

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

Regarding an application by Ivan Saranchuk for approval) **FINAL ORDER**
of a conditional use permit to operate a home occupation)
to host weddings and events on a four-acre parcel located) **Case No. Z0218-24-C**
at 10611SE 232nd Avenue in Clackamas County, Oregon) **(Saranchuk)**

I. SUMMARY

1. The applicant, Ivan Saranchuk, submitted an application requesting approval of a Conditional Use Permit (“CUP”) to operate a home occupation to host weddings and other events.

a. The applicant proposes to locate the facility on a four-acre parcel located at 10611 SE 232nd Avenue; also known as tax lot 101, Section 34B, Township 1 South, Range 3 East, of the Willamette Meridian, in Clackamas County (the “site”). The site is located in the southwest quadrant of the intersection of SE 232nd Avenue and SE Borges Road. The site and surrounding properties to the east, west, and south are zoned EFU (Exclusive Farm Use). Properties to the north, across SE Borges Road, are zoned TBR (Timber). The site is currently developed with a single-family residence and a shop in the north portion of the site and a 7,445 square foot “permanent tent” in the west central portion of the site, each with its own driveway access to SE 232nd Avenue. There is another, unpermitted, driveway accessing SW Borges Road, which the applicant will be required to close. A stream that the Statewide Wetland Inventory identifies as a freshwater forested/shrub wetland and unnamed riverine resource crosses the southwest corner of the site. The site is located within the Portland Metropolitan Urban Growth Boundary (the “UGB”).

b. The applicant proposes to conduct weddings and similar events in the existing “permanent tent” and a 1,082 square foot outdoor patio at the west end of the tent. The applicant proposed to provide 125 parking spaces on the site, accessed by the existing southern driveway onto SE 232nd Avenue.¹ The proposed tent structure, parking, and access drives will consume the majority of the undeveloped upland portions of the site. (Exhibit 2a at 26/Attachment 2).²

c. The applicant proposes to host a maximum of 40 events per calendar year with an average of 75 and a maximum of 300 guests per event. The events will take

¹ The applicant initially proposed to provide 172 parking spaces on the site (Exhibit 2), but amended the application to limit parking to 125 spaces (Exhibit 2a). The reference to 172 parking spaces on page 22 of the Staff Report is an error.

² Several of the applicant’s submittals contains additional documents identified as numbered “Exhibits”. The hearings officer refers to these documents as “Attachments” to Exhibit the identified by the County and refers to the .pdf page number of Exhibit 2. Therefore, “Exhibit 2a at 256/Attachment 2” refers to the applicant’s Exhibit 2 of the applicant’s revised narrative which appears at .pdf page 26 of Exhibit 2a in the County’s Exhibit list.

place exclusively inside the proposed tent and associated patio. The applicant will conduct office activities related to the use within the existing residence.

2. County staff recommended the hearings officer deny the application based on the findings in the Staff Report to the Hearings Officer dated November 7, 2024 (Exhibit 1, the “Staff Report”).

3. Clackamas County Hearings Officer Joe Turner (the "hearings officer") held a public hearing about this application. The applicant, their attorney, and one neighbor testified in support of the application. Two persons testified orally in in opposition to the application. Other persons testified in writing. The principal contested issues in the case include the following:

a. Whether the proposed use is allowed as a conditional use in the EFU zone, ZDO 1203.03(A);

b. Whether the characteristics of the site are suitable for the proposed use, ZDO 1203.03(B);

c. Whether the transportation system is safe and adequate to serve the proposed development (ZDO 1203.01(C) and 1007);

d. Whether operation of the proposed use will “[a]lter 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 underlying zoning district,” ZDO 1203.01(D), specifically due to the following impacts:

i. Noise

ii. Traffic;

iii. Lighting;

iv. Trespass and litter;

v. Fire hazard;

vi. Drugs and alcohol;

vii. Groundwater;

v. Prior violations and whether the County can ensure compliance with the conditions of approval;

e. Whether the proposal satisfies the goals and policies of the Comprehensive Plan that apply to the proposed use. ZDO 1203.03(E);

f. Whether the County can ensure compliance with the conditions of approval.

g. Whether the proposed permanent tent structure is a building normally associated with uses permitted in the EFU zoning district. ZDO 806.01(C);

h. Whether the applicant demonstrated that it is feasible to operate the facility in compliance with the noise level limits of ZDO 806.02(J);

i. Whether portable restrooms can be used on this site. ZDO 806.02(L); and

j. Whether the proposed use will force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest. ZDO 401.05(A).

4. Based on the findings and discussion provided or incorporated herein, the hearings officer finds that the applicant failed to bear the burden of proof that the proposed use can comply with the applicable approval criteria, specifically that the proposed permanent tent is a “building[] normally associated with uses permitted in the applicable zoning district. ZDO 806.02.C. Therefore, the hearings officer must deny the application, Case No. Z0218-24-C (Saranchuk).

II. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at a public hearing about this application on November 14, 2024. 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 hearings.

2. County planner Joy Fields summarized the Staff Report and her PowerPoint presentation (Exhibit 16).

a. She noted that the applicant propose to operate an event facility on the roughly four-acre site. The applicant proposes to conduct a maximum 40 events per year with an average of 75 and maximum 300 persons per event. The applicant will only operate the event facility between April and October. The applicant proposed to conduct the events inside a 7,445 square foot permanent tent, which the applicant has constructed on the site, and on a 1,082 square foot outdoor patio at the west end of the tent.

b. The County denied the applicant’s prior application for a similar use, Z0367-23-C. However, this application is substantially different, as the applicant reduced

the maximum number of events from 104 to 40, proposed to limit event attendance to an average of 75 persons per event, reduced the number parking spaces from 172 to 125, and reduced the period of use from year-round to eight months per year, between April and October. The applicant proposed to lease the tent for farm use between November and March, allowing a farmer to overwinter plants inside the tent and potentially allowing a bee keeper to store bee hives inside during those months. The applicant planted a line of trees along the west boundary of the site in order to screen the site from adjacent properties. Therefore, the County allowed the applicant to resubmit this application.

i. She noted that a single 300 person event would limit all subsequent events to a maximum of 70 persons in order to meet the 75 person average proposed by the applicant. She requested the applicant address how he will ensure compliance with the proposed 75 person average during the open record period.

c. The site is zoned EFU. There is a habitat conservation area associated with the stream in the southwest corner of the site.

d. The site is located in a groundwater limited area. However, given the limited water needs for the proposed home occupation use, the Water Master may conclude that adequate water is available to serve the use. Therefore, proposed Condition 13 requires the applicant obtain approval of the use from the water master or provide an alternative source of water for the use.

e. Several persons submitted written comments in opposition to the application, raising concerns with impacts to farm and forest uses on adjacent properties, parking, noise, and other impacts from events occurring on the site, and disputing the accuracy of the application materials.

i. The center of the tent on the site is located roughly 287 feet from the center of the residence to the south of the site, 355 feet to the residence to the north, 455 to the residence to the northwest, and 604 feet to the residence to the northeast. (Exhibit 16 at 8-11).

ii. Neighbors assert that that the applicant's prior unpermitted events on the site had a negative impact on farming activities as traffic entering the site blocked access to neighboring farm properties, guests parked in neighbors fields damaging plants and creating ruts.

f. She argued that the permanent tent on the site is not a "building[]" normally associated with a residence or uses permitted in the [EFU] district." ZDO 806.02.C. Therefore, the application should be denied. Although residential uses are not a permitted use in the EFU zone, the County considers existing residence to be permitted because they were established prior to adoption of restrictive zoning.

