



**Clackamas County Planning and Zoning Division
Department of Transportation and Development**

Development Services Building
150 Beavercreek Road | Oregon City, OR 97045

503-742-4500 | zoninginfo@clackamas.us
www.clackamas.us/planning

NOTICE OF LAND USE APPLICATION IN YOUR AREA

Date of Mailing of this Notice: 10/27/2025

Notice Mailed To: Property owners within 2640 feet of the subject property
Community Planning Organizations (CPO)
Interested Agencies

File Number: Z0371-25

Application Type: Nonconforming Use

Proposal: Alteration of existing NCU to allow placement of mobile coffee cart.

Applicable Zoning and Development Ordinance (ZDO) Criteria: In order to be approved, this proposal must comply with ZDO Sections 202, 316, 1206, and 1307. The ZDO criteria for evaluating this application can be viewed at <https://www.clackamas.us/planning/zdo.html>

Applicant: SCHWARTZ, KRISTYN

Property Owner: SHADADO INC

Site Address: 20189 S SPRINGWATER RD
ESTACADA, OR 97023

Location: Southwest corner of the junction of S Stormer Rd and S Springwater Rd

Assessor's Map and Tax Lot: 33E13 02000

Zoning: RRF-5 - RURAL RESIDENTIAL FARM FOREST 5-ACRE DISTRICT

Staff Contact: Mya Ganzer 503-742-4520

E-mail: MGanzer@clackamas.us

Community Planning Organization: The following recognized Community Planning Organization (CPO) has been notified of this application. This organization may develop a recommendation. You are welcome to contact the CPO and attend their meeting on this matter, if one is planned.

REDLAND-VIOLA-FISCHERS MILL CPO
LANCE WARD 503-631-2550
LANCECWARD@AOL.COM

If this CPO is currently inactive and you are interested in becoming involved in land use planning in your area, please contact Clackamas County Community Engagement at communityinvolvement@clackamas.us. In some cases where there is an inactive CPO, a nearby active CPO may review the application. To determine if that applies to this application, call or email the staff contact.

How to Review this Application: A copy of the application, all documents and evidence submitted by or on behalf of the applicant, and applicable criteria are available for inspection at no cost. Copies may be purchased at the rate of \$2.00 per page for 8 1/2" x 11" or 11" x 14" documents, \$2.50 per page for 11" x 17" documents, \$3.50 per page for 18" x 24" documents and \$0.75 per sq ft with a \$5.00 minimum for large format documents. You may view or obtain these materials:

- Online at <https://aca-prod.accela.com/clackamas>. After selecting the Planning tab enter the file number to search. Select File Number and then select Attachments from the dropdown list, where you will find the submitted application; or
- By emailing or calling the staff contact.

Decision Process: Following the closing of the comment period, a written decision on this application will be made and a notice of decision will be mailed to you. If you disagree with the decision, you may appeal to the Land Use Hearings Officer, who will conduct a public hearing. There is a \$250 appeal fee.

How to Comment on this Application:

To ensure your comments are considered prior to issuance of the decision, they must be received within 20 days of the date of this notice. Comments may be submitted by email to the staff contact or by regular mail to the address at the top of this notice. Please include the file number on all correspondence, and focus your comments on the approval criteria identified above or other criteria that you believe apply to the decision.

Comments:

Your Name/Organization

Telephone Number

Clackamas County is committed to providing meaningful access and will make reasonable accommodations, modifications, or provide translation, interpretation or other services upon request. Please contact us at least three (3) business days before the meeting at 503-742-4545 or DRenhard@clackamas.us.

¿Traducción e interpretación? | Требуется ли вам устный или письменный перевод? |
翻译或口译? | Cần Biên dịch hoặc Phiên dịch? | 번역 또는 통역?



Planning and Zoning
 Department of Transportation and Development
 Development Services Building
 150 Beavercreek Road | Oregon City, OR 97045
 503-742-4500 | zoninginfo@clackamas.us
 www.clackamas.us/planning

STAFF USE ONLY	
RECEIVED	
Sep 4 2025	
Clackamas County Planning & Zoning Division	Z0371-25
Staff Initials:	File Number:

Land use application for:

NONCONFORMING USE

VERIFICATION, RESTORATION, REPLACEMENT, AND/OR ALTERATION

Application Fee: \$1,933 (+\$154 for expanded notification area if the property is in the AG/F, EFU, FF-10, FU-10, RA-1, RA-2, RC, RI, RR, RRF-5, or TBR zone)

APPLICANT INFORMATION			
Applicant name: Kristyn Schwartz	Applicant email: Sugarcreekexpresso@gmail.com	Applicant phone: 503-409-3402	
Applicant mailing address: PO Box 275	City: Estacada	State: OR	ZIP: 97023
Contact person name (if other than applicant):	Contact person email:	Contact person phone:	
Contact person mailing address:	City:	State:	ZIP:

PROPOSAL
Brief description of proposal: Putting a drive through coffee stand at 20189 S Springwater Rd, Estacada on tax lot #33E13 02000

SITE INFORMATION		
Site address: 20189 S Springwater Rd, Estacada OR 97023	Comprehensive Plan designation:	Zoning district: RRFF5
Map and tax lot #: Township: 3 Range: 3 Section: 13 Tax Lot: 33E13 02000	Land area:	
Adjacent properties under same ownership:		
Township: Range: Section: Tax Lot:		
Township: Range: Section: Tax Lot:		

Printed names of all property owners: Rick Strauss RICHARDE STRAUSS Shelly Strauss PRODUCE, N/A SHARATA INC	Signatures of all property owners: 	Date(s): 2 SEP 2025
I hereby certify that the statements contained herein, along with the evidence submitted, are in all respects true and correct to the best of my knowledge.		
Applicant signature: 	Date: 9-2-2025	

E. For alteration of a nonconforming use:

If this application requests alteration of a nonconforming use, answer the following questions here in Part E. Attach additional pages, if necessary, and copies of supporting documentation.

For the purposes of Part E, the "existing use" is the nonconforming land use(s), structure(s), and/or physical improvement(s) you are seeking to alter.

1. Describe the proposed alteration:

Putting a drive through coffee stand (Class 3 mobile-self-contained) in front right entrance of the property in restaurant parking lot. Using one window as a drive-up and the other window as a walk-up. We will have up to two employee vehicles at a time parked by the shop during business hours.

Building measurements 8'7ft H (103) 8'3ft W (99.2) 23ft L (243)
We will have up to two employee vehicles at a time parked by the shop during business hours.

Days and hours of operation
Monday - Friday 5am-5pm
Saturday 8am-5pm
Sunday 8am-4pm

2. Explain how the alteration will, after the imposition of conditions of approval deemed necessary to ensure the mitigation of any adverse impacts, have no greater adverse impact on the neighborhood than the existing use:

There will be no adverse impacts due to current business operation

3. Identify how the nonconforming use status of the existing use will be, or already has been, verified pursuant to ZDO Subsection 1206.05:

- Verification is being requested in Part C of this application.
- Verification was previously approved by the County within the last 24 months.

File No. of approved verification: Z _____

- Verification was previously approved by the County more than 24 months ago, and documentation is attached showing that the nonconforming use has not discontinued for 24 consecutive months since that approved verification.

File No. of approved verification: Z 0125-03

4. Will the alteration expand the existing use from one lot of record to another?

- NO, the alteration will be on the same lot of record.
- YES, but the lot of record on which expansion is proposed, *and* the lot of record on which the existing use is currently located, have been part of the same tract continuously since the date the existing use became nonconforming, as evidenced by attached documentation.
- YES, but the expansion would allow only for facilities necessary to support the existing use, such as driveways, storm water management facilities, and on-site wastewater treatment systems. The alteration on the other lot of record are necessary to support the existing use for the following reasons:

PLANNING DIVISION

LAND USE FILES

FILE NUMBER: 20125-03-E

LEGAL DESCRIPTION:

T 3 S, R 3 E, SECTION 13

TAX LOT(S) 2000, 2100

NOTICE OF DECISION OF
ALTERATION OF A NONCONFORMING USE - APPROVAL

CLACKAMAS COUNTY DEPARTMENT OF TRANSPORTATION AND
DEVELOPMENT
LAND USE AND ENVIRONMENTAL PLANNING DIVISION
9101 SE SUNNYBROOK BLVD., CLACKAMAS, OR 97015
Phone: 353-4500/4501

TO: Applicant, Citizens Planning Organization, Agencies, and Property Owners within
500 feet of this application.

DATE: March 20, 2003

LAST DATE TO APPEAL: April 1, 2003

FILE NO.: Z0125-03-E

STAFF CONTACT: Rick McIntire (503-353-4516)

APPLICANT: Melinda Garfield, 24526 S. Metzler Park Rd., Estacada, OR 97023

OWNER OF PROPERTY: John & Lynne Barkle, 19400 S. Mosier Rd., Oregon City,
OR 97045

LEGAL DESCRIPTION: T3S, R3E, Section 13, Tax Lot(s) 2000 & 2100, W.M.

SITE ADDRESS: 20189 S. Springwater Rd., Estacada, OR

TOTAL AREA INVOLVED: Approximately 4.50 acres.

PRESENT ZONING: Rural Residential Farm/Forest (RRFF-5), five (5) acre district.

CITIZENS PLANNING ORGANIZATION FOR AREA: Redland-Viola-Fischers Mill
CPO, c/o Denise Knudsen, 17055 S. Redland Rd., Oregon City, OR 97045; 503-631-
8784

PROPOSAL: An alteration of an existing nonconforming use, a restaurant and grocery
store, to place a mobile drive-thru coffee stand at the southeast corner of the parking lot.

FINDINGS: The Planning Division has reviewed this application for an alteration of a
nonconforming use. This application is subject to Section 1206 of the Clackamas County
Zoning and Development Ordinance (ZDO). The Planning Division has reviewed this
section of the ZDO with respect to this proposal and makes the following findings:

1. The applicant is requesting approval of an alteration of a nonconforming use, an existing restaurant/lounge and small grocery store, to place and operate a 7.5 ft. by 18 ft. mobile drive-thru coffee stand upon the subject property. The proposed mobile coffee stand would be located at the southeast corner of the existing restaurant/store parking lot about midway along the property's Springwater Rd. frontage.

