



**NOTICE OF DECISION ON A TYPE II LAND USE PERMIT**

**Decision:** Denied

**Permit Type:** Nonconforming Use-Verification

**File No.** Z0279-24

**Applicant's Proposal:** The applicant is requesting approval for a non-conforming use verification for a vehicle, boat, recreational vehicle and similar item storage business on the subject property.

**Decision Date:** August 29, 2024

**Deadline for Filing Appeal:** September 10, 2024, at 4:00 pm.

**Issued By :** Erik Forsell, Senior Planner, [EForsell@clackamas.us](mailto:EForsell@clackamas.us)

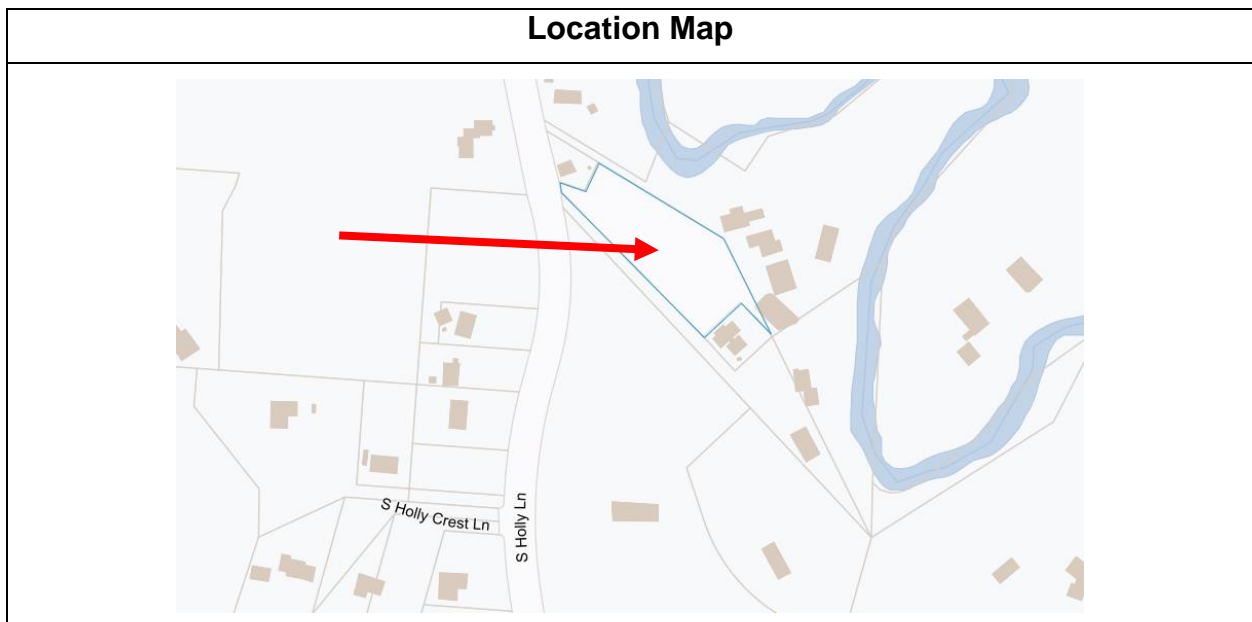
**Applicant:** Guoying He

**Owner of Property:** Guoying He

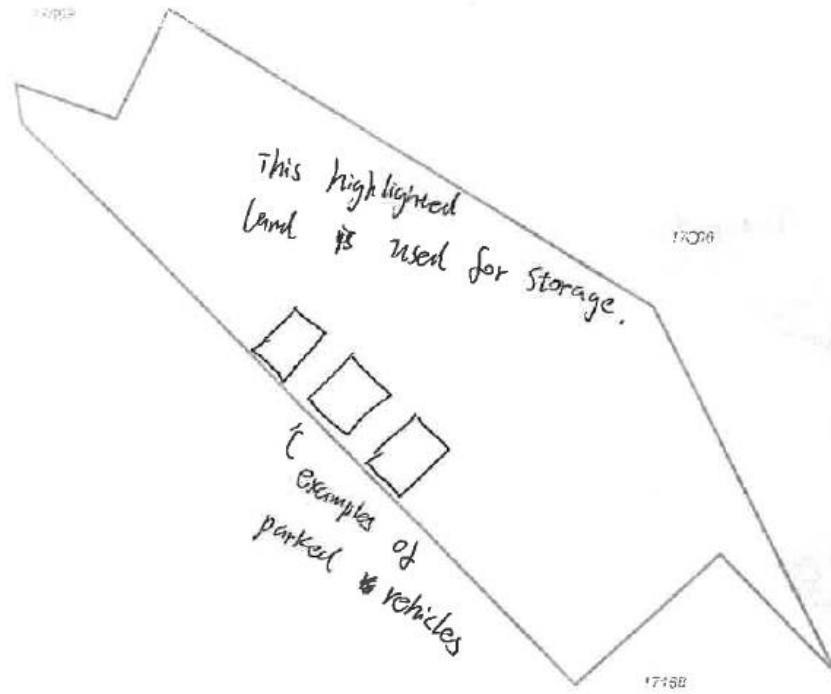
**Zoning:** RRF-5

**Assessor's Map & Tax Lot(s):** T2S R2E Section 33A Tax Lot 02600 and 02690

**Site Address:** 17106 S Holly Lane, Oregon City, OR 97045



# Site Plan



**Community Planning Organization (CPO) for Area:**

Holcomb (inactive) CPO, Redland/viola/Fischer’s Mill in lieu of Holcomb, Lance Ward,  
[lanceward@aol.com](mailto:lanceward@aol.com)

Community Planning Organizations (CPOs) are part of the county’s community involvement program. They are advisory to the Board of County Commissioners, Planning Commission and Planning and Zoning Division on land use matters affecting their communities. CPOs are notified of proposed land use actions and decisions on land within their boundaries and may review these applications, provide recommendations or file appeals. If this CPO currently is inactive and you are interested in becoming involved in land use planning in your area, please contact Clackamas County Community Engagement at 503-655-8751.

**Opportunity to Review the Record and Decision:** The complete decision, including findings and conditions of approval, and the submitted application are available for review online at <https://accela.clackamas.us/citizenaccess/>. Select the **Planning** tab and enter the file number to search. Select **Record Info** and then select **Attachments** from the dropdown list, where you will find the submitted