

BEFORE THE LAND USE HEARINGS OFFICER
CLACKAMAS COUNTY, OREGON

Regarding an Application for a Conditional Use Permit to Operate a Non-Profit Organization as a Similar Use to a Government Use Within General Industrial Zoning District

FINAL ORDER

Case File No: Z0016-24
(Fort Kennedy)

A. SUMMARY

1. The applicant is Fort Kennedy. The applicant seeks a conditional use permit to operate a non-profit organization that provides services to veterans. The request is being reviewed as a “similar use” to a government use; government uses require a conditional use permit in the General Industrial zoning district. There are no changes or development proposed to the building or property. The veteran’s services organization provides a variety of services which include offices for staff and volunteers who provide legal services, energy assistance (including electricity, natural gas, oil, propane), employment assistance, emergency financial assistance, referrals for drug and alcohol counseling, food and clothing distribution, health and hygiene services among other services.
2. The location of the proposed services is within an existing commercial building located at 7600 SE Johnson Creek Blvd., Portland, OR 97206, owned by Johnson Creek Real Property LLC, also known as T1S, R2E, Section 29AC, Tax Lot 2400. The property is an approximately 7.8 acre parcel zoned General Industrial (GI) District.
3. This application was deemed complete on July 22, 2024. The subject property is located inside an urban growth boundary. The 120-day timeline for final action on the application pursuant to ORS 215.427(1) was November 19, 2024. However, the applicant submitted a request to toll the 120-day review clock in this matter by a 30-day extension, extending the timeline for final action to December 19, 2024.
4. On November 21, 2024, the Hearings Officer conducted a public hearing to receive testimony and evidence about this application for a conditional use permit. At the conclusion of the public hearing, the Hearings Officer asked whether any party or member of the audience wanted an opportunity to provide additional evidence, arguments, or testimony, and no one requested this opportunity. The applicant indicated they wished to waive the period for submission of a final written statement. The Hearings Officer then closed the hearing, keeping the record open until 4:00 p.m. November 21, 2024 to receive the evidence discussed at the hearing.
5. The Hearings Officer approved the application, subject to Conditions of Approval.

B. HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony and evidence at the November 21, 2024 public hearing about this application. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. The public hearing was conducted virtually over the Zoom platform. 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 Hearings Officer stated that the only relevant criteria were those identified in the County's staff report, 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. Notice of the application was sent to applicable agencies and owners of property within 2,640 feet. Comments received relating to the applicable approval criteria listed above are addressed in the Findings Section. Public and Agency Responses Requested:
 - a. Clackamas County Development Engineering Division
 - b. Clackamas River Water
 - c. Clackamas Water Environment Services
 - d. Clackamas Fire District
 - e. Property Owners within 750 feet
3. At the hearing, County Senior Planner Ben Blessing provided background information concerning this application and its review by County staff before the matter was assigned to him. Mr. Blessing explained that prior to submitting this application the applicant took the first step of obtaining a "similar use" determination under file Z0549-22 whereby the County Planning Director determined that a nonprofit veterans' services organization is similar to government uses, which are listed as a Conditional Use in the General Industrial zone. Mr. Blessing further explained that the current application is the second part of the similar use determination process. Specifically, government uses are listed as conditional uses for the subject property's zoning district and therefore the application seeks a Conditional Use permit to operate a non-profit organization that provides services to veterans. Mr. Blessing also pointed out that the application proposes no changes or development to the existing building or property.
4. Mr. Blessing reviewed the proposed uses described in the application, including: offices for staff and volunteers; housing services; legal services; energy assistance; employment assistance; emergency financial assistance; referrals for drug and alcohol counseling; assistance obtaining IDs; transportation assistance; clothing distribution; food distribution; and health and hygiene services.
5. Mr. Blessing reviewed the September 11, 2024 staff report recommending denial of the Conditional Use permit application upon finding: insufficient parking; lack of detail regarding solid waste and recycling facilities; lack of detail demonstrating government uses that provide services for clothing distribution, food distribution, and health and hygiene services such as showers, haircuts, and distribution of hygiene items. Mr. Blessing noted that the applicant requested to cancel the earlier scheduled September 19, 2024 hearing. The applicant submitted additional documentation on November 8, 2024 providing examples of government agencies that provide clothing and food distribution services as well as health and hygiene services. The applicant also submitted documentation and a revised site plan demonstrating compliance with off-street parking and solid waste and recycling standards. Based on review of the additional submitted documentation, County staff developed a November 8, 2024 revised staff report recommending approval.
6. Mr. Blessing provided discussion of Conditional Use approval criteria, pointing to ZDO Section 1203.03 General Approval Criteria, specifically findings that: "The characteristics of the subject property are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features."

