

Section 2. The findings and conditions attached as Exhibit A, and incorporated herein by reference, are hereby adopted in support of this Order.

DONE this 15th day of October, 2020 at McMinnville, Oregon.

ATTEST:



YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN
County Clerk

Chair

Gasey Kulla
GASEY KULLA

By: *Carolina Rook*
Deputy Carolina Rook

Commissioner

MARY STARRETT

FORM APPROVED BY:

T. Sadlo
Timothy S. Sadlo
Office of County Counsel

Commissioner

Rick Olson
RICHARD L. "RICK" OLSON

Exhibit A

Board Order 20-363 Findings in Support of Approval of Planning Docket No. Z-02-20/SU-02-20/SDR-16-20 and Conditions of Approval

FINDINGS OF FACT:

A. Background Facts

1. The subject parcel (Tax Lot 3324-6800) is approximately 19.63 acres located at 23999 Highway 99W, Dundee. The property is split zoned with about 15.63 acres zoned Agricultural/Forestry (AF-10) and 2 acres zoned Resource/Industrial (RI), which is the portion of the property subject to these consolidated applications. The property is used primarily as a vineyard and winery, including production and tasting room. The property has direct access to Highway 99W. The subject parcel was created through a partition in 1978 (Docket P-919-78). An application for a zone change from AF-10 to VLDR-2.5 was denied in 1990 (Docket Z-06-90). In 1992, a plan amendment and zone change application was approved and changed 2 acres of the property from AF-10 to RI (Docket PAZ-04-91, Ordinance 530). It was this decision that removed the RI portion of the property from the agricultural lands inventory and imposed the Limited Use (LU) overlay. A subsequent site design review application for a winery and tasting room was approved (Docket SDR-05-92). In 1998, a site design review application to expand the winery was approved (Docket SDR-11-98).
2. Integrated Beverage Group, LLC is ("IBG" or "applicant") filed applications seeking to amend the property's LU overlay to allow a distillery as a similar use to a winery and use the existing structures to operate the distillery, which would include onsite production and a tasting room.
3. The proposed distillery is similar in character, production and sale of alcohol, to the existing winery. The scale of the proposed distillery is much smaller. The distillery is proposed to produce approximately 250 barrels per year, while the winery produces approximately 100,000 cases a year. The application states the proposed use requires minimal changes to the existing operations. The level of use is not expected to need any extension of existing services.
4. The majority of the surrounding properties are zoned VLDR-2.5, Very Low Density Residential and AF-10, Agriculture/Forestry Small Holding. These areas are parcels of one to five acres in size, many with residences. To the south is a parcel that is zoned HC, Highway Commercial and has a recent approval for an RV park/cottages as well as a tasting room and two retail use buildings. The parcel just south of the HC zone is zoned RI, Resource Industrial and is currently a tasting room. The city limits of Dundee are approximately 2 miles to the southwest of the property.

B. Procedural Findings

1. In March 2020, IBG approached staff about seeking a similar use determination to allow a distillery to co-locate at the property. During those conversations, IBG learned of the use limitation in the 1992 underlying overlay zone decision. After conferring with staff, on June

18, 2020, IBG filed consolidated applications for a limited use overlay zone amendment, similar use determination, and site development review. The applicant also sought the County's concurrence that it could serve and sell distilled spirits out of the existing winery tasting room as an incidental sales item under the winery land use approval (with any spirit served or sold produced offsite). Planning concurred as long as the spirit sales, plus any other incidental sales would not exceed the 25 percent threshold for all incidental retail sales allowed under the winery land use approval. The application was processed as a Type C review under Yamhill County Zoning Ordinance ("YCZO") 904.04.