The subject property fronts the west side of S. Springwater Rd., approximately 300 ft. south of the intersection with S. Stormer Rd. in the Springwater area. The subject property is developed with the existing 7800 s.f. restaurant and store building and a large graveled parking area between the building and the road. The existing restaurant/store structure is located to the north side of the subject property and approximately 165 from the south end of the property. The structure is located more than 300 from the west property boundary, approximately 15 ft. from the north property boundary and approximately 125 ft. from the road to the east. The subject property is level and the southeast corner of the property is wooded/brushy. The surrounding area can be characterized as a mix of rural residential, farm, forest and park uses. McIver State Park, a very large parcel of land, is located across Springwater Rd., but at a much lower elevation than the subject property.

2. Pursuant to subsection 1206.05B(2) of the ZDO, the applicant must first verify that the existing use(s), structure(s) and/or other physical improvements were established as a protected nonconforming use as defined in Sec. 202 of the ZDO. Sec. 202 of the ZDO defines a "Nonconforming Use" as:

"A use of any building, structure or land allowed by right when established or that obtained a required land use approval when established but, due to a change in the zone or zoning regulations, is now prohibited in the zone."

The subject property is currently zoned Rural Residential Farm/Forest (RRFF-5). This designation was applied to the subject property on June 18, 1979. The use and development of properties within this zoning designation are subject to the provisions of Sec. 309 of the ZDO. The existing and proposed usage of the subject property is not listed as a permitted primary, accessory, or conditional use in the RRFF-5 zoning district. The subject property was first subject to restrictive zoning regulations on June 9, 1970, when the RA-1-5 zoning designation was applied. That designation also did not list restaurant, lounge or grocery store uses as permitted, accessory or conditional uses.

3. In order for the applicant to prove the establishment of a nonconforming use, he must demonstrate the following: (1) that the use(s) and structure(s) were established prior to the effective date of the initial zoning of the property; **or** (2) that the use(s) and structure(s) were allowed by right under the zoning applicable at the time of establishment; **or** (3) that a required land use permit; e.g.

conditional use permit, was obtained from the County to establish the use(s) and structure(s) pursuant to subsection 1206.06B of the ZDO.

The original Viewpoint Restaurant was established by the 1950's in a 4,000 s.f. structure. In February of 1982, this structure, housing a restaurant, lounge and small grocery uses was destroyed by fire. The County Land Use Hearings Officer approved the re-establishment of the uses and a new structure of greater than 7,000 s.f. on April 27, 1982 (Planning file no. 851-81-E). In August of 1983, the Hearings Officer approved a modification of that approval to allow use of the upstairs area as a banquet room. On July 26, 2000, the Planning Division approved an Alteration of the Nonconforming Use, file no. Z0470-00-E, to permit the construction of a patio for outdoor restaurant/lounge patron seating at the southerly end of the existing building. At that time, the Planning Division found that the existing restaurant/lounge and grocery store use had been lawfully established and continued as a nonconforming use. Therefore, the staff finds that the existing uses and structure were lawfully established as a nonconforming use as defined in Sec. 202 of the ZDO.

4. If the applicant proves that nonconforming use status has been established, the nonconforming use may be continued pursuant to subsec. 1206.01 of the ZDO. Subsec. 1206.01 of the ZDO states:

“A nonconforming use may be continued although not in conformity with the regulations for the zone in which the use is located.”

5. The applicant must also show that, if a nonconforming use status is established, it has not been discontinued for a period exceeding twelve (12) consecutive months pursuant to subsec. 1206.02 of the ZDO. Subsec. 1206.02 of the ZDO states:

“If a nonconforming use is discontinued for a period of more than twelve (12) consecutive months, the use shall not be resumed unless the resumed use conforms with the requirements of the Ordinance and other regulations applicable at the time of the proposed resumption.”

The staff has not found any reason to believe that the use has been discontinued for any period in excess of twelve (12) consecutive months since the adoption of restrictive zoning on June 9, 1970 or since the 1982 and 2000 land use permit approvals for the present use and structures.

6. Pursuant to subsection 1206.05B(1) of the ZDO, the alteration shall have no greater adverse impact on the neighborhood than the existing use, structure(s) and/or physical improvements. The Planning Director, or designate, may impose conditions designed to mitigate any potential additional adverse impacts pursuant to subsection 1206.05B(3) of the ZDO.

The surrounding neighborhood can be characterized as a mix of rural residential, farm, forestry and park uses with a very low density of residential development. The nearest dwellings are generally located a few hundred feet from the restaurant and store. The property immediately to the north is developed with a single family dwelling, however this dwelling is located some distance to the north of the common property line and is entirely surrounded by woodlands. Other dwellings in the area are located several hundred feet from the restaurant building. The area of the subject property developed with the restaurant and store building and associated parking area is also separated from nearby properties by undeveloped, wooded or brushy areas of the subject property. The property immediately to the east contains a large undeveloped part of McIver State Park at a substantially lower elevation than the subject property.

The proposed mobile drive-thru coffee stand would be located close to Springwater Rd. at the southeast corner of the existing graveled parking lot next to the wooded area of the property. This location provides for substantial screening between the coffee stand and the nearest residence to the south.

The proposed coffee stand will be operated by the applicant and her daughter. The hours and days of operation will include Monday through Friday between the hours of 5:30 am to 1:30 pm, Saturdays between the hours of 7:00 am and 3:00 pm, and occasional, infrequent Sunday hours.

The mobile unit will be a self-contained mobile structure. To comply with County Public Health Div. licensing requirements and County Soils Sec. rules, the means of wastewater disposal must be approved by the Soils Sec. prior to the beginning of operations.

The Building Codes Div. has submitted comments indicating that as long as the coffee stand is a mobile structure (on wheels), no building permits are required, but electrical and plumbing permits will be required for water and power connections.

Approval of this request will not result in any operational changes at the restaurant or store uses. Approval should not generate any additional noise, fumes or odors detectable to nearby residents. The proposed use is unlikely to generate a significant amount of additional traffic on Springwater Rd. This type of use is designed to "capture" existing drive-by traffic primarily during the morning commute hours. Springwater Rd. has adequate capacity to handle the existing traffic and a significant increase in traffic. Sight distance is very good in both directions at the entrance to the facility, reducing the potential for turning movement conflicts.

The County DTD, Traffic Engineering Sec. has reviewed this proposal and submitted comments dated March 14, 2003. These are incorporated herein by reference. The existing business has two entrances onto Springwater Road. The

northerly access is approximately 40 feet in width. The southerly access, near the proposed site of the coffee stand, is approximately 100 feet in width. To insure that there will be no greater adverse impact to the neighborhood, the existing entrances shall be maintained at their current widths and shall not be widened. The revised site plan submitted March 12, 2003, shows drivers accessing the cart on the northerly side with the passenger side of vehicles adjacent to the cart. The cart should be relocated approximately 12 feet to the north to allow the vehicles to queue up on the southerly side, which would allow the drivers to be adjacent to the service window. A 12-foot wide minimum driving surface (crushed, compacted gravel) shall be provided adjacent to the southerly side of the cart. Orange traffic cones should be placed adjacent to the northerly side of the cart to alert drivers that no service will be provided on the northerly side of the cart. The revised site plan allows drivers to leave the cart and be properly aligned at a 90-degree angle to Springwater Road prior to entering onto the road. The cart should be required to meet the 30-foot front yard setback as required by ZDO subsection 309.08D. Some potholes exist in the gravel adjacent to the paved southerly access. These areas shall be filled with gravel and maintained by the applicant.

On balance, the Planning Division staff finds that the proposed use will cause no additional adverse impacts upon the surrounding properties when compared with the existing nonconforming use provided appropriate conditions of approval are imposed and satisfied.

DECISION: Approval with conditions. Based upon the above findings, it is the decision of the Clackamas County Planning Division staff to approve this application for an alteration of a nonconforming use, subject to the following conditions:

CONDITIONS OF APPROVAL

1. This request is approved based upon the revised March 12, 2003 site plan and narrative description of the proposed changes submitted with the application and the conditions of approval contained herein. Any modifications shall be reviewed and approved by the Planning Dept.
2. Prior to the commencement of operations, the applicant shall obtain any necessary structural, electrical, mechanical, fire and life safety, etc. permits deemed necessary by the County DTD, Building Codes Div. pursuant to the standards of the Oregon Structural Specialty Code, Uniform Fire Code, Oregon Electrical Specialty Code and other applicable codes and ordinances.
3. Prior to the commencement of operations, the applicant shall obtain any necessary licensing required by the County Public Health Div.
4. Prior to the commencement of operations, the applicant shall obtain written approval of the means of wastewater disposal from the County WES, Soils Sec.

5. The applicant shall comply with the following conditions contained in the March 14, 2003 memorandum from the County DTD, Traffic Engineering Sec.:
 - a) The existing entrances onto Springwater Road shall not be widened.
 - b) The espresso cart shall provide service to vehicles located adjacent to the southerly side of the cart only. No service shall be provided on the northerly side of the cart. At least two orange traffic cones shall be placed adjacent to the northerly side of the cart to indicate to drivers that no service will be provided on the northerly side of the cart.
 - c) The applicant shall provide a minimum 12-foot wide driving surface of crushed, compacted gravel adjacent to the southerly side of the cart.
 - d) The applicant shall repair and maintain the area, located adjacent to the westerly edge of pavement along the southerly access, such that potholes do not exist adjacent to the edge of the pavement in the graveled area.
 - e) The espresso cart shall comply with the 30-foot front yard setback required by subsection 309.08D of the ZDO.
6. Compliance with these conditions of approval is mandatory and failure to comply shall be cause for revocation of this permit.

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR, OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER.