application. A copy of the decision, application, all documents and evidence submitted by or on behalf of the applicant, and applicable criteria are available for inspection at no cost by contacting the Planner listed above. Copies of all documents may be purchased at a cost established by the County fee schedule.

**Appeal Rights:** **This decision will not become final or effective until the period for filing an appeal with the County has expired without the filing of an appeal.** Any person who is adversely affected or aggrieved or who is entitled to written notice of the decision pursuant to Subsection 1307.09(C) of the Clackamas County Zoning and Development Ordinance may appeal this decision to the Clackamas County Land Use Hearings Officer by filing a written appeal. An appeal must include a completed Appeal Form available at [www.clackamas.us/planning/supplemental.html](http://www.clackamas.us/planning/supplemental.html) and a \$250.00 filing fee and must be **received** by the Planning and Zoning Division by the appeal deadline identified above.

Appeals may be submitted in person during office hours (8:00 am to 4:00 pm Monday through Thursday, closed Friday and holidays). Appeals may also be submitted by email or US mail.

A person who is mailed written notice of this decision cannot appeal this decision directly to the Land Use Board of Appeals under ORS 197.830.

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

*Clackamas County is committed to providing meaningful access and will make reasonable accommodations, modifications, or provide translation, interpretation or other services upon request. Please contact us at 503-742-4545 or email [DRenhard@clackamas.us](mailto:DRenhard@clackamas.us).*

503-742-4545: ¿Traducción e interpretación? | Требуется ли вам устный или письменный перевод? | 翻译或口译? | Cán Biên dịch hoặc Phiên dịch? | 번역 또는 통?



## APPLICABLE APPROVAL CRITERIA

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This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Section(s) 202, 316, 1206 and 1307.

