

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

Regarding an Application for a Conditional Use)	Case File No.
Permit to Establish a Home Occupation to Host)	Z0602-18-C
Events.)	(Gornick)

A. SUMMARY

1. The owner is Brian Gornick. The applicant is Brian Lee of PACE Engineers.
2. The subject property is located at 16017 South Henrici Road, Oregon City, OR 97045. The legal description is T3S, R2E, Section 14B, Tax Lot 1800 W.M. The subject property is approximately 15.69 acres and is zoned RRFF-5 – Rural Residential Farm Forest 5-Acres.
3. On January 31, 2019, the Hearings Officer conducted a public hearing to receive testimony and evidence about the application.

B. HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony at the public hearing about this application on January 31, 2019. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the 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 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. At the hearing, county planner Clay Glasgow discussed the staff report and recommended approval of the application.
3. Brian Gornick and Brian Lee testified in support of the application.
4. Bill Merchant, Lywnn Lyen, and Ron Crait testified in opposition to the application.

5. At the conclusion of the public hearing, the Hearings Officer closed the record.

C. FACTS

The subject property is an approximately 15.69-acre parcel zoned RRFF-5. The property is located at 16017 South Henrici Road, Oregon City, OR 97045, on the north side of South Henrici Road between South Beaver Creek Road and South Ferguson Road. The property is irregularly shaped – it is essentially a rectangle with a large section missing in the northwest corner. The southern portion of the property, where the proposed use would occur, is relatively flat. The northern and eastern portions of the property begin to slope downwards to a small stream on the property. There is a dwelling in the southwest corner of the property. The property is in an area of RRFF-5 properties that are in rural residential and farm uses. The applicant seeks to construct a barn to host events in the southwestern portion of the property north of the existing dwelling. The proposal would allow up to 200 people per event and 72 events per year.

D. DISCUSSION

The staff report does a thorough job of explaining how all of the applicable approval criteria are satisfied. Most of the findings in the staff report are not challenged. It would be a waste of the County's money and resources to review and repeat all of the unchallenged findings in the staff report. I have reviewed the findings in the staff report and agree with those findings. Therefore, I adopt and incorporate the findings in the staff report in this decision, except as discussed further.

Clackamas County Zoning and Development Ordinance (ZDO) 1203.03 provides the approval criteria for conditional uses. Opponents do not cite any applicable approval criteria in their testimony, but I will do my best to apply their arguments to the applicable approval criteria.

1. ZDO 1203.03(A)

ZDO requires that the “use is listed as a conditional use in the zoning district in which the subject property is located.” Opponents argue that a “business use” should not be allowed in a rural residential area. ZDO Table 316-1 lists the potential permissible uses in the RRFF-5 zone. “Home occupation to host events” is specifically listed as a conditional use. Therefore, a home occupation to host events – like the proposed use – may be allowed

in an RRF-5 zone if it meets the applicable approval criteria, whether it is a “business” or not. Opponents’ arguments do not provide a basis to deny the application.

ZDO 1203.03(A) is satisfied.

2. ZDO 1203.03(C)

ZDO 1203.03(C) requires that the “proposed use is consistent with Subsection 1007.07, and safety of the transportation system is adequate to serve the proposed use.” Opponents argue that there is already significant traffic in the area and that the traffic from the proposed use would only make things worse. ZDO 1007.07(B) requires that “[a]pproval 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 County Engineering Department determined that “the increased traffic is not anticipated to create a capacity issue and is consistent with concurrency requirements under ZDO Section 1007.07.” Even if the County Engineering Department was incorrect, ZDO 1007.07(B)(5) specifically exempts home occupation event hosting such as the proposed use from concurrency requirements.¹ ZDO 1203.03(C) also requires that the “safety of the transportation system is adequate to serve the proposed use.” The County Engineering Department found that adequate sight distances could be provided for entrance into the property and that adequate parking and circulation could be provided. Although opponents argue that traffic from the proposed events could conflict with traffic from a nearby church, I do not see that renders the safety of the transportation inadequate.

ZDO 1203.03(C) is satisfied.