IF YOU HAVE ANY QUESTIONS ABOUT THIS APPLICATION, PLEASE CONTACT THE PLANNING DIVISION OFFICE. IF YOU DISAGREE WITH THESE FINDINGS OR CONDITIONS, YOU MAY APPEAL THIS DECISION TO THE CLACKAMAS COUNTY HEARINGS OFFICER. THE COST OF THE APPEAL IS \$100.00. YOUR APPEAL MUST BE RECEIVED IN THE PLANNING DIVISION OFFICE BY 5:00 P.M. ON THE LAST DATE TO APPEAL WHICH IS **APRIL 1, 2003**. THIS PERMIT WILL NOT BE EFFECTIVE UNTIL THE DAY AFTER THE APPEAL DEADLINE AND PROVIDED THAT AN APPEAL IS NOT FILED PRIOR.



Sunnybrook Service Center

NOTICE OF LAND USE APPLICATION IN YOUR AREA

Date: 02/25/2003

File Number: Z0125-03

Application: Alteration/Chg of Non-Conf Use

From: Clackamas County Planning Division

Notice Mailed To: Property owners within 500 feet
Community Planning Organizations (CPO)
Interested Citizens and Agencies

Explanation of this Notice:

AN ALTERATION OF A NONCONFORMING USE, A RESTUARANT AND GROCERY STORE, TO PERMIT THE PLACEMENT AND OPERATION OF A MOBILE DRIVE-THRU ESPRESSO STAND.

Property Owner: BARKLE JOHN E III & LYNNE M
19400 S MOSIER RD
OREGON CITY, OR 97045

Applicant: GARFIELD MELINDA
24526 S METZLER PK RD
ESTACADA OR 97023

Location: 20189 S SPRINGWATER RD, ESTACADA

Legal Description: (map & taxlot) **Acres:** 4.58 4.5 Ac
33E13 -02000/2100

Zone: RRFF-5 Rural Res Farm Forest (5 Ac)

Staff: Rick McIntire 503-353-4516 **e-mail:** RickM@co.clackamas.or.us

How to Comment on this Application:

1. To be sure your comments will be considered prior to the decision, we need to have them within 15 days of the date of this notice.

LAND USE APPLICATION

CLACKAMAS COUNTY PLANNING DIVISION
9101 SE SUNNYBROOK BLVD., CLACKAMAS, OREGON 97015 • PHONE (503) 353-4400 • FAX (503) 353-4550

FOR STAFF USE ONLY

<input type="checkbox"/> TEMPORARY PERMIT FOR CARE (ST) RENEWAL _____	<input type="checkbox"/> ZONE CHANGE (Z)	File No.: <u>2012503-E</u>
<input type="checkbox"/> TEMPORARY PERMIT USE NOT ALLOWED (ST) RENEWAL _____	<input type="checkbox"/> CONDITIONAL USE (C)	Pre-app: Staff _____ Date _____
<input type="checkbox"/> HOME OCCUPATION (HO) RENEWAL _____	<input type="checkbox"/> SUBDIVISION SHORT (1-10) (SS)	Date Received: <u>2-20-03</u> Fee: <u>374</u>
<input type="checkbox"/> NON FARM USE (N)	<input type="checkbox"/> SUBDIVISION LONG (11+) (SL)	Hearing Date: _____
<input type="checkbox"/> FARM DWELLING	<input type="checkbox"/> PARTITION (M)	Staff Member: <u>SPH</u>
<input type="checkbox"/> FOREST DWELLING	<input type="checkbox"/> VARIANCE (V)	Zone: <u>RRFF-S</u>
	<input checked="" type="checkbox"/> OTHER <u>MT. OF</u>	Comp. Plan: _____
	<input checked="" type="checkbox"/> OTHER <u>NON CON-</u>	Flex Lot Involved: <input type="checkbox"/> YES <input type="checkbox"/> NO
	<input checked="" type="checkbox"/> FORMING USE	Violation # _____
	<u>PR034503</u>	CPO _____

APPLICANT INFORMATION

PLEASE TYPE OR PRINT IN BLACK INK ONLY

WHAT IS PROPOSED Espresso Mobile One thru unit placed on south side of parking lot.

NAME OF APPLICANT Garfield Melinda
LAST FIRST

MAILING ADDRESS 24526 S Metzler Pl. Rd CITY Estacada ST OR ZIP 97023

APPLICANT IS: LEGAL OWNER CONTRACT BUYER OPTION BUYER AGENT renter

NAME OF CONTACT PERSON (if other than applicant) same as above

MAILING ADDRESS OF CONTACT _____ ZIP _____

PHONE NUMBERS OF: APPLICANT: WK 503-800-0740 (primary) Hm 503-630-4740 CONTACT PERSON: WK _____ Hm _____

SITE ADDRESS 20189 S. Springwater Rd Estacada TOTAL LAND AREA: 4.5 Ac

LEGAL DESCRIPTION: T 3 R 3E SECTION 13 TAX LOT(S) 2000/2100

ADJACENT PROPERTIES UNDER SAME OWNERSHIP: T _____ R _____ SECTION _____ TAX LOT(S) _____

PRESENT USE OF PROPERTY: Restaurant and Grocery

METHOD OF SEWAGE DISPOSAL: Septic

WATER SUPPLY: Well

OTHER PERSONS (IF ANY) TO BE MAILED NOTICES REGARDING THIS APPLICATION:

John Barkle 20189 S. Springwater Rd 97023 owner
NAME ADDRESS ZIP RELATIONSHIP

NAME ADDRESS ZIP RELATIONSHIP

NAME ADDRESS ZIP RELATIONSHIP

I hereby certify the statements contained herein, along with the evidence submitted, are in all respects true and correct to the best of my knowledge.

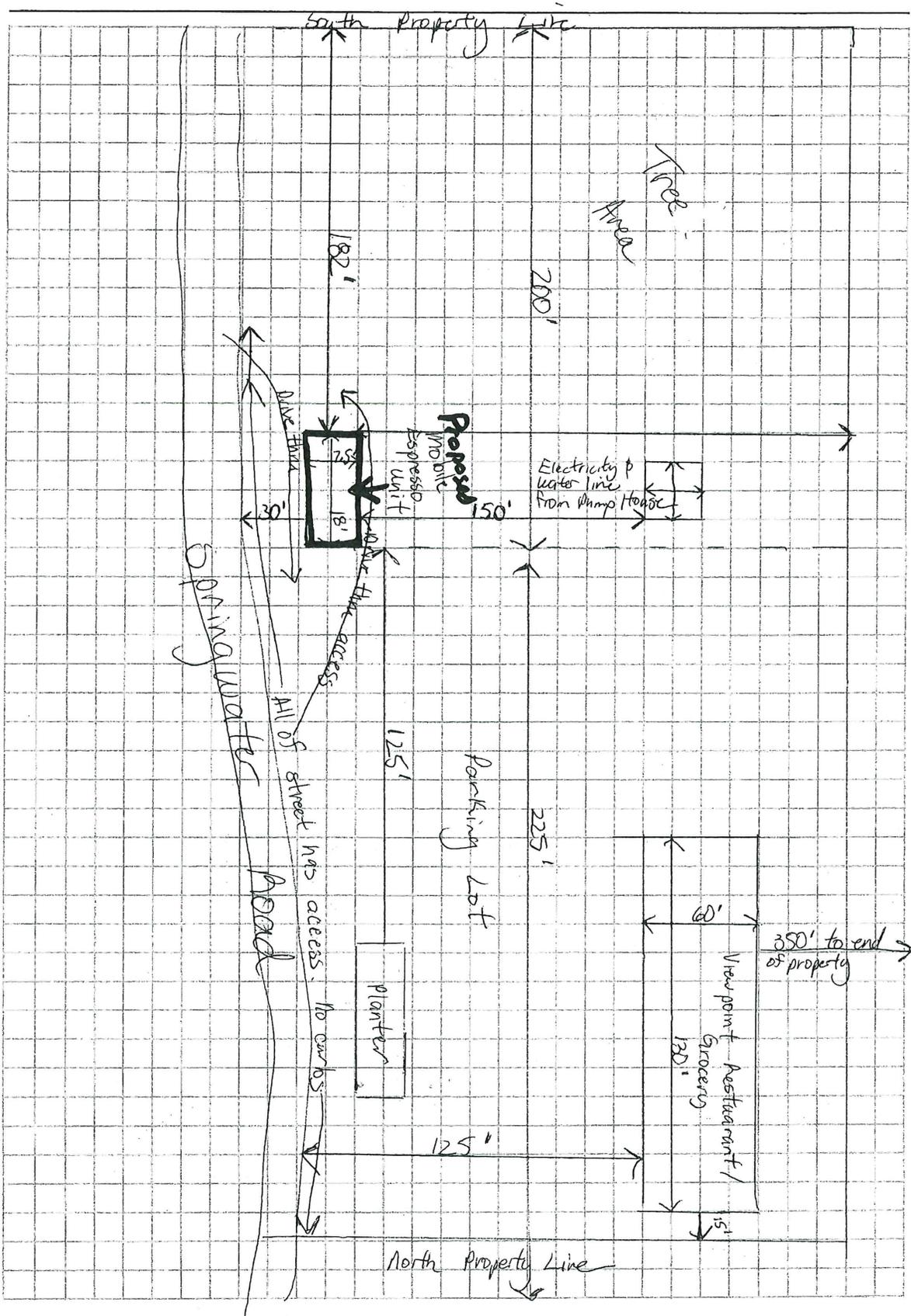
John S. Barkle Melinda J. Garfield
OWNER'S SIGNATURE (PRINT) (DATE) APPLICANT'S SIGNATURE (PRINT) (DATE)

John E. Barkle Melinda J. Garfield
SIGN SIGN CCP-PL10 (Rev. 2/01)