## PUBLIC AND AGENCY COMMENTS

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Notice was sent to applicable agencies and owners of property within 500 feet. Comments received relating to the applicable approval criteria listed above are addressed in the Findings Section. There were numerous public comments received and are part of this record. Most of the public comments are in opposition but there are also several public comments that are in support of the request. The comments have been incorporated into findings as appropriate.

## FINDINGS

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The findings below identify the standards and criteria that are relevant to this decision, state the facts relied upon in rendering the decision, and explain the justification for the decision.

1. **Background/Overview of Applicant's Proposal:** The applicant is requesting non-conforming use verification for a pre-existing business. The business is a lease and rental of outdoor space to store trucks, recreational vehicles, boats and similar items outdoors on the site. The applicant claims that the use has been in existence since the 1960s. A previous owner, apparently was engaged in a similar use but sold the property. A review of the County deeds and records office shows that the property has been conveyed several times over the last 20 years. Jim Garvison Jr., the original owner of the property, and current operator of the storage business, conveyed the property to Bayview Loan Servicing LLC (Federal Home Loan Mortgage) in November of 2017, the property was then conveyed to Genmei Zhang in July of 2019 and then conveyed to Guoying He in June of 2020. The property is currently owned by Guoying He who is also the applicant.

The business appears to be located primarily on Tax Lot 2690 which is vacant and does not appear to have extensive use on the adjacent Tax Lot 2690 which is in common ownership. Note that it appears that those tax lots combined are one legal lot of record.

2. **ZDO Section 316, RRFF-5 Zone:**

***Finding:** The subject property is zoned RRFF-5. There is no 'outdoor storage' or commercial use similar stated in Table 316-1. Uses not listed are not allowed in the zone. The only other option for an approval would be to pursue a Home Occupation with an exception; however, even that is challenging because the subject property used for storage is*

vacant (no house) and it appears from the record that the principal operator is Jim Garvison, who does not reside or own either of the tax lots that comprise the subject site.

**These criteria are not met and must be approved via a different process or it is not allowed in the zone.**

Table 316-2 sets forth dimensional standards for structures in the zone. Refer to the table details below:

Standard	RA-1	RA-2	RR	RRFF-5	FF-10	FU-10
Minimum Front Setback	30 feet <sup>8</sup>	30 feet <sup>8</sup>	15 feet, except 20 feet to garage and carport motor vehicle entries <sup>9</sup>	30 feet <sup>8</sup>	30 feet <sup>8</sup>	30 feet
Minimum Rear Setback	30 feet <sup>10,11</sup>	30 feet <sup>10,12</sup>	15 feet <sup>10</sup>	30 feet <sup>10,12</sup>	30 feet <sup>10,12</sup>	30 feet <sup>12</sup>
Minimum Side Setback	10 feet <sup>10,13</sup>	10 feet <sup>10</sup>	5 feet <sup>10</sup>	10 feet <sup>10</sup>	10 feet <sup>10</sup>	10 feet

**Finding:** The subject property (Tax Lot 2690) is vacant and therefore these standards are not applicable. The applicant has not indicated or requested to establish or construct any structures.

### **ZDO Section 1206, Non-Conforming Uses and Vested Rights**

#### **1206.02 STATUS**

A nonconforming use may be continued although not in conformity with the regulations for the zoning district in which the use is located. Nonconforming use status applies to the lot(s) of record on which the nonconforming use is located and may not be expanded onto another lot of record, except as provided under Subsection 1206.07(B)(3)(a) and (b) or, in the case of nonconforming premises for marijuana production, with an alteration approved pursuant to Subsection 1206.07(C). A change in ownership or operator of a nonconforming use is permitted.

**Finding:** The applicant is requesting to verify a non-conforming use on the subject property only and has not asked for an alteration or expansion onto adjoining lots or lots of record. The outdoor storage business is located only on Tax Lot 2690 and there is no indication from the applicant's submittal that the request is to also verify that the business is to be expanded onto Tax Lot 2600. Regardless, those tax lots appear to be one single legal lot of record.

