

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 DECISION
CONDITIONAL USE CASE NO. 23-009**

APPLICATION: Application of Brian Zielinski for a conditional use permit to establish a brewery on a 47.63-acre property in an EFU (Exclusive Farm Use) zone located at 13501 River Road NE, Gervais (T5S, R2W, Section 30, Tax Lot 100).

DECISION: The Planning Director for Marion County has **APPROVED** the above-described Conditional Use application subject to certain conditions.

EXPIRATION DATE: This conditional use permit is valid only when exercised by **March 28, 2025**. 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 proposal is for land use purposes only. Due to septic, well, and drain field replacement areas, these parcels may not be able to support the proposal. To be sure 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. The applicant shall obtain all necessary building and septic permits from the Marion County Building Inspection Division.
2. The applicant shall obtain all necessary permits from the Marion County Health and Human Services Department and or the Oregon Department of Agriculture.
3. Applicant must meet all Marion County Noise Ordinances
4. Driveway approaches must meet MCPW Engineering standards, including number of accesses.
5. A Water Pollution Control Facilities (WPCF) permit per OAR 340-071-0130(b)(B) is required.
6. An authorization notice application is required for the change of use of the proposed accessory structure to a brewery.
7. Events, tasting room, and customers are not permitted.

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

8. The development shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval of the Planning Director.
9. Failure to continuously comply with the conditions of approval may result in this approval being revoked. Any revocation could be appealed to the 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 restrictions or conditions thereon. It is recommended that agencies mentioned in Finding # below be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

10. The applicants should contact the Woodburn Fire District to obtain a copy of the District's Recommended Building Access and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards.
11. The applicants should contact Marion County Land Development and Engineering (503-584-7714) for additional Engineering Requirements and Advisories, listed in Finding #6 below, that may be required.

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 **March 28, 2023**. If you have questions about this decision, contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **March 29, 2023**, unless further consideration is requested.

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

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan. The major purpose of this designation and the corresponding EFU (Exclusive Farm Use) zone is to promote the continuation of commercial agricultural and forestry operations.
2. The property is located on the south side of River Road NE and is also located at the intersection of River Road NE and French Prairie Road NE. The property contains a dwelling built in 1904 and fourteen farm buildings ranging in size from 288 square feet to 3,240 square feet. The parcel has been the subject of two previous land use cases: Conditional Use 86-088 and Conditional Use 92-022. Conditional Use 86-088 was approved and allowed the applicant at the time to locate two additional farm dwellings on the property. Conditional Use 92-022 was also approved to allow a previous landowner to locate an additional farm dwelling on the property. A description of the subject parcel based on a deed from November 28, 1961, matches the current that was submitted. Therefore, the parcel is considered legal for land use purposes.
3. Surrounding uses are farm uses in all directions. All adjacent properties are zoned EFU.
4. Soil Survey of Marion County Oregon indicates 100% of the subject property is composed of high-value farm soils.
5. The applicant is proposing to build a small production brewery on the subject parcel in a pre-existing building on the applicant's farm that grows hops, barley, wheat, and fruit. The applicant is not proposing to be open to the public or serve beer.
6. Various agencies made the following comments:

Public Works Land Development and Engineering Permits (LDEP) requested that the following be included in the land use decision.

ENGINEERING REQUIREMENTS

- A. Driveway approaches must meet MCPW Engineering standards, including number of accesses. Typically, a residential property is allowed one direct access to the public road. Furthermore, MCPW Transportation System Plan policy places further restriction to multiple accesses on Arterial roads. At the time of application for building permits an Access Permit will be required to close two and possibly up to three of the five existing driveway access approaches to River Road, those being the westernmost approach along the E-W trending road segment, and the southern most two approaches on the N-S trending road segment.
- B. Transportation System Development Charges will be assessed at the time of application for building permits for a change-of-use of the existing accessory structure proposed for repurposing to a brewery.

Marion County Septic commented:

- A. The applicant proposes to dispose of brewery wastewater into an existing septic system. Brewery wastewater is greater than residential strength wastewater per OAR 340-071-0100(123); this would require a Water Pollution Control Facilities (WPCF) permit per OAR 340-071-0130(b)(B).
- B. An authorization notice application is required for the change of use of the structure to a brewery. The applicant must address all proposed sources of sewage flow going to the system, such as handwashing sinks, restrooms, etc., as well as the number of employees anticipated. Floor drains may not be plumbed to a septic system.

