

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

Regarding an application by Amanda Martinez for a home occupation permit for an educational farm and exceptions to certain standards on a 5.13-acre parcel at 29089 SE Kelso Road in unincorporated Clackamas County, Oregon) **FINAL ORDER**
) **File No.**
) **Z0208-23-HOEX**
) **(Thimbleberry Farm)**

A. SUMMARY

1. Amanda Martinez (the “applicant”) requests approval of a level three home occupation permit to operate a home occupation for an educational farm on a 5.13-acre parcel located at 29089 SE Kelso Road; also known as tax lot 00100, Section 06CD, Township 2 South, Range 4 East of the Willamette Meridian, Clackamas County (the “site”). The site and surrounding properties are zoned EFU (Exclusive Farm Use). The applicant will host educational events such as field trips and workshops to teach people about farming. The applicant will primarily operate the use within portions of the existing residence including the attached garage and covered porch, although participants will also be allowed to tour the garden and fields on the site.

2. The applicant is also requesting an exception to ZDO Subsections 822.04(F) which limits the external evidence of the home occupation, which 822.04(L)(1) limits the amount of dwelling space that can be used for the home occupation to 500 square feet, and 822.04(L)(3) which limits number of vehicles that are associated with the home occupation and located on the subject property to five (5) at any time, respectively. The applicant proposed to create a seating area on the covered porch that may be visible from adjacent properties or roads. The applicant requests to use up to 1,168 square feet of the dwelling for the home occupation and to have up to 13 vehicles associated with the home occupation and located on the property at any time.

3. County Hearings Officer Joe Turner (the "hearings officer") held a public hearing about the application. County staff recommended that the hearings officer approve the application, subject to conditions. See the Staff Report and Recommendation to the Hearings Officer dated August 24, 2023, (the “Staff Report”). The applicant accepted the findings and conditions of approval as recommended by County staff without exceptions. One person testified orally and the Boring CPO testified in writing, both in support of the application.

4. Based on the findings adopted or incorporated in this final order, the hearings officer concludes that the applicant sustained the burden of proof that the application complies with all applicable approval criteria for a Level 3 Home Occupation and exceptions. Therefore the hearings officer grants the appeal and approves Z0208-23-HOEX (Thimbleberry Farm), subject to the conditions of approval at the conclusion of this final order.

B. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at the public hearing about this appeal on August 31, 2023. All exhibits and records of testimony are filed at 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 following is a summary by the hearings officer of selected testimony and evidence offered at the public hearing.

2. County planner Melissa Lord summarized her PowerPoint presentation.

a. She noted that the applicant requests approval of a home occupation permit to operate a home occupation for an educational farm on a 5.13-acre parcel in the EFU zone. The applicant proposes to offer educational programs and classes to promote farming and agriculture. The applicant will primarily operate the use within portions of the existing residence including the attached garage and covered porch. Participants will also be allowed to tour the garden and fields on the site.

b. The applicant also requests exceptions to certain home occupation standards in ZDO 822, specifically:

i. ZDO 822.04(F) which prohibits external evidence of the home occupation. The applicant proposed to create a seating area on the covered porch, which may be visible from adjacent properties and roads;

ii. ZDO 822.04(L)(1) which limits the amount of dwelling space that can be used for the home occupation to 500 square feet. The applicant proposed to utilize 1,168 square feet (45-percent) of the floor area of the existing residence for the home occupation. However, that includes incidental use the hallway, kitchen and dining area of the residence to allow employees to heat up their lunches. The primary day to day operations will require substantially less than 1,100 square feet of floor area; and

iii. ZDO 822.04(L)(3) which limits number of vehicles that are associated with the home occupation and located on the subject property to five (5) at any time. The applicant proposes to have up to 13 vehicles on the site, as the use involves field trips and group classes. The applicant has not requested an exception to the vehicle trip limit of ZDO 822.04(L)(2)

3. The applicant, Amanda Martinez, accepted the revised findings and conditions of approval in the Staff Report without exception. She noted that the Boring CPO submitted a letter in support of the application. Exhibit 8.

4. Brenda Abelian testified orally in support of the application.

5. The hearings officer closed the record at the end of the hearing and announced his intention to approve the application subject to the findings and conditions of approval in the Staff Report, as amended at the hearing.