According to Deed No. 2006-089634, which references conveyances, the most recent of which was conveyance to Clackamas County in 1970 (Deed No.70-9842) it appears that Tax Lot 2690 and 2600 are one legal lot of record. This was also documented on August 17, 2010

by Clackamas County, which indicated that the tax accounts were created for assessment purposes because the property was split by a 'tax code boundary'.

***These criteria are not applicable and the non-conforming use has not been verified.***

### **1206.03 MAINTENANCE**

Normal maintenance of a nonconforming use necessary to maintain a nonconforming use in good repair is permitted provided there are not significant use or structural alterations. Normal maintenance may include painting; roofing; siding; interior remodeling; re-paving of access roads, parking areas, or loading areas; replacement of landscaping elements; and similar actions.

***Finding:*** *The applicant is allowed to conduct maintenance of a lawfully established non-conforming use consistent with the criteria above. However, as demonstrated throughout this decision, the use was not lawfully established.*

### **1206.04 DISCONTINUATION**

A. If a nonconforming use is discontinued for a period of more than 24 consecutive months, the use shall not be resumed unless the resumed use conforms to the requirements of this Ordinance and other regulations applicable at the time of the proposed resumption.

***Finding:*** *Staff have reviewed the applicant's submittal and there is not sufficient information in the record to indicate that the use has not been discontinued for a period of greater than 24 months. Of note are the following issues:*

- 1. The applicant has failed to demonstrate with objective evidence that the use has operated continuously without a gap since the claim of establishment in the 1960s.*
- 2. The property has been conveyed several times; for example, the property was sold by James Garvison (Trustee) to Bayview Loan Servicing (11/13/2017) and then three days later to Federal Home Loan Mortgage Corporation (11/16/2017) it was conveyed again to Genmei Zhang (7/2/2019).*

*That span is nearly two years. Evidence was not submitted demonstrating the use was not discontinued during this time. The applicant did not provide evidence or documentation that the site was used for outdoor storage while under the ownership of the lending institution. However, the burden is on the applicant to demonstrate that the use did not cease. There is insufficient information in the record to verify that it has not discontinued.*

- 3. Aerial imagery shows gaps in the outdoor storage use. Staff notes these are 'snapshots in time' but they don't support that the use has operating without gaps of more than two years. Below are images from various sources. The first set are historic photos from the Clackamas County planning library archives, the newer photos are from Clackamas County internal software 'Plan Map'.*
- 4. Comments from neighbors appear to indicate a sporadic and relatively recent establishment of the outdoor storage business.*