i. The applicant proposed to store plants in the tent over winter, placing the plants near the windows for light. However, the amount of sunlight entering

the tent in the winter is insufficient to support plants. The amount of sunlight entering the tent when the sun is low enough to shine through the windows is not sufficient to support plants. Once the sun is higher in the sky it will not shine through the windows and sufficient sunlight will not penetrate the tent to support the plants when the sun is higher in the sky.

ii. The applicant proposed to use the center of the tent for agricultural storage. However, the existing tent on the site, with rows of windows in the walls, does not constitute a storage structure similar to the images of storage tents submitted by the applicant.

g. The applicant's application narrative did not clearly address any of the comprehensive plan policies.

h. The Clackamas County Septic & Onsite Wastewater System Program (the "Wastewater Program") must approve the use of portable restroom facilities. In the prior application staff for the Wastewater Program stated that portable restrooms would not be allowed to support year-round use of the proposed permanent tent structure. However, in this application the applicant is only proposing to use the tent for seven months a year, between April and October, which may change their evaluation of this use. The applicant will have to coordinate with the Wastewater Program about that issue. She requested the hearings officer hold the record open for one week in order to provide a response to this issue from the Wastewater Program.

i. She opined that permeable parking should be allowed on this site pursuant to ZDO 1015.01.B, given the existence of a creek on the site. Permeable parking would allow more stormwater to infiltrate into the soil, reducing the volume of surface runoff entering the stream.

j. She noted a typographical error on page 9 of the Staff Report. The site is located in the urban area and therefore subject to a 120-day decision deadline. The 120 clock expires on January 30, 2025.

3. Attorney Charles Woodward IV and the applicant, Ivan Saranchuk, appeared in support of the application.

a. Mr. Woodward summarized the proposed use and responded to issues raised in the Staff Report and hearing testimony.

i. He testified that he spoke with Wastewater Program staff who stated that portable restrooms would be allowed for this use. The applicant's site plan demonstrates that it is feasible to comply with state law regulating the use of portable restrooms.

ii. The applicant will not use the existing groundwater well on the site for events. He agreed to a condition of approval to that effect.

iii. He agreed to a condition of approval requiring that all parking areas be hard-surfaced, unless the surface water management authority determines that a permeable surface is required for surface water management. All ADA parking spaces will be paved.

iv. The applicant has entered into a contract with a nursery operator to use the onsite tent for plant storage (Exhibit 2 at 47/ Attachment 9) and is in discussions with a beekeeper to store bee hives inside the tent during the winter months. (Exhibit 2 at 48/Attachment 10). These contracts contradict the staff conversation with a farmer regarding the feasibility of using the tent for agricultural purposes. The proposed use will actually benefit the surrounding agricultural community by providing opportunities for winter storage and restoring some agricultural use of the site, consistent with the agricultural policies of the comprehensive plan.

v. Although guests of past unauthorized events on the site parked on neighboring properties without permission, the applicant addressed that issue with the current application. There is sufficient vehicle access, maneuvering, and parking area on the site to allow drivers to quickly enter the site and access parking spaces without causing congestion on the adjacent road and the applicant will provide sufficient parking to accommodate the parking demand generated by the largest events allowed. The applicant proposed to provide more parking than the Code requires.

vi. The applicant will provide a solid waste enclosure on the site in compliance with Code requirements. The applicant or the local waste collection provider will empty all solid waste containers after events. Burning of waste on the site is not proposed.

vii. The applicant's sound study (Exhibit 2a at 27/Amended Attachment 13) demonstrates that it is feasible to comply with the noise limits of the Code.

viii. There is no evidence to support Staff's assertion that the site was used for "low intensity agricultural activities" until 2018. The 2018 aerial photo of the site. (Exhibit 1 at 7) shows that the site is currently maintained as a lawn; just grass, with no obvious rows or other evidence of agricultural activity. The same photos shows that the property east of the site, across SE 232nd Avenue has clear evidence of agricultural use, with row crops. The 1994 aerial photo of the site shows that the same mowed lawn condition. (Exhibit 2, Attachment 8, at 45). The 2024 aerial photo of the site and surrounding area shows a variety of other agricultural activities on surrounding properties in the area, which are clearly different from the use on the site. (Exhibit 2, Attachment 2, at 41). When the applicant purchased the site the prior owner told him that they had operated a body shop and no agricultural activities had occurred on the site for the past 30 years.

ix. The tent is similar to buildings normally associated with farm uses, consistent with ZDO 806.02.C, and will be used for agricultural purposes: storage and protection of plants and beehives, during the winter months.

(1) The tent is substantially similar to a greenhouse. Exhibit 2a at 32/Attachment 17 at 3 shows greenhouses covered with tarps during the winter months. One of the greenhouses has two layers of cover. The tarps limit the passage of light into the structures, similar to the roof of the applicant's tent. Such covers are used for light deprivation, to force off-season flowering and fruiting of plants within the greenhouses.

(2) Use by the beekeeper does not require access to sunlight. The beekeeper will use the tent to protect his dormant bees from the elements, as the tent will protect the hives from wind, rain, and snow and limit temperature variations.

x. Exhibit 2a at 42/Attachment 20 at 3 shows the "opaque fencing", chain link with plastic slats, and recently planted trees on the west boundary of the site.

xi. The applicant will operate the facility on weekends, Friday through Sunday, between 2:00 p.m. and 9:00 p.m. and will accept a condition of approval to that effect.

xii. Dust, noise, odors, and other potential impacts on the site from farm operations on adjacent properties is not an issue for the applicant. The site is located in the EFU zone where those types of impacts are expected and the applicant will deal with them if they occur. Events on the site will primarily occur in the evening hours during the summer months when farming activities may not be occurring.

xiii. The proposed use will not impact farm operations on surrounding properties. The traffic study demonstrates that the use will not cause excessive congestion. The noise study demonstrates that it is feasible to comply with County noise limits.

xiv. The green "O" on the site plan included with the noise study indicates the location of the speakers used in the noise study on the site. (Exhibit 2a at 29/Attachment 13 at 3). He agreed to conditions of approval requiring that speakers used for events be located in the eastern third of the tent in order to limit noise impacts to properties west of the site and prohibiting noise in excess of 70 dBA inside the tent. Treble frequencies are very directional. Therefore, the sound measurements taken at location X5 would be most impacted by sounds from the speakers and sound levels did not exceed 60 dBA at that location.

xv. He agreed that the distance listed in the application between the site and the residence to the south was an error. He did not see the nearest residence in the aerial photo.

xvi. The applicant has learned from his experience with prior unpermitted events on the site and has modified the operation of the facility to address issues that have occurred, limiting speaker volumes, providing more coordinated parking, etc. The applicant was unaware of the plan to have a helicopter arriving at a prior event and expressly prohibits that activity for all subsequent events.

xvii. The Code allows events up to a maximum 300 persons and the applicant proposed that as a maximum. However such events rarely occur. Most events involve 50 to 75 guests. If larger events occur the applicant can limit the size of subsequent events to ensure compliance with the 75 person average. He agreed to a condition of approval requiring the applicant to document the size of all events on the site in order to demonstrate such compliance.

xviii. He agreed to toll the 120 day clock for 25 days to accommodate the open record period.

b. Mr. Saranchuk testified that he measured sound levels from the audio system in the tent with the door open and closes and did not observe a significant change in noise levels between the two measurements. The PVC walls of the tent had little impact on noise levels. The front (east end) of the tent is kept open to allow guests to enter and exit. The walls of the tent are removable, however he agreed to a condition of approval prohibiting removal of the walls while events are occurring in order to limit noise impacts. There is no direct access between the tent and the patio at the west end of the tent. Guests exit the east end and walk around the tent in order to access the patio. He argued that the recently planted trees will buffer noise generated by guests on the patio.

i. He disputed neighbors allegations of conflicts between his neighbors and himself or guests. Many of his neighbors support the improvements he has undertaken on his property.

