

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

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| Regarding an Appeal of a Planning Director   | ) | <b>Case File No.</b>   |
| Decision Approving a Temporary Use Otherwise | ) | <b>Z0174-19-STU</b>    |
| Prohibited to Allow Car Camping at a Church. | ) | <b>(King of Kings)</b> |

**A. SUMMARY**

1. The applicant is Mary Zellharie. The owner is the King of Kings Lutheran Church.
2. The appellant is Michael Partridge.
3. The subject property is located at 5501 Southeast Thiessen Road, Milwaukie, OR 97222. The legal description is T2S, R2E Section 07AA, Tax Lots 100 and 1400, W.M. The subject property is approximately 1.66 acres and is zoned R-10 – Urban Low Density Residential – 10,000 Square Foot Minimum.
4. On September 19, 2019, the Hearings Officer conducted a public hearing to receive testimony and evidence about the application. At the conclusion of the public hearing, the record was left open two weeks for the submission of new evidence, testimony, and argument; one additional week for responses to the new evidence, testimony, and argument; and one additional week for the applicant’s final legal argument.

**B. HEARING AND RECORD HIGHLIGHTS**

1. The Hearings Officer received testimony at the public hearing on this application on September 19, 2019. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the hearings, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the Planning Director’s decision, that participants should

direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.

2. At the hearing, county planner Andrew Yaden and planning manager Jennifer Hughes discussed the Planning Director's decision.
3. The applicant and many citizens testified in favor of the application.
4. The appellants and many citizens testified in opposition to the application.
5. At the conclusion of the public hearing, the Hearings Officer left the record open two weeks for the submission of new evidence, testimony, and argument; one additional week for responses to the new evidence, testimony, and argument; and one additional week for the applicant's final legal argument.

### **C. FACTS**

This case involves the appeal of a Planning Director decision approving a temporary use otherwise not permitted to allow the Kings of Kings Lutheran Church (church) to operate a safe overnight shelter (SOS) car camp in their parking lot. The church is located at 5501 Southeast Thiessen Road, Milwaukie, OR 97222. The church property is zoned R-10, which does not allow such car camping. The church property is located in a residential neighborhood. The church is proceeding under a County pilot program that designates such uses as temporary uses otherwise not permitted.<sup>1</sup> The underlying decision approving the temporary use otherwise not permitted sets out the relevant facts:

“King of Kings Lutheran Church, in coordination with the Metropolitan Alliance for the Common Good and Providence Better Outcomes

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<sup>1</sup> ORS 203.082 provides:

“Camping by homeless on property of religious institutions; required elements of policies of local governments and religious institutions.

- “(1) Any political subdivision in this state may allow churches, synagogues and similar religious institutions to offer overnight camping space on institution property to homeless persons living in vehicles.
- “(2) In addition to any conditions or limitations imposed by a political subdivision, a religious institution located within the political subdivision and offering camping space described under subsection (1) of this section must:
  - “(a) Limit camping space at the institution site to three or fewer vehicles at the same time; and
  - “(b) Provide campers with access to sanitary facilities, including but not limited to toilet, hand washing and trash disposal facilities.”

The County is apparently establishing a pilot program to assess the feasibility of such SOS uses in order to determine whether to officially proceed under ORS 203.082.

through Bridges (BOB), proposes to host up to three occupied vehicles at a time for overnight parking/sleeping in the church parking lot. The program is intended to provide safe overnight shelter (SOS) alternatives for houseless individuals and families. The church will provide a porta-potty, handwashing station and trash receptacle. Upkeep and maintenance of the porta-potty, handwashing station and garbage receptacle will be the responsibility of the church. A maximum of three (3) vehicles will be permitted on-site from 6 p.m. to 8 a.m. No guests of the participants will be allowed on-site at any time. Nightly security patrols will sweep the parking lot to ensure only approved vehicles are on-site and will notify authorities of any illegal activity occurring on-site. On-site storage will not be available and all personal items of the participants will be stored in their vehicles. Potential participants will be identified and authorized through the Clackamas County Coordinated Housing Access (CHA) and must pass a background check and agree to adhere to a code of conduct. Providence Health and Services, through their BOB program, will provide additional mediation services and case management to residents.” Planning Director Decision 1-2.

