

Issue Area 1 and Approval Criteria	Hearings Officer's Decision	Opponent Positions	Applicant's Position	Staff Comment	Board Determination
<p>Has the applicant presented substantial evidence showing satisfaction with those conditions of approval which include discretionary elements?</p> <ul style="list-style-type: none"> • DCC 18.116.020(A) (Clear Vision Areas) • DCC 18.116.030(G)(4) (Off Street Parking) • DCC 18.116.030(F)(5) (Service Drive Width) • DCC 18.124.020 (Elements Of Site Plan) 	<p>To be satisfied.</p>	<p>Staff notes that traffic safety issues are raised for Bowery Lane. One outstanding criterion (Clear Vision Areas) would influence traffic safety on Bowery.</p>	<p>Yes, the applicant has already, or will, satisfy these conditions.</p>	<p>The submitted application materials demonstrate compliance with the conditions of approval Q, S, U, and W.</p> <p>The application materials do not yet demonstrate compliance with the conditions of approval J, L, T, and V.</p> <p>Staff notes:</p> <ul style="list-style-type: none"> - Compliance with condition of approval J (Clear Vision Areas) is not illustrated on the site plan at the two (2) access points as prescribed by Hearings Officer's decision. (DCC 18.116.020(A)) - Compliance with conditions of approval L & V (Off Street Parking) are not met as the design of the parking lot does not meet code design standards with the use of compact parking stalls and does not comply with DCC 18.116.030(G)(4). - Compliance with condition of approval T (Service Drive Width) is not met because, while the applicant proposes 24-foot service drives, it proposes a 20-foot entry gate. The proposal does not comply with DCC 18.116.030(F)(5). - As noted below under Issue Area 3, the proposed Winery Building was found to be a noncompliant structure in the reopened record period. Final site design is currently unknown based upon materials in the record. <p>The site plan does not verify that the proposal meets the above-mentioned code sections. Staff recommends denial of the Site Plan Review.</p>	<p>Yes: May be approved.</p> <hr/> <p>Yes: May be approved, but only by re-imposing the outstanding condition(s) of approval, or with the addition of modified or new conditions of approval.</p> <hr/> <p>No: May be denied.</p>

Issue Area 2 and Approval Criteria	Hearings Officer's Decision	Opponent Positions	Applicant's Position	Staff Comment	Board Determination
<p>Has the applicant presented substantial evidence showing satisfaction of, or demonstrated an ability to comply with, those conditions of approval which impact safety, and outside agency approval?</p> <ul style="list-style-type: none"> • DCC 18.124.020 (Elements Of Site Plan) • DCC 18.124.060(C) (Approval Criteria – Safe Environment) • DCC 18.124.060(K) (Approval Criteria – Transportation Access) 	<p>To be satisfied.</p>	<p>The applicant will have challenges receiving, or will be denied, approval from DEQ for wastewater treatment for the wine producing aspect of the proposal.</p> <p>Rock pillars are a hazard in the right of way along Bowery Lane.</p>	<p>The applicant will satisfy these conditions.</p>	<p>The application materials do not yet demonstrate compliance with the conditions of approval B, X, EE, and GG.</p> <p>Staff notes:</p> <ul style="list-style-type: none"> - Condition of approval B (General Division Permitting) can be satisfied with Building Division approval. However, new or modified Site Plan Review approval may be required if the Building Division determines changes are necessary. (DCC 18.124.020) <p>The Onsite Wastewater Division states that the current permitting does not account for any plumbing needs for any required bathroom in the Winery Building. Wastewater treatment for wine production is authorized by the Oregon Department of Environmental Quality (DEQ). Location of, and authorization for, additional system(s) have not yet been determined and compliance cannot be found without such information. New Site Plan Review approval may be required. (DCC 18.124.020)</p> <ul style="list-style-type: none"> - Condition of approval X (Confirmation from Bend Fire & Rescue) can be satisfied after land use approval. However, new Site Plan Review approval may be required if Bend Fire & Rescue determines changes to the site plan are necessary. (DCC 18.124.060(C)) - Conditions of approval EE (Evacuation of the right of way) and GG (Ingress and Egress via Hunnell Road) can be <p><i>(Continued on Next Page)</i></p>	<p>Yes: May be approved.</p> <hr/> <p>Yes: May be approved, but only with re-imposing the outstanding condition(s) of approval.</p> <hr/> <p>No: May be denied.</p>