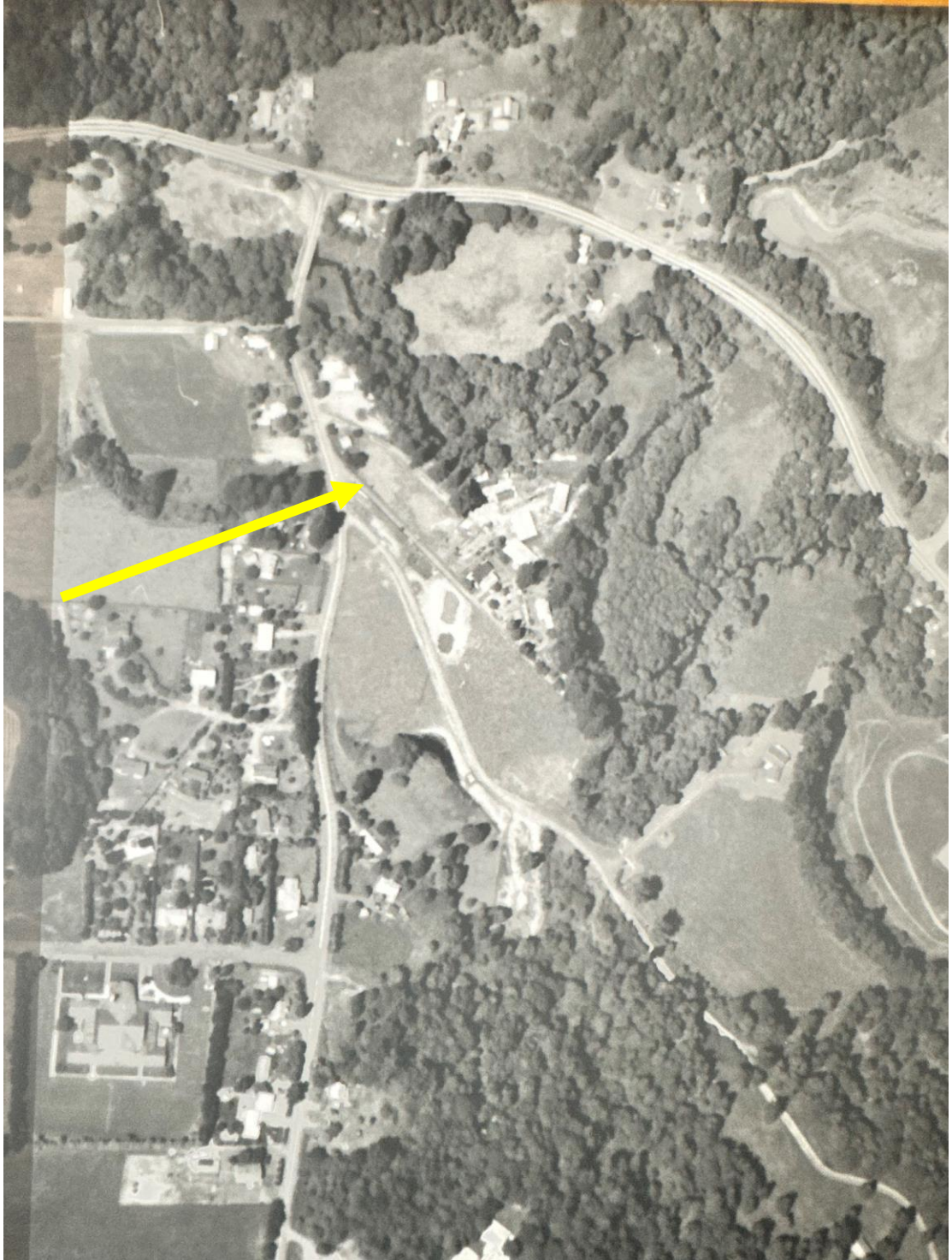


*Aerial Imagery 1976 (Site Appears Vacant of Storage)*

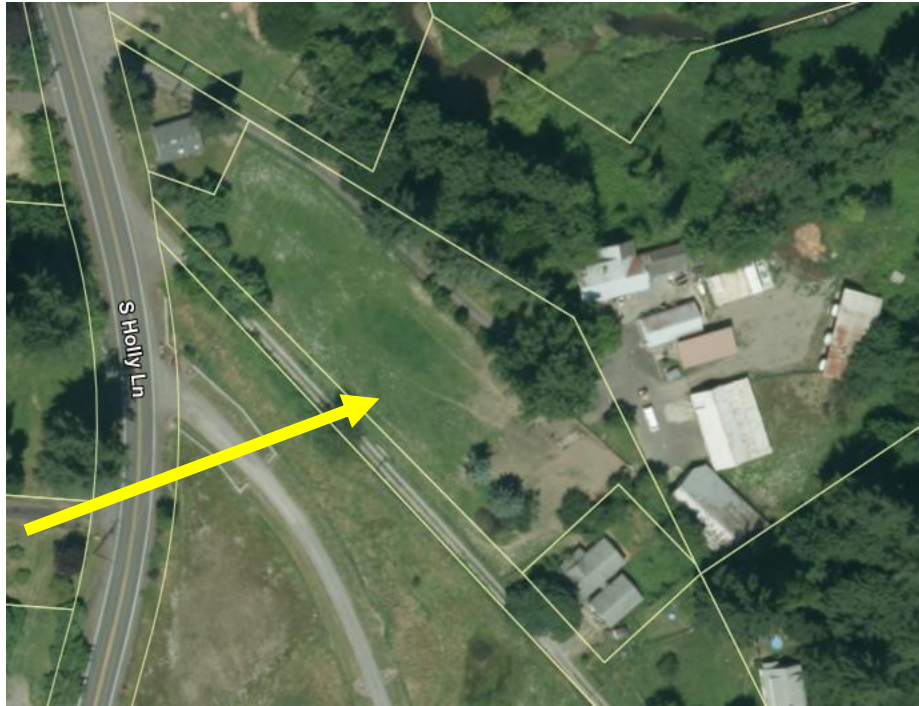




*Aerial Imagery 1989 (Site Appears Vacant of Storage)*



*Aerial Imagery 2016 (Site Appears Vacant of Storage)*



*Aerial Imagery 2018 (Site Being Used for Storage)*





*Aerial Imagery 2020 (Site Appears Vacant of Storage)*



*Aerial Imagery 2022 (Site Appears Vacant of Storage)*



*This criterion is not met.*

B. Notwithstanding Subsection 1206.04(A) and pursuant to Oregon Revised Statutes (ORS) 215.130(7)(b), a nonconforming surface mining use shall not be deemed to be discontinued for any period after July 1, 1972, provided:

1. The owner or operator was issued and continuously renewed a state or local surface mining operating permit, or received and maintained a state or local exemption from surface mining regulation; and

2. The surface mining use was not inactive for a period of 12 consecutive years or more. Inactive means no aggregate materials were excavated, crushed, removed, stockpiled, or sold by the owner or operator of the surface mine.

C. Notwithstanding Subsection 1206.04(A), marijuana production may not be resumed on a premises for which a marijuana producer holds a production license issued under ORS 475B.070 and which is nonconforming to the regulations for the zoning district in which the production is located if the premises is not used for marijuana production for a period of at least 12 calendar months, unless the marijuana production conforms to any zoning requirements or regulations applicable at the time of the proposed resumption.

***Finding:*** *Not applicable; this request is not related to surface mining or marijuana production.*

### **1206.05 VERIFICATION**

Verification of nonconforming use status requires review as a Type II application pursuant to Section 1307, Procedures, and shall be subject to the following standards and criteria:

A. The nonconforming use lawfully existed at the time of the adoption of zoning regulations, or a change in zoning regulations, which prohibited or restricted the use, and the nonconforming use has not been subsequently abandoned or discontinued. Once an applicant has verified that a nonconforming use was lawfully established, an applicant need not prove the existence, continuity, nature, and extent of the nonconforming use for a period exceeding 20 years immediately preceding the date of application for verification; or

