

CHELAN COUNTY

DEPARTMENT OF HEARING EXAMINER

316 WASHINGTON STREET, SUITE 301
WENATCHEE, WASHINGTON 98801

BEFORE THE CHELAN COUNTY HEARING EXAMINER

IN THE MATTER OF:)	FINDINGS OF FACT,
AA 2022-464)	CONCLUSIONS OF LAW AND
Buck)	DECISION ON
)	ADMINISTRATIVE APPEAL

I. FINDINGS OF FACT

1. An application for an Administrative Appeal with fees was submitted to appeal the Notice and Order to Abate Violations issued on November 8, 2022 for Code Enforcement file # CE 22-0070. The appeal was submitted on the basis that the appellant believes that the County has not provided consistent information in a timely manner about the permits needed to operate Plain Brewing.
2. The property location is 18692 Alpine Acres Road, Plain, WA 98826. The Parcel No. is 26-17-13-720-015 and the legal description is NO. 1 WENATCHEE PARK, LOT 3, SS#1176, PARCEL 1.
3. The Appellant/owners are Michael and Lisa Buck.
4. A building permit for a 24'x30' SFR, which included 2 bedrooms, a den, 2 baths, and a carport (BP-960540) was issued on August 13, 1996 and a building permit for a garage (BP-050010) was issued on January 28, 2005, but has since expired since not all of the inspections were completed.
5. Pre-App 22-167, which was to discuss the brewery, was submitted on April 5, 2022, the meeting between the Appellant and County staff was held via Zoom on April 28, 2022, and a summary of the pre-app was issued on June 2, 2022.
6. A code enforcement complaint (CR 22-0072) was submitted by County staff on 11/04/2022, which was converted into a code enforcement violation (CE 22-070) on 11/04/2022, and then the resulting Notice and Order was issued on 11/09/2022 by County Code Enforcement.
7. The Appellants submitted their appeal on November 17, 2022 and the Notice of Public Hearing was issued on January 14, 2023.
8. The Appellant currently owns and operates Plain Brewing at 18692 Alpine Acres Road. Starting on March 23, 2022, County staff has had numerous conversations with the appellant

AA 2022-464

Buck

Page 1 of 5

and his co-owner, Christopher Johnson, regarding the operation of Plain Brewing and a pre-app meeting was held via Zoom on April 28, 2022. The Pre-App Summary, issued June 2, 2022 erroneously had the subject property zoned as RR5 when it is actually RW, but the District Use Chart in CCC Section 11.04.020 shows that the proposed use (Plain Brewing) being the same for both RR5 and RW zoning districts and that wineries/breweries with less than 1,500 sq.ft. of retail space are allowed as an accessory use through the building permit process. The Appellant has not submitted a complete application for a change of use permit that converts the permitted single-family residence and garage, which are residential uses, into a brewery, which is a commercial use. In addition, the appellants have advertised the brewery as a place to hold private gatherings or meetings, which requires a Conditional Use Permit for Places of Public and Private Assembly.

9. On March 23, 2022, County staff spoke on the phone with Christopher Johnson (co-owner of Plain Brewing) regarding the Appellant's proposed operation of Plain Brewing. Mr. Johnson was then emailed a Commercial Building Permit application and the County Code requirements for a tasting room under 1500 sq.ft.
10. On March 25, 2022, Mr. Johnson sent County staff, via email, the completed Commercial Building Permit application form and after an initial review was advised by County staff that additional information would be needed.
11. On March 30, 2022, County staff recommended to Mr. Johnson and the Appellant to apply for a pre-application meeting to discuss the path forward for Plain Brewing.
12. On April 5, 2022, a Pre-Application request was submitted by the Appellant.
 - 12.1. The application proposed a micro-brewery and tap room with beer garden that would produce approximately 3.5 beer barrels per week and the tap room would be 800 sq.ft. in size with an additional 700 sq.ft. of outdoor beer garden
 - 12.2. The proposed operations were as follows:

