

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

Regarding an application by the Kinsman Foundation for approval of a conditional use permit to use a Historic Landmark residence at 17014 Oatfield Road as offices for the Kinsman Foundation, in unincorporated Clackamas County, Oregon ) **FINAL ORDER**  
)  
) **Case No. Z0558-22-C**  
) **(Kinsman Foundation)**

**A. SUMMARY**

1. The Kinsman Foundation (“the “applicant”), requests conditional use approval to use the Kinsman House, a Historic Landmark residence, as offices for less than five full-time staff and quarterly board meetings for the Kinsman Foundation. The Kinsman House is located on a 2.45-acre parcel at 17014 Oatfield Road; also known as Tax Lot 1900, Section 18AA, Township 2 South, Range 2 East, of the Willamette Meridian, Clackamas County (the “site”). The site and surrounding properties are zoned R8.5 (Urban Low Density Residential, 8,500 square foot minimum lot size). The site is also subject to the HL (Historic Landmark) overlay. The site is currently developed with three residences: the “Kinsman House” (the primary residence), the “Treehouse,” and the “Log Cabin” as well as several accessory structures. The applicant proposes to use the Treehouse for offices and the Kinsman House for occasional meetings.

2. Hearings Officer Joe Turner (the "hearings officer") held a public hearing about the application. County staff recommended that the hearings officer approve the application, subject to conditions. See the Staff Report and Recommendation to the Hearings Officer dated July 10, 2023, (the “Staff Report”). The applicant accepted the findings and conditions of approval as recommended by County staff, with certain exceptions. Three other persons testified orally or in writing in support of the application. Disputed issues in this case include:

- a. Whether ZDO 707.06(C)(5) limits the building floor space that may be used for the proposed commercial use;
- b. Whether the applicant is required to pave SE Treehouse Lane; and
- c. Whether additional permits and approval may be required to “implement” this approval.

3. Based on the findings provided or incorporated herein, the hearings officer finds that the applicant sustained the burden of proof that the proposed use does or can comply with the relevant approval standards of the Clackamas County Zoning and Development Ordinance (the “ZDO”), provided the applicant complies with conditions of approval recommended by County staff or warranted by the facts and law to ensure the proposed use does comply in fact with those standards. Therefore, the hearings officer

approves the application subject to the conditions at the end of this final order based on the findings and conclusions incorporated herein.

## **B. HEARING AND RECORD HIGHLIGHTS**

1. The hearings officer received testimony at the public hearing about this application on July 27, 2023. All exhibits and records of testimony are filed at Clackamas County Department of Transportation and Development. At the beginning of the hearing, the hearings officer made the declaration required by ORS 197.763. The hearings officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The following is a summary by the hearings officer of selected testimony at the public hearing.

2. County planner Joy Fields summarized the Staff Report. She noted that there are three residences on the site: the “Log Cabin,” the “Treehouse,” and the “Kinsman House.”

a. Although offices are not allowed in the R8.5 zone, they are allowed as a conditional use in the HL overlay zone. Pursuant to ZDO 102.06(B), in the event of a conflict, the provisions of ZDO 700 (overlay zones) prevails over the provisions of ZDO 300 (residential zones). ZDO 707.04(B)(2)(c) allows offices in the HL zone subject to the criteria of ZDO 707.04(B)(1). Therefore, the proposed office use is allowed pursuant to approval of a conditional use permit. Allowing office uses on the site will help preserve the historic residence.

b. ZDO 707.06(C)(5)(a) limits commercial uses in the HL zone to a maximum 4,000 square feet of building floor space unless the use is “[i]ntended to serve the community and surrounding rural area or the travel needs of people passing through the area.”

c. The site contains evidence of landslides and mass movement. However, the site is suitable for the proposed use because no additional development is proposed. The use will occur inside the existing structures on the site.

d. The parking requirements of ZDO 1007 do not apply to this use, as required improvements could conflict with the historic character of the site. The applicant will be required to delineate parking spaces, install curb stops, and demonstrate that adequate maneuvering area is available to access the parking. The applicant can provide adequate parking to serve the proposed use near the Treehouse residence on the site.

3. Keith Kinsman appeared on behalf of the applicant, the Kinsman Foundation and summarized the proposed use. He noted that Restore Oregon submitted written testimony in support of the application. He accepted the findings and conditions in the Staff Report with certain exceptions.

a. The applicant plans to use the Treehouse residence as the primary office use for the Foundation. They will use the main house for board meetings as well as for meetings with grantees. Their current offices are a nonconforming use in a residence located roughly one mile from the site. A neighbor of the current office submitted testimony in support of the application.

b. SE Treehouse Lane, which provides access to the site and two properties east of the site, is located in a 40-foot flag pole portion of the site. The existing road is not fully paved. The pavement is less than 12 feet wide; up to two-inches of asphalt is “missing”. Near the Treehouse the north edge of the road is gravel. The neighboring property owners support leaving the road as gravel. The Code allows parking on gravel, provided the parking spaces are striped and include curb stops.