C. DISCUSSION

The hearings officer adopts the following findings as his own.

1) ZDO SECTION 401 EXCLUSIVE FARM USE (EFU) DISTRICT

Subsection 401.04 allows home occupations as in the EFU District subject to Section 822 and a Type II land use permit.

Finding: The applicant submitted the necessary Type II land use application for a home occupation (with exceptions). Compliance with the standards pertaining to the Level 3 Home Occupation criterion of Subsection 822.04 and exception criterion of Section 822.05 of the Clackamas County Zoning Development Ordinance are discussed further in this Final Order. This criterion has been met.

2) ZDO SECTION 822 HOME OCCUPATIONS

Section 822 of the Clackamas County Zoning and Development Ordinance regulates home occupations. This application is specifically subject to Subsection 822.04 which controls Level 3 Major Home Occupations. Subsection 822.04(A-L) identifies the criteria that must be met for a home occupation to be approved.

The hearings officer has reviewed this subsection in conjunction with this proposal and makes the following findings:

822.04 Level Two And Three Major Home Occupations: A major home occupation requires review as a Type II application pursuant to Section 1307, *Procedures*, and shall be subject to the following standards and criteria:

1. *Subsection 822.04(A): The operator shall reside full-time in a lawfully established dwelling unit on the tract on which the home occupation is located.*

Finding: The applicant states that Amanda Martinez is the operator of the home occupation. The “operator” is the person who conducts the home occupation, has majority ownership interest in the home occupation, and is responsible for strategic decisions and day-to-day operations of the home occupation is the property owner and operator of the home occupation. Ms. Martinez resides full-time in the residence on the subject property. A condition of approval is recommended to ensure compliance with this criterion. This criterion is met as conditioned.

2. *Subsection 822.04(B) the home occupation shall have no more than five employees.*

Finding: The applicant stated that they propose to have no more than five employees which is within the number of employees permitted. An “employee” is any on-site person, whether they work full-time or part-time in the home occupation, including, but not limited to, the operator, partners, assistants, and any other persons participating in the

operation of the home occupation. Subsection 822.04(A) allows up to five employees for the level 3 major home occupation business. A condition of approval is recommended to ensure compliance with this criterion. This criterion is met as conditioned.

3. *Subsection 822.04(C)(1) From 8:00 am to 6:00 pm, the average peak sound pressure level, when measured off the subject property, of noise created by the home occupation shall not exceed the greater of 60 dB(A) or the ambient noise level. During all other hours, the home occupation shall not create noise detectable to normal sensory perception off the subject property.*

Finding: The applicant proposes to provide educational tours, workshops, and fields trips to teach people in attendance about farming and food. The events will involve the use of small pieces of farm equipment such as a hand-push tractor, weed whacker, and lawn mower. The property is currently in farm use, and these farming activities already occur on the property, as allowed in the EFU zoning district. During occasional events, the applicant proposes to have live music and amplification for speaking presentations.

A condition of approval is recommended to ensure that the amplification of music or speaking events does not exceed the maximum decibels allowed. As conditioned, this criteria can be met.

4. *Subsection 822.04(C)(2) A noise study may be required to demonstrate compliance with Subsection 822.04E (1). If a noise study is required, measurements shall be made with a sound level meter. The sound level meter shall be an instrument in good operating condition, meeting the requirements of a Type I or Type II meter, as specified in ANSI Standard 1.4-1971. The sound level meter shall contain at least an A-weighted scale, and both fast and slow meter response capability. Personnel making measurements shall have completed training in the use of the sound level meter, and measurement procedures consistent with that training shall be followed.*

Finding: As addressed above under the findings for Subsection 822.04(C)(1) there is no evidence that supports the need for a noise study since the primary focus of the business is education. This noise study criterion is not applicable.

5. *Subsection 822.04(D): The home occupation shall not create vibration, glare, fumes or odors detectable to normal sensory perception off the subject property. Vehicles entering or exiting the subject property shall be exempt from this standards, but idling vehicles shall not.*

Finding: There is no evidence that the activities proposed by the applicant will create vibration, glare, fumes, or odors detectable to normal sensory perception off the subject property. The Exclusive Farm Use zoning district allows farm uses, as defined by ORS 215.203, as an outright allowed use. Farming activities may occur on the property absent of an approved Home Occupation land use permit. This criterion is met.