Marion County Building Inspection commented:

If the proposed brewery production use is considered agriculturally exempt, as determined by Marion County Planning, then a change of use permit for the building is not required. Separate electrical, plumbing, and/or mechanical permits would be required for any proposed alterations to the structure or these systems.

All other commenting agencies stated no objection to the proposal.

- 7. In order to approve a commercial activity in conjunction with farm use the applicant must demonstrate compliance with the specific criteria listed in Chapter 17.136.060(D) of the Marion County Code (MCC). These include:

- (a) *The commercial activity must be primarily a customer or supplier of farm uses.*

The applicant is proposing to build a small production brewery that will use the applicant's hops, barley, wheat, and fruit, which are grown on-site, as the primary products for the brewing of beer. In this way, the applicant is proposing to be a customer of farm uses by using what is grown on-site to make beer. The criterion is met.

- (b) *The commercial activity must enhance the farming enterprises of the local agricultural community to which the land hosting that commercial activity relates.*

As stated previously, the applicant is proposing to build a small-scale brewery on the subject property. The applicant is also proposing to use the hops, barley, wheat, and fruit that is grown on the subject parcel to make the beer. By allowing a small-scale brewery to exist on-site with the applicant using the farm products being grown on the parcel to produce the beer, the applicant is ensuring that the subject parcel continue in agricultural production. By keeping the subject parcel in agricultural production, this will enhance the farming enterprises on not only the subject parcel, but the local agricultural community. The criterion is met.

- (c) *The agricultural and commercial activities must occur together in the local community to satisfy the statute.*

The applicant is proposing to place the small-scale brewery on the subject parcel. Furthermore, the applicant will also use the farm products grown on-site to brew the beer. Both agricultural and commercial activities will be happening on the subject parcel, therefore occurring in the local community. The criterion is met.

- (d) *The products and services provided must be essential to the practice of agriculture.*

Beer is the byproduct of the brewing process which uses a variety of agricultural products, including hops, barley, wheat, and fruit. Though barley, wheat, and fruit can be used in a variety of ways, including direct consumption, hops is mainly used in the brewing of beer. By allowing the proposed small-scale brewery to exist on the subject property, this will allow the applicant and any other supplier of hops, barley, wheat, and fruit to continue to farm those farm products ensuring that those farming practices continue. The criterion is met.

8. 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.*

The proposed small-scale brewery is intended to add value to the applicant's farming operation. The use of a small-scale brewery using the agricultural products grown on-site 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. The criterion is met.

- (b) *Adequate fire protection and other rural services are, or will be, available when the use is established.*

The property is served by the Woodburn Fire District and Marion County Sheriff's Office. The criterion is met.

- (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.*

During the brewing process, wastewater will be generated. Because the operation is proposed to be small, the amount of wastewater is expected to be low. According to the applicant, the wastewater will be drained into the existing septic system and drainfield. This is the typical location for any wastewater produced in areas using a septic system. Therefore, the criterion is met.

- (d) *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*

The potential noise generated by the proposed small-scale brewery is expected to be minimal. The brewing is being proposed to take place inside an existing, permitted building on-site. Furthermore, the applicant will be required to meet the Marion County Noise Ordinances. The criterion is met.

- (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.*

There is an existing perennial stream located on the western side of the subject property. However, the existing septic system and building being proposed to be used as the brewing location, are located on the eastern side of the property where most of the development has occurred. Therefore, given the location of the perennial stream, existing septic system, and proposed brewing location, it is not expected that the proposed use will not have a significant adverse impact on potential water impoundments. Additionally, there are no significant mineral or aggregate sites located near the subject property. The criterion is met.

9. Based on the above findings it has been determined that the applicant's request meets all applicable criteria for a and is, therefore, **APPROVED**, subject to conditions.

Brandon Reich
Planning Director/Zoning Administrator

Date: March 13, 2023

If you have any questions regarding this decision contact Jared Bradford at (503) 566-4173.

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.