c. The site is very secluded and mostly screened from surrounding properties and roads. Although the site has significant frontage on Oatfield Road, the site does not take access from that road. All access is from SE McNary Road, via SE Treehouse Lane. There is a steep, roughly 20-foot high, bank abutting Oatfield Road which screens views of the site from the road. The main house and the Log Cabin are located on a topographic bench at the top of the bank. Then there is another steep slope, with the Treehouse located at the top. The rear of the Treehouse is supported by stilts amongst the trees.

d. He argued that the proposed use is consistent with the standards for exceptions to the 4,000 square foot limit in ZDO 707.06(C)(5)(a), as the proposed use will serve “the surrounding rural area.” The Kinsman Foundation is a non-profit that provides grants to communities in the urban and rural areas.

e. Allowing commercial use of the site will help preserve the historic site and prevent it from being redeveloped, consistent with the comprehensive plan and the ZDO. The proposed use is a compatible adaptive use of the historic property. He cited the Bishop’s Close property in Multnomah County as an example of a historic property that was subject to potential development.

4. Jim Barrett testified in support of the application, but he objected to any changes to SE Treehouse Lane, which provides the only access to his properties east of the site. He argued that the existing hedge and trees on the site should be preserved to screen views of the site from his property. SE Treehouse Lane should remain a gravel surfaced road. There is a 10- foot x 10-foot PGE transformer box that could limit the applicant’s ability to pave SE Treehouse Lane.

5. Katelyn Van Genderen testified in support of the application on behalf of Restore Oregon. She testified that the Kinsman Foundation serves communities throughout the state for a variety of purposes.

6. At the end of the public hearing, the hearings officer held the record open subject to the following schedule:

a. For one week, until August 3, 2023 for anyone to submit new testimony and evidence;

b. For a second week, until August 10, 2023 for anyone to respond to issues raised during the first week; and

c. For a third week, until August 17, 2023 for the applicant to submit a final argument.

### **C. DISCUSSION**

The hearings officer adopts the following findings as his own.

#### **PART 1. CONFLICTS – HISTORIC LANDMARK vs DEVELOPMENT STANDARDS**

Subsection 102.06 of the Zoning and Development Ordinance lists the information that must be considered when there are conflicts between portions of the ordinance.

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B. If standards in this Ordinance conflict with one another to the extent that it is not possible for a use or development to comply with both, or all, of the conflicting standards, the conflicts shall be resolved by giving precedence as follows, in descending order of importance:

1. Standards required in an overlay zoning district by Section 700, Special Districts;
2. Standards required by the section of this Ordinance that regulates the underlying zoning district; and
3. Standards required by Section 1000, Development Standards.

C. If a standard required by Section 800 conflicts with a standard required by the section of this Ordinance that regulates the underlying zoning district or with a standard required by Section 1000, the standard in Section 800 shall apply.

***Finding:*** *This application includes a Historic Landmark that is subject to Section 707 of the Zoning and Development Ordinance. The entire property contains a Historic Landmark Overlay because the grounds along with the house were found to be contributing to the historic characteristics that gave historic significance to the property. Therefore, the protection of those contributing features supersedes the development standards found in Section 1000s including 1007 – roads, and 1015 parking and loading. These criteria are met as conditioned.*

## **PART 2. SUBMITTAL REQUIREMENTS – CONDITIONAL USE PERMIT**

**Subsection 1203.02** of the Zoning and Development Ordinance lists the information that must be included in a complete application for a conditional use permit.

***Finding:*** *This application includes a completed land use application form addressing the criteria in Section 1203 of the ZDO, site plan, application fee, and completed statements of feasibility from service providers. The application also includes a description of the proposed use and vicinity map. All the submittal requirements under Subsection 1203.04 are included in the application. The application was submitted with narrative and plan(s) dated December 15, 2022, and additional materials were provided on April 17, 2023 and on May 15, 2023. The application was deemed complete on June 1, 2023. **The submittal requirements of Subsection 1203.02 are met.***

**Subsection 707.06.B** of the Zoning and Development Ordinance provides:

In addition to the submittal requirements identified in Subsections 1203.02 and 1307.07(C), an application for a historic landmark include:

1. A written description of the boundaries of the proposed Historic District, if applicable, or the location of the site;
2. A map illustrating the boundaries of the proposed Historic District, if applicable, or the location of the site;
3. A list of exterior materials pertinent to the application request; 4. Drawings of elevations of affected structure(s):
  - a. Drawings shall indicate dimensions and be to scale.
  - b. Photographs may be used in lieu of drawings for small projects.
5. Floor plans of affected structure(s); and
6. Site plan showing relationship of structure(s) to roadways, parking areas, access drives, landscape features, plant materials, fences, and other pertinent elements, drawn to scale.

***Finding:*** *The applicant is not proposing any alterations to the contributing elements of the National Register Nomination and Historic Landmark Designation. However, if such modifications are required to meet the requirements of the Transportation and Engineering Division, then it would be considered site development and a modification of the historic landmark that would need to be considered by the Historic Review Board. **These criteria can be met as conditioned.***

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## **PART 3. CONDITIONAL USE PERMIT**

**Subsection 1203.03** of the Zoning and Development Ordinance lists six criteria that must be satisfied in order to approve this Conditional Use.