6. *Subsection 822.04(E): 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.

Finding: There is no evidence that the activities as proposed by the applicant will create visual or audible electrical interference in any radio, television or other electronic device off the subject property. This criterion is met.

7. *Subsection 822.04(F): No outside storage, display of goods or merchandise visible from outside the enclosed building space in which such goods or merchandise are stored, or external evidence of the home occupation shall occur, except as specifically allowed by Subsection 822.04. Notwithstanding this provision, business logos flush-mounted on vehicles used in the daily operations of the home occupation are allowed.*

Finding: The applicant states outdoor storage, display of goods or merchandise are not proposed for the home occupation use. Storage of materials and processing/ storage of farm goods will take place primarily in accessory buildings such as the greenhouse and shop. The home occupation is to operate educational programs which will take place substantially in the garage that is attached to the house, as well as on the covered porch. The education taking place on the covered porch will be “external evidence” of the home occupation. An exception to this standard is necessary pursuant to Subsection 822.05. The exception is discussed further, below in this Final Order.

8. *Subsection 822.04(G): Signs shall be permitted pursuant to Section 1010 signs.*

Finding: The applicant proposes one freestanding sign measuring six feet in width, four feet in height, mounted at a height of no more than ten feet. The sign will be located at the corner of Frank Avenue and Kelso Road, setback at least ten feet from each property line.

Pursuant to ZDO Section 1010.07(2) the maximum top-of-sign height shall be eight feet above finished ground elevation (not including berms or mounds specifically created for the sign). As proposed, the freestanding sign is too tall to comply with the standard; however, this standard can be met with a condition of approval. This criterion is met as conditioned.

9. *Subsection 822.04(H) Vehicles associated with the home occupation shall not be stored, parked, or repaired on public right-of-way. Parking spaces needed for employees or customers of the home occupation shall be provided in defined areas of the subject property. Such areas shall be accessible, usable, designed, and surfaced for parking. There shall be no more than five full- or part-time employees.*

Finding: The applicant states the public right of way will not be used for the home occupation use since adequate area is available on-site for vehicle parking. The home occupation will not involve repairing or storing vehicles.

Adequate parking will be provided for up to 13 vehicles onsite. The drawing submitted by the applicant from Titan Excavation Company shows ten parking spots and a gravel road that will access the parking area from Frank Avenue and exit onto Kelso Road. The other three parking spots are already located in front of the existing house; one of these parking spots will be paved to serve as an ADA-compliant parking spot.

The application requests an exception to ZDO Subsection 822.04(L)(3)(b) to allow up to 13 vehicles associated with the home occupation on site at any given time. Since the applicant proposed to have 13 designated off-street parking areas, that this standard can be met.

10. Subsection 822.04(I): If the subject property takes access via a private road or access drive that also services other properties, evidence shall be provided, in the form of a petition that all other property owners who have access rights to the private road or access drive agree to allow the specific home occupation described in the application. Such evidence shall include any conditions stipulated in the agreement. A new petition shall not be required for a renewal application.

Finding: The subject property will access from Frank Avenue and Kelso Road which are both public, County roads. SE Kelso Rd is classified as a rural minor arterial roadway and SE Frank Ave is classified as a rural local roadway. This criterion is not applicable.

11. Subsection 822.04(J): Notwithstanding the definition of home occupation in Section 202, Definitions, in the AG/F, EFU, and TBR Districts, the home occupation shall be operated substantially in the operation's dwelling or other buildings normally associated with uses permitted in the applicable zoning district.

Finding: Education programs will take place substantially in the garage that is attached to the house, as well as on the covered porch. Participants will have access to an ADA approved bathroom just inside the house from the garage. Employees will use the front room of the dwelling as an office space and they will use the kitchen in the dwelling to heat up lunches, etc. There are no other buildings onsite for employees to use as an office area.