PLOT PLAN

Township _____ Range _____ Section _____ Tax Lot _____

Address: _____



Building Permit or Building Permit Application Number: _____

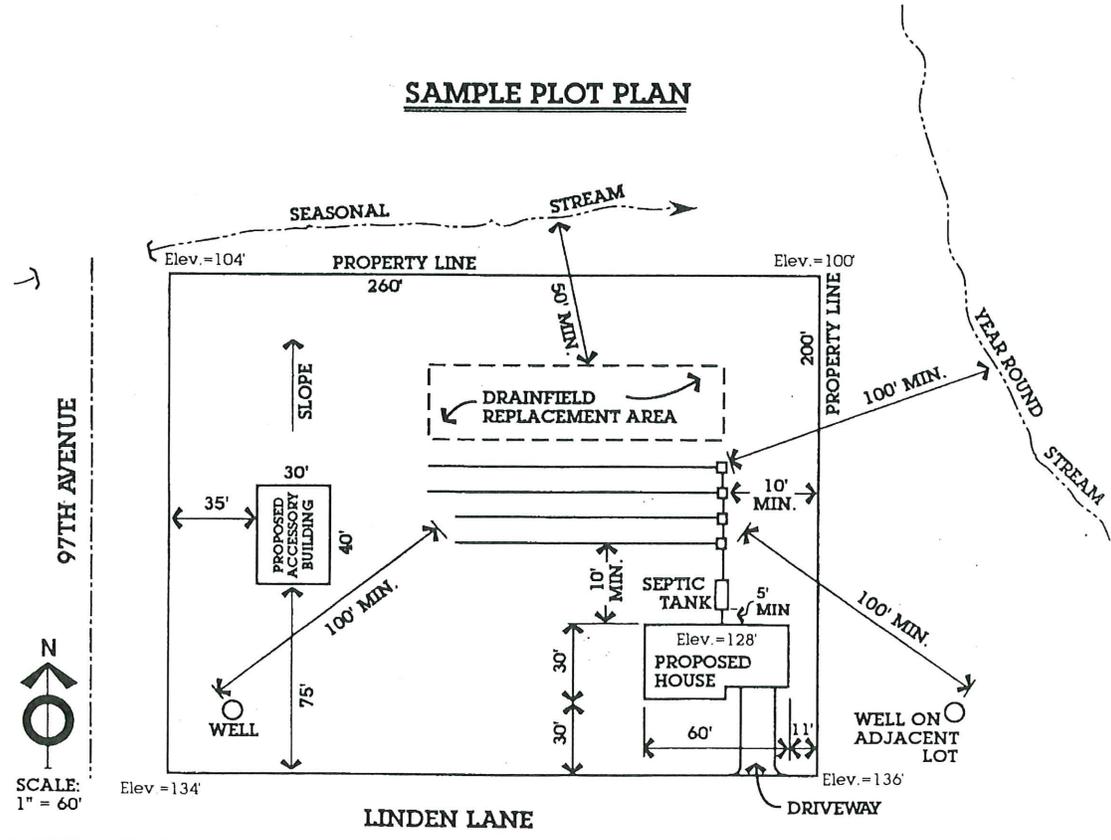
PLOT PLAN REQUIREMENTS

As part of your application for a building permit, you must submit a plot plan of your proposed development. This plan must show all of the items listed below (where relevant). You may use the reverse side of this form for your plan.

ITEMS THAT MUST BE ON THE PLOT PLAN:

1. Applicant's name and address.
2. Legal description of the property (Township, Range, Section and Tax Lot).
3. **ONE (1) COPY OF SITE PLAN MUST BE DRAWN TO SCALE ON 8 1/2" X 11" OR 8 1/2 X 14" PAPER.**
4. Direction of North.
5. Driveway location and location of adjacent streets.
6. Proposed and existing structures.
7. Location of any existing wells on this or adjacent properties.
8. Location of the septic tank, drainfield, and drainfield replacement area.
9. Approximate ground slope and direction of the slope.
10. Proposed setbacks from all property lines.
11. Position of all creeks, streams, ponds, springs, or other drainageways.
12. Relative elevations (1) At lot corners or construction area, and (2) At building site.

Additional information may be required when it appears necessary for the issuance of your permit. Such items as patio slabs, walkways, water service or utility service lines, and the location of soil test holes may be necessary.



SECTION _____ NAME _____
 T _____ R _____ ADDRESS _____
 TAX LOT NO _____

Proposal for Mobile Espresso Unit on property at View Point Restaurant

View Point is an opportune location to place a Drive-thru Espresso Unit. Springwater Road is a main access for people to get into Clackamas and other cities. There is not one Drive-thru located on Springwater Road. We chose View Point's location because of the already ~~existing~~ ^{existing} establishments and the traffic flow that slows down and uses these businesses. Placing a Drive-thru would service the existing customers, but also bring in the people that normally travel this road, but do not make View Point a regular stop. We also know that View Point has made quite a reputation for its self as a night spot. Which meaning, that our morning coffee people would not overlap and be in addition to that evening patrons. In the rural setting of View Point, the nearest neighbor is several hundred feet in distance, therefore, not being to overly impacted by our drive-thru unit. The southern neighbor is approx. 400 feet from our proposed location on the property. The western property is vacant and holds the septic system. The northern neighbor is approx. 350 ft from our proposed location with a buffer of trees in-between. To the East is Springwater Road and beyond that is the drop to McIver Park forest.

Mama Mo's Mochas Espresso trailer will set on the SE corner of the already existing parking structure. This parking area has a total access of appx. 225', being there is no curbing or obstruction (other than ~~to~~ ^{the} planter bed) to the parking lot. John Barkle has proposed to remove the front 2 trees on the southern side of his parking lot, so that visibility would not be a problem. Being a mobile unit, we would like to set back appx. 30' from Springwater Road. We would have access from both sides of the unit to serve customers. With enough off road waiting from the south to be 65' and approaching from the north unlimited waiting area. We would run electricity and water from the pump house that sits appx. 100' west. Our unit is 7.5' by 18', fully self contained with a natural wood siding, two serving windows and one end window and a rear door that will meet all legal requirements for building and health. Our unit will not impair a natural setting but blend and compliment the already existing setting.

Being that Viewpoint Restaurant and Grocery already serves coffee, we are an extension of that service. Mama Mo's Mochas will be serving coffee, specialty coffee drinks, Italian soda, smoothies and a few pastries made by Dalphinias or a certified baker. We have also agreed to sell juices and water from the grocery store and to cater to any events that View Point will host. We will be in charge of trash cleanup in the parking lot. Mama Mo's Mochas will not have employees, but be run by "Mama", Melinda Garfield owner, and Jessica Garfield CO-owner. Our hours of operation will be M-F 5:30am - 1:30pm, Sat 7:00am - 3:00pm, closed on Sundays, except for special events.

In conclusion you may be asking why View Point as a location or why Espresso as a business when there are so many out there already? Many reasons for both questions. View Point was picked because of the reasons above but also because for the past 20 years Springwater Road has been my route of travel into town, and for the last 10 years I have been saying "why is there no espresso out here?". It has been a life long dream, to not only consume my "White Chocolate Mint Mocha" on Springwater Road, but now to sell it. We feel that the summer month of tourism will help us through with the slower winter months. We know it is not going to bring in \$\$\$\$\$\$. But it is our neighborhood, the people we know and the coffee we love. Thank you.



Bent Shovel Brewing beer garden



Planning and Zoning
 Department of Transportation and Development
 Development Services Building
 150 Beaver Creek Road | Oregon City, OR 97045
 503-742-4500 | zoninginfo@clackamas.us
 www.clackamas.us/planning

STAFF USE ONLY

Staff Initials: _____ File Number: _____

Land use application for:

NONCONFORMING USE

VERIFICATION, RESTORATION, REPLACEMENT, AND/OR ALTERATION

Application Fee: \$1,955 (+\$154 for expanded notification area if the property is in the AGF, EFU, FF-10, FU-10, RA-1, RA-2, RC, RL, RR, RRF-5, or TBR zone)

APPLICANT INFORMATION			
Applicant name: Kristyn Schwartz	Applicant email: Sugarcreekexpresso@gmail.com	Applicant phone: 971-409-3402	
Applicant mailing address: PO Box 275	City: Estacada	State: OR	ZIP: 97023
Contact person name (if other than applicant):	Contact person email:	Contact person phone:	
Contact person mailing address:	City:	State:	ZIP:

PROPOSAL
Brief description of proposal: Putting a drive through coffee stand at 20189 S Springwater Rd, Estacada on tax lot #33E13 02000

SITE INFORMATION		
Site address: 20189 S Springwater Rd, Estacada OR 97023	Comprehensive Plan designation:	Zoning district: RRFF5
Map and tax lot #: Township: <u>3</u> Range: <u>3</u> Section: <u>13</u> Tax Lot: <u>33E13 02000</u>	Land area:	
Adjacent properties under same ownership: Township: _____ Range: _____ Section: _____ Tax Lot: _____ Township: _____ Range: _____ Section: _____ Tax Lot: _____		

Printed names of all property owners: Rick Strauss RICHARDE STRAUSS Shelly Strauss PRODUCE, SHARARA, INC MA	Signatures of all property owners: 	Date(s): 2/5/2025
I hereby certify that the statements contained herein, along with the evidence submitted, are in all respects true and correct to the best of my knowledge.		
Applicant signature: 	Date:	

C. For verification of a nonconforming use:

If you are requesting verification of nonconforming use pursuant to ZDO Subsection 1206.05, answer the following questions here in Part C. Attach additional pages, if necessary, and copies of supporting documentation.

For the purposes of Part C, the "nonconforming use" is the land use(s), structure(s), and/or physical improvement(s) for which you are seeking nonconforming use verification.

1. What is the nonconforming use? Describe the nonconforming use in detail, including buildings, vehicles, equipment, and materials used, days and hours of operation, the number of employees, and other operational and physical information, as applicable:

The nonconforming use is an existing restaurant/Bar/Beer Garden and grocery store. The restaurant, bar and grocery store are all located in the same building in the middle of the lot. The beer garden is located on the northeast corner of the lot.