B. The existence, continuity, nature, and extent of the nonconforming use for the 10- year period immediately preceding the date of the application is proven. Such evidence shall create a rebuttable presumption that the nonconforming use, as proven, lawfully existed at the time of, and has continued uninterrupted since, the adoption of restrictive zoning regulations, or a change in the zoning or zoning regulations, that have the effect of prohibiting the nonconforming use under the current provisions of this Ordinance.

***Finding:*** *The applicant is requesting to verify the existing non-conforming use of an outdoor storage business RRF5 zone. As part of the application, the applicant submitted aerial photos and lease agreements for storage on the property as supporting evidence to the written statements. The lease agreements are somewhat sporadic with the oldest copy dated in 2016. There are discrepancies in the agreements – for example, under one of the lease agreements, the clause ‘Identification of Premises’ is stated as 16815 SE 120<sup>th</sup> Avenue. The aerial photos supplied with the application are relatively new and don’t provide evidence that the use has existed prior to zoning regulations which would have placed requirements or restrictions on the business. In summary, the applicant’s submission and included documentation did not demonstrate that the use has existed since the 1960s as stated in the application.*

*The property was first zoned RA-1 via Order 1588, effective April 10, 1968. Approximately twelve years later, Board Order No. 80-1291, effective June 26, 1980 enacted more restrictive use and development regulations in the RA-1 Zone. The property was subsequently rezoned by Board Order No 81-1724 to RRF5, effective July 15, 1981 which it is currently zoned today.*

*The applicant has failed to provide objective evidence that the use meets either 1206.05.A or B. above. It does not appear from staff's research that the use would meet A or B above based on aerial imagery, permit history, a history of violations for the same use and because the applicant failed to meet the burden of proof to demonstrate that the use meets the criteria above.*