4. Lanai Walker testified in opposition to the application.

a. She resides on the property south of the site and activities from prior unpermitted events on the site significantly impacted the use of her property. A helicopter landed on the site during a prior event, generating significant noise and other impacts. She can hear “every word” of songs playing on the site. She cannot open her windows during the summer due to the noise. The applicant placed a generator adjacent to the common fence line and operated it continuously. Guests have thrown bottles and trash onto her property. The applicant has harassed neighboring residents when they complained about the impacts of events on the site and the applicant has no consideration for the impacts on her and her family. At one point the applicant claimed that he had purchased her property from her landlord and was evicting her.

b. The site has been used for agriculture in the past; cattle were grazed on the site 15 years ago.

c. Contrary to the statement in the application, her residence is located 200 feet away from the tent on the site and the north boundary of her property is only 70 feet from the tent.

5. Andrea Houck testified on behalf of the Damascus CPO and noted several alleged discrepancies in the applicant's testimony. Many neighbors objected to past events on the site and Sheriff's officers responded to conflicts between the applicant or guests and surrounding residents on several occasions. The applicant has fired guns over neighbors' properties. The applicant is currently operating the use illegally and the CPO has received many complaints about events on the site in the past year. The applicant has allowed helicopters to fly in and out of the site during events. The applicant threatened a neighboring farmer who was planting his fields during an event on the site. She questioned how the County will ensure compliance with any conditions of approval imposed on the application. During at least one event on the site guests released flaming lanterns, posing a significant fire hazard during the dry summer months.

6. Vitaliy Pechenyuk testified that he lives near the site. Events he attended were well organized and did not generate significant noise. There is a need for this type of event venue in this area.

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

a. For 18 days, until 4:00 p.m. on December 2, 2024, for all parties to submit additional testimony and evidence;

b. For an additional week, until 4:00 p.m. on December 9, 2024, for all parties to respond to the whatever was submitted during the first weeks; and

c. For a final week, until 4:00 p.m. on December 16, 2024, for the applicant to submit a final argument.

8. Exhibits 8 through 15 and 17 through 23 were submitted during the open record period.³

III. DISCUSSION

1. ZDO Section 1203.02 CONDITIONAL USES

1203.02: SUBMITTAL REQUIREMENTS

³ Exhibit 16 is Ms. Field's hearing presentation.

Finding: This application includes a completed land use application form, site plan, application fee, and completed supplemental application addressing the criteria in ZDO Section 1203 and 1307.17. The application also includes a description of the proposed use and a vicinity map. One Preliminary Statement of Feasibility (Exhibit 3) was submitted, for surface water management. The application includes all of the submittal requirements under Subsection 1203.02. The application was originally submitted on May 29, 2024 (Exhibit 2), and additional information was submitted on October 2, 2024 (Exhibit 2a). The application was deemed complete on October 2, 2024.

The submittal requirements of Subsection 1203.02 are met.

b. **1203.03 GENERAL APPROVAL CRITERIA:** *A conditional use requires review as a Type III application pursuant to Section 1307, Procedures, and shall be subject to the following standards and criteria:*

A. *The use is listed as a conditional use in the zoning district in which the subject property is located.*

Finding: The site is zoned Exclusive Farm Use (EFU). ZDO 401 controls land uses in the underlying EFU zoning district; Table 401-1 lists the uses which are allowed, including “home occupation to host events, subject to section 806” as a conditional use. The applicant proposes to operate a home occupation to host events; therefore, a conditional use permit is necessary. The standards of section 806 are discussed below.

Assertions that the proposed use is inconsistent with the purpose of the EFU zone are not relevant. This type of event facility is expressly allowed as a conditional use in the EFU zone.

This criterion is met.

B. *The characteristics of the site are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features.*

Finding: Size: The subject property is approximately four-acres in size. The submitted site plan demonstrates that the property is of sufficient size to accommodate the proposed event facility, along with required parking and circulation, landscaping, etc. (See Exhibit 2a at 26/Attachment 2).

Shape: The shape of the subject property is rectangular with an area in the north cut out for a separate dwelling on an adjacent lot, 23122 SE Borges Road. This shape does not present any particular limitation to the proposed use of the site based on the submitted site plan. (See Exhibit 2a at 26/Attachment 2).

Topography: The subject property is relatively flat and thus topography does not appear to be a limiting factor.

Location: The site is located between the community of Boring to the east and Happy Valley to the west, north of Highway 212. Land use here is mixed, including farming and rural residential uses on acreage properties. The location map submitted by the applicant indicated there is a school across Borges Road from the site. Opponents expressed concerns with the safety of area roads. (Exhibits 14 and 15 at 4,). However, County engineering staff reviewed the project and determined that the existing transportation will operate safely with additional traffic from this event facility. (Exhibit 7). Transportation issues are addressed in more detail in the findings below regarding ZDO 1203.03.C.

The homes on the properties to the north, west, and south are located in relatively close proximity to the boundaries of the site. (Exhibit 16 at 8-11 and Exhibit 9 at 3). As discussed below, the hearings officer finds that the location of the site is somewhat of a limiting factor when considering the suitability of the proposed event venue. However, these potential impacts can be addressed by conditions of approval. Errors in the location and distance to adjacent residences in the application do not constitute a basis for denial of this application.

In addition, many of the surrounding properties are being farmed (Exhibits 11, 16 at 9, and 17) and farming activities on those properties could generate noise, dust, odors, and other effects that may impact events on the site. However, as discussed below, those impacts will only affect operation of the proposed event facility and will not force significant changes in or increase the cost of accepted farm or forest practices on surrounding lands.

Improvements: The subject property is currently developed with a single-family residence, a shop and other outbuildings in the northern portion of the site, and a 7,445 square foot tent in the middle of the site.

Natural Features: The property was reviewed for the following:

- a. Floodplain: none of the subject property is shown as being within a regulatory floodplain.
- b. Geologic Hazards: nothing of note shows up on the Geologic Hazard maps, regarding this property.
- c. Habitat Conservation Areas and Wetlands: There are a mapped Habitat Conservation Area, a freshwater Forested/Shrub Wetland and an unnamed riverine resource along the southwestern boundary of the property. The site plan indicates that the development will avoid impact to these resources, but will increase the surface water runoff potential from the parking areas.

Summary: The shape, topographic, natural and developed characteristics of the property are suitable to accommodate the proposed use. The size and location of the site pose challenges to the suitability of the subject property for hosting events due to potential impacts events may have on the surrounding properties and potential impacts on the site from agricultural activities occurring on surrounding properties. However, when

considering all of the characteristics of the subject property, the hearings officer finds that this criterion can be met subject to a conditions regulating the location and scope of event activities on the site.

This criterion is not met.

C. The proposed use complies with Subsection 1007.07, and safety of the transportation system is adequate to serve the proposed use.