LUBA's decision in *Green v. Douglas County*, 63 Or LUBA 200 (2011) included a discussion of whether a building, for the purpose of complying with this Subsection, must be enclosed [Exhibit 7]. LUBA found that "buildings" for purposes of ORS 215.448(1)(c) "need not be enclosed structures". LUBA held that the only express limiting factor in ORS 215.448(1)(c) with respect to buildings is whether the building is "normally associated with uses permitted in the zone in which the property is located". As such, the use of the covered porch to conduct the education/lessons of the home occupation is acceptable to satisfy this criterion.

The applicant states that the home occupation staff will use the front room of the dwelling as an office space. Storage of materials and processing/storage of farm goods will take place primarily in accessory buildings such as the greenhouse and shop.

Education program participants will be taught in the garage or on the covered porch of the dwelling. They will also be allowed to access the restroom within the dwelling. As proposed, the home occupation will be conducted substantially in either the dwelling or in a building normally associated with uses permitted in the district. As proposed, this criterion is met.

12. Subsection 822.05(K): Hazardous materials shall not be present on the subject property in quantities greater than those normally associated with the primary uses allowed in the applicable zoning district, or in quantities greater than those exempt amounts allowed by the current edition of the Oregon Structural Specialty Code, whichever is less.

Finding: The applicant states that the proposed home occupation will not include the storage of any hazardous materials. A condition of approval to this effect is recommended to ensure future compliance should any hazardous materials be present on site. As conditioned, this criterion is met.

13. Subsection 822.04(L) Major home occupations are classified as level two or three. A level three major home occupation may be established only if at least 50 percent of the lots of record abutting the subject property are larger than two acres; however, a renewal application shall be evaluated on the basis of the lot size analysis first applied to the home occupation. A lot of record is considered to be abutting if it is contiguous to the tract on which the home occupation is proposed, or if it is directly across an access drive, private road, or public or county road with a functional classification below that of a collector.

Finding: The subject site is surrounded by eight parcels. Five parcels exceed two acres in size which is more than 50%. Based on the surrounding parcel sizes the site is eligible to be reviewed under the level three home occupation criterion. This criterion is met.

14. Subsection 822.04(L)(1): The home occupation may be conducted in a dwelling unit, but except in the case of a bed and breakfast homestay – is limited to incidental use thereof. For a level three major home occupation, a maximum of 1,500 square feet of accessory building floor space may be used for the home occupation. If only a portion of an accessory building is authorized for use in the home occupation, a partition wall at least seven feet in height, or a height as required by the County Building Codes Division, whichever is greater, shall separate the home occupation space from the remainder of the building. A partition wall may include a door, capable of being closed, for ingress and egress between the home occupation space and the remainder of the building.

ZDO 822.02(D) defines “Incidental use” as “The use of no more than 25 percent of the floor area of a building or 500 square feet, whichever is less.”

Finding: The applicant proposes to use a portion of their dwelling and accessory building space for the home occupation. Participants will have the opportunity to walk through the

farm to make observations but education will take place substantially in the garage and on the covered porch area, which will have tables, chairs, etc. Participants will be allowed to access the dwelling to use the restroom and will meet in the converted garage area for field trips, workshops, etc.

The dwelling is approximately 2,600 square feet, therefore the maximum floor area of the dwelling that can be used for the home occupation is 500 square feet. The applicant states that 1,168 square feet of the dwelling will be used by the home occupation, which is approximately 45% of the dwelling area.

However, the submitted floor plan suggests that the area of the dwelling used for the primary business operations are two offices, a kitchen and a bathroom which equates to approximately 600 square feet of floor area. The other areas of the dwelling that will be used for the home occupation, as marked on the floor plan, appear to be accessory to the main business operations area, i.e., the hallway and dining room that provide access between the “offices” and the kitchen. The applicant has requested an exception to Subsection 822.04(L)(1) which is discussed below. As proposed, that this exception can be granted.

The attached garage is an accessory building and is 408 square feet; the covered porch is an accessory building for the purposes of this section and is approximately 128 square feet. The applicant also proposes to use a 32 square foot chicken coop and a 144 square foot goat shelter as part of the home occupation. The sum of all accessory structures to be used as part of the home occupation is less than 1,500 square feet which complies with this standard. As proposed this criterion is met.