**Subsection 1203.03(A)**: The use is listed as a conditional use in the zoning district in which the subject property is located.

Section 315, R-8.5: The subject property is zoned R8.5, an Urban Residential District. Section 315 of the ZDO controls land uses in the underlying R8.5 zoning district. Table 315-1 lists the uses that are allowed and identifies that “Home Occupations” are an allowed accessory use but offices are prohibited.

Section 707, Historic Landmark Overlay District: Allows commercial uses such as Offices as a Conditional Use subject to ZDO 1203.

***Finding***: *The applicant is not proposing to live in the house, so a Home Occupation is not proposed. However, the Historic Landmark Overlay District allows additional uses as Conditional Uses. **This criterion is satisfied.***

**Subsection 1203.03(B)**: The characteristics of the subject property are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features.

***Finding***:

1. **Size**: *The site is approximately 2.45-acres in size and developed with three residential structures. The applicant proposed to utilize the Treehouse structure for offices and the main residence, the Kinsman House, for occasional meetings. The submitted site plans and narrative demonstrate the property is of sufficient size to accommodate the proposed use, along with screening and circulation.*
2. **Shape**: *The property is approximately flag like in shape. The flagpole portion of the site is more than adequate to provide access to the site. Combined with size, the shape does not present any significant limitation to the proposed use of the site.*
3. **Topography**: *The subject property can be described as gently sloped with a steep slope adjacent to Oatfield Road and another slope between the Kinsman House and the Treehouse. Topography is not an impediment to the proposed use, except that the ADA accessible parking will have to be separated from other parking to facilitate accessibility to the meeting rooms.*
4. **Location**: *The site is located inside the Urban Growth Boundary, along the eastern side of Oatfield Road between SE Treehouse Lane and Oatfield Road to the south of SE McNary Road. There is no evidence of any locational issues that would adversely affect the proposed use.*

5. Improvements: The subject property is developed with homes, accessory outbuildings, and landscaping. No changes are proposed to these structures.
6. Natural Features: The site could be considered to have a group of trees or woods. There are also mass movement hazards on site. However, no new structures are proposed and the limited site development required (expanded gravel road shoulders and delineation of parking spaces) will not increase the risk of slope failure or landslides.

Summary: The location, size, shape, topographic, natural and developed characteristics of the property are suitable to accommodate the proposed use. **This criterion is met.**

**Subsection 1203.03(C)**: The proposed use is consistent with Subsection 1007.07, and safety of the transportation system is adequate to serve the proposed use.

Subsection 1007.07: Transportation Facilities Concurrency

Subsection 1007.07(A) Subsection 1007.07 shall apply to the following development applications: design review, subdivisions, partitions, and conditional uses.

Subsection 1007.07(B) Approval of a development shall be granted only if the capacity of transportation facilities is adequate or will be made adequate in a timely manner. The following shall be exempt from this requirement:

1. Development that is located:
  - a. In the Light Industrial, General Industrial, or Business Park District; and
  - ...

***Finding***: The proposed use is identified as a conditional use in the Historic Landmark Overlay District. The site is not located in the Light Industrial, General Industrial, or Business Park District. Therefore, the proposed use is subject to the requirements of ZDO 1007.07, except to the extent the standards in ZDO 1007.07 conflict with the standards of Section 707, as preservation of the historic resource including the landscaping and the building is required by 707 and supersedes the development standards in 1007 pursuant to ZDO 102. **This criterion can be met as conditioned.**

Subsection 1007.07(B): Approval of a development shall be granted only if the capacity of transportation facilities is adequate or will be made adequate in a timely manner...

*ZDO Section 1007.07 requires that development is served by a transportation system that has adequate capacity to handle any increased vehicle trips generated by new development. Although, the applicant indicates that staff currently work a hybrid schedule, for a conservative estimate, it is assumed that all four staff may be on-site at one time. Based on ITE trip generation rates, a single tenant office with four employees generates a total of 15 daily vehicles trips, with two trips in the AM peak hour, and two trips in the PM peak hour. This low trip generation rate is equivalent to approximately one to two single family residences.*

*At the present time SE McNary Road operates during the mid-day one hour peak and first and second hours of the PM peaks, at acceptable volume to capacity (v/c) ratios less than the maximums which are 0.90 and 0.99 respectively. Therefore, engineering staff determined that the roadways and intersections serving the project site will continue to operate within standards, satisfying the provisions of Section 1007.07. There is no evidence to the contrary. **This criterion is met.***

**Subsection 1203.03(D):** “The proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located.”

**Finding:**

*This criterion does not prohibit any impacts from the proposed use. This provision only prohibits impacts that substantially limit, impair or preclude the use of surrounding properties for the allowed primary uses. The site and surrounding properties are zoned R8.5 and land use in the area is primarily residential home-sites. Primary uses allowed in the R8.5 Zoning District are listed in Table 315-01, and include residential development. The applicant proposed to use the existing residential structures on the site for office uses for a maximum four employees. As noted above, the proposed use will generate fewer vehicle trips than the three existing residences on the site. In addition, existing trees, vegetation, and topography screen views of the site from surrounding properties and roads and will be retained with the proposed development. Based on these factors, the hearings officer finds that the proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of those properties for primary uses allowed in the R8.5 zone. **This criterion is met.***

**Subsection 1203.03(E):** “The proposal satisfies the goals and policies of the Comprehensive Plan that apply to the proposed use.”