1. *Subsection 1007.07: Transportation Facilities Concurrency*

- a. *Subsection 1007.07(A): “Shall apply to the following development applications :design review, subdivisions, partitions, and conditional uses.”*
- b. *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:*

Finding: As discussed below, this application for a home occupation to host events is exempt from the concurrency requirements of ZDO 1007.07.

2. *Safety:*

- a. *Subsection 1007.02(D): “Developments shall comply with the intersection sight distance and roadside clear zone standards of the Clackamas County Roadway Standards. In addition:*
 - i. *No planting, signing, or fencing shall be permitted which restricts motorists’ vision; and*
 - ii. *Curbside parking may be restricted along streets with visibility problems for motorists, pedestrians, and/or bicyclists as deemed appropriate by the Department of Transportation and Development.”*

Finding: The hearings officer finds that the safety of the transportation system is adequate to serve the proposed use, based on the expert testimony of County transportation staff. (Exhibit 7). Neighbors testimony to the contrary is not sufficient to overcome the expert testimony of County engineering staff. Weddings and similar events generate a larger number of vehicles on days when an event occurs than are typically on the roadway. However, the average number of vehicle trips over the course of the entire year, assuming smaller events in the winter, would be approximately 8,000 to 10,000 trips, which is equivalent approximately 2-3 single family homes. Based on the limited number of annual trips generated by the event use, the existing right-of-way and roadway are adequate to support the proposed event use.

Any increase in traffic will pose an increased risk for drivers, cyclists and pedestrians in the area. Higher vehicular traffic volume creates a marginally higher risk for pedestrians and bicyclists. It may well warrant a heightened degree of attentiveness to traffic when driving, cycling or walking in the neighborhood. But it will not substantially limit, impair or preclude the use of surrounding properties for permitted uses. Traffic generated by this use will not substantially limit, impair or preclude operation of the existing school north of the site as most events on the site will occur in the evenings, on weekends, and during the summer months when school is not in session.

Neighbors testified that traffic on SE 232nd Avenue during past events on the site created significant congestion and blocked traffic. With this application the applicant proposes to provide sufficient parking on the site to accommodate the maximum number of guests and employees allowed. The applicant proposes to widen the access drive and provide parking spaces accessed by 24-foot wide drive aisles to accommodate two-way traffic. These improvements will allow guest vehicles to quickly enter the site and park, eliminating bottlenecks that caused traffic backups on SE 232nd Avenue. In addition, ZDO 806.02(K)(1) prohibits on-street parking on event days.

This criterion is met.

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 require that the use have no impacts at all. Any new use or development will alter the character of the area to some extent by modifying existing views, generating additional traffic, installing new light sources, increasing noise, etc. The Code only prohibits impacts that *substantially* limit, impair or preclude the use of surrounding properties for the allowed primary uses, e.g. farm and forest activities, as well as residential uses as required by ZDO 806.02.E. (Emphasis added). The Code does not define the word “substantially.” Therefore, the hearings officer must look to the plain and ordinary meaning of that term. *Sarti v. City of Lake Oswego*, 106 Or. App. 594, 597, 809 P.2d 701 (1991). Random House Unabridged Dictionary defines “substantial” as “by an ample or considerable amount; quite a lot.” “Substantial.” In Dictionary.com, Retrieved March 12, 2023, from <https://www.dictionary.com/browse/substantially>.

Noise

The hearings officer finds that noise levels that exceed the limits in ZDO 806.02(J) will substantially limit, impair or preclude the use of surrounding properties allowed uses. This section prohibits average peak sound pressure levels in excess of 60 dBA measured off the subject property.

Neighbors argued that sound levels generated during prior events on the site greatly exceeded 60 dB and significantly limited the use of surrounding properties. However, with this application the applicant proposed to limit sound levels to comply with the Code.

The applicant analyzed noise generated on the site, placing two speakers within the tent on the site and measuring sound levels at various points on the property to determine the maximum noise level within the tent that would still meet the noise limits of the Code. The applicant concluded that locating speakers within the eastern third of the tent and limiting sound levels inside the tent to a maximum 70 dB measured ten feet from the speakers will ensure that sound levels at the site boundaries will not exceed 60 dB. (Exhibit 2a at 27/Amended Attachment 13). There is no substantial evidence to the contrary. If this application is approved a condition of approval is warranted requiring that all speakers be located in the eastern third of the tent and that the applicant monitor and limit sound system noise to a maximum 70 dB at a distance ten feet from the speakers in order to ensure compliance with this criterion.

Past events on the site have occurred with the walls of the tent opened. (Exhibit 13b). However, the applicant testified that the noise study was performed with all of the tent walls fully closed. (Saranchuk testimony). Although the applicant asserted that there was “little difference” in noise levels with the walls open or closed, there is no evidence in the record that it is feasible to comply with the 60 dB limit with the walls of the tent open. Therefore, the applicant should be required to keep all tent walls fully closed during events on the site, with the exception of the eastern wall, which serves as the entrance to the site. In addition, all event activities should be required to occur inside the fully enclosed tent structure. A condition of approval is warranted to that effect if this application is approved.

Noise from events measured at 60 dB at the property boundary may be audible on some surrounding properties. However, the Code does not prohibit such impacts provided noise levels do not exceed 60 dB at the boundaries of the site. Future activities on the site must comply with these noise limits and it is in the applicant’s best interest to do so, as violations may result in enforcement action by the County, including potential revocation of any approval.

The hearings officer finds that the applicant failed to demonstrate that outdoor activities on the “patio” outside of the tent, located roughly 18 feet from the west boundary of the site, will comply with the sound limits of the Code. The applicant conducted additional sound readings with “20 people on the patio talking and singing...” and measured maximum sound levels of 58.9 dB at the west boundary of the site closest to the patio. (Exhibit 21 at 5/Attachment 22). The measured sound levels are within 1.1 dB of the maximum sound levels allowed by the Code. Therefore, even a minor increase in volume from activities on the patio would result in a violation. At the hearing the hearings officer noted his understanding, based on review of prior applications, that studies are available with noise ranges for various activities and suggested the use of such studies as objective evidence of potential sound levels. Evidence of sound measurements generated by a group of people controlled by the applicant is much less objective. However, the applicant failed to provide evidence from such objective studies to support his noise measurements. Given that the applicant’s measurements are very close to exceeding the limit, the hearings officer cannot find that the applicant’s supplemental sound study, without further objective evidence of sound levels generated by groups of people, is sufficient to demonstrate the feasibility of compliance with the maximum noise levels limits of the Code when guests are allowed to gather on the outdoor patio. Therefore, if

this application is approved a condition of approval is warranted prohibiting use of the outdoor patio area outside the west end of the tent during events on the site.

There is no evidence that the six-foot slatted cyclone fence and recently planted trees on the west boundary of the site (Exhibit 2a at 42/Attachment 20 at 3) provide any noise buffering. As discussed in the “Agroforestry Notes” report attached to Exhibit 8, a wide row of dense vegetation is required to provide an effective noise buffer. To be effective, “The noise buffer must completely block the line of sight. If any light can be seen through the buffer, it is providing no appreciable noise reduction.” (Exhibit 8 at 5/page 2 of the report). Although the trees planted by the applicant are intended to continue to grow and mature over time, the existing buffer is relatively sparse and unlikely to provide significant noise mitigation.

Noise generated by vehicles entering or exiting the site is exempt from the noise standards of ZDO 806.02(J)(1). ZDO 806.02(J)(1)(a).