2. Staff scheduled a public hearing before the Planning Commission on August 6, 2020.
3. The Planning Commission held a public evidentiary hearing on August 6, 2020. At the hearing, the Planning Commission considered the report from staff, IBG's presentation and testimony, and comments received from Friends of Yamhill County (FYC) raising concerns about the applications. FYC argued that the applicant had not demonstrated that the proposed use complied with YCZO 1208.02(B) and YCZO 1208.02(D), and that the applicant's proposal could not go forward if the distillery tasting room was not dependent upon distillery production taking place onsite. After receiving public testimony, the Planning Commission closed the record and deliberated on the decision. The Planning Commission discussed the issues raised, which primarily concerned the issue of whether the distillery tasting room would be tied to production operations taking place onsite in order to comply with the applicable YCZO provisions. Following deliberations, the Planning Commission concluded that the evidence in the record supported approval of the applications and unanimously approved the applications subject to conditions. The Planning Commission incorporated by reference the staff report and applicant's materials as findings to support the Planning Commission decision.
4. Following the Planning Commission hearing, staff issued notice for a public hearing in front of the Board of County Commissioners for September 17, 2020.
5. The Board of County Commissioners held a public hearing on September 17, 2020. The Board accepted testimony from IBG and FYC, closed the record, and deliberated. The Board discussed the concerns raised by the FYC, including whether a distillery tasting room needed to be conditioned on production of distilled spirits onsite in order to satisfy the applicable YCZO requirements. The Board considered IBG's proposed condition language to address the concerns raised by the Planning Commission and FYC, which would require IBG to apply for a TTB permit for production of distilled spirits within a year of receiving final approval from the County. The Board also considered whether IBG's proposal was consistent with Goal I.F.1 of the County's Comprehensive Plan. IBG responded that the proposal would actually promote Goal I.F.1 by growing an existing business within the County, potentially adding employment opportunities and revenues at two locations in the County. The Board also considered Goal I.H.1 and agreed the proposed use was consistent with that goal. The property is already zoned for industrial use, specifically a winery, and the proposed distillery does not involve new construction. No new building is required as part of the proposal, the location is currently served by utilities, and no additional major utilities are anticipated with the proposed use. The Board also considered FYC's objections to IBG's proposal, including their concerns that without production, the location would become a simple retail location for spirits, inconsistent with the language of the RI zone. The Board considered the Planning Commission's decision,

FYC's arguments, and IBG's arguments. The Board considered IBG's proposed condition of approval, requiring IBG to file a TTB permit application for a Distilled Spirits Plant within one year from the date of the final land use decision and provide evidence of the TTB filing to the planning department. The Board discussed this option but rejected IBG's proposed language. After deliberation, the Board, IBG, and FYC all agreed that the original recommendation made by the Planning Commission was adequate. The Board concluded that the evidence in the record supported affirming the Planning Commission's decision approving the consolidated applications for the limited use overlay zone amendment, similar use determination, and site development review, subject to conditions of approval. The Board moved to affirm the Planning Commission's decision to approve IBG's applications subject to conditions of approval, as amended by the Planning Commission with regard to the LU overlay amendment, changing the language from "may include production and/or tasting" to "may include production and tastings." The motion was unanimously approved. The Board directed staff and county counsel to prepare findings of fact and conclusions to document the decision, and on October 15, 2020, the Board adopted the presented findings of fact and conclusions of law.

C. Substantive Findings

1. The applicable approval criteria and review standards are set forth in YCZO 701, 904, 1007, 1101, and 1206.

2. YCZO 904.03 Limited Use Overlay

A. When the Limited Use Overlay District is applied, the uses permitted in the underlying zone shall be limited to those specifically referenced in the ordinance adopting the Limited Use Overlay District.

D. Until the overlay has been removed or amended, the only permitted uses in an LU district shall be those specifically referenced in the adopting ordinance.

The RI zone allows a winery as a permitted use and allows uses similar to a permitted use subject to a Type A application under YCZO 701.04. However, the property's LU overlay district limits the authorized uses on the property to those identified in Ordinance 530. The applicant has demonstrated in this application that the proposed distillery, like the previously authorized winery, would not undermine the prior findings in Ordinance 530 or result in adverse impacts not previously considered in Ordinance 530. The Board agrees with the applicant that a distillery (like the one proposed) is of similar nature, intensity, and scale (or less) as the winery previously evaluated under Ordinance 530 and therefore a distillery is a permissible use based on the same justification as a winery — both are in character with neighboring uses and neither use, individually or cumulatively, would be in conflict with existing uses. YCZO 940.03 is met.