3. ZDO 1203.03(D)

ZDO 1203.03(D) requires that the “proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs, or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located.” The character of the surrounding area is rural residential and farm and forest uses. The primary uses are residential and farm and forest

¹ ZDO 1007.07(B) provides:

“Approval of a development shall be approved only if the capacity of the transportation facilities is adequate or will be made adequate in a timely manner. The following shall be exempt from the requirement:

“* * * * *

“(5) Home occupations to host events, which are approved pursuant to Section 806[.]”

uses. Previous cases have explained that the inquiry under ZDO 1203.03(D) entails whether the proposed use makes the exercise of those primary uses substantially worse. Therefore, in the present case, the question is whether the proposed home occupation to host events would make rural residential or farm and forest uses substantially worse. I do not see any way that the proposed use would negatively affect farm or forest uses, and I do not understand opponents to make that argument. Opponents argue that traffic, noise, and dust could adversely affect rural residential uses.

The applicant seeks to obtain approval for up to 72 events per year for up to 200 people per event. While there would certainly be some traffic impacts on event days, the property satisfies the parking requirements under ZDO Chapter 806, there is adequate circulation for the traffic on site so that it would not back up on to South Henrici Road, South Henrici Road is a minor arterial that is designed for significant amounts of traffic, and there is more than adequate existing capacity on South Henrici Road. The cumulative effect of these circumstances is that traffic from the proposed events would be an occasional minor inconvenience at most, and certainly would not rise to the level of making rural residential use substantially worse.

ZDO 806.02(J) provides:

“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 subject property, of noise created by the home occupation shall not exceed the greater of 60 dB(A) or the ambient noise level. During all other hours, the average peak sound pressure level, when measured off the subject property, of noise created by the home occupation shall not exceed the greater of 50 dB(A) or the ambient noise level.”

Opponent Ron Crait (Crait), who lives the nearest of the opponents to the area where the proposed use would take place wonders how the noise provisions would be enforced. The applicant explained that most activities would be inside, noise meters would be used on site to keep in compliance with the noise requirements, and contracts with clients would require compliance with the noise regulations. Compliance with the noise regulations would ensure that noise from the proposed use would not make rural residential uses on surrounding significantly worse, and I agree that it is feasible for the applicant to comply with the noise regulations.

Crait also wonders whether dust from the parking area would impact his rural residential use. The applicant proposes to use a plastic grid under the parking area to reduce dust and dirt and is amenable to a condition of approval requiring such a plastic grid. With the plastic grid, I agree that dust and dirt would be reduced so as to not make surrounding rural residential uses substantially worse.

ZDO 1203.03(D) is satisfied.

All of the approval criteria are satisfied.

E. DECISION

Based on the findings, discussion, and conclusions provided or incorporated herein and the public record in this case, the Hearings Officer hereby **APPROVES** application Z0602-18-C, with the following conditions of approval.

F. CONDITIONS OF APPROVAL

I. General Conditions:

- 1) Approval of this land use permit is based on the submitted written narrative and plan(s) dated 12/12/18. Following two incomplete notices, the application was deemed complete on 12/17/18. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of approval described herein.
- 2) The applicant is advised to take part in a Post Land Use Transition meeting. County staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project. If you like to take advantage of this meeting please contact Deana Mulder, at (503) 742-4710 or at deanam@co.clackamas.or.us.
- 3) **Prior to the issuance of building permits,** the applicant shall submit a statement of use to Wendi Coryell in the Clackamas County Engineering Division. Wendi may be contacted at 503-742-4657, or wendicor@co.clackamas.or.us The statement of use is used to calculate the Transportation System Development charge. A Transportation System Development Charge (TSDC) is included in the final calculation of the building permit fees for new instructional projects; this includes additions and tenant improvements that increase the number of daily trips to the site.

- 4) The conditional use approval is valid for four years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four year period, the approval shall be implemented, or the approval will become void. "Implemented" means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, "implemented" means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained. A "major development permit" is:
 - a) 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.
- 5) This Conditional Use approval is granted subject to the above and below stated conditions. Failure to comply with any of the conditions of approval constitutes a violation of this permit and may be cause for revocation of this approval.
- 6) The approval of the application granted by this decision concerns only the applicable criteria for this decision. The decision does not include any conclusions by the county concerning whether the activities allowed will or will not come in conflict with the provisions of the federal Endangered Species Act (ESA). This decision should not be construed to or represented to authorize any activity that will conflict with or violate the ESA. It is the applicant, in coordination if necessary with the federal agencies responsibility for the administration and enforcement of the ESA, who must ensure that the approved activities are designed, constructed, operated and maintained in a manner that complies with the ESA.
- 7) Applicant to satisfy applicable requirements from Oregon Division of State Lands, regarding waters or potential wetlands on site.