The applicant provided additional noise analysis demonstrating that the Generac 10kW generator, model number G0071720 used during events on the site can comply with the noise limits of the Code, provided the generator is located near the north wall of the tent, roughly 100 feet east of the west boundary of the site. (Exhibit 31 at 5-6/Attachment 22 at 1-2). Conditions of approval are warranted requiring use of this type of generator in the location shown in the applicant’s analysis if this application is approved.

Helicopters landing and taking off from the site would likely exceed the noise limits of the Code, as well as potentially violating FAA regulations, and would be prohibited if this application were approved.

Traffic

The hearings officer finds that traffic generated by 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. As transportation staff noted, adequate sight distance can be provided at the site access onto SE 232nd Avenue and traffic generated by the proposed use will not create a hazard. (Exhibit 7).

Lighting

It is feasible to design and locate any outdoor lighting on the site to comply with ZDO 806.02(K) and ZDO 1005.04(A). The proposed drive aisles and parking spaces on the site will direct vehicle headlights towards the boundaries of adjacent properties. (Exhibit 2 at 10). The applicant argued that existing fencing on the perimeter of the site will shield adjacent properties from the headlights of vehicles parking and maneuvering on the site. However, there is no evidence regarding the effectiveness of the existing slatted cyclone fence at screening headlights and the recently planted vegetation is too sparse to provide an effective buffer. In addition, there is no evidence of that screening exists or will be provided around the entire parking area. But the hearings officer finds that it is feasible to install fencing, additional vegetation, or other measures to screen the headlights of

vehicles parking and maneuvering on the site. A condition of approval would be warranted to that effect if this application were approved.

Trespass and litter

The proposed facility will attract additional people to the area, which will increase the risk of trespass, litter, and similar impacts. However, there is no evidence that this will substantially impact the area. Perimeter fencing or landscaping necessary to shield vehicle headlights will clearly identify the boundaries of the site and limit guests ability to access adjacent properties. The owners of abutting properties have adequate legal (civil) recourse to address any trespass problems that may arise. Perimeter fencing will also prevent litter generated on the site from blowing onto adjacent properties. The applicant can be required to pick up litter on the site immediately after events to ensure compliance with the “appearance” standard of ZDO 806.02(O). A condition of approval is warranted to that effect if this application is approved.

Fire Hazard

The hearings officer finds that smoking on the site will not substantially increase the risk of fire in the area. Most activities will take place within the tent structure or in the “hard-surfaced” parking lot. Smoking may increase the risk of fire due to the potential for improperly discarded cigarettes and matches. However, this risk already exists, as residents of this site and surrounding properties may choose to smoke. Although the proposed use will increase the number of potential smokers it will not otherwise substantially increase the risk of fire. In addition, it is in the applicant’s best interest to prohibit smoking outside of designated areas on the site in order to prevent damage to the site. A condition of approval would be warranted prohibiting the use of fireworks, torches, lanterns, and other sources of open flame if this application is approved.

The site is located within the UGB. Therefore, all areas used for the vehicle parking and maneuvering areas must be “hard surfaced” unless a permeable surface is required for surface water management ZDO 1015.01(A). Parking on grass is prohibited. Therefore, there is little potential for vehicle exhaust systems to spark a fire through contact with grass or other vegetation.

Drugs and alcohol

The applicant can regulate or prohibit alcohol and marijuana use and prohibit illegal drug use on the site. Some attendees may bring their own or otherwise consume excessive amounts of these substances, which could create a hazard if those attendees attempt to drive home. However, the applicant will have a strong interest in monitoring and enforcing limits on consumption and stopping intoxicated patrons from driving, in order to avoid legal liability. There is no evidence that this use will generate a substantially higher risk of impaired drivers than any other business that serves alcohol or anywhere people consume marijuana or other drugs.

Groundwater

The applicant proposed to require caterers to supply water for events on the site. No groundwater use is proposed for event services.

Prior violations

Allegations of past violations by the applicant (conducting unpermitted events) are not relevant to the applicable approval criteria for this application. The applicant's past behavior does not show that he cannot or will not operate the use in a manner that complies with the ZDO. If the applicant sustains the burden of proof that the application complies with the approval standards, or if it can comply provided certain conditions are imposed, the hearings officer must as a matter of law approve the application subject to those conditions, ORS 197.522(4).

If the application is approved, the hearings officer would impose conditions of approval requiring ongoing compliance with all applicable approval criteria. It would be in the applicant's best interest to comply with those conditions, as failure to do so can be a basis for enforcement, including modification or revocation of the CUP. The County will monitor and enforce the permit. The County's Code Enforcement Program exists for the purpose of identifying, responding to, and remedying alleged violations of County land use decisions and codes. Neighboring residents can assist in the enforcement process by reporting any violations they observe. If the applicant fails to comply with the conditions of approval, i.e., by exceeding the hours of operation, guest limits, maximum noise levels, or otherwise expanding or changing the use, the planning director may initiate proceedings to revoke the permit. But the hearings officer cannot assume that the applicant will not comply and deny the application on that basis.

The fact that neighbors can assist in monitoring the use does not shift the responsibility to them to do so. The County continues to bear the responsibility for enforcing its laws. However neighbors may be in a better position to monitor the use on a continuing basis because of their proximity, and it may be in their interests to do so given the complaint-driven nature of the enforcement process,

This criterion can be met with conditions.

- E. The proposed use is consistent with the applicable goals and policies of the Comprehensive Plan.*

Finding: The original application addressed several general, non-agricultural, Comprehensive Plan policies. (Exhibit 2 at 7-9). Staff cited the following relevant agricultural policies from Chapter 4 of the Comprehensive Plan:

4.NN Agriculture Policies

4.NN.1 The following areas shall be designated Agriculture:

- 4.NN.1.1 Areas with predominantly Class I through IV agricultural soil as defined by the United States Natural Resources Conservation Service or identified as agricultural soil by more detailed data;*

- 4.NN.1.2 *Areas generally in parcels of 20 acres or larger;*
- 4.NN.1.3 *Areas primarily in agricultural use;*
- 4.NN.1.4 *Areas necessary to permit farming practices on adjacent lands or necessary to prevent conflicts with the continuation of agricultural uses;*
- 4.NN.1.5 *Other areas in soil classes different from NRCS I through IV when the land is suitable for farm use as defined in Oregon Revised Statutes 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farm practices.*

The site is currently designated Agriculture and the applicant has not proposed to change that designation. Therefore, the hearings officer finds that the policies of Section 4.NN.1 are inapplicable to this application.

4.NN.2 Agriculturally related industries shall be encouraged.

The site is not currently used for agriculture and there is no evidence that it has been used for agriculture in the recent past. Therefore, provided the use does not conflict with agricultural uses on adjacent properties the use is consistent with Section 4.NN.2, as it will not discourage any agriculturally related industries. Neighbors argued that the site was used for cattle grazing 15 years ago. However, that use ceased and there is no evidence of any recent agricultural use of the site which this use would displace.

4.NN.3 Land uses that conflict with agricultural uses shall not be allowed.

The proposed home occupation to host events is allowed as a conditional use in the EFU zone. Therefore, the hearings officer cannot find that the proposed land use will *per se* conflict with agricultural uses and conditions of approval can be imposed to limit potential conflicts with agricultural uses in the area. The hearings officer finds that the proposed use is consistent with Section 4.NN.3.

This criterion is met.