15. Subsection 822.04(L)(2) A level three home occupation shall not generate more than 30 vehicle trips per day. A vehicle trip is defined as “...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.”

Finding: A level three home occupation is limited to 30 trips per day, which equates to 15 round-trips. The applicant anticipates that there will be a maximum of 40 guests on-site at one time, and that only 13 vehicles associated with the home occupation will be on site at any time. The nature of the business is to attract groups of people, such as school field trips. The likely clientele of this business will arrive by group, such as on a bus or in a carpool. Therefore it reasonable to expect that this standard can be met. As conditioned this criterion is met.

16. Subsection 822.04(L)(3): The maximum number of vehicles that are associated with a level three major home occupation and located on the property shall not exceed five at any time, including, but not limited to, employee vehicles, customer vehicles, and vehicles to be repaired. Vehicles to be repaired shall be located within an enclosed building or in an areas not visible from off the subject property. No more than one of the five vehicles permitted to be located on the subject property at one time shall exceed a gross vehicle weight rating of 11,000 pounds.

Finding: The applicant requested an exception to Subsection 822.04(L)(3) to allow up to 13 vehicles on site at any time. The exception request is addressed below.

The applicant states that only one vehicle exceeding 11,000 pounds in gross weight will be on the subject property at any given time; this would likely be a school bus bringing a group to the farm.

Compliance with this section is directly related to the outcome of the exception request made pursuant to ZDO Section 822.05. This criterion is met, based on approval of the exception.

17. Subsection 822.04(L)(4) the following uses shall be prohibited as a major home occupation.

- 1. Marijuana production*
- 2. Marijuana processing*
- 3. Marijuana wholesaling*
- 4. Marijuana retailing.*
- 5. As a level two major home occupation:*
 - i. Repair or motorized vehicles and equipment, including the painting or repair of automobiles, trucks, trailers, or boats:*
 - ii. Towing and vehicle storage business and*
 - iii. Any use that requires a structure to be upgraded to a more restrictive use, under the current edition of the Oregon Structural Specialty Code, than an automobile repair shop with open flame; and*

Finding: The proposed home occupation does not include marijuana productions, processing, wholesale, retailing, or involve vehicle repair, painting, towing, or include uses that require a structure to be upgraded to a more restrictive use. This criteria does not apply.

822.05 Exceptions

An exception to any of the standards identified in Subsection 822.04 requires review as a Type III application pursuant to Section 1307, Procedures, and shall be subject to the following standards and criteria:

- A. The use shall remain compatible with the area. The following factors shall be considered when determining if a use is compatible with the area:*

1. *Subsection 822.05(A)(a): The number of standards identified in Section 822.04 that will be exceeded, it is presumed that the more standards exceeded, the more difficult it will be to demonstrate compatibility.*

Finding: The applicant has requested exceptions to three criteria, Subsection 822.04(F) limiting the external evidence of the home occupation, Subsection 822.04(L)(1) relating to the floor area of the dwelling used in the home occupation, and 822.04(L) (3) relating to the number of vehicles associated with the home occupation located on the subject property at any time. The three exception requests are within reason to demonstrate compatibility with Subsection 822.04, based on the findings below.

2. *Subsection 822.05(A)(b): The character of the neighborhood, including such factors as the presence of off-site similar and outside storage uses, proximity of off-site dwellings, level of surrounding traffic, size of off-site accessory buildings, and background noise levels.*

Finding: The applicant proposed three exceptions:

Exception 1 - Section 822.04(F): As described in the applicant's narrative, the farm operation occurring on site uses farm practices that do not require large, loud machinery, like the farms on nearby properties do. The applicant states that the nature of the proposed home occupation, educational groups, will generate a low impact in terms of noise and traffic.

External evidence of the home occupation will be from the participants seated on the covered porch of the dwelling for the educational programming. The participants will be invited to walk through the farm; however the majority of the home occupation experience will be operated from either inside the garage, or on the covered porch. The porch is not visible to neighbors due to the orientation of the house and the vegetation that block the view. The closest dwellings are located across SE Frank Ave to the west of the subject property; approximately 250 feet from the covered porch. When considering the nature of the home occupation (i.e. educational programming), the distance between the covered porch and the surrounding dwellings, and the presence of vegetation that buffers the use from surrounding properties, the hearings officer finds that this exception request for 822.04(F) meets the criteria of this subsection.