**Chapter 9, OPEN SPACE, PARKS, AND HISTORIC SITES:**

**Historic Site Policies:**

- 9.C.5 Identify conflicts by analyzing the economic, social, environmental, and energy consequences of land use actions with regard to significant historic resources.



- 9.C.6 Develop policies and programs to protect historic resources and minimize the conflicts.
- 9.C.7 Pursue private and public sources of funding for use by property owners in the renovation and maintenance of historic properties.
- 9.C.8 Pursue options and incentives to allow productive, reasonable use, and adaptive reuse of historic properties.

*The hearings officer finds that the proposed change of use is consistent with Comprehensive Plan policy 9.C.8, as it will allow productive, reasonable and adaptive reuse of the historic property. Converting a historic home to offices for a non-profit is a reasonable adaptive reuse of the historic property that will protect the site from development. **This criterion is met.***

**Subsection 1203.03(F):** The proposed use complies with any applicable requirements of the zoning district and overlay zoning district(s) in which the subject property is located, Section 800 (further below, under Part 3 of this report), and Section 1000.

The proposed development is consistent with ZDO 1000, 1002, 1003, 1004, 1005, 1006, 1007, 1009, 1010, 1011, 1015, 1021, as modified by ZDO 102.06 and 707, based on the findings below. ***This criterion is met.***

### **SECTION 1000: DEVELOPMENT STANDARDS:**

***Finding:*** *The proposed office use is a “commercial use” as defined by ZDO 202. Therefore, pursuant to Table 1001-1, this application is subject to the following 1000 Sections applicable to commercial uses.*

### **1002 PROTECTION OF NATURAL FEATURES**

***Finding:*** *The site contains steep slopes and is largely wooded. However, no development is proposed that will impact the slopes and no tree removal is proposed. Other natural features, such as rivers, streams, significant landforms, winter range, and hillsides addressed in Section 1002 were reviewed and not found on site, or would not be impacted by the proposed use. **These criteria are inapplicable.***

### **1003 HAZARDS TO SAFETY**

***Finding:*** *Based on DOGAMI online maps, the site contains landslide scarps and mass movement hazards. The applicant is not proposing any additional structural development on the site. All activities will take place within existing structures: the Kinsman House, Treehouse, Log Cabin, and sheds are already built therefore, additional land use review for mass movement hazards is not needed. The site does not contain identified flood, soil, or fire hazards. **These criteria are inapplicable.***

## **1004 HISTORIC PROTECTION**

***Finding:*** *The site was designated as a Historic Landmark with the Kinsman House and associated landscape contributing to the historical significance of the site. Therefore, this project is subject to Subsection 707 of the ZDO. These criteria are addressed under a separate section. This criterion is met as conditioned.*

## **1005 SITE AND BUILDING DESIGN:**

Section 1005 of the ZDO sets forth the standards, requirements, and considerations that pertain to additional techniques to meet sustainability goals. Staff reviewed Section 1005 and finds the following criteria apply:

### **Subsection 1005.04, Outdoor Lighting:**

#### **Subsection 1005.04(A), Outdoor lighting devices:**

Outdoor lighting devices:

1. Shall be architecturally integrated with the character of the associated structures, site design and landscape.
2. Shall not direct light skyward.
3. Shall direct downward and shield light; or direct light specifically toward walls, landscape elements or other similar features, so that light is directed within the boundaries of the subject property;
4. Shall be suitable for the use they serve, e.g. bollard lights along walkways, pole mounted lights for parking lots;
5. Shall be compatible with the scale and intensity of uses they are serving. Height of pole mounted fixtures shall not exceed 25 feet or the height of the tallest structure onsite, whichever is less; and
6. At entrances, shall be glare-free. Entrance lighting may not exceed a height of 12 feet and must be directed downward.

***Finding:*** *No changes to the buildings are proposed, and the proposal contains no walkways, or parking lots. However, the applicant is silent on site lighting. A condition is warranted requiring any future outdoor lighting associated with the proposed office use include fixtures that are directed downward, shielded, and compatible and appropriate for the use, location and overall style of the building and property.*

*If additional lighting will be installed, the applicant shall submit an outdoor lighting design plan prior to installation for review and approval by the Planning and Zoning Division.*

*These standards of Section 1005 can be met as conditioned.*

**1006, UTILITIES, STREET LIGHTS, WATER SUPPLY, SEWAGE DISPOSAL,**

Subsection 1006.03 – Water Supply Standards.

- A. All development which has a need for, or will be provided with, public or community water service shall install water service facilities and grant necessary easements pursuant to the requirements of the district or company serving the development.