3. YCZO 904.04, Procedures

A. The Limited Use Overlay District is to be applied through a zone amendment application utilizing the Type C process at the time the underlying zone is being changed in the case of an exception.

B. It shall not be necessary to disclose in the public hearing notice of a zone change that a Limited Use Overlay may be applied.

C. The ordinance adopting overlay zone shall, by section reference or by name, identify those permitted uses in the zone that will remain permitted uses or become conditional uses. The description of the permitted or conditional use may be qualified as necessary to achieve the intent of the LU overlay zone.

The LU overlay amendment application and the consolidated similar use/site design review applications were processed through the Type C review. The request is consistent with the procedure requirements of YCZO 904.04.

4. YCZO 1208.02, Amendment to Limited Use Overlay

(A) The proposed change is consistent with the goals, policies, and any other applicable provisions of the Comprehensive Plan.

Regarding criterion (A) above, the applicant addressed applicable goals and policies in pages 5-7 of the application narrative and those findings are incorporated here by reference. Staff also has addressed additional goals and policies below in the staff report, which the Board agreed were pertinent to the LU overlay amendment request. Specifically,

Economic Development Goal Statement I.F.1: To maintain a rate and pattern of economic growth sufficient to prevent recurring high levels of unemployment and under-employment in the county, balance the real property tax base of the various cities, and strengthen local economic bases.

Industrial Development Goal Statement I.H.1: To concentrate industries of similar types, service needs, and performance characteristics within designated areas of each of the existing urban centers; to encourage adequate land for new industrial development within urban growth boundaries; to encourage the relocation of existing industries from undesirable locations in order to eliminate land use conflicts; to attract new industries in accordance with the need to achieve a more balanced local property tax and employment base, while maintaining a high standard of environmental quality; and to protect the stability and functional aspect of industrial areas by protecting them from incompatible uses.

Policy I.H.1.b: To the greatest extent possible, industrial areas will be located within urban growth boundaries. Those industrial areas located outside urban growth boundaries will be compatible with the industrial development goal and will be located where they can be adequately served by necessary major utility lines, including electric power substations and transmission lines, trunk sewer lines, trunk water lines, and where appropriate, trunk gas lines.

The above goal and policies encourage the location of industrial uses within existing urban areas and urban growth boundaries. The property is already zoned for industrial use, specifically a winery, and the proposed distillery does not involve new construction. No new building is required as part of the proposal and the location is currently served by utilities and no additional major utilities are anticipated with the proposed use.

Part of the above goal is to attract new industries to achieve a broader, more stable tax base while maintaining a high standard of environmental quality. Amending the limited use overlay would broaden the uses allowed on the property. Being a developed site, it has already had its environmental impact on the site. During the Board hearing, the applicant answered the Board's questions as to the impact of the proposed use and demonstrated that this impact would be minimal based on the proposed intensity. As stated in this application, the subject property already benefits from the appropriate infrastructure. The proposed use would not significantly increase the environmental impact from what already exists at the site, while at the same time potentially adding employment opportunities and benefitting the local economy. For these reasons, the Board finds that this criterion is met.

(B) There is an existing demonstrable need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area, the existing market demand which such uses will satisfy, and the availability and location of other lands so zoned and their suitability for the uses allowed by the zone.

The application states that the proposed use complements the existing winery operation and bolsters not only the tourism economy in the area but also the food and beverage manufacturing and production economy in the area. The applicant is proposing to co-locate two production facilities for efficiency of scale and proximity to a tourist corridor. Before the Board, the applicant provided additional testimony showing the benefits of co-locating the winery and distillery facilities. The applicant explained that two of their distilled products, brandy and grappa, are by-products from the winery and grape fermentation and need to be distilled immediately after fermentation. For these reasons the Board finds that this criterion is met.