Exception 2 - Section 822.04(L)(1): Subsection 822.04(L)(1) limits the home occupation to an incidental use of the dwelling. "Incidental use" is defined as "the use of no more than 25 percent of the floor area of a building or 500 square feet, whichever is less." The dwelling is approximately 2,600 square feet, therefore the maximum floor area of the dwelling that can be used for the home occupation is 500 square feet. The dwelling is the only existing building on the site that is suitable for an office space and employees will use the front area of the home and the room next to the ADA-approved restroom as an office area. They will use the kitchen to prepare lunch, and they will have access to the ADA-approved restroom. The rest of the home is partitioned off with existing walls and doors. Education program participants will

use the attached garage and covered porch area as accessory buildings for classroom space and will have access to the ADA- approved restroom inside the residence.

Based upon the submitted floor plan, the area of the dwelling used for the primary business operations are two offices, kitchen and bathroom which equate to approximately 600 square feet. The other areas of the dwelling that will be used for the home occupation, as marked on the floor plan, appear to be accessory to the main business operations area.

The nature of the business that will take place in the dwelling is office work which is not intensive. The number of employees allowed on site at any time is five (5), and the number of employees will not be increasing due to the larger work space within the dwelling. Partitioning off a portion of the dwelling to facilitate the work space would decrease the normal layout and functionality of the dwelling on non- work days, and is not recommended. The character of the neighborhood, including such factors as the presence of off-site similar and outside storage uses, proximity of off-site dwellings, level of surrounding traffic, size of off-site accessory buildings, and background noise levels will not be impacted by the use of the dwelling for the home occupation.

Exception 3 - Section 822.04(L)(3)(B): Subsection 822.04(L)(3)(B) limits the number of vehicles associated the home occupation and located on the subject property to five at any time. The applicant requests to allow up to 13 vehicles onsite at any given time. The nature of the home occupation is to host groups, such as field trips and workshops, rather than serve individual customers one at a time. No additional vehicle trips than what is permitted by Section 822 are requested to accommodate the increased number of vehicles on the property at one time and off-street parking standards would be met.

The hearings officer finds that this criterion is met.

3. *Subsection 822.05(A)(c): The ability to mitigate impacts by driveway and road improvements, screening, landscaping, building location, building design, and other improvements.*

Finding: The requested exceptions will have minimal impacts on surrounding properties and uses. The increased floor area of the residence will not be detectable from offsite and will not increase the number of employees on the site. The outdoor uses on the covered porch, gatherings of participants, will be largely screened by existing vegetation. The applicant will provide adequate parking to accommodate the additional vehicles, which will be screened by existing vegetation. The applicant proposed to create a one-way access to the secondary parking lot with an entrance from Frank Avenue and an exit onto Kelso Road, which will reduce the volume of traffic on Frank Avenue. This criterion is met as conditioned.

4. *Subsection 822.05(A)(d): Potential environmental impacts, including effects on air and water quality.*

Finding: The proposed exceptions will not result in any additional environmental impacts. Increasing the floor area of the residence and the number of vehicles on the site will not alter increase the number of people (employees and participants) on the site or the number of vehicle trips generated by the use. People sitting on the covered porch in an area potentially visible from offsite will not cause environmental impacts.

In addition, there are no mapped environmental overlays on this property, including floodplain, river and stream conservation areas, steep slopes, and/or landslide deposits.

This criterion is met.

5. *Subsection 822.05(A)(e): Provision of adequate and safe access to public, County, or state roads.*

Finding: The project site currently includes a gravel driveway approach on SE Kelso Road and SE Frank Avenue. A second driveway approach is proposed on SE Frank Avenue to provide access to the proposed parking area. Access from the existing driveway on SE Kelso Road will serve as an exit only.