**Finding:** *The applicant is not proposing to add rooms or alter the Kinsman house to accommodate the proposed office use and no subdivision or partition is proposed. The current house and site are served by Oak Lodge Water and during the pre-application for this proposal their comments included “Existing services and meters may be used without analysis if structures are not reconstructed or added onto.” The applicant also provided a preliminary statement of feasibility signed by Oak Lodge Water. **This criterion is met.***

Subsection 1006.05 - Onsite Wastewater Treatment:

- A. All development proposing onsite wastewater treatment shall receive approval for the system from the County prior to submittal of a land use application for development. Said systems shall be installed pursuant to Oregon Revised Statutes 454.605 through 454.745 and Chapters 171, 523, and 828; Oregon Administrative Rules Chapter 340, Divisions 71 and 73; and the policies of the County.

**Finding:** *The applicant is not proposing to add rooms or alter the Kinsman house to accommodate the proposed office use and no subdivision, or partition, is proposed. The current house and site are served by Oak Lodge Water and during the pre-application for this proposal their comments included “The existing structure, if replaced, will require a new lateral. No wastewater work is required if the structure remains.” The applicant also provided a preliminary statement of feasibility signed by Oak Lodge Water. **This criterion is met.***

Subsection 1006.06 - Surface Water Management Standards:

The following surface water management and erosion control standards apply:

- A. Positive drainage and adequate conveyance of surface water shall be provided from roofs, footings, foundations, and other impervious or near-impervious surfaces to an appropriate discharge point.

- B. The requirements of the surface water management regulatory authority apply. If the County is the surface water management regulatory authority, the surface water management requirements of the *Clackamas County Roadway Standards* apply.
- C. Approval of a development shall be granted only if the applicant provides a preliminary statement of feasibility from the surface water management regulatory authority. The statement shall verify that adequate surface water management, treatment and conveyance is available to serve the development or can be made available through improvements completed by the developer or the system owner.
  - 1. The service provider may require a preliminary storm water management plan, storm drainage report, natural resource assessment and buffer analysis prior to signing the preliminary statement of feasibility.
  - 2. The statement shall be dated no more than one year prior to the date a complete land use application is filed and need not reserve surface water treatment and conveyance system capacity for the development.

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***Finding:*** *Oak Lodge is the surface water management authority for the area including the subject site. The applicant’s proposal includes no additional impervious surface or site development. The applicant submitted a Preliminary Statement of Feasibility signed by Oak Lodge indicating it is feasible for the site to handle additional surface water from this use. If additional impervious areas is necessary to provide access to the proposed parking spaces, compliance with Oak Lodge Water Service standards will be required. The standards of Section 1006 are met.*

**1007, ROADS AND CONNECTIVITY:**

1007.01 GENERAL PROVISIONS

- A. The location, alignment, design, grade, width, and capacity of all roads shall be planned, coordinated, and controlled by the Department of Transportation and Development and shall conform to Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards. Where conflicts occur between Section 1007, the Comprehensive Plan, and the Clackamas County Roadway Standards, the Comprehensive Plan shall control.

***Finding:*** No new roads are proposed or required. Therefore, ***this provision is inapplicable.***

- B. Right-of-way dedications and improvements shall be required of all new developments, including partitions, subdivisions, multifamily dwellings, duplexes, triplexes, quadplexes, townhouses, cottage clusters, detached single-family dwellings, and commercial, industrial, and institutional uses, consistent with Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.

***Finding:*** The project site includes frontage on SE McNary and Oatfield Roads. Consistent with ZDO Section 1007, development applications are required to bring the roadway frontage up to current standards, including, but not necessarily limited to, right-of-way width, road width, sidewalks and storm drainage facilities. Based on the low traffic volume generated by the proposed office use, consisting primarily of staff trips to and from the property, public roadway frontage improvement would not be proportional to the transportation impacts of the proposed office use and will not be required. ***This criterion is met***

- C. New developments shall have access points connecting with existing private, public, county, or state roads.
  - 1. Intersection spacing and access control shall be based on Subsection 3.08.110(E) of the Metro Code (*Regional Transportation Functional Plan*); Chapters 5 and 10 of the Comprehensive Plan; and the Clackamas County Roadway Standards.

***Finding:*** The site currently takes access from SE McNary Road via SE Treehouse Lane. No changes are proposed to the existing access. No new roads are proposed or required, as they would likely alter the historic character of the site and are therefore prohibited by ZDO 707, which supersedes the standards in ZDO 1007 pursuant to ZDO 102. ***This criterion is met***

#### 1007.02 PUBLIC AND PRIVATE ROADWAYS

- A. All roadways shall be developed according to the classifications, guidelines, tables, figures, and maps in Chapters 5 and 10 of the Comprehensive Plan and the provisions of the Clackamas County Roadway Standards.