The Planning Director approved the temporary use not otherwise permitted.<sup>2</sup> This appeal followed.

#### **D. DISCUSSION**

Clackamas County Zoning and Development Ordinance (ZDO) 1204.02 provides the approval criteria for temporary uses otherwise prohibited:

- “A. A temporary permit for a use otherwise prohibited requires review as a Type II application pursuant to Section 1307, Procedures, and shall be subject to the following standards and criteria:
- “1. The use for which a temporary permit is requested is not listed as a primary, accessory, limited, or conditional use in the applicable zoning district;
  - “2. There is no reasonable alternative to the temporary use;
  - “3. The permit will be necessary for a limited time;
  - “4. The temporary use will not include the construction of a substantial structure or require a permanent commitment of the land; and
  - “5. The temporary use will not have a materially adverse effect on the surrounding area.

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<sup>2</sup> Under ZDO 1307.03(B), the Planning Director includes “any County staff member authorized by the Planning Director to fulfill the responsibilities assigned to the Planning Director by the [ZDO].”

“B. A temporary permit for a use otherwise prohibited may be approved for a period not to exceed one year. The permit may be renewed, subject to review as a Type II application pursuant to Section 1307, for a period not to exceed one year. A renewal shall be subject to the same approval criteria as an initial permit. A temporary permit for a use otherwise prohibited may be renewed an unlimited number of times.”

**1. ZDO 1204.02(A)(1)**

The first approval criterion is ZDO 1204.02(A)(1) which requires that the proposed use “is not listed as a primary, accessory, limited, or conditional use” in the R-10 zone. The Planning Director’s decision explains:

“Staff has reviewed the permitted, accessory and conditional uses listed in Table 315-1, Residential R-10, of the Clackamas County Zoning and Development Ordinance. The proposed overnight parking will be in the parking lot of an existing faith based institution and per the applicant, can include cars, vans, pickups and Class B Recreational Vehicles (RVs). Use of a parking lot for overnight sheltering is not a permitted, accessory, or conditional use in R-10 zoning district and RV Camping Facilities are prohibited in the R-10 zone. There are no limited uses listed in the R-10 zone.” Planning Director Decision 11.

There does not seem to be any dispute that the proposed use is not listed as any kind of allowable use in the R-10 zone.

ZDO 1204.02(A)(1) is satisfied.

**2. ZDO 1204.02(A)(2)**

The second approval criterion is ZDO 1204.02(A)(2) which requires that there is “no reasonable alternative to the temporary use.” The Planning Director found that there were no reasonable alternatives to the proposed temporary use:

“The applicant provides that there is no reasonable alternative to the overnight car camping program due to an increasing houseless population, both nationally and here in the County. The applicant states that despite an increasing need, there are no transitional housing options in the County beyond emergency warming and cooling shelters which are only open during extreme weather. The applicant states that individuals sleeping in cars are a specific subset of houseless people because they are unsheltered, but have the mobility to look for work and to go to appointments or interviews.

“Comments received identified some options as viable alternatives. The church has an apartment inside the main structure. According to the

applicant, the church hosted a guest house program for approximately 12 years. The program was discontinued and the applicant provides that the apartment is not viable as an alternative today as the space is used for the food pantry program and by other programs that lease space in the church.

“Other comments in opposition contend that placing the overnight car camping program on County owned property or at a Providence Health & Services owned medical care facility were both viable alternatives to the church site, thereby providing better access to services and existing security systems.

“Staff interprets the term ‘reasonable alternative’ to be limited to alternatives available and reasonable to the applicant. The church cannot reasonably be expected to operate an overnight car camping program at the Clackamas County Sheriff’s office or any other property not under the applicant’s ownership.

“The applicant has applied for use of the church parking lot for overnight parking as a low cost means to provide a safe alternative to sleeping in cars parked in public rights-of-way and not as an option to provide a long-term housing option. The applicant has indicated that SOS program is designed for a specific subset of the houseless population – unsheltered and living in vehicles. As the church has repurposed the apartment for storage and other church activities, Staff finds that use of the apartment is not a reasonable alternative.