F. *The proposed use complies with any applicable requirements of the zoning district and overlay zoning district(s) in which the site is located, and Section 1000 Development Standards.*

Finding: As noted above, the proposed home occupation event facility is allowed as a conditional use in the EFU zone, subject to the criteria in ZDO 806, which are addressed below. Applicable section 1000 Development Standards are also addressed below.

This criterion is met.

2. ZDO SECTION 1000 DEVELOPMENT STANDARDS

Finding: ZDO 1203.03(F) requires compliance with “[a]ny applicable requirements of ... Section 1000 Development Standards.” The hearings officer finds that the applicable sections of Section 1000 are limited to ZDO 1005.04(A), 1007.07, and 1015, as these are the only criteria mentioned in ZDO 806 or 1203.03.

The applicant is not required to demonstrate compliance with the remaining standards of ZDO 1000 in order to obtain approval of this application. But future development on the site will be required to comply with all applicable standards, such as the surface water management requirements of ZDO 1006.06.

ZDO 806.02(I) provides:

Lighting: All lighting used during events shall comply with Subsection 1005.04(A).

ZDO 806.02(K) provides:

Parking: The home occupation shall comply with Section 1015, Parking and Loading, except as modified by Subsection 806.02(K).

ZDO 1203.03(C) provides:

The proposed use complies with Subsection 1007.07, and safety of the transportation system is adequate to serve the proposed use.

a. **1005.04 OUTDOOR LIGHTING**

A. *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. The 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: The applicant provided evidence of the existing and proposed exterior lighting on the site, consisting of “string lights” and pole mounted fixtures. (Exhibit 2a at 37-44/Attachments 19 and 20). The hearings officer notes that the pole lights on the site can meet this standard as the lights appear to be architecturally integrated, shielded to avoid casting light upwards or onto adjacent properties, suitable for the intended use, compatible with the scale and intensity of the use, and are less than 25 feet high. However, the applicant’s “string lights” are not shielded to direct light downwards as required by ZDO 1005.04.A(2) and (3). In addition, there is no evidence about whether and how lighting will be provided within the parking areas and site entrance. However, the hearings officer finds that it is feasible to design and locate lighting on the site, and to the extent necessary modify any existing lighting to comply with this standard.

The lighting standards of Section 1005.04(A) can be met with conditions.

b. **1007.07 TRANSPORTATION FACILITIES CONCURRENCY**

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

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:*

...

(5) *Home occupations to host events, which are approved pursuant to Section 806.*

...

Finding: The applicant is applying for a conditional use permit to operate a Home Occupation to Host Events which is a conditional use in the EFU zoning district. Under ZDO Section 1007.07(B)(5) home occupations to host events are exempt from concurrency requirements.

This criterion is inapplicable, as the use is exempt from concurrency requirements.

c. **1010 SIGNS**

Finding: Pursuant to Section 806.02(M), any signage associated with the Home Occupation to Host Events is subject to the applicable standards of Section 1010 in addition to the requirements of 806.02(M). The hearings officer finds that it is feasible to comply with these requirements.

This criterion can be met with conditions.

d. **1015 PARKING AND LOADING**

i. **1015.01 GENERAL STANDARDS**

Findings: The site is located within the UGB. Therefore, ZDO 1015.01(A) requires that all parking, loading, and maneuvering areas serving the event facility “[s]hall be hard-surfaced, unless a permeable surface is required for surface water management pursuant to the regulations of the surface water management authority or in order to comply with Subsection 1006.06.” Staff opined that permeable parking should be allowed on this site pursuant to ZDO 1015.01.B, given the existing creek on the site as permeable parking would allow more stormwater to infiltrate into the soil, reducing the volume of surface runoff entering the stream. However, this provision requires that the surface water management authority find that “[a] permeable surface is required for surface water management...” Therefore, if the application is approved the applicant should be required to provide hard surfaced parking unless the surface water management authority finds that a permeable surface is required for surface water management.

Table 1015-1 does not impose maximum parking limits on Home Occupation to Host Events. Therefore, ZDO 1015.01(C) is inapplicable.

Bicycle parking and loading areas are not required for this use. Therefore, ZDO 1015.01(D) is inapplicable.

The applicant did not propose to rent, lease, or assign parking on the site, use parking for storage, or for conducting business activities. A condition of approval is warranted to that effect to ensure compliance with ZDO 1015.01(E).

This criterion can be met with conditions.

iii. **1015.02 MOTOR VEHICLE PARKING AREA STANDARDS**

Findings: Based on the applicant’s revised site plan (Exhibit 2a at 26/Attachment 2) the proposed parking areas appear to meet the standards of ZDO 1015.02(A). Vehicle parking is located in clearly defined areas of the site. ZDO 1015.02(A)(1). All parking spaces appear to meet or exceed the dimensional requirements of the Code. ZDO 1015.02(A)(2). It is feasible to comply with the dimensional requirements of ZDO 1015.02(A)(2) and (3). It is also feasible to comply with the minimum dimensions for curb length, stall depth, and aisle width established by the Clackamas County Roadway Standards. ZDO 1015.02(A)(4). All parking areas are double loaded, with parking spaces on both sides of the drive aisles. ZDO 1015.02(A)(b).

ZDO Table 1015-1 requires a minimum one parking space per three guests and one additional parking space for each employee for the proposed Home Occupation to Host Events facility. There is no parking maximum for this type of use. The applicant proposes to allow a maximum 300 guests per event and up to five employees. Therefore, a minimum 105 parking space are required. The applicant proposes to provide 125 parking spaces, exceeding the Code requirement.

Bicycle parking and loading berths are not required for this use. ZDO Tables 1015-3 and 1015-4.

This criterion can be met with conditions.

iv. 1021 SOLID WASTE AND RECYCLABLE MATERIAL COLLECTION

Finding: This Code section is not listed as an applicable section of Section 1000 in ZDO 1203.03(F) or 806.

This criterion is inapplicable.

3. ZDO SECTION 806 HOME OCCUPATIONS TO HOST EVENTS

a. 806.02 STANDARDS

A. *Operator: The operator shall reside full-time in a lawfully established dwelling unit on the tract on which the home occupation is located.*

Finding: The site contains a lawfully established dwelling. The Applicant states he will reside full-time in the dwelling on the site.

This criterion can be met with conditions.

B. *Employees: The home occupation shall have no more than five employees.*

Finding: The definition of “Employee” under Section 806.01(A) is “Any on-site person, whether they work full-time or part-time in the home occupation business, including, but not limited to, the operator, partners, assistants, and any other persons or family members participating in the operation of the business. Except in the EFU, TBR, and AG/F Districts, this definition does not apply to persons employed by contract to provide services for a single event, such as caterers, photographers, and florists.” The site is zoned EFU. Therefore, the five employee limit applies to persons employed by contract to provide services for a single events. The applicant proposes to have no more than five (5) employees, which is within the permissible number of employees allowed for a home occupation.

This criterion can be met with conditions.

C. *Type of Buildings: Notwithstanding the definition of home occupation in Section 202, Definitions, in the AG/F, EFU, and TBR Districts, the home occupation shall be operated substantially in the operator's dwelling or other buildings normally associated with uses permitted in the applicable zoning district.*

Finding: The applicant states this home occupation will be operated substantially within the existing residence and an existing 7,445 square foot “permanent tent”. However, the hearings officer finds that the applicant failed to prove that the existing permanent tent located on the site is a “[b]uilding normally associated with uses permitted in the [EFU zone]”.

The Code does not define the term “normal.” Webster’s dictionary defines “normal” as “conforming to a type, standard, or regular pattern : characterized by that which is considered usual, typical, or routine.” (“Normal.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/normal>. Accessed 2 Jan. 2025)).