Mr. Blessing reviewed findings by staff that these criteria are met, pointing to findings that: the site is 8 acres in size; the applicant is proposing to use the existing building on a developed lot, with no additional development proposed; the site has access from a major arterial road; and there are no mapped environmental hazards. Mr. Blessing referred to staff findings that the proposal complies with applicable requirements of the zoning district and overlay district in which the property is located and is in compliance with applicable ZDO Section 1000 Development Standards.

7. Garrett Stephenson, attorney and legal counsel for the applicant, and his associate Ben Taylor, appeared and provided advocacy on behalf of the applicant. Mr. Taylor noted that the applicant agrees with the recommendations in the County's revised staff report, with the exception of certain language in recommended Condition of Approval 2. Mr. Taylor provided some additional background information, noting that Fort Kennedy has operated at the site for a number of years and there is very low overhead for the applicant to continue operating at the site, making approval of this application of critical importance. With respect to the recommended Condition of Approval 2., Mr. Taylor points to the specific language stating that all necessary development permits shall be obtained and maintained within four years of the application approval, or the approval will become void. Mr. Taylor points out that the applicant does not expect to develop the building on the property at all, and their concern is essentially that an approved conditional use permit could become void simply because no development permits were ever obtained. Mr. Taylor requested on behalf of the applicant that this proposed condition not be adopted or the language of this proposed condition be modified to avoid any issues with the provision if Fort Kennedy has not actually obtained any development permits within the referenced four-year period.
8. No members of the public requested an opportunity to provide comment.
9. The Hearings Officer discussed the language of proposed Condition 2. with the parties, with Mr. Taylor and Mr. Stephenson agreeing to submit proposed language to modify Condition 2. to County staff for additional comment by 4:00 pm the day of the hearing, for inclusion in the record and submission to the Hearings Officer for consideration.

C. DISCUSSION

The evidence presented is reliable, probative and substantial evidence upon which to base a determination in these matters. This application is being processed as a Type III Permit, pursuant to Clackamas County Zoning and Development Ordinance (ZDO) Section 1307. The Type III procedure is quasi-judicial in nature and involves land use actions governed by standards and approval criteria that require the use of discretion and judgment. The issues associated with the land use action may be complex and the impacts significant, and conditions of approval may be imposed to mitigate the impacts and ensure compliance with this Ordinance and the Comprehensive Plan. The Type III procedure is a quasi-judicial review process where the review authority receives testimony, reviews the application for conformance with the applicable standards and approval criteria, and issues a decision.

This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Sections 106, 202, 602, 1000-series, 1203 and 1307; and the Comprehensive Plan. Clackamas County Planning and Zoning Staff have reviewed these Sections of the ZDO and Comprehensive Plan in conjunction with this proposal and make the following findings and

conclusions, adopted and/or modified by the Hearings Officer as denoted by boldface type in italics:

1) **PROJECT OVERVIEW:**

The applicant seeks Conditional Use permit approval to operate a non-profit organization that provides services to veterans. The request is being reviewed as a “similar use” to a Government Use; government uses require a conditional use permit in the General Industrial zoning district. There are no changes/development proposed to the building or property.

The veteran services non-profit organization, Fort Kennedy, provides a variety of services which include offices for staff and volunteers who provide legal services, energy assistance (including electricity, natural gas, oil, propane), employment assistance, emergency financial assistance, referrals for drug and alcohol counseling, food and clothing distribution, health and hygiene services among other services.

A pre-application conference was held on September 27, 2022 (ZPAC0099-22). A Type II land use application for a Similar Use determination was filed and approved in part on September 26, 2023 (Z0549-22). A copy of this land use application has been entered into the record as Exhibit 8 for reference. The Similar Use determination was requested by the applicant to determine if the Fort Kennedy non-profit use was similar to “government uses”. The land use decision found that some of the applicant’s described land uses are similar to “government uses” as provided in the GI District in Table 602-1, *Permitted Uses in the General Industrial Zoning District*, of ZDO Section 602. Government Uses are a Conditional Use in the General Industrial zoning district and require a Conditional Use land use permit to operate.

The applicant was advised that while the County’s Planning and Zoning division may have found that the non-profit business being run (Fort Kennedy) is, in some ways, similar to government uses, the Hearings Officer is not bound by the findings made in land use file Z0549-22 and may come to a different determination.