“Staff finds that there is no reasonable alternative to the temporary use otherwise prohibited.” Planning Director Decision 11-12.

The first paragraph of the Planning Director’s decision states that the applicant relies on the proposition that the proposed temporary use is in response to the increasing homeless population, both locally and nationally. Furthermore, the applicant relies on the lack of transitional housing opportunities and warming or cooling shelters. Finally, the applicant relies on the fact that homeless people with cars are a distinct subset of the entire homeless population. If the proposed temporary use is to help homeless people with cars in order to help alleviate the problem of homelessness in general and the lack of warming or cooling shelters then there are clearly plenty of reasonable alternatives to the proposed temporary use. The people who would use the SOS at the church are obviously staying somewhere presently. Opponents have submitted numerous alternative sites that could easily accommodate an SOS as proposed for the church. Opponents also argue that the

interior of the church could house homeless people more effectively than the proposed car camping.

The Planning Director narrowed the proposed temporary use to SOS car camping on church property. Under the Planning Director's interpretation, it is irrelevant whether SOS car camping could be established on other properties because the proposed temporary use is for SOS car camping on the *applicant's* property. Furthermore, the applicant subsequently narrowed the scope of the proposed use to car camping rather than indoor shelter. According to church, even though the interior of the church is no longer available for shelter, it would not matter if it was because the proposed temporary use is for car camping in the parking lot not indoor shelter.

The question therefore reduces to whether there are no reasonable alternatives to helping homeless people (perhaps with cars) or whether there are no reasonable alternatives to the church hosting an SOS car camping program on its own property. ZDO 1204.02(A)(2) only refers to the "temporary use." While 1204.02(A)(2) does not specifically restrict reasonable alternatives to the subject property, it seems reasonable to limit the inquiry to the subject property. In most, if not all situations, a proposed use could likely be conducted somewhere else. Therefore, I agree with the Planning Director that the universe of possible reasonable alternatives must be restricted to the subject property.

Turning to the subject property, the church's proposed use is a car camping SOS. The church only has one parking lot. I do not see that there are any other alternatives where the car camping SOS could occur on the church's property. I realize this results in eliminating most reasonable alternatives merely by describing the proposed temporary use with such specificity that there is only one potential use. ZDO 1204.02(A)(2), however, does not appear to require any inquiry into the underlying basis for the proposed temporary use, nor does it put any restrictions on the specificity of the requested use. Furthermore, in the present case, the County has established a pilot program for SOS car camping and indicated that temporary uses otherwise prohibited is the avenue to evaluate the pilot program. Therefore, I agree with the Planning Director that there are no reasonable alternatives for the church to conduct an SOS car camping pilot program on church property than the proposed temporary use.

ZDO 1204.02(A)(2) is satisfied.

### 3. ZDO 1204.02(A)(3)

The third approval criterion is ZDO 1204.02(A)(3) which requires that the “permit will be necessary for a limited time.” The Planning Director found that the permit will only be necessary for a limited time:

“In 2017, the Clackamas County Board of Commissioners opted to review individual applications for overnight car camping, rather than commit to code changes that would allow the use as provided in ORS 203.082. The King of Kings application is the first such application.

“The Board of County Commissioners has directed the Department of Transportation and Development to look at the full spectrum of housing as part of the agency’s 2 year work program. The Clackamas County Affordable Housing Task Force recommends allowing safe overnight car camping as a primary strategy for moving unsheltered individuals towards more stable housing.

“The SOS program is, at this stage, a pilot project. The County is evaluating if they want to codify overnight car camping programs in the Zoning and Development Ordinance. A temporary permit allows the applicant to host occupied vehicles overnight for a limited time while the County evaluates options for longer-term code solutions.

“The Temporary Permit Otherwise Prohibited allows the County to authorize the use for a period of up to one year. The County has decided to issue this permit for six months from the date of commencement or one year from the date of the final decision, whichever is earlier. The 6 month timeframe provides the County an opportunity to review the progress and success of the program with empirical evidence while providing the applicant some certainty and provide the neighborhood with an opportunity to weigh in on a new permit based upon experiences and interactions with the program.