(C) The proposed change is appropriate considering the surrounding land uses, the density and pattern of development in the area, any changes which may have occurred in the vicinity to support the proposed amendment and the availability of utilities and services likely to be needed by the anticipated uses in the proposed district.

The property already has an approved winery which has been operating and coexisting with the surrounding land uses for many years. The application notes that the existing winery includes production, storage, retail sales, promotion and marketing activities, and other similar activities related to the sale and promotion of wine. The proposed distillery is similar in character, production and sale of alcohol, to the existing winery. The scale of the proposed distillery is much smaller. The distillery is proposed to produce approximately 250 barrels per year, while the winery produces approximately 100,000 cases a year. The application states the proposed use requires minimal changes to the existing operations. The level of use is not expected to need any extension of existing services. For these reasons, the Board finds that this criterion is met.

(D) Other lands in the county already designated for the proposed uses are either unavailable or not as well-suited for the anticipated uses due to location, size, or other factors.

The property is zoned RI and the RI zone allows a winery as a permitted use and also allows uses similar to a winery as a permitted use. It is the limited use overlay district, however, that limits the use to only a winery pursuant to the finding in Ordinance 530. The applicant notes that while the facility could be located on other land, other land is not well suited because the applicant seeks to collocate two production facilities (one existing) for efficiency of scale and proximity to a tourist corridor along Highway 99W. The applicant showed that co-location of the distillery and winery operations are essential for the production of two distilled products: grappa and brandy. For these reasons, the Board finds that this criterion is met.

(E) The amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable.

Regarding criterion (E), an exception was already taken when the property was originally zoned RI Resource Industrial. No exception is required for the proposed change in the limited use overlay.

5. YCZO 701.04, Similar Use Provisions

Section 701.04: Any use not specifically listed as a permitted or conditional use in this district that is similar in character, scale and performance to the permitted uses specified in subsection 701.02 may be allowed as a similar use, subject to the provisions of Section 1206, and pursuant to the Type A application procedure set forth in Section 1301.

1206.02 Review Criteria: A similar use may be authorized pursuant to subsection 1206.01 above and subject to the Type A application procedure set forth in Section 1301 and provided that the applicant demonstrates that the proposed use satisfies the following criteria:

A. The use is consistent with the purpose and scope set forth in subsection 1206.01 and with the purpose of the underlying zoning district; and

B. The use conforms with the applicable standards and limitations of the underlying zoning district.

In addressing YCZO 1206.02, the first step is to address the consistency with YCZO 1206.01. The purpose and scope of YCZO 1206.01 is to provide for those uses not specifically listed in a particular zoning district but which are similar in character, scale and performance to the permitted uses specified therein. The application states that the distillery would be similar in character to the winery but much smaller in scale. No new construction is required for the operation of the distillery. The character of the use, production and sale of alcohol, is similar to the permitted use winery. The applicant showed that the proposed distillery would conform to the applicable standards and limitations in the RI district such as setbacks, access and parking requirements. The findings in the application narrative and staff report are incorporated herein by

reference to further supporting findings of compliance under YCZO 701.04. For these reasons, the Board finds that this criterion is met.

6. YCZO 1101, Site Design Review

Section 1101.02(A) of the YCZO governs site design review.

Review of a site development plan shall be based upon consideration of the following:

Section 1101.02(A)(1): Characteristics of adjoining and surrounding uses;

The surrounding uses are described in Section A.4 of these findings. The surrounding area is predominantly rural residential with other wineries and tasting rooms in the area. As stated elsewhere, the Board finds that the proposed distillery is consistent with the characteristics of the onsite and surrounding uses. Therefore, the characteristics of the adjoining and surrounding area has been adequately considered.

Section 1101.02(A)(2): Economic factors relating to the proposed use;

The applicant indicates that the economic factors related to the proposed use are minimal given the size and scale of the proposed distillery and that the proposal is to include it within an existing winery building. As shown above, the applicant demonstrated that the proposed use would be beneficial to the economy of the area by potentially creating additional employment opportunities while minimizing the impact on the land by co-locating two complementary uses.