				<p>continually imposed. (DCC 18.124.060(K))</p> <p>The proposal does not appear fully developed and represented on the site plan. Because review by the Building Division, Onsite Wastewater Division, DEQ and Bend Fire & Rescue has not occurred, or confirmation is represented in the record, it is unknown whether these agencies will require changes to the site plan to comply with these conditions of approval.</p> <p>Staff recommends denial of the Site Plan Review.</p>	
Issue Area 3 and Approval Criteria	Hearings Officer's Decision	Opponent Positions	Applicant's Position	Staff Comment	Board Determination
<p>A. Can the Board approve a Type I Variance in the decision to satisfy the Hearings Officer's decision and condition of approval G?</p> <p>B. In the alternative, can the Board impose a condition of approval to require modification or relocation of the Wine Storage Building from the front yard setback?</p> <ul style="list-style-type: none"> DCC 18.132.020 (Variances) 	<p>To address the front yard setback for the Wine Storage Building, the following condition of approval was added to the Hearings Officer's Decision:</p> <p>G. Front Yard Setback for Wine Storage Building. Prior to the issuance of building permits, the property owner will submit confirmation that the Wine Storage Building meets the front yard setback requirements.</p>	<p>Type I Variance request not addressed.</p>	<p>A Type I Variance can be approved for the Wine Storage Building in the Board's decision.</p>	<p>Pursuant to condition of approval G, the applicant submitted a survey from David Cloninger July 31, 2024, illustrating that the proposed Winery Building is 9 feet from the front property boundary. The proposed Winery Building is a noncompliant structure because it does not meet the front yard setback requirements.</p>	<p>Issue Area 3(A) Yes: May be approved.</p>
				<p>The Multiple Use Agricultural Zone requires a minimum 20-foot setback from the front property line.</p>	<p>Issue Area 3(B) Yes: Denial may not be required if the Board imposes a condition of approval which requires the building to be modified, or relocated, to meet the 20-foot front yard setback.</p>
				<p>A Type I Variance is a Land Use Permit which requires an application, review, and approval process as outlined in the Deschutes County's Procedures ordinance, Title 22. A Type I Variance cannot be approved outside the process prescribed by Title 22.</p> <p>The Board should either deny the application or impose a condition of approval requiring the building to be modified, or relocated, to meet the 20-foot front yard setback.</p>	<p>Issue Areas 3(A) and (B) No: May be denied.</p>

Issue Area 4 and Approval Criteria	Hearings Officer's Decision	Opponent Positions	Applicant's Position	Staff Comment	
<p>Can wineries only be sited on property in the Exclusive Farm Use Zone pursuant to ORS 215.452, and not in any other zone?</p> <ul style="list-style-type: none"> DCC 18.32.030(C) (Commercial Activity in Conjunction with Farm Use) 	<p>ORS 215.452 does not preclude the siting of commercial activities in other zone districts. Commercial activities in conjunction with farm use are an allowed use within the MUA10 Zone.</p>	<p>Wineries are only allowed on properties which are within the Exclusive Farm Use Zone (EFU).</p>	<p>The proposed winery can be approved as a Commercial Activity in Conjunction with Farm Use under the provisions of the Multiple Use Agricultural Zone.</p>	<p>Staff concurs with the Hearings Officer's analysis that wineries can be sited on properties other than those within the Exclusive Farm Use Zone.</p>	<p>No: May be approved.</p> <hr/> <p>Yes: May be denied.</p>
Issue Area 5 and Approval Criteria	Hearings Officer's Decision	Opponent Positions	Applicant's Position	Staff Comment	Board Determination
<p>Did the Hearings Officer err in finding that a winery can be approved on MUA10-zoned property as a Commercial Activity in Conjunction with Farm Use?</p> <ul style="list-style-type: none"> DCC 18.32.030(C) (Commercial Activity in Conjunction with Farm Use) 	<p>A Commercial Activity in Conjunction with Farm Use is an allowable use in the MUA10 Zone through the provisions of DCC 18.32.030(C).</p>	<p>Yes, wineries are only allowed in the Exclusive Farm Use Zone (EFU) pursuant to ORS 215.452.</p> <p>The proposed winery may not meet the applicable criteria for a winery under ORS 215.452.</p>	<p>No, the winery is a commercial activity in conjunction with farm use and can be approved in the MUA10 Zone through the provisions of DCC 18.32.030(C).</p>	<p>Staff concurs with the Hearings Officer's analysis. However, staff raise concerns with the conditions of approval that delay discretionary decision-making outside of a land use review process and question the compatibility analysis required through DCC 18.128.015 (A & B), as prescribed by DCC 18.32.030(C).</p>	<p>No: May be approved.</p> <hr/> <p>Yes: May be denied.</p>