“Staff finds that the permit will be necessary for a limited time.”  
Planning Director Decision 12-13.

The Planning Director relies on the fact that the SOS car camping proposal is part of a pilot program established by the Board of County Commissioners. Under the pilot program, the County would evaluate SOS car camping experiments to determine whether changes should be made to the ZDO to allow such uses. The pilot program even reduces the typical one year approval period to six months. Opponents argue that the proposed permit would not be necessary for a limited time. According to opponents, homelessness is not going to be eliminated in the next six months or a year, but will continue to be a

problem indefinitely. Opponents also argue that the SOS car camping program is not of a limited duration, as once one car camper leaves another will take his or her place. Finally, opponents argue that the temporary use may be extended so it is not really temporary.

While I tend to agree with opponents that the need for some type of homelessness solution will not be resolved in a limited time and that the proposed use is not particularly temporary because open spots would be filled by new car campers, the permit is only to be used for the duration of the pilot program. After the evaluation of the pilot program, the Board of County Commissioners will likely either eliminate the SOS program or enact some type of amendment to the ZDO to allow such uses in some manner. In any event, the method of using a temporary use otherwise prohibited to allow SOS car camping does seem to be limited. While this likely is not the typical situation contemplated for temporary uses otherwise prohibited, I agree with the Planning Director that under the unique circumstances involving the SOS pilot program the permit will be necessary for a limited time.<sup>3</sup>

ZDO 1204.02(A)(3) is satisfied.

#### **4. ZDO 1204.02(A)(4)**

The fourth approval criterion is ZDO 1204.03(A)(4) which requires that the “temporary use will not include the construction of a substantial structure or require a permanent commitment of the land.” The Planning Director explained:

“The participants will park vehicles overnight from [6] p.m. to [8] a.m. in existing parking spaces. No tents or other shelter types are permitted. No permanent shelters or storage pods will be built by the church. Temporary sanitation facilities, including a porta-potty and portable hand washing station, and waste receptacles will be provided. No connections to utilities are allowed. No substantial structure will be built and no permanent commitment of the land is required.” Planning Director Decision 13.

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<sup>3</sup> Additionally, even under normal circumstances temporary uses otherwise prohibited are not necessarily so temporary. ZDO 1204.02(B) provides:

“A temporary permit for a use otherwise prohibited may be approved for a period not to exceed one year. The permit may be renewed, subject to review as a Type II application pursuant to Section 1307, for a period not to exceed one year. A renewal shall be subject to the same approval criteria as an initial permit. *A temporary permit for a use otherwise prohibited may be renewed an unlimited number of times.*” (Emphasis added.)

There does not seem to be any dispute that the proposed use will not involve construction or permanent commitment of the land.

ZDO 1204.02(A)(4) is satisfied.

#### **5. ZDO 1204.02(A)(5)**

The fifth approval criterion is ZDO 1204.02(A)(5) which requires that the “temporary use will not have any materially adverse effect on the surrounding area.” Opponents raised a number of issues regarding potential adverse effects on the neighborhood. The Planning Director addressed those arguments in his decision:

“The applicant states that the use will not have a materially adverse effect on the surrounding area due to an authorization process of potential applicants and a signed code of conduct agreement.

“Opponents raise concerns that the SOS program will have a number of materially adverse effects on the surrounding area. Each identified potential affect is discussed below. The primary concern raised is safety and the potential for an increase in criminal activity. Other potential impacts identified by public comments include a reduction in property values, accumulation of solid waste, drug use, attraction of other non-participant homeless individuals, parking on the street during daytime hours, and risk of fires from outer cooking.

“Safety and Crime

“Staff has identified conditions of approval intended to mitigate the potential impacts of the proposed temporary use. King of Kings will provide a two-part authorization process, with Clackamas County Coordinated Housing Access providing initial screening and King of Kings providing criminal back ground checks. This two-step review of each participant will help ensure that only potential participants that are appropriate for the program obtain authorization to park in the church parking lot.

“Property Values

Many opponents of the application stated that the temporary permit would reduce property values. A number of comments directed Staff towards an article from realtor.com that states that neighborhoods with homeless shelters have houses that sell for 13% less than neighborhoods without a homeless shelter. No evidence has been submitted into the record that the use of the church parking lot for three vehicles overnight will impact property values.