Since the conditional use permit is only required if it is determined that the proposed use is Similar to Government Uses, this staff report is organized to first evaluate whether the use is similar to “government uses”, and then to determine if the standards of the conditional use permit are met.

Public Comment: At the time of this staff report, Planning and Zoning has not received any written public comment pertaining to this proposal.

2) **DESCRIBED USE**

The land use described by the applicant is in the associated land use application file Z0549-22 is an organization that provides a variety of services which include:

- Offices for staff and volunteers
- Housing services (screening for government housing programs, calling housing case managers)
- Legal services (provide legal advice)
- Energy assistance (including electricity, natural gas, oil, propane, wood or pellets)

- Employment assistance
- Emergency financial assistance (for past due rent, utilities, moving expenses, security deposits)
- Referrals for drug and alcohol counseling
- Assistance obtaining IDs
- Food distribution
- Clothing distribution
- Health and hygiene services (on-site showers, haircuts, distribution of hygiene items)
- Transportation assistance (bus passes, gas cards)

The applicant is seeking a conditional use permit based on a determination that the above-stated uses provided by the non-profit organization are similar to government uses.

3) ZDO SECTION 106 AUTHORIZATIONS OF SIMILAR USES

- I. 106.01 Purpose and Applicability: Section 106 is adopted to provide standards, criteria, and procedures under which an authorization of a similar use may be approved.
 - A. The sections of this Ordinance that regulate individual zoning districts identify the uses permitted in those districts. In some cases, those sections also provide that an authorization of a similar use may be approved to allow a use that is not identified as permitted. In the absence of such a provision, Section 106 does not apply.
 - B. An authorization of a similar use is not a site-specific application, but rather it is a use-specific application. The decision on an application for authorization of a similar use is applicable to all land in the zoning district for which the request was made and is applicable only to the use described in the application.
 - C. If an application for an authorization of a similar use is approved, the proposed use shall be subject to the same approval criteria, review process, dimensional standards, and development standards as the use to which it is found to be most similar pursuant to Subsection 106.02(A), (B), (C), or (D).

Staff Finding: *Subsection 106.01(A) does not warrant written findings. Pursuant to Subsection 106.01(B), the decision on this application is applicable to all land in the General Industrial (GI) District and is applicable only to the land use described above and in the application. As required by Subsection 106.01(C) and noted in the Condition of Approval above, the proposed use shall be subject to the same approval criteria, review process, dimensional standards, and development standards as “government uses” as listed for the GI District in Table 602-1 including obtaining a conditional use permit. **The Hearings Officer in the above analysis, agrees with these staff findings.***

//
//

II. 106.02 Approval Criteria: An authorization of a similar use requires review as an interpretation pursuant to Section 1308, Interpretation, and shall be subject to the following standards and criteria.

A. In the following zoning districts, the proposed use must be similar to one or more of the listed permitted uses in that same zoning district: BP, C-2, C-3, CC, CI, GI, LI, NC, OA, OC, PMD, PMU, RC, RCC, RCO, RI, RTC, RTL, SCMU, and VCS Districts.

Finding: *The proposed use is in the GI District. The applicant requests a similar use determination for “government uses”, which is listed in Table 602-1 as a conditional use in the GI District.*

The listing in Table 602-1 for government uses states “unless such a use is listed elsewhere in this table as a primary or accessory use.

The allowance for offices in the GI District is specifically for offices of business that “primarily serve other industries or deliver their products and services to the end user through means other than on-site customer visits”. Fort Kennedy’s offices are for employees and volunteers primarily providing on-site services to clients who visit the subject property which is not listed or described elsewhere in Table 602-1. Therefore, the staff offices can be allowed as a use that is customarily accessory to the government uses.

The applicant provided a copy of the land use decision from associated Similar Use Authorization land use application file Z0549-22 to be included in their application submittal. The decision lists various organizations that provide services to veterans which the applicant provided with their Z0549-22 land use application materials. The table below represents staff’s analysis of the submitted application materials. The table specifies the type of services each organization provides, as described in the submitted application materials of land use application Z0549-22 and cross-referenced on the organization’s website, and identifies if Fort Kennedy provides a correlating service. As represented in the table below, the applicant has demonstrated at the following services are provided by government agencies and Fort Kennedy:

- *Offices for staff and volunteers*
- *Housing services (screening for government housing programs, calling housing case managers)*
- *Legal services (provide legal advice)*
- *Energy assistance (including electricity, natural gas, oil, propane, wood or pellets)*
- *Employment assistance*
- *Emergency financial assistance (for past due rent, utilities, moving expenses, security deposits)*
- *Referrals for drug and alcohol counseling*
- *Assistance obtaining IDs*
- *Transportation assistance (bus passes, gas cards)*