The applicant appears to argue that the building is *per se* normally associated with EFU uses if it is used for agricultural purposes for some portion of the year, i.e., for overwintering plants and beehives. However, there is no evidence that the legislature intended ZDO 806.02.C or its statutory equivalent, ORS 215.448(1)(c)(B), to relate to the use of the building, rather than the design. As the Court of Appeals held, “it is not necessarily true that the legislature intends that each component of a statutory definition advance the same objective. There may be a number of reasons to narrow the definition of a statutory term.” *Green v. Douglas County*, 245 Or App 430, 445, 263 P.3d 355 (2011). The hearings officer finds ZDO 806.02.C relates to the design and character of the structure, not its use. See *1000 Friends of Or. v. Clackamas Cnty.*, 309 Or App 499, 483 P.3d 706, 715 (2021) (Finding that interior changes to an existing barn would not alter the exterior appearance of the structure, or cause the structure to “[l]ose its ‘character’ as a barn...”

In this case, the permanent tent on the site does not have the “character” of a barn, greenhouse, or other accessory structure normally associated with uses permitted in the EFU zone or permitted residential uses. Although the construction of the tent is similar to a greenhouse, with a plastic⁴ roof and walls supported by poles, the design of the tent structure is clearly different from a greenhouse. The applicant’s tent structure looks like an event facility, with an opaque roof and walls that limit the passage of sunlight and continuous arched windows on all sides. The greenhouse structures shown in the applicant’s photos are designed and intended to allow sunlight to penetrate through the walls and roof. The applicant notes that the greenhouses shown in Exhibit 2a at 32/Attachment 17 at 3 are covered with opaque tarps, similar to the roof and walls of the tent. But the noted tarps appear to be a seasonal addition, not a permanent part of the greenhouse structure.

⁴ The hearings officer uses the general term “plastic” to refer to the type of malleable material used in the applicant’s tent structure and the greenhouse structures shown in Exhibit 2a.

Use of the applicant's tent for agricultural purposes during the winter will not alter the exterior appearance of the structure or change its character to a barn, storage building, greenhouse or other building normally associated with uses permitted in the EFU zone. It will still look like an event tent. There is no evidence in the record that this type of tent is associated with any permitted uses on EFU zoned lands in the area. The hearings officer finds that the applicant failed to demonstrate compliance with this criterion.

This criterion is not met.

D. *Tents: Temporary tents are allowed as follows:*

1. *In the AG/F, EFU, and TBR Districts, temporary tents are permitted to the extent consistent with Subsection 806.02(C).*
2. *In a zoning district other than AG/F, EFU, and TBR, one temporary tent is permitted, and additional temporary tents may be permitted if consistent with Subsection 1203.03.*
3. *Temporary tents may be placed on the subject property no more than 24 hours before the event and must be removed no more than 24 hours after the event.*

Finding: This section allows temporary tents. The applicant proposed to utilize a permanent tent. Therefore, this criterion is inapplicable. In addition, this section requires that tents must be consistent with ZDO 806.02(C), which is not met based on the discussion above.

This criterion is inapplicable.

E. *In the AG/F, EFU and TBR Districts, the evaluation of compliance with Subsection 1203.03(D) shall include consideration of impacts on dwellings even though dwellings are not primary uses in these zoning districts.*

Finding: The site is located in the EFU zone. The impacts of the proposed use are addressed in the findings above addressing ZDO 1203.03(D). Those findings considered the impact of the use on dwellings. This Code section establishes a review standard. It does not include an approval criterion that must be met.

This criterion is inapplicable.

F. *During the months of November through March, no event shall take place outside the hours of 9:00 A.M. to 10:00 P.M. During the months of April through October, no event shall take place outside the hours of 8:00 A.M. to 10:00 P.M. These time restrictions do not apply to persons involved in the set-up or clean-up of the facilities.*

Finding: The applicant proposes to operate the use between 2:00 p.m. and 9:00 p.m., which is consistent with these hours of operation.

This criterion is met.

- G. A maximum of two events shall be allowed per day, and no more than one event shall occur at any one time. During the months of November through March, no more than five events shall be allowed per week. During the months of April through October, no more than seven events shall be allowed per week.*

Finding: The applicant proposes to comply with these restrictions, holding a maximum of 40-events per year between the months of April and October with a maximum of 300 guests and an average of 75 participants. As discussed in Exhibit 21, the applicant can host larger events and still comply with the proposed attendance average by reducing the total number of events occurring in a particular year and/or by limiting the size of other events. A condition of approval would be warranted requiring the applicant document attendance at all events in order to demonstrate compliance with the proposed attendance averages.

This criterion can be met with conditions.

- H. A maximum number of guests for any single event is 300. However, to the extent necessary to comply with Subsection 1203.03, a lower limit may be imposed based on site capacity constraints.*

Finding: The applicant is proposing to host events with a maximum of 300 guests, per event This criterion is met as proposed.

This criterion can be met with conditions.

- I. All lighting used during events shall comply with Subsection 1005.04(A).*

Finding: The lighting standards of Subsection 1005.04(A) are addressed above. As discussed above, it is feasible to comply with this criterion.

This criterion can be met with conditions.

- J. Noise shall be regulated as follows:*
- 1. From 7:00 a.m. until 10:00 p.m. on Friday and Saturday and until 9:00 p.m. on all other days of the week, the average peak sound pressure level, when measured off the site, of noise created by the home occupation shall not exceed the greater of 60 dBA or the ambient noise level. During all other hours, the average peak sound pressure level, when measured off the site,*

of noise created by the home occupation shall not exceed the greater of 50 dBA or the ambient noise level.

- a. Noise generated by vehicles entering or exiting the site, but not by idling vehicles, shall be exempt from Subsection 806.02(J)(1).*
 - b. Subsection 806.02(J)(1) shall not apply to noise detectable on public rights-of-way and railroad rights-of-way.*
- 2. A noise study may be required to demonstrate compliance with Subsection 806.02(J)(1). If a noise study is required, measurements shall be made with a sound level meter. The sound level meter shall be an instrument in good operating condition, meeting the requirements of a Type I or Type II meter, as specified in ANSI Standard 1.4-1971. The sound level meter shall contain at least an A-weighted scale, and both fast and slow meter response capability. Personnel making measurements shall have completed training in the use of the sound level meter, and measurement procedures consistent with that training shall be followed.*

Finding: As discussed above, the applicant's acoustical analysis demonstrated that it is feasible to comply with this standard provided all sound system speakers used on the site are located in the western third of the tent, the volume is monitored and limited to a maximum 70 dB within ten feet of the speakers, all events occur within the enclosed tent, with no use of the outdoor patio, and any generators are located on the north side of the tent and 100 or more from the west boundary.

This criterion can be met with conditions.

K. The home occupation shall comply with Section 1015, Parking and Loading, except as modified by Subsection 806.02(K):

- 1. On-street parking shall be prohibited on the day of an event.*

Finding: Neighbors testified about vehicles parked on SE 232nd Avenue and in an off-site field during prior events on the site. However, the proposed parking lot can provide sufficient on-site parking to accommodate the largest events proposed (maximum 300 guests and five employees). There is no need for guests or employees to park on the street or on surrounding properties. The proposed parking lot, with clearly marked parking stalls, will ensure adequate parking is available on the site. A condition of approval would be warranted to prohibit on-street or off-site parking. If this application were approved.