“Solid Waste and Outdoor Storage

“The applicant has provided that they will provide a trash receptacle. A condition is warranted that the trash receptacle is capped and that the church shall regularly empty the trash. Staff finds that, as conditioned, there will be no material adverse effect from solid waste generated by participants.

“A condition of approval is warranted that all personal items not in use shall be stored in participant vehicles.

#### “Drug Use

“The applicant has provided a copy of their proposed code of conduct for potential participants. Included in the code of conduct is a zero tolerance for drug and alcohol use while on-site. Participants found to be using drugs or alcohol on-site will be removed from the program. Illegal drug use may also be referred to the Sheriff’s office, much as any other member of society.

#### “Increase in houseless population in neighborhood

“Public comments sited a concern that the program would attract more houseless individuals to the neighborhood in hopes of getting into the program or to utilize the facilities provided to program participants.

“The applicant has proposed two mitigation techniques to limit the possibility of the program attracting other houseless individuals. The applicant proposes nightly security sweeps, whereby a security guard will visit the property nightly to ensure that only participant vehicles are parked overnight and that guests of the participants are not on-site. The applicant also proposes to provide a designated contact person to be available 24 hours a day. Conditions of approval are included requiring that security personnel visit the property nightly for the length of SOS program occupancy. A second condition requires that the contact of the designated contact person is provided to property owners within 300 feet of the church property lines.

“Given that there is a population of homeless individuals in the area, it is possible but unknown if some will seek to take advantage of the sanitation facilities provided by the church. A condition of approval is included requiring that the porta-potty have a lock that is accessible only to program participants, King of Kings volunteers and the porta-potty service provider. Nightly security sweeps and the availability of a designated contact person 24 hours a day will also ensure that non-participants are not utilizing program facilities.

#### “Daytime Parking

“A number of comments identified the daytime parking of participants as a potential impact. The comments pointed to an expectation that

program participants will simply move to neighborhood streets during the day. Participants in the program have the same rights to park in a public right-of-way as any other member of society. As such, whether or not the participants park on the streets during off hours is not considered a materially adverse effect.

“Noise

“The County has a noise ordinance to which everyone must adhere. Noise violations by program participants should be directed to the Clackamas County Sheriff’s Office, in the same way as a complaint about a neighbor exceeding the noise ordinance. Additionally, neighbors have the option of contacting the King of Kings designated contact person on duty to report the violation of the code of conduct by the participant. This level of response will ensure that participants will comply with the County noise ordinance.

“Fire Risk

“A number of comments identified the additional risk of fire associated with outdoor cooking. It is unrealistic that the applicant, could effectively manage or regulate on-site cooking, including but not limited to separation distances between open flames and vehicles or other combustible materials, and sanitary disposal of food scraps and grey water. A Condition of approval is included that prohibits outdoor cooking.

“Staff finds that there will be no materially adverse impacts created by this proposal.” Planning Director Decision 13-15.

Opponents raise a number of very valid points. All of the adverse effects listed by opponents certainly have the potential for occurring. The applicant and the Planning Director tend to dismiss opponents’ concerns as merely speculative or easily addressed by the screening and monitoring provisions proposed by the church. While it is true that many of opponents’ concerns are speculative – so are the applicant’s assurances that there will not be any problems. The burden, however, is on the applicant to demonstrate that there will not be materially adverse effects – not for opponents to demonstrate that there will be. Both the applicant and opponents point to other homeless programs to bolster their arguments. None of the programs cited are especially similar programs, and both sides make apples to oranges comparisons to support their position and discount the other side’s position. While there are certainly apples to oranges aspects to the arguments, apples and oranges are both round fruit that grow on trees – so there are some similarities. The

recurring aspects of the more successful programs generally involve support from the surrounding area (certainly not present here) and active supervision and involvement from qualified personnel. While there does not seem to be much that can be done to improve support from the surrounding area (other than successful operation of the program), the applicant has proposed a number of conditions involving screening, support, and supervision.