Section 1101.02(A)(3): Traffic safety internal circulation and parking;

The proposed distillery is approximately 1,200 square feet with approximately 500 square feet dedicated to tasting room area. Both production and tasting room activities will be located in portions of the existing winery buildings. The operational hours will remain the same as the existing winery, including the tasting room which is open from 11 am to 5 pm. Section 1007.02(C) of the YCZO requires one parking space per 100 square feet of floor area and one space per employee on a maximum work shift. The application includes Exhibit 3 which is an aerial photo with a parking area outlined that is approximately 250 feet long and 70 feet wide. The applicant notes that there is an adequate existing area for parking and circulation of delivery and personal vehicles. A condition of approval will require that the applicant establish and maintain a parking area that provides one (1) parking space for each employee working a maximum shift and one (1) parking space per 100-square feet of tasting room area that is open to the public. For these reasons, the Board finds that YCZO 1101.02(A)(3) is met.

Section 1101.02(A)(4): Provisions for adequate noise and/or visual buffering from noncompatible uses;

The proposed distillery will be located in an existing building that already operates as a processing facility and tasting room. The proposed distillery is not anticipated to have any additional impacts visually or related to noise. The Board finds that YCZO 1101.02(A)(4) is met.

Section 1101.02(A)(5): Retention of existing natural features on site;

The applicant plans to continue operating the wine production facility and tasting room from the existing winery building while adding the distillery to the existing structure. The applicant states that there are no construction activities planned in conjunction with the distillery and tasting room. Additionally, there are no known significant natural features in the vicinity of the proposed distillery. On this basis, the Board finds that YCZO 1101.02(A)(5) is met.

Section 1101.02(A)(6): Problems that may arise due to development within potential hazard areas.

Regarding standard (6) above, the property is not located in the Floodplain Overlay District or other identified hazard area. This factor is not relevant.

Section 1101.02(A)(7): Comments and/or recommendations of adjacent and vicinity property owners whose interests may be affected by the proposed use.

Notice of the application was mailed to surrounding property owners. FYC were the only entity to comment on the consolidated applications. The issues raised by FYC are addressed under YCZO 1208.0. The Board finds that there is nothing in the record to suggest that permitted uses conducted on surrounding properties will be negatively impacted by the addition of a distillery to the applicant's winery and tasting room. Therefore, the Board has adequately considered this factor in its decision making.

DECISION:

This request is for a limited use overlay zone amendment, similar use determination and site design review. The applicant is seeking to co-locate a distillery and related spirit tastings within the existing winery facilities. The Board accepts the Planning Commission's recommendations and finds that IBG's proposal to co-locate a distillery (production and tasting room) within the existing winery facilities complies with the applicable criteria in the YCZO and is approved subject to conditions.

CONDITIONS:

LIMITED USE OVERLAY:

1. The property is limited to a winery as authorized under Ordinance 530 and a distillery as a similar use on the 2-acre RI zoned portion of Tax Lot 3324-6800. The distillery may include production and tastings.

SITE DESIGN REVIEW:

2. The distillery shall be operated from within the existing winery buildings. Production of distilled spirits is limited to a maximum of 250 barrels per year (approximately 8,000 gallons).

3. Parking shall be established and permanently maintained as long as the facility is operating so that there is a minimum of one (1) parking space per 100 square feet of tasting room space plus one (1) parking space for each employee on maximum working shift pursuant to Section 1007 of the YCZO. Parking shall not be permitted on the street or public right-of-way.
4. The applicant shall obtain all permits required by the Oregon Liquor Control Commission (OLCC) and the Oregon Department of Agriculture (ODA).
5. This approval shall expire one year from the date of this letter unless the use has been initiated.
6. Modification of conditions 2 through 4 requires approval under Section 1101.02 of the Yamhill County Zoning Ordinance. Violation of any of the above conditions may result in revocation of the site design review permit with the process detailed in Sections 1101.06 and 1101.07 of the Yamhill County Zoning Ordinance.

END