This criterion can be met with conditions.

2. *An alternative to the parking area surface required pursuant to Subsection 1015.01(B) may be approved based on the following criteria:*
 - a. *It is appropriate considering season, duration, and intensity of use.*
 - b. *It shall be surfaced with hardy grasses, wood chips, or other similar organic materials sufficient to adequately stabilize the ground surface for parking.*
 - c. *In order to minimize tracking of soil onto the roadway, a driveway surfaced with screened gravel or better must extend a minimum of 200 feet in length from the interior edge of the roadway that provides access to the site. A traffic management plan must direct all vehicular traffic along the required driveway prior to such traffic entering the roadway.*

The applicant did not request an alternative parking area surface. The site is located within the UGB. Therefore, all parking areas on the site must be “hard surfaced” unless the surface water management authority determines that a permeable surface is required for surface water management, as required by Subsection 1015.01(A).

These criteria are inapplicable.

L. Portable restroom facilities shall:

1. *Include hand-sanitizing or hand-washing facilities;*
2. *Comply with the standards of the service provider and the applicable regulations of the Oregon Department of Environmental Quality;*
3. *Be screened from adjacent lots and rights-of-way by sight-obscuring fences or plantings; and*
4. *Be located a minimum of 50 feet from all lot lines.*

Finding: The applicant proposes to use portable restroom facilities exclusively. Staff from the Wastewater Program and confirmed that the portable restrooms can meet the Oregon Department of Environmental Quality requirements if they are adequately maintained, serviced, and used temporarily. (Exhibit 22). There is no evidence in the record to support neighbors assertion that the portable restrooms may be tied into the existing septic system on the site. (Exhibit 8). The applicant will need to obtain approval from the Wastewater Program prior to utilizing portable restrooms on the site and staff for that agency can review this issue through that process.

This criterion can be met with conditions.

M. One temporary sign shall be allowed in addition to signs permitted pursuant to Section 1010, Signs. The sign shall not exceed eight square feet in area; shall be placed on private property on the day of the event; shall be removed no more than 24 hours after the event; and shall be physically attached to the premises in a manner which both prevents the sign from being moved or blown from its location, and allows the prompt removal of the sign.

Finding: The applicant states he will comply with these requirements. (See 15) Exhibit 2 at 23 and 54/Attachment

This criterion can be met with conditions.

N. Equipment, furniture, goods, and other amenities used for events shall be stored indoors on non-event days

Finding: The applicant states he will comply with this requirement.

This criterion can be met with conditions.

O. On non-event days, the use shall not take an outward appearance nor manifest any characteristics of a business or operation of a service commercial nature, except for those characteristics normally associated with or allowed for a primary use in the subject zoning district, or, in the AG/F, EFU, and TBR Districts, for a use identified as “allowed” by Table 407-1, Permitted Uses in the AG/F District, 401-1, Permitted Uses in the EFU District, or 406-1, Permitted Uses in the TBR District, respectively.

Finding: The applicant states that he will comply with this criterion.

This criterion can be met with conditions.

4. ZDO SECTION 401 EFU DISTRICT

- a. *401.02 Uses Permitted. Table 401-1 lists “Home Occupation to Host Events, subject to Section 806” as a conditional use.*

Finding: As established in Table 401-1, a Home Occupation to Host Events is a Conditional Use and is subject to Section 806. The application is also subject to 401.05(A)(1). The applicant is proposing to host events on site. The applicant has applied for a conditional use permit.

This criterion is met.

- b. *401.05 Approval criteria for specific uses, provides, in relevant part:*

The following criteria apply to some of the uses listed in Table 401-1, Permitted Uses in the EFU District. The applicability of a specific criterion to a listed use is established by Table 401-1.

A. General Criteria:

- 1. Uses may be approved only where such uses:
 - a. Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and*
 - b. Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.**

...

Finding: The applicant identified existing farm and forest operations on properties surrounding the site, including: growing of nursery stock and Christmas trees on properties to the east, across SE 232nd Avenue, and timber on properties to the west and north, across SE Borges Road. There are no current farm or forest activities occurring on the property to the immediate south of the site. But the next property to the south is currently growing pumpkins. (Exhibit 21 at 3). The applicant asserts that the owners of the properties to the north and east “[s]upport of the application as it will not affect the farming practices on their properties.” (*Id.*). However, he failed to provide any evidence to that effect.

The hearings officer finds that the proposed use will not force a significant change in or significantly increase the cost of accepted farm or forest practices on surrounding lands as the use will not impact existing farm and forest operations. With the exception of vehicles traveling to and from the site, vehicles parking on the site, and guests traveling between their vehicles and the event tent, all event activities will occur within the enclosed tent on the site, limiting potential offsite impacts.

Neighbors noted that traffic from prior unpermitted events on the site blocked traffic on SE 232nd, which prevented farmers from accessing their fields and encouraged guests to park on adjacent agricultural properties where they damaged crops. However, with this application the applicant proposed to provide a two-way access onto SE 232nd Avenue and drive aisles leading to 125 marked parking spaces on the site. These improvements will allow vehicles to quickly enter the site and park, reducing or eliminating the potential for congestion on SE 232nd Avenue. The applicant will provide sufficient parking for the maximum size events allowed, eliminating the need to seek offsite parking on adjacent properties.

Noise generated on the site must be consistent with the 60 dB limit of the Code. In addition, there is no evidence that noise will impact the growth of plants and trees on adjacent farm properties.

Farming activities in the area may impact events on the site, generating noise, dust, odors, and other impacts. However, as discussed above, the applicant will be required to keep the walls of the tent closed during events, which will limit the potential for these activities to impact the event. The applicant should be required to clearly inform customers about these potential impacts, including notices on the facilities website and contract documents. Although neighbors testified about prior confrontations between the applicant and or guests of the facility and adjacent farmers, there is no evidence that such confrontations are likely to recur or occur with sufficient frequency as to significantly impact the operation or cost of farm and forest activities on adjacent properties. It is in the applicant's best interest to ensure that they do not occur, as it could result in revocation of the conditional use approval.

This criterion is met.

D. Commercial Uses:

- 1. The home occupation shall not unreasonably interfere with other uses permitted in the EFU District and shall not be used as justification for a zone change.*

Finding: The applicant is not requesting a zone change and as discussed above, the proposed home occupation can be conditioned to ensure that it will not unreasonably interfere with other permitted uses in the EFU zone.

This criterion is met.

- c. **401.07 Dimensional Standards** establishes the following minimum dimensional standards in the EFU district:
 - i. 30 feet from the front property line;*
 - ii. Ten feet from the side property lines; and*
 - iii. 30 feet from the rear property line for accessory structures**

Finding: The proposed accessory building is subject to the minimum setback standards in the EFU district. The applicant's site plan demonstrates that all existing structures on the site, including the permanent tent, comply with these standards.

This criterion is met.

D. CONCLUSION

Based on the findings and discussion provided or incorporated herein, the hearings officer finds that the applicant failed to bear the burden of proof that the proposed use can comply with the applicable approval criteria, specifically that the proposed permanent tent is a “building[] normally associated with uses permitted in the applicable zoning district. ZDO 806.02.C. Therefore, the hearings officer must deny the application, Case No. Z0218-24-C (Saranchuk).

E. DECISION

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the hearings officer hereby denies Case No. Z0218-24-C (Saranchuk).

DATED this 6th day of January 2025.

A handwritten signature in black ink, appearing to read 'Joe Turner', with a long horizontal flourish extending to the right.

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).