The applicant takes the position that the homeless population they would allow on the church property would be completely harmless, while opponents raise the specter of all the worst aspects of homelessness that are unfortunately all too readily apparent. The likelihood is that the SOS car camping population would fall somewhere in between. As the burden is on the applicant to ensure that there will not be materially adverse effects in the surrounding area and this is a pilot program that could be modified in the not too distant future, I agree with opponents that additional conditions of approval are warranted.

I am particularly persuaded by appellant Michael Partridge's (Partridge) testimony. Partridge lives adjacent to the church and essentially shares the same block as the church – so his house would be very close to the SOS campers. In addition to the arguments made by many opponents, Partridge persuasively argues that he would not have bought his house (which he did recently) had he known there would be a homeless camp next door and that his property values would almost certainly decline with the SOS car camp. Partridge requests that a fence be erected around the church's property to separate the SOS car camp from adjoining neighbors (Partridge in particular). I agree that this is a necessary condition to prevent materially adverse effects to Partridge. Therefore, the following condition of approval is warranted:

“King of Kings will install a six-foot sight obscuring fence along the entire perimeter of the property, except for along Southeast Thiessen Road.”

The applicant argues that because the SOS car camping program would only provide for two to three camping spots that the participants can be screened to allow only the most worthy and least likely to be problematic homeless people. That assertion is belied by the fact that at least one of the spots is to be designated for participants from the Providence Better Outcome through Bridges (BOB) program that appears to be specifically tailored towards people with substance abuse or mental health problems. The applicant has

suggested that it is willing to strengthen its screening requirements to exclude anyone with felony convictions for assault or sexual assault at any time; felony convictions for property, drug, or alcohol crimes with the past five years; and misdemeanor convictions for property, drug, or alcohol crimes within the past three years. I agree that this should be a conditional of approval and include prohibitions against any participants who have committed felonies or sex crimes of any kind. Therefore, the following condition of approval is warranted:

“All potential participants shall undergo criminal background checks. Any applicants with felony convictions or sex crime convictions of any kind are prohibited. Any applicants with misdemeanor convictions of property, drug, or alcohol crimes within the past three years are prohibited.”

Although the Revised Rules of Conduct proposed by the applicant prohibit drug or alcohol use on the property and provide for potential drug testing, there is nothing to prevent participants from engaging in such use before coming to the church for the night. Given the applicant’s resistance to restrictions, it seems unlikely to me that the applicant would be likely to drug test participants on their own. Therefore, the following condition of approval is warranted:

“Prior to participation in the SOS program, all participants must pass a drug test for drugs illegal under Oregon law.”<sup>4</sup>

Opponents raise valid points about illegal or unregistered cars, trucks, or recreational vehicles being parked at the church. Therefore, the following conditions of approval are warranted:

“At least one participant in each vehicle must have a valid driver license and the church must maintain a copy of that license.”

“All participant’s vehicles must have current registration, license plates, and insurance. The church must maintain copies of such documents.”

As discussed earlier, homeless shelters appear to have less material adverse effects on their surrounding when there is professional involvement with the participants. Therefore, the following condition of approval is warranted:

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<sup>4</sup> The potential participants are not on any kind of parole or probation, so I do not think it is appropriate to prevent them from using legal substances while off the church property.

“Participants must meet weekly (on average) with May Zellharie or Mikaila Smith (or their equivalents) at King of Kings to assess their transition towards more permanent housing. The applicant must maintain records of such meetings.”

The applicant proposes to have a nightly security patrol for the SOS parking lot. The proposed security patrol would only “confirm that only approved vehicles are present on site” and would only “notify the correct authority in the event of illegal activity or the presence of unpermitted vehicles parked in the parking lot.” I agree with opponents that this condition of approval is woefully inadequate to prevent any materially adverse effects. The proposed security patrol would only visit the property once per day, which is not enough to prevent unpermitted activity. The proposed security patrol would also not be authorized to remedy any violations of the code of conduct, but instead would merely report activity to the “correct authority.” First of all, the sheriff’s office will not respond to violations of the code of conduct if it is not also a violation of the law. Furthermore, as opponents argue, even if there are violations of the law, the sheriff’s office does not respond to all minor violations, particularly in the middle of the night. I agree with opponents that increased and authorized security patrols are warranted and also that a video security system should be installed. Therefore, the following conditions of approval are warranted:

“Security patrols shall occur at least three times per night for the length of the operation of the SOS site. Security patrols will be authorized to enforce the code of conduct signed by participants. In the event of illegal activity, security patrols must contact the Clackamas County Sheriff’s Office.”