Restaurant Hours:
11:00am-9:00pm Wednesday/Thursday/Sunday
11:00am-11:00pm Friday/Saturday

Beer garden:
12:00pm-8:00pm Friday/Saturday/Sunday
closed Monday-Thursday

Grocery Hours:
8:00am-8:00pm
Monday-Sunday

2. When did the nonconforming use first become nonconforming to the County's zoning regulations?

Date: 1981

3. What *current* zoning regulations do/does the nonconforming use described in response to Question C.1 not conform to?

Lot is zoned RRF5

support for question 2.
the county determined in 1981 that the existing restaurant, bar and store had been lawfully established on the site prior to any zoning.

4. When was the nonconforming use described in response to Question C.1 established? Attach evidence that supports your response.

Date: November 3, 2022

5. Describe any changes in the nonconforming use since being established, and identify, with supporting documentation, when those changes occurred:

2000 - approved 20'x50' patio for the restaurant/lounge
2003 - approved mobile drive through coffee cart
2012 - approved outdoor patron serving/seating area (beer gardens)

6. Did the existence, continuity, nature, or extent of the nonconforming use discontinue for any 24-month period in the 20 years immediately preceding the date of this application? (If the nonconforming use is surface mining or marijuana production, see ZDO Subsection 1206.04 for the allowed discontinuance period.)

NO, and supporting documentation is attached.

NO, and supporting documentation is attached to prove the existence, continuity, nature, and extend of the nonconforming use for the 10-year period immediately preceding the date of this application. Pursuant to ZDO Subsection 1206.05(B), this creates a rebuttable presumption that the nonconforming use, as proven, lawfully existed at the time of, and has continued uninterrupted since, the adoption of restrictive zoning regulations, or a change in the zoning or zoning regulations, that have the effect of prohibiting the nonconforming use under the current provisions of the ZDO.

YES, as explained in the box below:

D. For restoration or replacement of a nonconforming use:

If this application requests restoration or replacement of a nonconforming use, answer the following questions here in Part D. Attach additional pages, if necessary, and copies of supporting documentation.

For the purposes of Part D, the "nonconforming use" is the land use(s), structure(s), and/or physical improvement(s) you are seeking to restore or replace.

1. What damaged or destroyed the nonconforming use?

Fire

Other casualty (i.e., an unfortunate or unforeseen happening), explained in the box below:

N/A

Natural disaster, explained in the box below:

N/A

2. When was the nonconforming use damaged or destroyed by the incident(s) identified in response to Question D.1?

Date: N/A

3. Explain in the box below, and demonstrate in your attached site plan and other supporting documentation, how your proposed restoration or replacement will *not* alter or change the nature or extent of the nonconforming use as lawfully established prior to the incident(s) identified in response to Question D.1.

(Note: If you are requesting an alteration or change in the nature or extent of the nonconforming use, you must complete Part E of this application.)

N/A please see part E

4. Identify how the nonconforming use status of the existing use will be, or already has been, verified pursuant to ZDO Subsection 1206.05:

Verification is being requested in Part C of this application.

Verification was previously approved by the County within the last 24 months.

File No. of approved verification: Z_____

Verification was previously approved by the County more than 24 months ago, and documentation is attached showing that the nonconforming use has not discontinued for 24 consecutive months since that approved verification.

File No. of approved verification: Z_____

E. For alteration of a nonconforming use:

If this application requests alteration of a nonconforming use, answer the following questions here in Part E. Attach additional pages, if necessary, and copies of supporting documentation.

For the purposes of Part E, the "existing use" is the nonconforming land use(s), structure(s), and/or physical improvement(s) you are seeking to alter.

1. Describe the proposed alteration:

Putting a drive through coffee stand (Class 3 mobile-self-contained) in front right entrance of the property in restaurant parking lot. Using one window as a drive-up and the other window as a walk-up. We will have up to two employee vehicles at a time parked by the shop during business hours.

Building measurements 8'7ft H (103) 8'3ft W (99.2) 23ft L (243)

We will have up to two employee vehicles at a time parked by the shop during business hours.

Days and hours of operation

Monday - Friday 5am-5pm

Saturday 8am-5pm

Sunday 8am-4pm

2. Explain how the alteration will, after the imposition of conditions of approval deemed necessary to ensure the mitigation of any adverse impacts, have no greater adverse impact on the neighborhood than the existing use:

There will be no adverse impacts due to current business operation

3. Identify how the nonconforming use status of the existing use will be, or already has been, verified pursuant to ZDO Subsection 1206.05:

- Verification is being requested in Part C of this application.
- Verification was previously approved by the County within the last 24 months.

File No. of approved verification: Z _____

- Verification was previously approved by the County more than 24 months ago, and documentation is attached showing that the nonconforming use has not discontinued for 24 consecutive months since that approved verification.

File No. of approved verification: Z 0125-03

4. Will the alteration expand the existing use from one lot of record to another?

- NO, the alteration will be on the same lot of record.
- YES, but the lot of record on which expansion is proposed, and the lot of record on which the existing use is currently located, have been part of the same tract continuously since the date the existing use became nonconforming, as evidenced by attached documentation.
- YES, but the expansion would allow only for facilities necessary to support the existing use, such as driveways, storm water management facilities, and on-site wastewater treatment systems. The alteration on the other lot of record are necessary to support the existing use for the following reasons:

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

Regarding an appeal of an administrative decision) **FINAL ORDER**
approving verification and alteration of a nonconforming)
use at 20189 and 20195 S. Springwater Road) **Z0087-22-E**
in unincorporated Clackamas County, Oregon) **(Bent Shovel NCU)**

A. SUMMARY

1. On February 17, 2022, Richard E. Strauss (the “applicant”) filed an application for verification and alteration of a nonconforming use (“NCU”) (File No. Z-0591-08-E) on 4.5 acre parcel located at 20189 and 20195 S. Springwater Road; also known as Tax Lots 2000 and 2100, Section 13, Township 3 South, Range 3 East of the Willamette Meridian, Clackamas County, Oregon (the “site”). The applicant requests verification that an existing restaurant/bar/beer garden/grocery store use is lawfully nonconforming, and an alteration of the nonconforming use to:

- a. Change the use to a “brew pub”, with certain modifications to the interior of and entrance to an existing building;
- b. Operate within certain specified hours;
- c. Expand an existing outdoor seating/serving area (beer garden);
- d. Add a covered area, and allow certain outdoor activities, in the existing beer garden;
- e. Add buildings for storage and barbecue cooking facilities;
- f. Allow for amplified outdoor music/announcements;
- g. Allow for quarterly “special events”;
- h. Allow for an annual on-site American Legion car show and an annual on-site “business party”;
- i. Allow for portable toilets; and
- j. Replace existing signage.

2. On November 3, 2022, the planning director (the “director”) issued a written decision verifying that a commercial restaurant/bar/lounge/retail use, with a patio, an outdoor customer serving/seating area, and certain accessory uses (e.g., vehicle parking), was lawfully established and has never discontinued for 12 consecutive months. In addition, the director approved the following alterations to the lawfully established nonconforming use:

- Interior modifications to the existing restaurant building (e.g., removal of certain interior walls separating a lounge area from restaurant seating, conversion of some seating to a game room, and conversion of an upstairs dining area into office space), and a new entrance to the restaurant building on the same side of the building as the existing entrance;
- A 400-square-foot storage building south of the restaurant building by the beer garden;
- An 800-square-foot "pre-fab" cold storage building and a separate 400-square-foot dry storage building to the west of the restaurant building;
- Replacement of the existing free-standing business sign near S. Springwater Road;
- Outside activities and "games for kids and families" (e.g., corn hole, large Jenga, giant Connect Four, board games) in the beer garden area; and
- Outdoor cooking during approved restaurant hours, within a roughly 200-square-foot covered barbecue area.

(Exhibit 1).

3. The director *denied* the following alterations to the lawfully established nonconforming use:

- Expansion of the beer garden area;
- A "pole barn" covering in the beer garden for sheltered seating;
- Annual "car shows";
- Amplified outdoor music/announcements;
- Use of portable toilets ("porta-potties"); and
- Operating hours as follows:
 - 8:00 a.m. - midnight, seven days per week for the restaurant/bar/event space/retail store and patio; and
 - 11:00 a.m. - 10:00 p.m., every Friday-Sunday for the beer garden.

The conditions of approval limited the operating hours as follows:

- For the restaurant and patio:
 - 11:00 a.m. - 9:00 p.m. on Wednesdays, Thursdays, and Sundays; and
 - 11:00 a.m. - 11:00 p.m. Fridays and Saturdays;
- For the beer garden: Noon until 8:00 p.m., Friday-Sunday during good weather, with additional operating days only from time to time;
- Everything closed on Mondays and Tuesdays.

(Exhibit 1).

4. On November 14, 2022, the applicant filed a written appeal objecting to limitations on the hours of operation of the restaurant, bar, and patio. (Exhibit 19).

5. County Hearings Officer Joe Turner (the "hearings officer") conducted an online public hearing regarding the appeal. County staff recommended that the hearings officer deny the appeal and affirm the director's decision. The applicant testified in support of the appeal. One area resident submitted written testimony in support of the appeal. (Exhibit 20). Two area residents testified in opposition to the appeal. Principal contested issues in the case include the following:

a. Whether the applicant sustained its burden of proof that the hours of operation of the restaurant, bar, and patio have not been reduced for more than 12 consecutive months below the hours determined for this nonconforming use in File No. Z0470-00-E (Barkle/Viewpoint Restaurant);

b. Whether the outdoor patio may be used in conjunction with the restaurant as well as the bar; and

c. Whether the outdoor patio remains in compliance with the screening requirements set out in File No. Z0470-00-E (Barkle/Viewpoint Restaurant).

6. The hearings officer concludes the new evidence submitted with the appeal demonstrates that the restaurant, bar, and patio have been operating from 8:00 a.m. to 9:00 p.m. Monday through Thursday and 8:00 a.m. to 11:00 p.m. Friday and Saturday and the use has not been operating at the reduced hours noted in the director's decision for more than 12 months. However, the applicant failed to bear the burden of proving that the use has been operating during the extended hours noted in File No. Z0470-00-E (Barkle/Viewpoint Restaurant) without any reductions of 12 months or more. Therefore the hearings officer grants the appeal in part, modifies the planning director's decision in part, and approves the application subject to the revised conditions of approval at the end of this final order.

B. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at the public hearing about the appeal on December 22, 2022. In addition, the hearings officer takes official notice of the prior approvals for this use, casefiles: 851-81-E (Hinkle), 851-81-E,D (Hinkle), Z0470-00-E(Barkle/Viewpoint Restaurant), Z0125-03-E (Garfield/Viewpoint Restaurant), Z0261-12-E (Joln Properties), and Z0227-18-E (Herman/Viewpoint on Springwater). All exhibits and testimony are filed with the Clackamas County Department of Transportation and Development. At the start of the hearing, the hearings officer made the declaration required by ORS 197.763 and disclaimed any *ex parte* contacts, bias, or conflicts of interest. The following is a summary by the hearings officer of selected testimony offered at the hearing.

2. County planner Annabelle Lind summarized the director's decision(Exhibit 1) and her PowerPoint presentation (Exhibit 21) and responded to the appeal.

a. She noted that the applicant reduced the hours of operation during the 12 months prior to submittal of the application, based on the hours of operation listed on

the applicant's website. The applicant now proposes to expand the hours of operation, to operate the restaurant/bar/event space/retail store and patio from 8:00 a.m. - midnight, seven days per week and the beer garden from 11:00 a.m. - 10:00 p.m., every Friday-Sunday. The employee timesheets the applicant submitted with the appeal are insufficient to support the applicant's assertions regarding longer hours of operation.

b. The applicant has the burden of proof to demonstrate that the use has continued at the same level of operation, including hours of operation, without interruptions longer than 12 months. The last review of this use was in 2018, so the applicant must demonstrate that the use has continued without interruption or reduction since that date.

3. The applicant, Richard Strauss, testified that he has owned the business for just under one year. The former owners operated the restaurant from 8 a.m. until midnight or later, seven days a week. He continued operating the use consistent with the previously established hours of operation well into 2022. He only reduced the operating hours in mid-May 2022, due to the economic downturn and a lack of employees. He submitted employee time cards with his appeal as evidence of the hours of operation between January and May 2022.

a. From January until mid-May 2022, the restaurant was open from 8:00 a.m. to 9:00 or 10:00 p.m. Sunday through Thursday and from 8:00 a.m. to midnight or later Friday and Saturday. The employee timesheets and time clock data he submitted with his appeal support these hours of operation. The hours of operation are typical for this type of restaurant/bar use.

b. Beginning in mid-May 2022 the restaurant was closed on Mondays and Tuesdays due his inability to hire sufficient staff to cover all shifts. The restaurant continued to operate from 8:00 a.m. to 10:00 p.m. Sunday through Thursday and from 8:00 a.m. to midnight or later Friday and Saturday. Some time later the restaurant ceased all breakfast service due to further staff shortages. The restaurant began opening at 11:00 a.m. Wednesday through Sunday while maintaining the prior closing hours. County staff relied on the hours listed on restaurant website, which shows the current reduced hours of operation, to support the director's determination regarding the historic hours of operation for the use. However, those reduced hours are not permanent and are not reflective of past operating hours. The applicant only reduced the operating hours because they could not find sufficient staff to fill all available shifts. County staff did not make any mention of a need for historic data regarding the hours of operation of the use.

c. He testified that he is only appealing the decision regarding the hours of operation of the restaurant, bar, and patio. He is not appealing the decision regarding the hours of operation of the beer garden.

d. He does not propose to change the use of the patio area from its historic use.

e. He requested that the hearings officer allow him until January 17, 2023, to submit a final written argument. He agreed to extend the 150-day clock for two weeks, until February 12, 2023, to accommodate the longer period for submittal of his final argument.

4. Doug Towsley testified on behalf of himself and his wife, Linda Towsley. They have no objections to the proposed hours of operation. They only object to any expansion of the area of the use.

a. He noted that the operating hours of the beer garden are different from the restaurant and bar hours.

b. In addition, the restaurant and bar were operated separately. The bar would usually continue to operate after the restaurant was closed for the evening. The patio area was used as an extension of the bar, not the restaurant. The patio was historically used as a smoking area for the bar with a few picnic tables. The applicant has reconfigured the facility to combine the bar and restaurant and appears to be proposing to use the patio for meal service associated with the restaurant. Use of the patio for meal service could increase the number of people using the patio area, which would increase the level of noise generated on the site and impacting adjacent properties. In addition, the applicant has removed required screening around the patio.

5. At the conclusion of the hearing the hearings officer held the record open to until January 17, 2023, to allow the applicant an opportunity to submit a final written argument. The record in this case closed at 5:00 p.m. January 17, 2023. The applicant did not submit a final argument prior to the close of the record.

C. DISCUSSION

1. ZDO 1305.02.D(2) authorizes the hearings officer to hear appeals of planning director decisions. Pursuant to ORS 215.416(11)(a), appeals of administrative decisions must be reviewed as a *de novo* matter. The hearings officer is required to conduct an independent review of the record. He is not bound by the prior decision of the planning director and does not defer to that decision in any way. New evidence may be introduced in an appeal, and new issues may be raised. The hearings officer must decide whether the applicant carried the burden of proof that the application complies with all applicable approval criteria in light of all relevant substantial evidence in the whole record, including any new evidence.

2. The hearings officer adopts as his own the findings in the director's decision, Exhibit 1, except to the extent that those findings are inconsistent with the findings in this final order. The hearings officer finds, based on those findings, that the appeal should be granted in part and the nonconforming use application should be approved subject to the revised conditions of approval provided at the end of this Final Order

3. A nonconforming use is "A use of any building, structure or land allowed by right when established or that obtained a required land use approval when established but,

due to a change in the zone or zoning regulations, is now prohibited in the zone.” ZDO 202. A nonconforming use may be continued although not in conformity with the regulations for the zoning district in which the use is located. ZDO 1206.02. A nonconforming use that has been discontinued for a period of more than 12 consecutive months may not be resumed unless the resumed use complies with the current zoning requirements. ZDO 1206.03.A. The applicant bears the burden of proof to demonstrate that the use has not been discontinued. *Besseling v. Douglas County*, LUBA No. 2000-155 (Or. LUBA 2001).

4. A nonconforming use can be partially abandoned or discontinued through reductions in the intensity of the use or through discontinuance of component uses. “Short of the point that it is abandoned or discontinued, the intensity of a nonconforming use may be reduced without its being lost.” *Hendgen v. Clackamas County*, 115 Or App 117, 120, 836 P.2d 1369, 1370, *appeal after remand*, 110 Or.App. 55, 849 P.2d 1135 (1992). However,

[t]he law of nonconforming uses is based on the concept, logical or not, that uses which contravene zoning requirements may be continued only to the extent of the least intensive variations --- both in scope and location --- that preexisted and have been continued after the adoption of the restrictions.

Clackamas County v. Gay, 133 Or. App. 131, 135, 890 P.2d 444 (1995).

5. As noted in the director’s decision, the County initially determined in 1981 that a commercial use that included a restaurant, lounge, and convenience store had been lawfully established on the site prior to any zoning and that use was allowed to continue as a legally established nonconforming use. See File No. 851-81-E. Subsequent decisions concluded that the nonconforming use had continued without being discontinued for 12 months or more and approved certain alterations or expansions of the nonconforming use:

a. Later in 1981 the County approved use of the upstairs portion of the restaurant as a banquet room. See File No. 851-81-E,D.

b. In 2000 the County approved “[a] 20 ft. by 50 ft patio/deck for outdoor seating of patrons of the restaurant and lounge use... located at the south end of the existing restaurant/store structure.” See File No. Z0470-00-E (Barkle/Viewpoint Restaurant). In that decision the County determined that “The days and hours of operation are 6:30 a.m. to 12:30 a.m. during the week and 6:30 a.m. to 2:30 a.m. on weekends.” *Id* at p. 4. In addition, Condition 4 of that approval provided, “The patio seating area shall be surrounded by sight-obscuring fencing at least six (6) ft. in height with no more than two and one-half (2.5) ft of this height consisting of lattice type material.” *Id* at p. 5.

c. In 2003 the County approved a mobile drive-thru coffee stand at the southeast corner of the existing parking lot.¹ See File No. Z0125-03-E (Garfield/Viewpoint Restaurant).

d. In 2012 the County approved “[u]se of an outdoor patron serving/seating area in the wooded area south of the existing building use” , along with a portable refrigerated trailer and barbeque to be placed near the area in the parking lot. (what is now referred to as the “beer garden”). See File No. Z0261-12-E (Joln Properties).

e. In 2018, the County denied a request to allow amplified sound systems and unamplified musical performances in the previously approved beer garden. File No. Z0227-18-E. (Herman/Viewpoint on Springwater).

f. With the exception of File No. Z0470-00-E (Barkle/Viewpoint Restaurant), none of these decisions addressed the hours of operation of the restaurant, bar, and patio.

6. With this application the applicant proposed to operate the restaurant/bar/event space/retail store and patio between 8:00 a.m. and midnight, seven days per week. The applicant did not include any evidence demonstrating the historic hours of operation of these uses since the 2000 or 2018 approvals.

7. The director’s decision restricted the use to the following operating hours:

- For the restaurant and patio, 11:00 a.m. - 9:00 p.m. on Wednesdays, Thursdays, and Sundays and 11:00 a.m. -11:00 p.m. Fridays and Saturdays;
- For the beer garden, noon until 8:00 p.m., Friday-Sunday during good weather, with additional operating days only from time to time; and
- Everything closed on Mondays and Tuesdays.