- *Clothing distribution*
- *Food distribution*
- *Health and hygiene services (on-site showers, haircuts, distribution of hygiene items)*

Organization	Government	Services	Fort Kennedy Services	Notes
Veterans Village	No	Transitional shelter Community kitchen Bathroom/shower facilities Behavioral and physical health services Social services Employment training and skill-building	Food distribution Hygiene services Drug and alcohol counseling referral Employment assistance	Transitional shelter use no longer permitted in the GI district. The Village is operated by Do Good Multnomah, a nonprofit organization
Clackamas County Mobile Shower Units – Clackamas Service Center	No	Showers Clothing donation (provided to customers)	Hygiene services Clothing distribution	Not a service operating at a specific, permanent location
Stand Down - Clackamas County	Unclear	Employment fair Health and wellness service Military surplus Vaccinations Veteran intake for program & services Meals	Employment assistance Health and hygiene service Food distribution	“Stand down” are events that occur; single-day events at various locations. Not a service operating at a specific, permanent location
DVOP Disabled Veterans Outreach Program	Yes, State of Oregon	Employment and training services	Employment assistance	
Clackamas County Veteran Services	Yes, Clackamas County	VA Benefit Enrollment help	-	
Disability Resource Connection Clackamas County	Yes, Clackamas County	Information distribution / how to access services	Information distribution / how to access services	
Transportation Reaching People Program - Clackamas County	Yes, Clackamas County	Transportation services; individual transport to	Transportation assistance	

		appointments, shopping, etc.		
Housing Rights and Resources Center	Yes, Government agency partnership	Housing information Housing-related legal information Assist in finding housing	Housing services Legal services	
Utility Support Clackamas County	Yes, Clackamas County	Utility bill payment assistance	Energy assistance (electricity, gas, oil, etc.) Financial assistance for utility bills	
ODVA – State of Oregon	Yes, State of Oregon	Benefit and program offerings Assistance in filing claims Employment Disability Compensation Education Financial assistance Transportation ID's, records and medals	Coordination with veteran agencies Employment assistance Financial assistance Transportation assistance Obtaining ID assistance	
Supportive Services for Veterans Families; Department of Veteran's Affairs	Yes, State of Oregon	Assist in finding housing Financial assistance Assistance obtaining VA benefits Referrals for health care Assist with personal financial planning Legal services Employment and training Drug and alcohol counseling referral	-	This is a grant program. Recipients of the grant must provide services. "Supportive services grants have been awarded to selected private non-profit organizations and consumer cooperatives" Fort Kennedy does not provide grants to private non-profit organizations
Community Connections of	No	Housing assistance Utility assistance	Housing services	

Northeast Oregon, Inc.		Transportation Food bank	Utility assistance (energy assistance and utility financial assistance) Food distribution	
Oregon Department of Veterans Affairs	Yes	Drop in centers where homeless veterans can clean up, wash clothing, and participate in a variety of therapeutic and rehabilitative activities.	See bullet points above this table.	
Multnomah County and City of Portland	Yes	Created Joint Office of Homeless Services that provide housing assistance, shelter, outreach, case management, and other services to people experiencing homelessness.	See bullet points above this table.	

Additionally, the applicant provided information on other government agencies that provide services similar to Fort Kennedy as follows:

City of Portland definition of Community Service (Portland Zoning Code Section 33.920.420)

Community Services are uses of a public, nonprofit, or charitable nature generally providing a local service to people of the community. Generally, they provide the service on the site or have employees at the site on a regular basis. The service is ongoing, not just for special events. Community centers or facilities that have membership provisions are open to the general public to join at any time, (for instance, any senior citizen could join a senior center). The use may provide mass, outdoor, or short term shelter with no minimum length of stay when operated by a public or nonprofit agency. The use may also provide special counseling, education, or training of a public, nonprofit or charitable nature.

Accessory uses of Community Uses may include offices, meeting areas, food preparation areas, food membership distribution, parking, health and hygiene facilities, therapy areas, daycare uses, and athletic facilities.

Examples of Community Uses include libraries, museums, senior centers, community centers, publicly owned swimming pools, youth club facilities, hospices, ambulance stations, drug and alcohol centers, social service facilities, mass shelters, outdoor shelters, or short term shelters when operated by a public or non-profit agency, vocational training for persons with disabling conditions, crematoriums, columbariums, mausoleums, park-and-ride facilities for mass transit, and charitable meal service or food distribution centers.

