

**BEFORE THE LAND USE HEARINGS OFFICER  
OF CLACKAMAS COUNTY, OREGON**

Regarding an Application for a Home Occupation )	<b>Case File No.</b>
To Store Brewing Materials With an Exception for )	<b>Z0346-20-HOEX</b>
Additional Building Space and Use of a Vehicle )	<b>(Fearless Brewing)</b>

**A. SUMMARY**

1. The owners and applicants are Bennett and Kenneth Johnson.
2. The subject property is located at 29085 Southeast Crest Drive, Eagle Creek, OR 97022. The legal description is T3S, R3E, Section 13AA, Tax Lots 2700 and 2800, W.M. The subject property is approximately 2.24 acres and is zoned RRFF-5 – Rural Residential Farm Forest – 5 Acres.
3. On October 8, 2020, the Hearings Officer conducted a public hearing to receive testimony and evidence about the application.

**B. HEARING AND RECORD HIGHLIGHTS**

1. The Hearings Officer received testimony at the public hearing about this application on October 8, 2020. The public hearing was conducted using the Zoom platform due to the corona virus. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.
2. At the hearing, county planner Lorraine Gonzales discussed the staff report and recommended approval of the application.
3. Bennett Johnson testified in favor of the application.
4. A number of neighbors testified about concerns with the application.
5. At the conclusion of the public hearing, the Hearings Officer closed the record.

### **C. FACTS**

The subject property is located at 29085 Southeast Crest Drive, Eagle Creek, OR 97022. The property is 2.24 acres and is zoned RRFF-5. The property consists of two tax lots along the Clackamas River. The property is located along the eastern border of the Twin Island Park neighborhood, which is served by Southeast Allen Road (Allen Road) and Southeast Woods Road (Woods Road). The property is west of Southeast Crest Road (Crest Road). The property is therefore located between Twin Island Park subdivision and the Crest Road neighborhood. Although there appears to have been some confusion regarding access to the property, the proposed access is from Crest Road via an easement through the neighbor's property which is between the subject property and Crest Road. No access is proposed from Twin Island Park subdivision via either Allen Road or Woods Road. In addition to the existing house and garage, there is an existing 2800 square foot building that the applicants seek to use for the home occupation. The applicants own and operate Fearless Brewing. The applicants seek to use the 2800 square foot building to store empty cans and other inventory for the brewery. The applicants also seek exceptions to the home occupation standards regarding the amount of accessory building space and for use of a vehicle in excess of 11,000 gross vehicle weight.

### **D. DISCUSSION**

Clackamas County and Zoning Development Ordinance (ZDO) 822.04 provides the approval criteria for home occupations. The findings in the staff report were not challenged. It would be a waste of the County's money and resources to review and repeat the findings in the staff report. I have reviewed the findings in the staff report and agree with those findings. I therefore adopt and incorporate the findings in the staff report in this decision.

A number of neighbors, while not opposing the application, had questions and concerns. Tom Palmer (Palmer), who lives to the east of the subject property, negotiated a settlement with the applicants to allow them to use an easement across his property to access Crest Road. The terms of that settlement are included in the proposed conditions of approval. The terms of the settlement allow only one vehicle in excess of 11,000 GVW

(Gross Vehicle Weight) but not to exceed 14,500 GVW to use the easement. A primary concern of Palmer is that larger trucks would use the easement. At the public hearing, it was clarified that no larger trucks would be permitted to use the easement. With the proposed conditions of approval, Palmer's concerns will be addressed and satisfied.

A number of neighbors who live in Twin Island Park subdivision to the west of the subject property are concerned that the home occupation would access the property from Allen Road or Woods Road to the west and such traffic would go through the subdivision. This concern appears to have been caused by the notice of the application that led some neighbors to think the access would be through the subdivision. At the public hearing, it was clarified that approval of the present application would only allow access from Crest Road and not from Twin Island Park subdivision. The applicants made assurances that they had no intention accessing the home occupation via Twin Island Park subdivision, but even if they change their minds they would be required to file a new application in order to change the access. The applicants also clarified that the area for the home occupation is set back from the top of the ridge that nothing would flow down towards Twin Island Park subdivision. At the public hearing, it was also clarified that any additional use of either tax lot for the home occupation would require another application. It is my understanding that all of the neighbors' concerns were addressed.

All of the approval criteria are satisfied.

#### **E. DECISION**

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the Hearings Officer hereby **APPROVES** application Z0346-20-HOEX, with the following conditions of approval.

#### **F. CONDITIONS OF APPROVAL**

1. Approval is for three years only. Continuation of the use beyond the three year approval period will require a renewal of this permit.
2. Continued compliance with Section 822 must be met. Failure to comply will be cause for revocation of this permit.
3. The business owners Kenneth and Bennett Johnson, are the current property owners and currently and will continue to reside in a dwelling on the property. This land use decision is not transferrable to other parties.