See Condition 5 of File No. File No. Z0087-22-E.

a. The director’s decision did not provide any discussion of how the director determined these hours of operation. Based on the applicant’s testimony, the director may have determined the hours based on the applicant’s current website. The applicant testified that, beginning in May 2022, he reduced his hours of operation due to a lack of available restaurant staff to fill all shifts and those reduced hours are reflected on the restaurant website. However, those reduced hours are intended as a temporary

¹ The site plan submitted with the application for Z0261-12-E and aerial photos included with the record show the drive-thru coffee stand approved in 2003 had subsequently been removed.

measure and the applicant intends to resume historic operating hours when he is able to hire sufficient staff to cover the additional shifts.

8. A reduction in the hours of operation constitutes a partial discontinuance of the use that may not be resumed if that reduction continues for more than 12 consecutive months. However, the hearings officer finds that the use has only been operating at the reduced hours noted in the director's decision since May 2022, less than 12 consecutive months. Therefore, the hearings officer finds that the applicant has not yet discontinued the longer hours of the use, based on the evidence submitted with the appeal.

a. The applicant's appeal included employee timeclock (p 6-42 of Exhibit 19) and income data (pp 8-12 of Exhibit 19) for the restaurant and bar use during April and May 2022. The hearings officer condensed this data into a table showing the start and end times for each day of operation during these months. See Attachment A of this Final Order. Based on that data, and the complete lack of findings or evidence to support the hours of operation set out in the director's decision, the hearings officer finds that the applicant demonstrated that:

i. The restaurant, bar, and patio have been opening at 8:00 a.m. seven days per week;

ii. The restaurant, bar, and patio have been closing around 9:00 p.m. Monday through Thursday;² and

iii. The restaurant, bar, and patio have been closing around 11:00 p.m. Friday and Saturday.³

b. In mid-May 2022, the applicant reduced the operating hours of the restaurant to 11:00 a.m. - 9:00 p.m. on Wednesdays, Thursdays, and Sundays, 11:00 a.m. - 11:00 p.m. Fridays and Saturdays, and closed Mondays and Tuesdays. However, those modified hours have not continued for more than 12 consecutive months. Therefore, the applicant has not permanently reduced the scope of the nonconforming use.

i. If the applicant continues to operate the use at the current reduced hours through mid-May 2023, that reduction will become permanent, as the applicant will have discontinued longer hours for more than 12 months. The fact that the reduced hours are due to a lack of available staff is irrelevant. The Code and state law prohibit the resumption of a nonconforming use that has been discontinued for more than 12 months, regardless of the reason for the discontinuance.

c. The applicant testified that he and the prior owner previously operated the restaurant, bar, and patio between 8:00 a.m. and midnight, seven days per week, consistent with the historic hours of operation noted in the County's 2000 decision, File No. Z0470-00-E (Barkle/Viewpoint Restaurant). However, the applicant failed to provide

² The last employee generally checked out sometime after 9:00 p.m. on those dates.

³ The last employee generally checked out sometime after 11:00 p.m. on those dates.

any evidence to support that assertion. The only evidence in the record demonstrates that the restaurant, bar, and patio have open for business between 8:00 a.m. and 9:00 p.m. Sunday through Thursday and between 8:00 a.m. and 11:00 p.m. Fridays and Saturdays. As noted above, the applicant must bear the burden of proof that the nonconforming use has continued at the same scope and scale, including hours of operation, without being discontinued in whole or part for more than 12 consecutive months. There is no evidence in the record to support a determination that the restaurant, bar, and patio were open for business beyond the hours shown in the applicant's timesheet and sales data for April and May 2022 since the County last confirmed the continuity of this nonconforming use in 2018.

d. The appellant's assertion that longer hours of operation are typical for this type of restaurant/bar use is irrelevant. This is not a "typical" restaurant/bar use located in a commercial zone where that type of use is allowed. This is a nonconforming use located in the RRFF-5 zone where restaurant/bar uses are prohibited. Therefore, this use is limited to the scope and scale of use that existed when the use became nonconforming and that continued without discontinuance or reductions that continued for more than 12 consecutive months.

9. The appellant did not object to the hours of operation of the beer garden as determined by the director. Therefore, the hearings officer will not address that issue.

10. The Towsleys argued that the patio has historically been used in conjunction with the bar, not as part of the restaurant. However, the 2000 application approved by the County for modification of the nonconforming use expressly proposed "a 20 ft. by 50 ft patio/deck for outdoor seating of patrons of the restaurant and lounge use." (See p. 1 of the director's decision in File No. 20470-00-E (Barkle/Viewpoint Restaurant)). The hearings officer has no authority to reconsider that approval in this proceeding.

11. The conditions of approval in File No. 20470-00-E (Barkle/Viewpoint Restaurant) required that "The patio seating area shall be surrounded by sight-obscuring fencing at least six (6) ft. in height with no more than two and one-half (2.5) ft of this height consisting of lattice type material." (*Id* at p. 5). The Towsleys testified that the applicant has removed portions of the required patio screening. The applicant should be required to demonstrate that the required screening remains in place or restore the required screening. A condition of approval is warranted to that effect.

D. CONCLUSIONS

Based on the findings adopted or incorporated above, the hearings officer concludes that the applicant sustained the burden of proof that the nonconforming use and design review applications do or can comply with the applicable approval criteria. Therefore the appeal should be granted and the applications should be approved subject to the conditions of approval recommended by County staff as modified at the hearing.

E. DECISION

Based on the above findings and discussion, the hearings officer hereby grants the appeal, modifies the director's decision, and approves File No. Z0087-22-E (Bent Shovel NCU), subject to the following revised conditions of approval:

CONDITIONS OF NONCONFORMING USE APPROVAL

1. Approval of this land use permit is based on the submitted written narrative and plans and accompanying documentation deemed complete on August 16, 2022, as well as on the additional project details submitted on October 6, 11, and 18, 2022, and the timesheets and sales data submitted with the appeal, Exhibit 19. No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions below. It shall be the responsibility of the property owner(s) to comply with this documents and the limitation of any approval resulting from the decision described herein.
2. This decision approves certain elements of a nonconforming use alteration, as listed on Pages 11-12 of the director's decision. Approval of these elements is valid for four years from the date of the final written decision on this application. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval for these elements shall be implemented, or their approval will become void. "Implemented" means all major development permits are obtained and maintained for the approved elements, or if no major development permits are required to complete the approved elements, "implemented" means all other necessary County development permits (e.g., electrical permits, plumbing permits) shall be obtained and maintained. (ZDO Subsection 1206.08(A))
3. If the approved elements are not implemented within the initial four-year approval period described in Condition 2 above, a two-year time extension may be approved pursuant to ZDO Section 1310, Time Extension. (ZDO Subsection 1206.08(B))
4. The verification in response to ZDO Subsection 1206.07 that certain aspects of the nonconforming use are lawfully nonconforming is valid for 12 months from the date of the County's final written decision on this application. The approved elements of the nonconforming use alteration shall be implemented within this 12-month period, or a new nonconforming use verification approval may be required. (ZDO Subsection 1206.03(A))
5. Operating hours shall be limited as follows:
 - a. For the restaurant, bar, and patio, 8:00 a.m. to 9:00 p.m. Monday through Thursday and 8:00 a.m. to 11:00 p.m. Friday and Saturday.
 - b. For the beer garden, noon until 8:00 p.m., Friday-Sunday during good weather, with additional operating days only from time to time.

(ZDO Subsections 1206.06(B) and 1206.07(A) and Exhibit 19)

6. The 1,000-square-foot outdoor covered patio on the south side of restaurant building shall continue to be surrounded by the six-foot-high board fence required by File No. Z0470-00-E, the top part of which shall also continue to consist of lattice-type material. Customers shall continue to only enter this patio through the restaurant building. The applicant shall provide photos or other evidence to the County demonstrating that the required screening is in place. (ZDO Subsection 1206.06(B))
7. The beer garden in the southeast corner of the subject property shall continue to be limited to 12,000 square feet approved in File No. Z0261-12-E. The area shall also continue to be fenced with sight-obscuring materials on all sides. The applicant shall provide photos or other evidence to the County demonstrating that the required screening is in place. Any lighting of the beer garden area shall continue to be limited in height and directed in such a manner as to avoid lighting adjacent property. The beer garden shall continue to be required to comply with relevant building and electrical codes, and with fire district, health department, Oregon Liquor Control Commission (OLCC), and septic system requirements. (ZDO Subsection 1206.06(B))
8. Outside activities and “games for kids and families” (e.g., corn hole, large Jenga, giant Connect Four, board games) shall be located only in the 12,000-square-foot existing beer garden area, and shall be limited to the beer garden’s operating hours listed in Condition 5.b above. (ZDO Subsection 1206.06(B))
9. The 200-square-foot barbecue area shall be: covered and enclosed as proposed in the application; located at least 100 feet from all property lines; and, unless otherwise authorized in writing by the County’s Septic and Onsite Wastewater Program, located at least ten feet from all septic drainfield areas and replacement drainfield areas. (ZDO Subsection 1206.06(B))
10. All new structures (i.e., the 400-square-foot storage building south of the restaurant building by the beer garden, the 800-square-foot “pre-fab” cold storage building, the 400-square-foot dry storage building to the west of the restaurant building, and the 200-square-foot covered and enclosed barbecue area), and all modifications to the restaurant building, shall be permitted (e.g., with building permits, electrical permits, plumbing permits) as required by the County’s Building Codes Division, and shall comply with the requirements of the local fire district and the County’s Septic and Onsite Wastewater Program. (ZDO Subsection 1206.06(B))
11. The total sign area of a replacement business road sign shall be no greater than that of the existing pole sign shown in the photographs included with the submitted application, with “sign area” defined in ZDO Section 202, Definitions. Prior to approval of any building permit, sign permit, or electrical permit for the replacement sign, and prior to the installation of the replacement sign, the

Applicant shall provide to Planning & Zoning a diagram prepared by a licensed architect showing the dimensions of both the existing and proposed replacement sign. The replacement sign shall be located entirely outside of a public right-of-way. (ZDO Subsection 1206.06(B))

12. Vehicle parking associated with the nonconforming use is prohibited in the public right-of-way and on the east side of S Springwater Rd. The property owners shall: locate the right-of-way line in relation to their property; indicate (e.g., with signage) that parking in the right-of-way by their customers and employees is prohibited; and inform customers and employees who are parking in the right-of-way to park their vehicles in the existing parking areas entirely on the subject property. (ZDO Subsection 1206.06(B))

DATED this 30th day of January, 2023



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

ENDANGERED SPECIES ACT NOTICE

This decision addresses only the applicable criteria under the ZDO. It does not address whether the activities allowed by this decision will comply with the provisions of the federal Endangered Species Act (“ESA”). This decision should not be construed or represented to authorize any activity that will conflict with or violate the ESA. It is the applicant, in coordination if necessary with the federal agencies responsible for the administration and enforcement of the ESA, who must ensure that the approved activities are designed, constructed, operated, and maintained in a manner that complies with the ESA.