City of Salem definition of Social Services: Are characterized by the provision of on-going social services to clients or the general public on-site by organizations or agencies of a public or nonprofit nature. Clients or those seeking services typically go to the site to receive aid. Services are generally targeted to one or more vulnerable populations and are often provided free of charge.

City of Eugene definition of Homeless Shelter: A nonprofit or public agency providing food, temporary housing, clothing and other support services primarily for adult, transitory individuals

The applicant provided a Certificate of Occupancy for the Veterans Village as evidence to support that the uses provided by Veterans Village are customarily accessory to government uses. The applicant states:

“The property in the Certificate of Occupancy is owned and operated by a government agency and conducts activities including Clothing distribution, Food distribution, and Health and hygiene services (onsite showers, haircuts, distribution of hygiene items). Therefore, it may be found that all of Fort Kennedy’s activities associated with its use are customarily accessory to government uses.”

The Village is operated by Do Good Multnomah, a veteran-managed nonprofit specializing in providing services to homeless veterans. The site contains 15 sleeping pods, a community kitchen, showers and restrooms, and a community room. The project was supported by the Clackamas County Board of Commissioners, who invested money from the county’s general fund to support the project, and is located on land owned by the County; however, the facility is not run by the County. In addition, the Village includes a community kitchen, but the use is different than that of Fort Kennedy; Fort Kennedy provides food distribution services by handing out unprepared food items, whereas Veterans Village offers a communal kitchen for residents to store, cook and eat prepared foods onsite. The uses offered by each organization are not synonymous.

The services/amenities offered by Veterans Village that are listed on the County’s webpage include: sleeping pods with a closet, shared kitchen and bathroom/shower facilities, as well as meeting spaces health services (behavioral and physical), social service programs (geared toward self-sufficiency), and employment training and skill-building. Clothing distribution is not a listed service.

*Staff finds that the Applicant’s described use is, similar to “government uses”, as used in the GI District in Table 602-1. **The Hearings Officer agrees with this finding.***

In the following zoning districts, the proposed use must be similar to one or more of the listed permitted limited uses in that same zoning district: HDR, MRR, RCHDR, and SHD Districts.

Finding: *The proposed use is in the GI district; therefore, this criterion is not applicable. **The Hearings Officer concurs.***

B. In zoning districts regulated by Table 315-1, Permitted Uses in the Urban Residential Zoning Districts, 316-1, Permitted Uses in the Rural Residential and Future Urban Residential Zoning Districts, or 317-1, Permitted Uses in the MRR and HR Districts, the proposed use must be similar to one or more uses that are:

- I. Listed permitted conditional uses in that same zoning district; and
- II. Identified by the applicable table as eligible to be the basis of an authorization of similar use.

Finding: *The GI district is regulated by Table 602-1, and not Tables 315-1, 316-1, or 317-1. Therefore, this criterion is not applicable. The Hearings Officer concurs.*

C. In the Historic Landmark, Historic District, and Historic Corridor overlay zoning district, the proposed use must be similar to one or more of the listed permitted conditional uses in that overlay zoning district.

Finding: *The application does not concern a land use in the Historic Landmark, Historic District, or Historic Corridor overlay zoning districts. This criterion is not applicable. The Hearings Officer concurs.*

D. A use may not be authorized as a similar use if it is specifically listed as prohibited in the applicable zoning district.

Finding: *The described use is not specifically listed in the ZDO as prohibited in the GI District. This criterion is met. The Hearings Officer concurs.*

E. A use may not be authorized as a similar use if it is a special use regulated by Section 800, Special Use Requirements.

Finding: *The described use is not regulated by Section 800. This criterion is met. The Hearings Officer concurs.*

4) ZDO SECTION 1203.02 CONDITIONAL USES

A. 1203.02: Submittal Requirements

This application includes a completed land use application form, site plan, application fee and completed supplemental application addressing the criteria in ZDO Section 1203. The application also includes a description of the proposed use and vicinity map. All the submittal requirements under Subsection 1203.02 are included in the application. The application was submitted on January 22, 2024 and additional materials received were on July 22, 2024 (and October 28, 2024). The application was deemed complete on July 22, 2024.

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

Finding: *The subject property is located in the General Industrial (GI) zoning district. ZDO Section 602, Table 602-1, of the ZDO controls land uses in the underlying GI district. "Government Uses, unless such a use is listed elsewhere in*

this table as a primary or accessory use” is listed as a conditional use in Table 602-1, subject to Footnote 2.