***Finding:*** The site is located in the urban area. Therefore Drawing R100 of the Clackamas County Roadway Standards requires that this access provide a minimum 12

feet of paved width. However, existing SE Treehouse Lane is partially paved and primarily gravel. Additional pavement could conflict with the historic character of the site. Therefore, the applicant should be required to improve existing SE Treehouse Lane with gravel shoulders as necessary to provide the minimum 12-foot width. Condition of approval IV.2.a should be modified to that effect.<sup>1</sup> **This criterion can be met as conditioned.**

#### 1007.03 PRIVATE ROADS AND ACCESS DRIVES

A. Private roads and access drives shall be developed according to classifications and guidelines listed in Section 1007, Comprehensive Plan Figures 5-1 through 5-3, *Typical Roadway Cross Sections*, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards, except:

1. When easements or “flag-pole” strips are used to provide vehicular access to lots or parcels, the minimum width shall be 20 feet, unless a narrower width is approved by the Department of Transportation and Development and the applicable fire district’s Fire Marshal;

...

***Finding:*** Existing SE Treehouse Lane is located within a 40-foot wide “flag-pole” portion of the site, which exceeds the minimum 20-foot width. ***This criterion is met.***

#### **1009 LANDSCAPING**

ZDO Table 1009-1 requires that conditional uses in the R8.5 zone provide a Minimum Landscaped Area of 25-percent.

***Finding:*** The majority of the site is vegetated with mature trees and landscaping. The existing landscaping exceeds the minimum landscaping standard of 25-percent and no changes to the existing landscaping are proposed unless absolutely necessary for the driveway improvements required by the Transportation and Engineering Division. ***These criteria are met.***

#### **1010 SIGNS:**

***Finding:*** The Applicant proposes to display a painted wood sign approximately 574 square inches (3.98 square feet) in size. The sign exceeds the maximum three square feet for exempt signs. However, the applicant can modify the existing sign to meet this

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<sup>1</sup> There is a typographical error in the Staff Report. Condition IV of the Staff Report should be numbered as Condition III.

standard or obtain a sign permit. **The standards of Section 1010 can be met as conditioned.**

### **1011 OPEN SPACE AND PARKS:**

**Finding:** *The site is not identified on the Open Space Map. The applicant is not proposing a change to the outside of the building or a change in the lot of record dimensions. There, are therefore no known open space or park resources required or impacted by this project as identified in ZDO 1011. These criteria are therefore, not applicable to the project proposed through Z0558-22 and are included here for informational purposes only. **These criteria are inapplicable.***

### **1015, PARKING AND LOADING:**

**Finding:** *The applicant plans to use the existing drive, SE Treehouse Lane, to access the site. The applicant indicated that the designated parking spaces would be located at the “Treehouse” residence. The applicant noted that fewer than 15 parking spaces are needed based on square footage of office space and that with only two full-time employees and a couple of part-time employees coming to the site for work, three parking spaces are sufficient. Additionally there is capacity and ability for handicap accessible parking to be provided on the asphalt drive located adjacent to the Kinsman House. Discussion during the pre-application conference ZPAC0087-22 indicated that this parking configuration was needed to protect the historic landmark setting that is described in relation to the house as “highly compatible and contributing landscape reinforces its character and strongly supports an ability to accurately convey the original design”.*

*The applicant will be required to provide adequate on-site circulation for all vehicles anticipated to use the parking and maneuvering areas, per ZDO Section 1015. Based on the Historic Landmark designation of the site, typical commercial parking lot standards would not be consistent with the character of the property. The driveway and paving serving the main house is adequate for general site access. The applicant has provided a parking plan for staff parking, showing thee parking spaces adjacent to the Treehouse building, which has separate access to SE McNary Road, via SE Treehouse Lane. SE Treehouse Lane is located within a 40-foot wide area of the project site that also serves as access to two single family homes on properties to the east. There is a ten-foot wide public right-of-way along the east side of SE Treehouse Lane, but the existing road improvements do not appear to be located within the public right-of-way.*

*The preliminary parking does not show the existing road width adjacent to the proposed parking spaces. The applicant will be required to provide more detailed plans prior to initiation of the use, demonstrating that there is adequate maneuvering for the proposed parking spaces, and the access serving Tax Lots 22E18AA01800 and 22E18AA01700 is not obstructed.*

*As conditioned these standards can be met.*

**1021 SOLID WASTE AND RECYCLABLE MATERIAL COLLECTION:** outlines the standards for refuse and recycling for commercial developments.

**Finding:** *Staff from the Sustainability & Solid Waste Division found that Pursuant to 1021.08 Modification, the proposed commercial use of the site would not change the efficient, safe, and convenient collection of solid waste and recycling already in existence. Therefore, the refuse and recycling enclosure plans provided satisfy the requirements of ZDO 1021. The applicant shall work Clackamas County's Sustainability & Solid Waste Staff if plans change or questions arise. **These criteria are met.***

**Summary:** As discussed, above, and conditioned, the applicant can comply with all required sections listed under Section 1000, or are superseded by recommendations to protect the contributing resources in the Historic Landmark Overlay pursuant to ZDO 102.

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### **PART 3. OTHER DEVELOPMENT STANDARDS**

**Section 315– R8.5 Zone.** Table 316-1 lists “Offices” as a prohibited use but Section 707.04(B) identifies Offices in “urban and rural zoning districts, uses listed in Subsection 707.04(B)(2), which are not otherwise allowed in the underlying zoning district, are conditional uses, approval of which is subject to Section 1203, Conditional Use.”