“The church must install a video and audio security system dedicated to monitoring all areas of the SOS car camping area. The security system must store a minimum of 90-day rolling history. The security footage must be made available to any neighbors who request the footage.”

While it is a close call, I conclude that with the proposed and additional conditions of approval that it is feasible that the proposed temporary use would not have materially adverse effects on the surrounding area. I certainly sympathize with the neighbors that they are being asked to trust the church that there will be no adverse effects. The County, however, has established a pilot program for SOS car camping – theoretically the County could have allowed such SOS car camping as an outright permitted use with no conditions

of approval. Presumably, if the program does have materially adverse effects it will be discontinued.

While the applicant may balk at some of the additional conditions of approval, the burden is on the applicant to demonstrate that there will not be materially adverse impacts on the surrounding area. It is not sufficient to merely dismiss the neighbors' concerns as speculation or discrimination against the homeless. The neighbors are being asked – well told – to be the guinea pigs in this pilot program. I do not think it is unreasonable to require security and supervision conditions of approval to protect the neighbors from potential adverse effects. While obviously not all – or even most –homeless people are potential problems, the church only has to be wrong once to have very serious consequences occur.

Therefore, with conditions of approval, ZDO 1204.02(A)(5) is satisfied.

All of the approval criteria are satisfied.

#### **E. DECISION**

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the Hearings Officer hereby **APPROVES** the application for a temporary use otherwise prohibited for an SOS car camping pilot program in Z0174-19-STU, with the following conditions of approval.

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

##### **1) General Conditions:**

1. Approval of this permit for a Temporary Use Otherwise Prohibited is based on the submitted materials dated April 10, and June 26, 2019. No work shall occur under this permit beyond that specified in this decision. It shall be the responsibility of the property owner(s) to comply with this decision and the limitations of approval described herein.
2. **This temporary permit approval is valid for one year from the date of the final decision or for 6 months from the date of commencement of safe overnight shelter (SOS) operations, whichever is earlier.** Commencement means the date the first occupied vehicle is authorized overnight on the subject property. Pursuant to Clackamas County Zoning and Development Ordinance Subsection 1307.16(I), the final decisions date is:
  1. The day the final decision is issued, if no appeal at the County level is allowed;
  2. The day after the appeal period expires, if an appeal at the County level is allowed, but no notice of appeal is timely filed;

3. The day the decision is issued by the final County appeal body, if an appeal is allowed and notice of appeal is timely filed. However, if the appeal is withdrawn prior to decision, the effective date of the County's final decision shall revert to the day after the appeal period would have expired had an appeal not been timely filed; or
  - B) The applicant shall provide the Clackamas County Planning and Zoning Division written notice seven days prior to the first occupied vehicle on-site.
  - C) A new application is required to continue the temporary use otherwise prohibited after the permit expires.
3. The approval of the application granted by this decision concerns only the applicable criteria for this decision. The decision does not include any conclusions by the county concerning whether the activities allowed will or will not come in conflict with the provisions of the federal Endangered Species Act (ESA). This decision should not be construed to 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 responsibility 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.

## II) **Specific Conditions:**

1. The Temporary Use Otherwise Prohibited is for a maximum of three vehicles to park only from from 6 p.m. to 8 a.m. on the King of Kings Lutheran Church parking lot at 5501 SE Thiessen Rd.
2. Participant vehicles shall only park in the designated area as shown on the applicant's revised site plan submitted June 26, 2019.
3. Vehicles, including RVs, shall not connect to any utilities from the church.
4. The vehicle parking shall not be a source of rental income.
5. SOS participant vehicles shall be removed from the subject parcel when the permit expires. **It is a violation of ZDO 1204 to leave a temporary use otherwise prohibited on the subject property after the need ceases or the permit expires.**
6. No personal items shall be stored outside. All personal items not in immediate use shall be kept within enclosed facilities, such as the church or in participant vehicles.
7. The applicant shall provide a minimum of one solid waste receptacle, with lid, that is accessible to the SOS participants during the hours of operation. No accumulation of solid waste on the subject property is permitted. The church shall be responsible for providing solid waste management for participants, including

regular removal of accumulated waste, in such a manner that solid waste does not accumulate outside of waste receptacles.