Issue Area 6 and Approval Criteria	Hearings Officer's Decision	Opponent Positions	Applicant's Position	Staff Comment	Board Determination
<p>Is there inconsistency between the Hearings Officer's Decision on 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).</p> <ul style="list-style-type: none"> • DCC 18.32.030(C) (Commercial Activity in Conjunction with Farm Use) 	<p>Not addressed.</p>	<p>Yes, wineries are only allowed in the Exclusive Farm Use Zone (EFU) pursuant to ORS 215.452.</p>	<p>The winery is a commercial activity in conjunction with farm use and can be approved in the MUA10 Zone through the provisions of DCC 18.32.030(C).</p>	<p>The referenced Meadery is located on property in the EFU Zone and subject to the provision of DCC 18.16. The subject proposal is sited on property in the MUA10 Zone and subject to the provisions of DCC 18.32.</p> <p>Because the proposals and the zoning standards are different, they are not comparable.</p> <p>Staff recommends the Board deny this appeal issue.</p>	<p>No: May be approved.</p> <hr/> <p>Yes: May be denied.</p>

Issue Area 7 and Approval Criteria	Hearings Officer's Decision	Opponent Positions	Applicant's Position	Staff Comment	Board Determination
<p>Did the Hearings Officer err in the incorporation of testimony placed into the public record?</p>	<p>Not addressed.</p>	<p>Hearings Officer Brooks only considered testimony placed in the public record between the dates of 11/8/2023 and 11/18/2023.</p>	<p>Not addressed.</p>	<p>Staff understands that Hearings Officers consider all relevant record materials when considering the approvability of any proposal.</p> <p>The Open Record Period was a 7 – 7 – 7 with the following phases:</p> <ul style="list-style-type: none"> • 10/25/23 to 10/31/23: New Evidence and Testimony Phase • 11/1/23 to 11/7/23: Rebuttal Phase • 11/8/23 to 11/14/23: Applicant's Final Legal Argument: <p>Staff recommends the Board deny this appeal issue.</p>	<p>No: May be approved.</p> <hr/> <p>Yes: May be denied.</p>
Issue Area 8 and Approval Criteria	Hearings Officer's Decision	Opponent Positions	Applicant's Position	Staff Comment	Board Determination
<p>Is there substantial evidence in the record, specifically in the application materials, to support a determination that the site is suitable for the proposed use and the use will be compatible with existing and projected uses on surrounding properties?</p> <ul style="list-style-type: none"> • DCC 18.128.015 (A) (Site Suitability) • DCC 18.128.015 (B) (Compatible with Uses on Surrounding Properties) 	<p>As conditioned, the proposed winery use is allowed as a Commercial Activity in Conjunction with Farm Use.</p>	<p>A number of neighbors believe that the proposed winery is not compatible in a residential neighborhood based upon:</p> <ul style="list-style-type: none"> • Traffic safety • Wastewater management • Property value degradation • Water usage • Environmental impacts (noise & odor) due to scale of operations on limited acreage in a residential neighborhood. 	<p>The winery is a commercial activity in conjunction with farm use and can be approved in the MUA10 Zone. The proposal complies with the standards of DCC 18.128.015 (A & B).</p>	<p>A number of criteria remain unaddressed in the application, or in materials submitted by the applicant during the course of review . The applicant has not met its burden of proving compliance with the required standards.</p> <p>As noted above, waste disposal on the site for wine production or for the Winery Building is undefined. Also, the site plan does not currently meet the Site Plan Review Standards of DCC 18.124 and DCC 18.116.030 for adequate parking, service drive width. Lastly, the proposed Winery Building has been confirmed as a noncompliant structure because it intrudes into the required front yard setback.</p> <p><i>(Continued Next Page)</i></p>	<p>Yes: May be approved.</p> <hr/> <p>Yes: May be approved, but only with condition(s) of approval.</p>

				<p>Site suitability and compatibility with surrounding properties cannot be determined and compliance with DCC 18.128.015 (A & B) is unknown.</p> <p>Staff recommends denial of the Conditional Use Permit.</p>	<p>No: May be denied.</p>
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