**Finding:** *The applicant is proposing to use the Historic Landmark Kinsman House as an office use in the urban zoning district. Therefore, they are applying for Conditional Use approval to obtain approval for a use identified in Subsection 707.04(B)(2). This Criterion is met pursuant to ZDO 102 and 707.04.*

**The minimum yard depths in the R8.5 zone are a minimum of:**

15 feet except 20 feet to garage - from the front property line which runs along SE McNary Rd, and Oatfield Rd.

5 feet - from the side property lines

20 feet - from the rear property line

**Finding:** *These dimensional standards are met for existing structures as shown by the submitted site plan. No new structures are proposed with Z0558-22. **These criteria are met.***



**Section 707, Historic Resources**

707.04(B) Conditional Uses:

In urban and rural zoning districts, uses listed in Subsection 707.04(B)(2), which are not otherwise allowed in the underlying zoning district, are conditional uses, approval of which is subject to Section 1203, Conditional Use

1. In addition, the following criteria apply:
  - a. The use will preserve or improve a resource which would probably not be preserved or improved otherwise;
  - b. The use will not require the extension or development of urban services in rural areas;
  - c. The use will not adversely affect surrounding natural resource uses; and
  - d. The use will utilize existing structures rather than new structures, except where new structures are determined by the Historic Review Board to be in the best interest of preserving the historic resource. All structures of any form or size, including new structures, shall satisfy Subsection 707.06. 2.
2. The following conditional uses may be permitted. In addition, uses similar to one or more of the listed uses may be authorized pursuant to Section 106, Authorizations of Similar Uses.

...

- c. Offices;

...

**Finding:** *The applicant proposes to utilize existing buildings on the site for offices and occasional meetings. No new structures are proposed. Allowing office use of the site will allow the applicant to make beneficial use of the historic property, thereby preserving the historic resource. The site is located in the urban area and surrounded by residential zoned lands. There are no natural resource uses in the vicinity. Therefore, the use will not require extension or development of urban services in rural areas or adversely affect surrounding natural resource uses. **These criteria are met.***

**707.06 THE REVIEW PROCESS**

Subsection 707.06 applies to all Historic Landmarks, properties within Historic Districts and Historic Corridors, and contributing resources therein.

A. Designation and Zoning:

**Finding:** *The site was previously designated a historic resource, pursuant to the requirements of this section. **This criterion is inapplicable to the current application.***

B. Application Requirements:

In addition to the submittal requirements identified in Subsection 1307.07(C), applications for alteration and development shall include:

...

**Finding:** *The applicant submitted an application consistent with the requirements of this subsection, which the County accepted as complete. **This criterion is met.***

C. Alteration and Development:

1. Maintenance:

...

2. Minor Alterations:

...

3. Major Alterations:

...

4. New Construction:

...

**Finding:** *No alterations or development are proposed with this application. **These criteria are inapplicable.***

5. Maximum Building Floor Space: Commercial uses approved pursuant to Subsection 707.04(B)(2) are subject to the following standards:

- a. In an unincorporated community other than Government Camp, the maximum building floor space per commercial use shall be 4,000 square feet except that no maximum applies to uses intended to serve the community and surrounding rural area or the travel needs of people passing through the area.
- b. In Government Camp, the maximum building floor space per commercial use shall be 8,000 square feet except that no maximum applies to uses intended to serve the community and surrounding rural area or the travel needs of people passing through the area
- c. Outside both an unincorporated community and an urban growth boundary, the maximum building floor area per commercial use

shall be 3,000 square feet. However, a lawfully established commercial use that existed on December 20, 2001, may expand to occupy a maximum of 3,000 square feet of building floor space or 25 percent more building floor space than was occupied by the use on December 20, 2001, whichever is greater.

***Finding:*** *The hearings officer finds that ZDO 707.06(C)(5) does not limit the amount of floor space that may be used for the proposed commercial use. The site is not located in an unincorporated community other than Government Camp or in Government Camp. Therefore, ZDO 707.06(C)(5)(a) and (b) are inapplicable. The site is not located outside an unincorporated community or outside an urban growth boundary; the site is located within the UGB. Therefore, the floor area limitations of ZDO 707.06(C)(5)(c) are also inapplicable. ZDO 707.06(C)(5) does not impose any limitation on the floor area of commercial uses within the UGB. Therefore, proposed condition 4.c should be deleted. These criteria are inapplicable.*

6. Partitions and Subdivisions:

***Finding:*** *The applicant is not proposing to partition or subdivide the site. These criteria are inapplicable.*

7. Modifications to Certain Regulations: Regulations pertaining to signs, fence and wall provisions, general provisions regarding height, yards, area, lot width, frontage, depth, coverage, number of off-street parking spaces required, and regulations prescribing setbacks may be modified, if the modifications:
- a. Are necessary to preserve the historic character, appearance or integrity of the proposed Historic Landmark, Historic District or Historic Corridor; and
  - b. Are in accordance with the purposes of the zoning and sign regulations.