*Staff notes that there were many responses received from the public who indicated they have lived near the subject site for many years and suggested that the non-conforming use is relatively new and is not consistent with the applicant's statement that the use has existed since the 1960s.*

***These criteria are not met.***

### **1206.06 RESTORATION OR REPLACEMENT FOLLOWING DAMAGE OR DESTRUCTION**

If a nonconforming use is damaged or destroyed by fire, other casualty, or natural disaster, such use may be restored or replaced consistent with the nature and extent of the use or structure lawfully established at the time of loss, subject to the following conditions:

A. Alterations or changes to the nature and extent of the nonconforming use as lawfully established prior to the fire, other casualty, or natural disaster shall not be permitted under Subsection 1206.06, but may be permitted pursuant to Subsection 1206.07.

***Finding:*** *The proposed use must be verified to be afforded these options.*

B. Physical restoration or replacement of the nonconforming use shall be lawfully commenced within one year of the occurrence of the damage or destruction. Lawfully commenced means the lawful resumption of the nonconforming use or the issuance of a land use, building, on-site wastewater treatment system, grading, manufactured dwelling placement, residential trailer placement, plumbing, electrical, or other development permit required by the County or other appropriate permitting agency that is necessary to begin restoration or replacement of the nonconforming use or structures and resumption of the nonconforming use.

***Finding:*** *This is not applicable because the non-conforming use has not been verified.*

C. The nonconforming use status of the use to be restored or replaced, and the nature and extent of the nonconforming use, shall be verified pursuant to Subsection 1206.05.

***Finding:*** *This is not applicable because the non-conforming use has not been verified.*

***This criterion is met.***

### **1206.07 ALTERATION**

A. Alterations Required by Law:

1. The alteration of any nonconforming use shall be permitted when necessary to comply with any lawful requirement for alteration of the use or structure, subject to building, plumbing, sanitation, and other specialty code permit requirements in effect at the time the alteration is commenced. Additional conditions shall not be imposed upon the continuation of a nonconforming use when an alteration is required to comply with local

or state health or safety requirements, except as provided in Oregon Revised Statutes (ORS) 215.215 pertaining to the re-establishment of nonfarm uses in the EFU District.

2. Alterations to a premises for which a marijuana producer holds a production license issued under ORS 475B.070 shall be permitted when necessary to comply with a lawful requirement for alteration in production.

B. Alterations Not Required by Law: Except as provided in Subsection 1206.07(C), an alteration of a nonconforming structure or other physical improvements, or a change in the use, requires review as a Type II application pursuant to Section 1307, Procedures, and shall be subject to the following standards and criteria:

1. The alteration or change will, after the imposition of conditions pursuant to Subsection 1206.07(B)(4), have no greater adverse impact to the neighborhood than the existing structure, other physical improvements, or use.
2. The nonconforming use status of the existing use, structure(s), and/or physical improvements is verified pursuant to Subsection 1206.05.
3. The alteration or change will not expand the nonconforming use from one lot of record to another unless:

***Finding:*** *As mentioned above, the non-conforming use status has not been verified and the applicant has not requested to alter the non-conforming use.*

***These criterion are not applicable.***

*C. Alterations to Nonconforming Marijuana Production Premises Not Required by Law: Alterations in production or in a building, structure, or physical improvement associated with a nonconforming premises for which a marijuana producer holds a production license issued under ORS 475B.070 requires review as a Type II application pursuant to Section 1307 and shall be subject to the following standards and criteria:*

***Finding:*** *Not applicable; this request is not related to marijuana uses.*

## **1206.08 ALTERATION APPROVAL PERIOD AND TIME EXTENSION**

A. Approval Period: Approval of an alteration of a nonconforming use, pursuant to Subsection 1206.07(B) or (C), is valid for a period of two years from the date of the final decision. If the County's final decision is appealed, the approval period shall commence on the date of the final appellate decision. During this two-year period, the approval shall be implemented, or the approval will become void.

