultural and commercial activities must occur together in the local community to satisfy the statute.*
 - (d) *The products and services provided must be essential to the practice of agriculture.*
8. The hops grown on the farm operation would supply the hops for processing into beer. The processing of hops into beer and bottling it enhances the local agricultural community by adding value to a farm product locally. Beer produced from hops grown on site may be sold to retail and wholesale customers as other farm products are sold. The applicants are applying for a brewery and tasting room as a commercial use in conjunction with farm use. However, beer tasting is a customary practice in conjunction with the purchase of craft beer. Therefore, the operation of a brewery tasting room in addition to the brewery production facility can be permitted as a commercial use in conjunction with farm use. Any approval will be conditioned that a limited service restaurant permit would not be allowed. The approval of a commercial use in conjunction with farm use does not permit other kinds of events such as weddings and receptions. In order to clarify that these are not allowed in conjunction with an approval, they can be listed as prohibited uses.
9. In addition to the specific criteria above, the proposal must also satisfy the conditional use criteria in MCC 17.136.060(A). Those requirements are:
- (a) *The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not*

include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.

- (b) Adequate fire protection and other rural services are, or will be, available when the use is established.*
- (c) The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.*
- (d) Any noise associated with the use will not have a significant adverse impact on nearby land uses.*
- (e) The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.*

10. As described above, the use is a commercial use in conjunction with farm use and, due to the close connection between the proposed use and farm use it would not significantly increase the cost of farming. However, to ensure compatibility with surrounding uses, MCC 17.136.050(B) requires that a declaratory statement meeting the requirements of MCC 17.136.100(C) be filed and this serves to notify the applicants and subsequent owners that there are farm or timber operations in the area. Recording the declaratory statement can be made a condition of any approval. There appears to be adequate fire protection and other rural services to the property. Because the use will take place inside a building, there are no anticipated significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality or noise in excess of what is usually found in rural agricultural settings. Also, there are no water impoundments or significant mineral and aggregate sites on the property or in the area that could be impacted by the proposed use. The proposal satisfies, or can be conditioned to satisfy, the general criteria for a conditional use in the EFU zone.

11. Based on the above findings, it has been determined that the applicants' request meets, or can be conditioned to meet, all applicable criteria to operate a brewery with a tasting room as a commercial activity in conjunction with farm and is, therefore, **APPROVED**, subject to conditions.

Joe Fennimore
Planning Director

Date: December 21, 2017

If you have any questions regarding this decision contact Patty Dorr at (503) 588-5038

Notice to Mortgagee, Lienholder, Vendor or Seller: ORS Chapter 215 requires that if you receive this Notice, it must promptly be forwarded to the purchaser.