Layout: The plan is to use the two car garage as the brewery for a 3.5BBL electric brew system. Last October, we started working with local Kevan Arthur of Beaver Valley Electric and Chelan County PUD to install the necessary power to the brewery, with Chelan County PUD changing the transformers to 440 amp service earlier this spring. There have been several supply chain issues on equipment which postponed our intended opening. At this time, we are awaiting delivery of the final piece of equipment and supply storage. Keeping in mind our 1500 sq.ft. limit, we also plan to make use of some of the outdoor space for seasonal outdoor activities.
13. A summary of this Pre-Application meeting was issued on June 2, 2022:
 - 13.1. County staff highlighted that restaurants are not an allowed use in the zoning district (both RR5 and RW).
 - 13.2. County staff highlighted that the brewery shall adhere to all applicable building, fire safety and health codes.
 - 13.3. County staff noted that public or private events and gatherings would require a Conditional Use Permit.
 - 13.4. County staff highlighted that prior to opening the brewery, the Appellant would need to obtain the appropriate building permits and that staff recommended finding a professional building designer/consultant to help the Appellant meet the building code requirements for their brewery.

14. Email correspondence between the Appellant and the Interim Building Official in late June / early July 2022 regarding building code questions, their response to the Pre-App summary, a site plan showing the different uses of the structures, and then lastly about obtaining a certificate of occupancy. The Interim Building Official never formally replied to the Appellant and since has left Chelan County for other endeavors.
15. On July 12, 2022, County staff issued a follow up email re-iterating the need for a change of use permit (Commercial Building permit) and the recommendation that the Appellant hire a consultant to help with the design and documentation needed.
16. On July 13, 2022, the Appellant responded to County staff's July 12th email and provided additional information regarding the existing structures on the subject property as well as the improvements made in order to operate Plain Brewing.
17. On July 20, 2022, County staff responded to the Appellant's interpretation of different codes with another re-iteration for the Appellant to hire a consultant to help with the permitting needed for Plain Brewing. No further correspondence has occurred.
18. Social Media screen grabs from March 31, 2022 show that Plain Brewing was already in the process of modifying the existing structures on the subject property prior to the pre-app meeting on April 28, 2022. These screen grabs show modifications to the interior of both structures occurring as well as the development of their social media with plans to originally open in June 2022.
19. Additional Social Media screen grabs from November 4, 2022 show that Plain Brewing was open and operating, was advertising a food menu, and also was advertising for private gatherings of up to 24 people.
20. In further correspondence between County staff and the Appellant, staff again recommends that the Appellant hire a professional designer/consultant/engineer who could help prepare the necessary documentation required for the building permit submittal.
21. To date, no complete Commercial Building permit application, nor Conditional Use Permit application has been received by the County.
22. Chelan County Code Section 14.12.010: Administrative appeals:
 - (1) An administrative appeal to the hearing examiner shall be filed with the department within ten working days of the issuance of the decision appealed, together with the applicable appeal fee.
 - (2) The notice of appeal shall contain a concise statement identifying:
 - (A) The decision being appealed; (B) The name and address of the appellant and his/her interest(s) in the application or proposed development; (C) The specific reasons why the appellant believes the decision to be erroneous, including identification of each finding of fact, each conclusion, and each condition or action ordered which the appellant alleges is erroneous. The appellant shall have the burden of proving the decision is erroneous; (D) The specific relief sought by the appellant; (E) The appeal fee.
23. After due legal notice, an open record public hearing was held via Zoom video conference on January 25, 2023.
24. Admitted into the record were the following exhibits:
 - 24.1 From the County:
 - 24.1.1 Ex. A: AA 22-464 Application Materials;