Footnote 2 of the referenced Table states that “In Regionally Significant Industrial Areas (RSIAs) identified on Comprehensive Plan Map IV-8, parks—intended to serve people other than those working or residing in the RSIA— and schools are prohibited.” The proposed use is not a park; therefore, Footnote 2 is not applicable to this land use application. **The Hearings Officer concurs.**

If found to be Similar to “Government Uses”, the proposed use is a conditional use in the underlying zoning district. **The Hearings Officer concurs.**

- C. **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: The subject property is already developed with an existing multi-tenant building and parking lot. Fort Kennedy has been operating at this location for some years. The applicant states that there are designated parking spaces for Fort Kennedy’s staff/volunteers and clients which has adequately served their parking needs on site.

The subject property is nearly 8 acres in size and is relatively flat. The site is accessed off of Johnson Creek Blvd., a major arterial road, located between the main intersections of Bell Ave and 82nd Ave. There are no mapped environmental hazards that are regulated by the Zoning and Development Ordinance, such as Floodplain (Section 703), Habitat Conservation Area (Section 706), or Water Quality Resource Area (Section 709).

When considering the characteristics of the subject property, staff finds that this criterion is met. **The Hearings Officer concurs with the above analysis and staff findings.**

- D. **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.

Finding: Conditional Uses in the GI zoning district are exempt from following the concurrency requirement of Subsection 1007.07, pursuant to 1007.07(B)(1). This standard is not applicable. **The Hearings Officer concurs.**

- E. **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: The site is in the General Industrial (GI) zoning district and is surrounded by properties in GI district to the west, Medium Density Residential (MR-1) to the east, Urban Low Density Residential (R-7) to the south, and Medium-High Density Residential (MR-2) to the north. This specific review criterion does not require the proposed use to not have any impacts, rather the impacts must not substantially limit, impair or preclude the use of surrounding properties for the allowed primary uses.

The proposed use operates entirely inside the existing structure. There is no external evidence of the use, such as outdoor storage, and based on the information from the submitted land use application materials the use generates few vehicles trips to/from the site. Due to the nature of the business, there are no impacts from noise, odor, dust, or light that would substantially limit the use of surrounding properties.

*As proposed, staff finds this criterion is met. **The Hearings Officer agrees with the above analysis and concurs in these staff findings.***

- F. **1203.03(E):** The proposed use is consistent with the applicable goals and policies of the Comprehensive Plan.

Finding:** Industrial goals of Chapter 4 of the Comprehensive Plan include “Protect Industrial areas from the transportation impacts of residential and commercial development” and “protect areas adjacent to industrial areas from potential blighting effects of noise, dust, odor or high truck traffic volumes.” The proposed use is not commercial or residential in nature and so industrial areas will not be impacted by traffic from that type of development. Moreover, the proposed use will operate exclusively within an existing building and so there will be no detectable noise, dust, or odor from the use. The non-profit does not involve the operation of high truck volumes which could have an impact on surrounding residential developments. This criterion is met. **The Hearings Officer concurs.

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, and Section 1000 Development Standards.

***Finding:** Staff reviewed compliance with ZDO Section 1000, as applicable. The findings are included in the staff report below.*

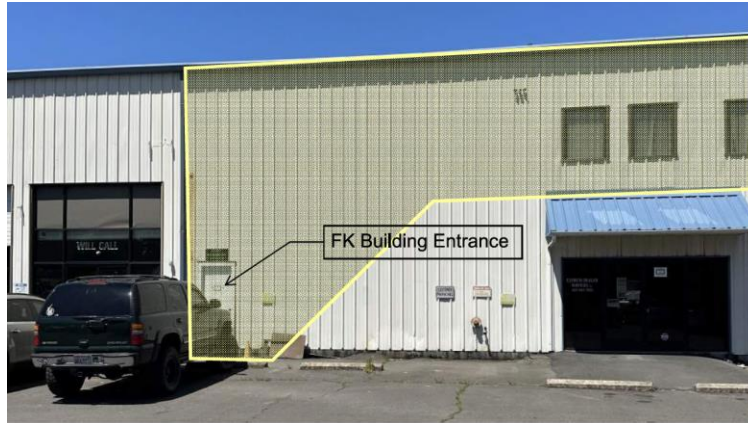
5) ZDO SECTION 1000 DEVELOPMENT STANDARDS

Not all review subsections in ZDO Section 1000 are applicable. Below is an evaluation of the criteria that are applicable to the proposed conditional use.