8. Sanitation Facilities:

- A) A minimum of one porta-potty shall be provided on-site with a locked door, accessible only to program participants and the service provider. The facilities shall be inspected and serviced by a DEQ certified contractor at least once a week and pumped as necessary, as determined by the contractor. Prior to commencement of operations, a copy of the contract with the certified contractor shall be submitted to the Planning Division.
- B) A hand washing station shall be provided with hand washing cleanser and single use sanitary towels.

9. Use of outdoor open flame cooking facilities by program participants is prohibited on-site.

- A) The church may, at its discretion, allow program participants to use cooking facilities located inside the church building.
- B) This condition does not prohibit the church from using an outdoor barbeque or other open flame cooking facility for church events or for participants in the SOS program.

10. No guests of the SOS participants are allowed. For the purposes of this condition, members of the church, Providence Better Outcome through Bridges staff and other social service providers are not considered to be guests.

11. King of Kings shall provide a designated contact person who is available 24 hours a day to respond to issues and emergencies relating to the SOS site. The phone number for the participant shall be provided to participants and property owners within 300 feet of the subject property lines, and shall be posted on-site.

12. All SOS participants shall be authorized through Clackamas County Coordinated Housing Access.

13. The applicants shall have a memorandum of understanding with Providence Better Outcome through Bridges signed prior to commencement of operations.

14. The applicant shall track and maintain a list of all incidents and any calls to the designated contact person during the 6-month period of use for the SOS program. An incident is any event in which the contact person, Sheriff or other authority, or service provider responded or took further action. Scheduled visits shall not count as incidents.

15. King of Kings will install a six-foot sight obscuring fence along the entire perimeter of the property, except for along Southeast Thiessen Road.

16. All potential participants shall undergo criminal background checks. Any applicants with felony convictions or sex crime convictions of any kind are prohibited. Any applicants with misdemeanor convictions of property, drug, or alcohol crimes within the past three years are prohibited.
17. Prior to participation in the SOS program, all participants must pass a drug test for drugs illegal under Oregon law.
18. At least one participant in each vehicle must have a valid driver license and the church must maintain a copy of that license.
19. All participant's vehicles must have current registration, license plates, and insurance. The church must maintain copies of such documents.
20. Participants must meet weekly (on average) with May Zellharie or Mikaila Smith (or their equivalents) at King of Kings to assess their transition towards more permanent housing. The applicant must maintain records of such meetings.
21. Security patrols shall occur at least three times per night for the length of the operation of the SOS site. Security patrols will be authorized to enforce the code of conduct signed by participants. In the event of illegal activity, security patrols must contact the Clackamas County Sheriff's Office.
22. The church must install a video and audio security system dedicated to monitoring all areas of the SOS car camping area. The security system must store a minimum of 90-day rolling history. The security footage must be made available to any neighbors who request the footage.

DATED this 7<sup>th</sup> day of November, 2019.

  
Fred Wilson  
Clackamas County Hearings Officer

### **ENDANGERED SPECIES ACT NOTICE**

The federal Endangered Species Act (ESA) is not a criterion for approval of this application. The County has reviewed the approval standards in light of the requirements of the ESA, believes that the criteria for approval are consistent with the terms of the ESA and has submitted the Development Ordinances for consideration for a "4(d)" programmatic limitation. However, the analysis included in this decision does not include an evaluation by the County of the applications for consistency with the ESA nor does the decision reach any conclusions concerning that federal law. The applicant are responsible for designing, constructing, operating and maintaining the activities allowed by an approval of this application in a manner that ensures compliance with the ESA. Any question concerning this issue should be directed to the applicant, their consultants and the federal

agencies responsible for administration and enforcement of the ESA for the affected species.

### **APPEAL RIGHTS**

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