- 24.1.2 Ex. B: Notice and Order;
- 24.1.3 Ex. C: Email Correspondence;
- 24.1.4 Ex. D: Completed Building Permit Application;
- 24.1.5 Ex. E: Email Correspondence
- 24.1.6 Ex. F: Email Correspondence
- 24.1.7 Ex. G: Pre-Application Request
- 24.1.8 Ex. H: Pre-Application Summary
- 24.1.9 Ex. I: Email Correspondence
- 24.1.10 Ex. J: Email Correspondence
- 24.1.11 Ex. K: Site Uses
- 24.1.12 Ex. L: Email Correspondence
- 24.1.13 Ex. M: Email Correspondence
- 24.1.14 Ex. N: Email Correspondence
- 24.1.15 Ex. O: Additional Information
- 24.1.16 Ex. P: Email Correspondence
- 24.1.17 Ex. Q: Screenshots from March 31, 2022
- 24.1.18 Ex. R: Screenshots from November 4, 2022
- 24.1.19 Ex. S: Staff Report.

24.2 From the Appellant:

- 24.2.1 Exhibits A through R in Appellant's rebuttal materials;
- 24.2.2 Rebuttal Narrative.
- 24.2.3 Letters from the following persons:
 - 24.2.3.1 December 10, 2022 letter from Kent Gavin
 - 24.2.3.2 Undated letter from Lee Miller
 - 24.2.3.3 Undated letter from Polly Hines
 - 24.2.3.4 Undated letter from Rich Adamson
 - 24.2.3.5 November 30, 2022 letter from Wiel Penders

25. Appearing at the hearing on behalf of the Appellant was Michael Buck. Mr. Buck testified consistent with his appeal materials. Mr. Buck's primary contention was that he received inconsistent information from Chelan County and that he opened his business only with the understanding that the County had already approved the required permits because he had received his liquor license and business license from the State. During the course of his testimony, Mr. Buck indicated that the Applicant, despite the advertising provided by the County, was not planning to have the facility operate as a place of public and/or private assembly, as defined by the Chelan County Code. He simply wants to open his brewery as an accessory use to his residence. He understands that no restaurant is allowed and that any food and beverage service would be catered (not cooked on-site) or pre-packaged. He further

understands that if he wishes to hold events that characterized as following within the definition of a place of public and private assembly, that he would be required to obtain a conditional use permit **PRIOR** to the event.

26. The Appellant clearly understood that the holding of weddings, birthday celebrations, concerts, carnivals, or any other events where there is a gathering of persons for the purposes of celebration, amusement, entertainment, socializing, or awaiting transportation, require a conditional use permit.
27. During the course of the hearing, staff indicated to the Appellant what would be needed to lawfully open the brewery as an accessory use. This primarily involves the application for, and receipt of, various permits, including a building permit, a change of use permit, and other related permits.
28. The Hearing Examiner finds that the Appellant did not provide evidence demonstrating that the Notice and Order to Abate Violations issued November 8, 2022, was issued in error.
29. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

II. CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this Decision.
2. Restaurants are not an allowed use in the zoning district (both RR5 and RW).
3. Public or private events and gatherings would require a Conditional Use Permit.
4. The brewery shall adhere to all applicable building, fire safety and health codes.
5. The Notice and Order to Abate Violations issued by Chelan County on November 8, 2022 regarding property located at 18692 Alpine Acres Rd., Leavenworth, Washington, was properly issued.
6. Any Finding of Fact that is more correctly a Conclusion of Law is incorporated herein as such by this reference.

III. DECISION

WHEREFORE, based upon the above Findings of Fact and Conclusions of Law, the Hearing Examiner finds that the Notice and Order of CE 22- 0070 be upheld for not obtaining the needed change of use permit (Commercial Building permit) and not obtaining the needed CUP for Places of Public and Private Assembly.

Dated this 26th day of January, 2023.

CHELAN COUNTY HEARING EXAMINER



Andrew L. Kottkamp

This decision is subject to appeal pursuant to the Chelan County Code. Appeals must be timely filed. Anyone considering an appeal of this decision should seek immediate legal advice.

AA 2022-464

Buck

Page 5 of 5