- A. Sections 1002, 1003, and 1004 are not applicable to the subject property. **The Hearings Officer concurs.**
- B. Section 1005 relates to the design of the buildings and the site.

***Finding:** Section 1005 is adopted to ensure sites are developed and buildings are designed to create safe employment areas, and accommodate the needs of users in developments. The proposal does not involve the construction or redesign of any buildings or the site; Subsection 1005.02 is not applicable. Subsection 1005.03 applies standards to building facades with primary and/or public entrances, including the need for entrances to be highly visible and clearly defined. To increase safety, adequate lighting shall be provided for entryways, walkways, and parking areas. Due to the scope of the proposal (i.e. no new development proposed), staff finds that these standards can be met by providing lighting at Fort*

Kennedy's primary entrance. A wall-mounted light or pole-mounted light shall provide adequate illumination of the primary entrance; if existing lighting already serves this purpose, then new lighting need not be required. Subsection 1005.04 provides requirements for outdoor lighting. A condition of approval is recommended to ensure that there is a visible and safe entrance to the Fort Kennedy tenant space.



FK occupies the upper level of Office Building with stair & elevator access
SOUTH ELEVATION

*As conditioned, this criterion can be met. **The Hearings Officer agrees with the above analysis, concurs in these staff findings, and adopts the related proposed condition of approval.***

- C. **1006.03(D) Water Supply.** The following standards apply inside the Portland Metropolitan Urban Growth Boundary, Government Camp, Rhododendron, Wemme/Welches, Wildwood/Timberline, and Zigzag Village:
- a. Approval of a development that requires public or community water service shall be granted only if the applicant provides a preliminary statement of feasibility from the water system service provider.

Finding: *The property is within the Clackamas River Water (CRW) service district. A preliminary statement of feasibility was signed by CRW confirming that water service, including fire flows, is available in levels appropriate for the development and adequate water system capacity is available in source, supply, treatment, transmission, storage, and distribution, or such levels and capacity can be made available through improvements completed by the developer or the system owner. This criterion is met. **The Hearings Officer concurs.***

- D. **1006.04 Sanitary Sewer Service.** Approval of a development that requires sanitary sewer service shall be granted only if the applicant provides a preliminary statement of feasibility from the sanitary sewage treatment service provider and the collection system service provider.

Finding: *The applicant provided a signed preliminary statement of feasibility from Water Environment Services (WES) confirming that sanitary sewer capacity in the*

wastewater treatment system and the sanitary sewage collection system is available to serve the development or can be made available through improvements completed by the developer or the system owner. This criterion is met. **The Hearings Officer concurs.**

E. **1006.06 Surface Water Management and Erosion Control.** 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.
 - i. 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
 - ii. 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.

Finding: WES is the surface water management authority for the area including the subject site. The applicant has submitted a preliminary statement of feasibility signed by WES indicating that adequate surface water management, treatment, and conveyance is available to service the development or can be made available through improvements completed by the development or the system owner. This criterion is met. **The Hearings Officer concurs.**

F. **1009, Landscaping.** Section 1009 seeks to ensure that sites are designed with appropriately selected, designed, installed, and maintained landscape materials and that landscaped areas are used for appropriate purposes.

Finding: The minimum landscaping requirement in the GI district is 15 percent, pursuant to ZDO Subsection 1009.02, however if a commercial, industrial, or institutional development is lawfully nonconforming with regard to compliance with the minimum landscaped area standard then additions of less than 1,000 square feet of building floor space do not require increased compliance with the minimum landscaped area. The applicant did not provide information pertaining to the

existing landscaped area on site; however, since there is no building addition proposed with this land use application then no additional landscaping would be required if the site were non-compliant with regards to minimum site landscaping. Staff finds that no additional landscaping is necessary to screen or buffer the proposed use from the adjoining residential uses when considering the existing vegetation on site, and that the proposed use operates exclusively indoors.

As such, staff finds that this section is not applicable. **The Hearings Officer concurs.**

- G. **1010 Signs; 1010.09 Commercial Signs in Industrial Districts.** Section 1010 regulates the size, type and location of signs.

Finding: There are no proposed signs associated with the application. Should the applicant want to install signage for the business, then compliance with this section shall be met at that time. This Section is not applicable. **The Hearings Officer concurs.**

- H. **1015 Parking and Loading.** Section 1015 is designed to ensure that developments in Clackamas County provide sufficient and properly designed parking for motor vehicles and bicycles as well as appropriate off-street loading areas. Parking and loading requirements for uses and structures not specifically listed in Tables 1015-1 shall be subject to the requirements for the most similar use.