Access is limited on arterial roadways, with access required from the lower functional classification roadway, when available. As part of the pre-application for this application, closure of the SE Kelso Road driveway was identified as a requirement. Following the pre-application, the Engineering Division determined that a driveway approach could be retained on SE Kelso Road as an exit only for the home occupation use, based on the low traffic volume associated with the use. Paved driveway approaches are required for all access onto a county roadways. The two driveways on SE Frank Avenue and one driveway approach on SE Kelso Road will require a minimum 12-foot wide by 20-foot long paved approach, constructed per Roadway Standards Drawing D500. Beyond the paved approach, the applicant will be required to construct a minimum 12-foot wide driveway to the parking and circulation area for the home occupation. A minimum road/parking surface in the rural area is screened gravel or better.

The Clackamas County Development Engineering Division reviewed this application and provided comments pertaining to this subsection. The Engineering Division determined that a driveway approach could be retained on SE Kelso Road as an exit-only for the home occupation use, based on the low traffic volume associated with the use. This criterion is met.

- B. *Subsection 822.05(B): Services adequate to serve the proposed use shall be available, including transportation, public facilities, and other services existing or planned for the area affected by the use. At a minimum, compliance with Subsections 1006.03(B), 1006.04(B), and 1006.06(C) (except as set forth in Subsection 1006.07, and 1007.07 is required.*

1. *Subsection 1006.03(B): Approval of a development that requires public or community water service shall be granted only if the applicant provides a preliminary statement of feasibility from the water system service provider.*

Finding: The applicant submitted a signed preliminary statement of feasibility from Boring Water District, the water service provider. The statement verifies that water service, including fire flows, is available in levels appropriate for the development and that adequate water system capacity is available in source, supply, treatment, transmission, storage and distribution, or the levels and capacity can be made available through improvements completed by the developer or the system owner.

This criterion is met.

2. *Subsection 1006.04(B): Approval of a development that requires sanitary sewer service shall be granted only if the applicant provides a preliminary statement of feasibility from the sanitary sewage treatment service provider and the collection system service provider.*

Finding: The subject property is not served by a sanitary sewer district. The subject property is served by an onsite wastewater treatment facility which is regulated by Section 1006.05. Compliance with this criterion is not applicable.

3. *Subsection 1006.06(C): Approval of a development shall be granted only if the applicant provides a preliminary statement of feasibility from the surface water management regulatory authority. The statement shall verify that adequate surface water management, treatment and conveyance is available to serve the development or can be made available through improvements completed by the developer or the system owner.*

Finding: The Clackamas County Engineering Division is the surface water management authority for the subject site. The applicants submitted a signed preliminary statement of feasibility from the Engineering Division confirming that adequate surface water management, treatment and conveyance is available to serve the development or can be made available through improvements completed by the developer or the system owner. This criterion is met.

C. Notwithstanding the remainder of Subsection 822.05:

1. *Subsection 822.05(C)(1): An exception shall not be granted to Subsection 822.04(A), (I), (J) or (L) (4) (a) through (d).*

Finding: The applicant is not requesting an exception to the listed standards. This criterion is met.

2. *Subsection 822.05(C)(2): Accessory building floor space for the home occupation shall not exceed 3,000 square feet.*

Finding: The applicant proposes to use 536 square feet of accessory building floor space, including the attached garage, the covered porch, a chicken coop, and a goat shelter. This does not require an exception pursuant to Subsection 822.05 and does not exceed the limit allowed by this Section. This criterion is met.

3. *Subsection 822.05(C)(3): If the subject property is in an EFU, TBR, or AG/F zoning district, the number of employees shall not exceed five.*

Finding: The subject site is within the EFU District and will have up to five employees. This criterion is met as conditioned.

D. CONCLUSION

Based on the findings and discussion provided or incorporated herein, the hearings officer concludes that Case No. Z0208-23-HOEX (Thimbleberry Farm) should be approved, because the application does or can comply with applicable standards of the Clackamas County ZDO, provided it is subject to conditions that ensure timely compliance in fact with the ZDO and relevant Comprehensive Plan Policies.

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 Z0208-23-HOEX (Thimbleberry Farm) subject to the following conditions:

1. A major home occupation permit is valid for three years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision.

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 operator, Amanda Martinez, will reside in a dwelling on the property. This land use decision is not transferrable to other parties per ZDO Section 822.04(A).
4. There shall be no more than five (5) employees on the property at a given time per ZDO Section 822.04(B).
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 per ZDO Section 822.04(C).
6. The home occupation shall not create vibration, glare, fumes or odors detectable to normal sensory perception of the subject parcel per ZDO Section 822.04(D).