1. Implemented means all major development permits shall be obtained and maintained for the approved alteration of a nonconforming use, or if no major development permits are required to complete the development contemplated by the approved alteration of a nonconforming 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. A major development permit is:

- i. A building or manufactured dwelling placement permit for a new primary structure that was part of the alteration of a nonconforming use approval; or



ii. A permit issued by the County for parking lot or road improvements required by the alteration of a nonconforming use approval

2. Notwithstanding Subsection 1206.04(A), the allowed discontinuance period for a nonconforming use approved for an alteration pursuant to Subsection 1206.07(B) is extended to 24 consecutive months from the date of implementation of the alteration pursuant to Subsection 1206.08(A)(1). In no event shall the total period of discontinuance exceed 48 consecutive months (i.e., any discontinuance period preceding the filing of an application for an alteration, plus the period during which the alteration application is under review, plus the approval period allowed by Subsection 1206.08(A), plus the 24 consecutive months from the date of implementation).

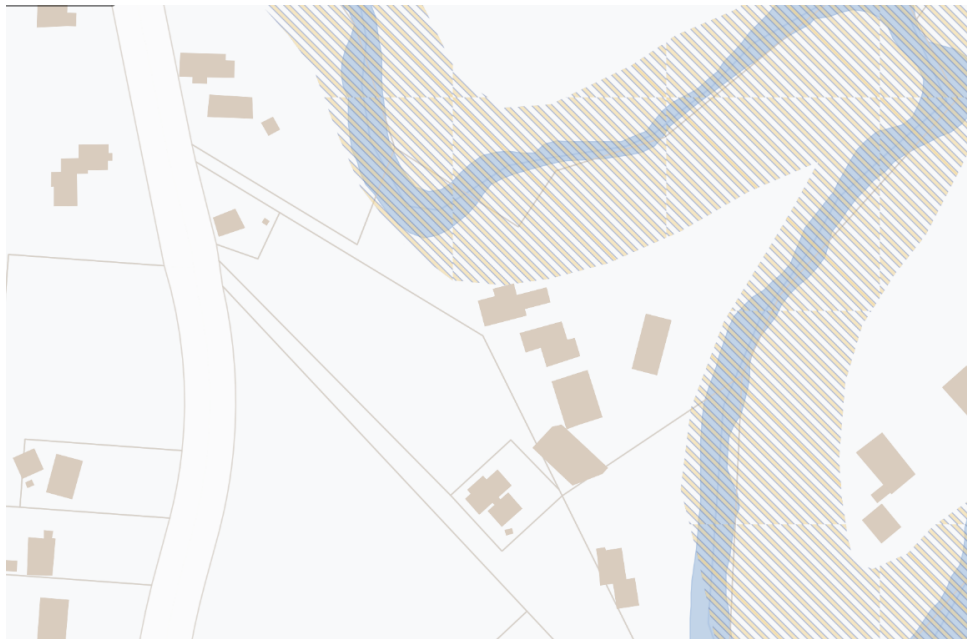
B. Time Extension: If the approval of an alteration of a nonconforming use is not implemented within the initial approval period established by Subsection 1206.08(A), a two-year time extension may be approved pursuant to Section 1310, Time Extension. However, in no event may the total period of discontinuance exceed 48 months, inclusive of those discontinuance periods identified in Subsection 1206.08(A)(2).

***Finding:*** *As mentioned above, the non-conforming use status has not been verified and the applicant has not requested to alter the non-conforming use.*

***These criterion are not applicable.***

### **ZDO Section 703 – Floodplain Management District**

***Finding:*** *Staff notes that a large portion of the site on Tax Lot (2600) which is part of the whole legal lot is within the regulatory flood hazard area. The site is subject to the standards and criteria found in the ZDO section 703.*



### **ZDO Section 704 – River and Stream Conservation Area**

***Finding:*** Staff notes that the subject property is within the 100-foot buffer of a ‘large’ protected water body. This restricts vegetation removal, development and other encroachments. The property is subject to the standards and criteria found in ZDO Section 704.



### **ZDO Section 706 – Habitat Conservation Area**

***Finding:*** Similar to above and roughly matching the 100-foot RSCA stream buffer is the Habitat Conservation Area. This property is subject to the standards and criteria found in ZDO Section 706.