Finding: Applicant's narrative submitted on July 22, 2024 states that five (5) parking spaces are allocated to Fort Kennedy. The applicant submitted additional information on October 28 demonstrating 15 parking spaces will be provided for the proposed use. Parking requirements in Table 1015-1 are expressed as number of spaces per 1,000 square feet of gross leasable area, unless otherwise stated. The land use categories in Table 1015-1 list "office uses" including "government office" and require that 2.7 parking spaces, per 1,000 square feet of floor area is required. For warehousing and storage, 0.3 spaces per 1,000 square feet are required. The floor plan provided by the applicant states that Fort Kennedy occupies approximately 8,100 square feet of space overall, yet a portion of the leased space, approximately 3,000 square feet is for storage purposes only. It is noteworthy to add that the scale provided on the floor plan did not appear to be correct and so Planning staff used their best judgement to determine the square footage of storage areas within the tenant space.

5,100 square feet of office/government office space necessitates 13.77 parking spaces. 3,000 of storage space necessitates 0.9 parking spaces; therefore, 15 parking spaces are required for the proposed use.

On October 28, 2024 the applicant submitted additional material demonstrating that 15 parking spaces are available to the proposed use. The applicant also updated their site plan demonstrating the location of the 15 parking spaces (that are currently not assigned to other tenants on the site). This criterion is met. **The Hearings Officer agrees with the above analysis and concurs with this staff finding.**

- I. **1021 Solid Waste and Recyclable Material Collection.** Outlines the standards for refuse and recycling for commercial developments.

Finding: *The requirements and standards of Section 1021 are applicable to conditional uses; on October 28, 2024, the applicant provided an updated site plan and detailed drawings demonstrating compliance with this Section. The site plan does not show the location of the trash enclosure, if existing, and there is no information on how the trash handling is addressed. Staff finds that the standards of this section are met. **The Hearings Officer concurs.***

D. DECISION

Based on the findings, discussion, conclusions, and record in this matter, the Hearings Officer APPROVES application Z0016-24 for a conditional use permit to operate a non-profit organization that provides services to veterans, as a “similar use” to a government use within the General Industrial zoning district, subject to the following conditions of approval:

E. CONDITIONS OF APPROVAL

Staff recommends approval of this application for the Conditional Use permit be subject to the following conditions. The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parentheses. **Hearings Officer: I reviewed and considered the proposed conditions of approval submitted by staff, and the proposed amendment to C.2. proposed by the applicant, and find the following conditions adequate to ensure that the requirements of this Conditional Use permit are met, with changes or additions denoted by boldface type in italics. I note that 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.**

1. Approval of this land use permit is based on the submitted written narrative and plans filed with the County on January 22, 2024 and additional materials submitted on July 22, 2024 and October 28, 2024. No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions below. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of any approval resulting from the decision described herein.
2. The conditional use approval is valid for four (4) years from the date of the final written decision (ZDO 1203.05). 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) A building permit for a new primary structure that was part of the conditional use approval; or
- b) A permit issued by the County Engineering Division for parking lot or road improvements required by the conditional use approval.

If the approval of a conditional use is not implemented within the initial approval period established by Subsection 1203.05(A), a two-year time extension may be approved pursuant to Section 1310, Time Extension. ***As there are no significant changes or development proposed to the building or property associated with this Conditional Use, neither the Applicant nor the County anticipates a need for any new “major development permits” or “County development permits” related to this proposal, unless perhaps a permit is required to meet the lighting condition described in C.4. below.***

3. If a conditional use is implemented pursuant to Subsection 1203.05 and later discontinued for a period of more than five consecutive years, the conditional use shall become void. [1203.06]
4. The applicant shall obtain necessary permits to install a wall-mounted light or pole-mounted light to illuminate the primary entrance of the tenant space. If existing lighting already serves this purpose, then the applicant need not install a new light, rather must provide evidence of this to the Planning and Zoning division. New outdoor lighting is subject to compliance of Subsection 1005.04. [1005.03 and 1005.04]
5. The applicant shall coordinate with Clackamas Fire District #1 to provide safe access to the site with regards to the gates shown on the site plan. If the gate is electric, it must have a Knox switch; if the gate is manual and is locked, it needs a Knox box with a lock key inside.

Dated: December 4, 2024



Carl D. Cox
Clackamas County Hearings Officer

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 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 is “final” for purposes of a LUBA appeal as of the date of the decision appearing by my signature.