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 per ZDO Section 822.04(E).
8. No outside storage, display of goods or merchandise visible from outside the enclosed building space in which such goods or merchandise are stored, or external evidence of the home occupation shall occur, except as specifically allowed by Subsection 822.04, Subsection 822.05, and this land use decision. Notwithstanding this provision, business logos flush-mounted on vehicles used in the daily operations of the home occupation are allowed per ZDO Section 822.04(F).
9. The maximum top-of-sign height for the proposed freestanding sign shall be 8 feet above finished ground elevation (not including berms or mounds specifically created for the sign) per ZDO Section 1010.07(2).
10. Vehicles associated with the home occupation shall not be stored, parked, or repaired on public rights-of-way. Parking spaces needed for employees or customers of the home occupation shall be provided in defined areas of the subject property per ZDO Section 822.04(H).
11. Hazardous materials shall not be present on the subject property in quantities greater than those normally associated with the primary uses allowed in the applicable zoning district, or in quantities greater than those exempt amounts allowed by the current edition of the Oregon Structural Specialty Code, whichever is less per ZDO 822.04(K).
12. The applicant has requested an exception to Subsection 822.04(L)(1), which allows a maximum of 500 square feet of the dwelling to be used for the home occupation. In conformance to ZDO Subsection 822.05 the applicant upon approval is allowed to use 1,168 square feet of the dwelling for the home occupation use.
13. The home occupation business shall not generate more than thirty (30) trips per day per day. 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*”; and
 - a. Only one vehicle in excess of 11,000 pound GVW, is allowed on site as part of the home occupation activities per ZDO 822.04(L).
14. The applicant has requested an exception to Subsection 822.04(L)(1), which allows a maximum of five vehicles total associated with the home occupation may be located on the subject property at any one time per ZDO 822.04(L)(3). In conformance to Subsection 822.05 the applicant upon approval is allowed to have no more than 13 vehicles on site at any time.

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

15. The applicant shall apply for a “Change of Occupancy” permit from the Building Codes Division for the conversion of the garage.
16. All frontage and on-site improvements shall be in conformance with the *2010 Clackamas County Roadway Standards*.
17. 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
18. The applicant shall work with Clackamas Fire District #1 to ensure the fire related requirements are met per ZDO 822.05(B).
19. All frontage and on-site improvements shall be in conformance with the Clackamas County Roadway Standards.
20. The driveway and parking area shall meet the following standards:
 - a. The two driveway approaches on SE Frank Avenue and the driveway approach on SE Kelso Road shall be paved to a minimum width of 12 feet and minimum length of 200 feet from the existing edge of the county road, constructed per Roadway Standards drawing D500.
 - b. The SE Kelso Road driveway shall be an exit only. The applicant shall provide signs indicating the exit only access restriction.
 - b. Beyond the paved approach, a minimum 12-foot wide gravel driveway shall be constructed, per Roadway Standards drawing R100.
 - c. The applicant shall provide adequate on site circulation for the parking and maneuvering of all vehicles anticipated to use the site.
 - d. The parking and maneuvering area shall be surfaced with screened gravel or better, in accordance with Roadway Standards drawing R100.
 - e. Parking spaces shall meet minimum ZDO section 1015 requirements. The site plan shall include dimension for the parking stalls and back up areas. The applicant shall provide a wheel stop/bumper or similar physical feature for each parking space in accordance with ZDO subsection 1015.
21. The applicant shall obtain a **Development Permit** from the County Engineering Section prior to initiation of construction, and shall 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. These plans shall either be signed and stamped by a Professional Engineer registered in the

State of Oregon, or shall be prepared in a manner complying with requirements acceptable to the Engineering Division.

DATED this 5th day of September 2023.



Joe Turner, Esq., AICP
Clackamas County Land Use Hearings Officer

APPEAL RIGHTS

ZDO 1307.14(D)(6) 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 mailing (which date appears on the last page herein).