APPEAL RIGHTS

ZDO 1304.01 provides that the Land Use Hearings Officer’s decision is the County’s final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules adopted by LUBA describe when

and how an appeal must be filed with LUBA. Presently, ORS 197.830(8) 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.” ZDO 1304.02 provides that this decision will be “final” for purposes of a LUBA appeal as of the date of mailing of this final order (which date appears on the last page herein).

**Attachment A, Employee Time Card Data Summary
Hearings Officer Final Order
Z0087-22-E (Bent Shovel NCU)**

APRIL 2022		Start a.m.	End p.m.
F	4/1/23	6:42	11:57
SAT	4/2/23	6:32	11:23
SUN	4/3/23	6:03	9:29
M	4/4/23	6:33	9:27
TU	4/5/23	6:27	10:02
W	4/6/23	6:31	9:43
TH	4/7/23	6:03	9:35
F	4/8/23	7:31	10:45
SAT	4/9/23	6:34	11:16
SUN	4/10/23	6:35	10:09
M	4/11/23	6:36	9:23
TU	4/12/23	6:26	9:12
W	4/13/23	5:03	10:01
TH	4/14/23	6:33	10:05
F	4/15/23	6:03	11:14
SAT	4/16/23	6:34	12:58
SUN	4/17/23	6:42	10:53
M	4/18/23	6:57	10:14
TU	4/19/23	6:27	9:21
W	4/20/23	6:03	10:35
TH	4/21/23	6:28	10:51

F	4/22/23	6:03	11:16
SAT	4/23/23	6:03	11:37
SUN	4/24/23	6:44	10:03
M	4/25/23	6:03	11:14
TU	4/26/23	6:28	10:15
W	4/27/23	6:32	10:02
TH	4/28/23	6:33	10:02
F	4/29/23	6:34	11:33
SAT	4/30/23	6:29	11:09
MAY			
2022			
Day	Date	Start a.m.	End p.m.
SUN	5/1/23	6:32	10:03
M	5/2/23	6:35	9:55
TU	5/3/23	6:30	10:03
W	5/4/23	6:31	10:43
TH	5/5/23	6:37	10:01
F	5/6/23	6:33	10:34
SAT	5/7/23	6:33	10:43
SUN	5/8/23	6:35	10:29
M	5/9/23	8:57	10:04
TU	5/10/23	7:58	10:24
W	5/11/23	6:40	12:31
TH	5/12/23	6:34	9:43

F	5/13/23	6:33	10:30
SAT	5/14/23	6:26	12:18
SUN	5/15/23	6:31	11:07
M	5/16/23	6:31	10:17
TU	5/17/23	6:36	9:37
W	5/18/23	6:28	9:24
TH	5/19/23	6:27	9:51
F	5/20/23	6:34	11:44
SAT	5/21/23	6:33	1:04
SUN	5/22/23	6:33	12:05
M	5/23/23		
TU	5/24/23	7:18	12:08
W	5/25/23	6:29	10:35
TH	5/26/23	6:30	8:58
F	5/27/23	7:18	11:25
SAT	5/28/23	6:29	12:02
SUN	5/29/23	6:30	9:58
M	5/30/23		
TU	5/31/23		



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Stuff Your Stockings!



With Cheer!

BENT SHOVEL BREWING

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We recommend our Black Spade Stout and a
Brisket Sandwich! We are OPEN today until 9pm
See you soon!

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HEY LET'S PARTY!



ANNIVERSARY PARTY



SATURDAY AUG 5TH, 2023
12-8PM

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Nashville, Tennessee



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September 18, 2023





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update for you. We're closing at 3 PM this
afternoon last call 2:45 PM.

December 24, 2023



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Bent Shovel Brewing



IMPORTANT

Your application will be deemed complete, if, within 180 days of the date the application was first submitted, Planning and Zoning receives one of the following:

1. All of the missing information; or
2. Some of the missing information and written notice from you (the applicant) that no other information will be provided; or
3. Written notice from you (the applicant) that none of the missing information will be provided.

If any one of these options is chosen within 180 days of the date of the initial submittal, approval or denial of your application will be subject to the relevant criteria in effect on the date the application was first submitted.

Your application will be considered void if, on the 181st day after the date the application was first submitted, you have been mailed this notice and have not provided the information requested in Options 1-3 above. In this case, no further action will be taken on your application.

Applicant or authorized representative, please check one of the following and return this notice to: **Clackamas County Planning and Zoning, 150 Beavercreek Road, Oregon City, OR, 97045** or the staff contact email on page 1 of this notice

- I am submitting the required information (attached); or
- I am submitting some of the information requested (attached) and no other information will be submitted; or
- I will not be submitting the requested information. Please accept the application as submitted for review and decision.

Kristyn Schwartz
Signed

10/01/2025
Date

Kristyn Schwartz
Print Name



BUSINESS LICENSE CERTIFICATE

01/01/2025 THRU 12/31/2025



APPROVED This license has been reviewed by the municipality and approved.
This certificate is accurate as of 10/01/25 05:18 PM. For real-time status on this license, visit licenseregistrar.com.

License No. 0002-03866

Program INSIDE CITY LIMITS

BUSINESS INFORMATION

Business Name

KRISTYN SCHWARTZ LLC

DBA

SUGAR CREEK ESPRESSO

Business Address

38400 PIONEER BLVD.
SANDY, OR 97055

CONTACT INFORMATION

Contact Name

KRISTYN SCHWARTZ

Contact Address

PO BOX 275
ESTACADA, OR 97023

The person, firm or corporation named above is granted this certificate pursuant to the provisions of the License Ordinance to engage in, carry on or conduct the business, trade, calling, profession, exhibition or occupation described below. Issuance of this certificate is not an endorsement, nor certification of compliance with other ordinances or laws, nor an assurance that the proposed use is in conformance with the city zoning regulations. This certificate is issued without verification that the taxpayer is subject to or exempt from licensing by the State.

DISPLAY THIS CERTIFICATE FOR PUBLIC VIEW

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Business Registry Business Name Search

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Business Entity Data

10-01-2025
17:16

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Next Renewal Date	Renewal Due?
2307664-95	DLLC	ACT	OREGON	09-11-2024	09-11-2026	
Entity Name KRISTYN SCHWARTZ LLC						
Foreign Name						

[New Search](#)

Associated Names

Type	PPB	PRINCIPAL PLACE OF BUSINESS			
Addr 1	38424 PIONEER BLVD				
Addr 2					
CSZ	SANDY	OR	97055	Country	UNITED STATES OF AMERICA

Please click [here](#) for general information about registered agents and service of process.

Type	AGT	REGISTERED AGENT	Start Date	09-11-2024	Resign Date
Name	KRISTYN MARIE SCHWARTZ				
Addr 1	39952 SE TUMALA MOUNTAIN RD				
Addr 2					
CSZ	ESTACADA	OR	97023	Country	UNITED STATES OF AMERICA

Type	MAL	MAILING ADDRESS			
Addr 1	PO BOX 275				
Addr 2					
CSZ	ESTACADA	OR	97023	Country	UNITED STATES OF AMERICA

Type	MEM	MEMBER			Resign Date
Name	KRISTYN MARIE SCHWARTZ				
Addr 1	39952 SE TUMALA MOUNTAIN RD				
Addr 2					
CSZ	ESTACADA	OR	97023	Country	UNITED STATES OF AMERICA

[New Search](#)

Name History

Business Entity Name	Name Type	Name Status	Start Date	End Date
KRISTYN SCHWARTZ LLC	EN	CUR	09-11-2024	

Please read before ordering Copies.

Business Registry Business Name Search

New Search

Business Entity Data

10-01-2025
17:10

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Next Renewal Date	Renewal Due?
1868349-91	DBC	ACT	OREGON	09-10-2021	09-10-2026	
Entity Name SHADADO INC.						
Foreign Name						

New Search

Associated Names

Type	PPB	PRINCIPAL PLACE OF BUSINESS				
Addr 1	21678 S LATOURETTE RD					
Addr 2						
CSZ	OREGON CITY	OR	97045	Country	UNITED STATES OF AMERICA	

Please click [here](#) for general information about registered agents and service of process.

Type	AGT	REGISTERED AGENT		Start Date	09-10-2021	Resign Date
Name	RICK STRAUSS					
Addr 1	21678 S LATOURETTE RD					
Addr 2						
CSZ	OREGON CITY	OR	97045	Country	UNITED STATES OF AMERICA	

Type	MAL	MAILING ADDRESS				
Addr 1	21678 S LATOURETTE RD					
Addr 2						
CSZ	OREGON CITY	OR	97045	Country	UNITED STATES OF AMERICA	

Type	PRE	PRESIDENT			Resign Date
Name	RICK STRAUSS				
Addr 1	21678 S LATOURETTE RD				
Addr 2					
CSZ	OREGON CITY	OR	97045	Country	UNITED STATES OF AMERICA

Type	SEC	SECRETARY			Resign Date
Name	MICHELE STRAUSS				
Addr 1	21678 S LATOURETTE RD				
Addr 2					
CSZ	OREGON CITY	OR	97045	Country	UNITED STATES OF AMERICA