4. There shall be no more than five employees on the property at a given time.
5. Noise created by the business shall not exceed the average peak sound pressure level of 60db between the hours of 8 AM to 6 PM when measured off the property line. During all other hours the business noise levels shall not exceed levels detectable to normal sensory perception off the property.
6. The home occupation shall not create ***vibration, glare, fumes or odors detectable to normal sensory perception of the subject parcel.***
7. The home occupation shall not create visual or audible electrical interference in any radio, television, or other electronic device off the subject property or cause fluctuations in line voltage off the subject property.
8. Outdoor storage and activities are prohibited.
9. Any future signage is subject to Section 1010.06(B) of the Clackamas County Zoning Development Ordinance which limits signage to eight square feet and not to exceed a height of 6 feet and may be located within the setback behind the property line.
10. Home occupation vehicles shall not be stored, parked, or repaired on public rights-of-way.
11. Parking of all business related vehicles shall be located in front or west of the pre-existing 40'X70' detached accessory structure.
12. All business related activities shall use the same easement access as provided for the on-site single family residence and existing detached accessory structure located on tax lot 2800 of map 33E13AA. In accordance to easement agreement 2020-028924 (Exhibit 2) dated April 22, 2020 the grantee (the Johnsons) shall keep and maintain the existing easement in its current condition as required in the easement agreement.
13. Storage of hazardous materials in quantities not normally associated with residential use or exempt amounts allowed by the current edition of the Oregon Structural Specialty Code are prohibited.
14. The applicant has request an exception to Subsection 822.04(L) (1), which allows a maximum of 1,500 ***square feet of accessory building space.*** In conformance to Subsection 822.05(C) (2) the applicant upon approval is allowed use of the existing 40'X70' (2,800 square feet) detached accessory structure for the home occupation use.

15. The applicant shall contact DEQ to ensure the necessary permits are acquired and business storage of hazardous materials is in compliance with the DEQ standards and regulations as identified at the following link <https://www.oregon.gov/deq/Hazards-and-Cleanup/hw/Pages/default.aspx>
16. As specified in the easement agreement (Exhibit 2) the home occupation business:
  - a. Shall not generate more than six (6) trips per day (three (3) round trips) per day over the easement with an allowance of ten (10) one-way trips over the easement area with its company box truck/replacement truck one day within the month. A vehicle trip is defined under Subsection 822.02 as “A *vehicular movement either to or from the subject property by any vehicle used in the home occupation, any delivery vehicle associated with the home occupation, or any customer vehicle*”.
  - b. Shall not exceed a speed limit of ten (10) mph over the easement area for any commercial related traffic.
  - c. Only one vehicle in excess of 11,000 pound GVW, not to exceed 14,500 GVW, is allowed as part of the home occupation activities. The box truck VIN #J8DC4B16X77002452 shall be allowed in the easement area, regardless of its actual weight.
17. No more than five vehicles total associated with the home occupation (employees, customers/clients, deliveries) may be located on the property at any one time.
18. Repair of motorized vehicles and equipment, painting or repair of automobiles, trucks, trailers, or boats, towing or storage of vehicles as a home occupation activity are prohibited.
19. Marijuana business activities are a prohibited use as a home occupation.

**Prior to conducting the home occupation on site the following conditions shall be met:**

20. Within **45 days from the date of this approval** the applicant shall apply for a “Change of Occupancy” permit from the Building Codes Division for the existing 40’X70’ detached accessory structure and receive final approval for occupancy of the structure for the home occupation.
21. The applicant shall consult with the Engineering Department to determine if a Development Permit is required for review and approval of erosion control Best Management Practices implemented, sight distances and the driveway improvements. The permit shall be obtained prior to commencement of site work and Certificate of Occupancy. If a permit is required, the applicant shall submit construction plans prepared and stamped by an Engineer registered in the State of

- Oregon, or plans acceptable to the Engineering Division, provide a performance guarantee equal to 125% of the estimated cost of the construction and pay a plan review and inspection fee. The fee will be calculated as a percentage of the construction costs if it exceeds the minimum permit fee. The minimum fee and the percentage will be determined by the current fee structure at the time of the Development Permit Application.
22. The applicant shall submit to the Engineering Department site plans showing all proposed and existing improvements including:
    - a. Proposed commercial vehicular maneuvering and parking per Section 320 Standard Detail P100.
    - b. Provide Fire District approval for existing conditions or fire apparatus turnaround at or near the end of the shared private roadway, per Standard Detail C350 at allocation approved by Estacada Fire and Engineering staff.
  23. **Prior to Final Inspection:** the applicant shall provide and maintain minimum intersection sight distances at the proposed shared private road intersection with Crest Dr. Intersection sight distance shall restrict plantings at maturity, retaining wall, embankments, trees, fences or any other objects that obstruct vehicular sight distance. Minimum required intersection sight distance is 280 feet to the north along SE Fir St and east along SE Crest Dr.
  24. The applicant shall contact Wendi Coryell at the Engineering Division for her to calculate if System Development Charges are applicable to the proposed home occupation. Wendi Coryell can be reached at [wendicor@clackamas.us](mailto:wendicor@clackamas.us)
  25. The permit is granted for the proposed home occupation as submitted; to the extent it is consistent with these conditions of approval.
  26. Approval is subject to the above stated conditions. Failure to comply with all conditions of approval shall be cause for revocation of this permit.

DATED this 28<sup>th</sup> day of October, 2020.

  
Fred Wilson  
Clackamas County Hearings Officer

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## **APPEAL RIGHTS**

ZDO 1307.10(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such an appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision will be "final" for purposes of a LUBA appeal as of the date of the decision (which date appears above my signature).