***Finding:*** *As discussed above, the applicant is proposing modifications to the off-street parking requirements in order to avoid impacts to the historic character, appearance and integrity of the Historic Landmark. The proposed modifications are in accordance with the purposes of the zoning regulations. These criteria are met.*

D. Moving or Demolition of a Historic Landmark or Contributing Resource:

***Finding:*** *The applicant is not proposing to move or demolish the Historic Landmark or Contributing Resource. These criteria are inapplicable.*

**PART 4. CONDITIONS OF APPROVAL**

The applicant objects to that portion of proposed condition of approval I.2 which discusses “major development permits” and “other necessary County development permits (e.g. grading permit, building permit for an accessory structure).” The applicant requests the hearings officer find that no additional permits are required for the proposed use.

The portion of condition of approval I.2 to which the applicant objects merely notes that this conditional use approval must be “implemented” within four years and goes on to discuss how the approval can be “implemented.” This condition does not require specific permits. However, the hearings officer notes that some additional permits may be required, i.e., a change of use permit from the Buildings Codes Division to change the use of the buildings on the site from residential to commercial office uses, and/or a development permit from the Transportation and Engineering Division for the proposed parking spaces and widening of SE Treehouse Lane. The applicant can discuss with County staff which, if any, additional permits may be required to implement this approval.

#### **D. CONCLUSION**

Based on the findings and discussion provided or incorporated herein, the hearings officer concludes that Case No. Z0558-22-C (Kinsman Foundation) should be approved, because the application does or can comply with applicable standards of the Clackamas County ZDO, provided it is subject to conditions that ensure timely compliance in fact with the ZDO and relevant Comprehensive Plan Policies.

#### **E. DECISION**

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the hearings officer hereby approves Z0558-22-C (Kinsman Foundation) subject to the following conditions:

#### **Conditions of Approval:**

##### **I. General Conditions:**

- 1) Approval of this land use permit is based on the submitted written narrative and plan(s) dated December 5, 2022, and additional materials provided on April 17, 2023 and May 15, 2023. The application was deemed complete on June 1, 2023. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of approval described herein.
- 2) The conditional use approval is valid for four years from the date of the final written decision. During this four-year period, the approval shall be implemented,

or the approval will become void. “Implemented” means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, “implemented” means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained. A “major development permit” is:

- a) Change of use permit from the Buildings Codes Division; or
  - b) A Development permit from the Transportation and Engineering Division.
- 3) This Conditional Use approval is granted subject to the above and below stated conditions. Failure to comply with any of the conditions of approval constitutes a violation of this permit and may be cause for revocation of this approval.

**II. Planning and Zoning Conditions:** Joy Fields, (503) 742-4510, [jfields@clackamas.us](mailto:jfields@clackamas.us)

- 1) Any outdoor lighting [ZDO 1005.05(A) and (B)] shall be located and designed so that it does not shine onto adjacent properties, upwards or rights-of-way. If additional lighting will be installed, the applicant will submit an outdoor lighting system design plan prior to installation of the outdoor lighting system for review and approval by Planning and Zoning Division.
- 2) All signs shall be in compliance with ZDO Section 1010.06 and 1010.13. Any plans to increase the size of the wooden sign discussed as being 574 inches in size will require a sign permit per ZDO 1010 and 1307.
- 3) **Prior to commencement of use:** The applicant shall provide the Planning and Zoning Division with:
  - a. Schematic of the sign
  - b. Review by the Historic Review Board if there is any modification to the outside of the building or site development in conjunction with this application.

**III. Engineering Division Conditions:** Ken Kent, (503) 742-4673, [kenken@clackamas.us](mailto:kenken@clackamas.us)

- 1) All frontage improvements in, or adjacent to Clackamas County right-of-way, and/or on-site transportation improvements shall be in compliance with Clackamas County Roadway Standards.

- 2) Prior to issuance of a Building Permit and initiation of the use, the applicant shall obtain an Engineering Permit from Development Engineering for the proposed access and parking spaces, as follows:
  - a. The applicant shall add gravel shoulders to SE Treehouse Lane as necessary to provide a minimum width of 12 feet, consistent with Roadway Standards Drawing R100.
  - b. Adequate on-site circulation shall be provided for the parking and maneuvering of all vehicles anticipated to use the site. The plans shall identify the paved width adjacent to the parking spaces so that vehicles are provided the minimum backing area, per Roadway Standards Drawing R100.
  - c. Parking spaces shall meet minimum dimensional requirements of ZDO section 1015 and Roadway Standards, Standard Drawing P100. The plans shall list the number of parking spaces required and the number of parking spaces provided.
  - d. Parking spaces shall be delineated with striping and/or wheel stops.
- 3) Drainage facilities shall be provided, as required, in conformance Oak Lodge Water Services standards.

DATED this 23rd day of August 2023.



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

### **APPEAL RIGHTS**

ZDO 1307.14(D)(6) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such an appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision will be "final" for purposes of a LUBA appeal as of the date of mailing (which date appears on the last page herein).