II. Planning and Zoning Conditions: Clay Glasgow, (503) 742-4520, clayg@clackamas.co

- 1) Development of the subject property is subject to the provisions of ZDO Sec.1203 and those other relevant codes and ordinances adopted by the Board of County Commissioners pursuant to subsec. 1001.03 of the ZDO, including, but not limited to, the County Roadway Standards, County Excavation and Grading Ordinance, and Oregon Structural Specialty Code, etc.
- 2) Any outdoor lighting [ZDO 1005.05(A) and (B)] and 806.03(M) shall be located and designed so that it does not shine onto adjacent properties, upwards or right-of-ways. If additional lighting will be installed, the applicant will submit an outdoor

- lighting system design plan prior to installation of the outdoor lighting system for review and approval by Planning and Zoning Division.
- 3) All signs shall be in compliance with ZDO Section 1010.06 and 1010.13. One temporary sign shall be allowed in addition to signs permitted pursuant to Section 1010. 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.
 - 4) Use of on-site sewage disposal facilities shall be subject to approval by Septic & Onsite Wastewater System Programs.
 - 5) **Prior to building permit approval**, the applicant shall submit a landscape plan to the Planning and Zoning Division for review and approval, illustrating the location of the vegetation and a legend, per ZDO Section 1009.
 - 6) **Prior to Occupancy**, the proposed landscaping shall be installed and inspected.
 - 8) **Prior to final occupancy permit issuance**: the applicant shall submit a plan showing satisfaction of requirements from Section 1021 of the Zoning and Development Ordinance, regarding trash/recycling. Detailed information, including ZDO 1021, is available on the county web site www.co.clackamas.or.us under "Garbage & Recycling."
 - 9) **Prior to final occupancy permit issuance**: The applicant shall obtain all County Health Department Licenses and comply with County Health Department regulations.
 - 10) **Prior to final occupancy permit issuance**: The applicant shall obtain any applicable OLCC Licenses and comply with OLCC regulations.
 - 11) The operator of the home occupation shall be a resident of the property on which the home occupation is located.
 - 12) The home occupation shall have no more than five full-time or part-time employees on the site.
 - 13) 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.
 - 14) 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.

15) A maximum of two events shall be allowed per day, and no more than one event shall occur at any one time. There shall be a maximum of 72 events per year.

16) The maximum number of guests for any single event shall not exceed 200.

17) Noise shall be regulated as follows:

A. 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 of the noise shall not exceed the greater of 60 dB(A) or the ambient noise level when measured off the subject property. During all other hours, the average peak sound pressure level of the noise shall not exceed the greater of 50 dB(A) or the ambient noise level when measured off the subject property.

i. Noise generated by vehicles entering or exiting the subject property, but not by idling vehicles, shall be exempt from Subsection 806.03(N)(1).

ii. Subsection 806.03(N)(1) shall not apply to noise detectable on public rights-of-way and railroad rights-of-way.

18) Restroom facilities shall be regulated as follows:

A. Portable restroom facilities shall include hand-sanitizing or hand-washing facilities.

B. Portable restroom facilities shall be subject to the standards of the service provider and the County Septic & Onsite Wastewater System Programs.

C. Portable restroom facilities shall be screened from adjacent properties and rights-of-way by sight-obscuring fences or plantings and shall be located a minimum of 50 feet from all lot lines.

19) Property owner must maintain access to City of Oregon City water reservoir at all time per Easement Document 92 38566.

20) Property owners must provide access to waterline and necessary power and telemetry wires per Easement 92 38566.

21) Property Owner must not make any changes to the access, waterline, and power and telemetry wires without the written consent of the City of Oregon City Public Works Director

22) Contractor for property owner must contact Oregon City Public Works Water Division to request locates prior to any disturbance of the easement areas.

III. Building Code Division Conditions: Richard Carlson, (503) 742-4769,
richardcar@co.clackamas.or.us

- 1) All construction activities, and all changes of use (occupancy type), shall comply with applicable Oregon Specialty Codes and local ordinances. All such codes and ordinances apply to all such activities, even when permits and inspections are not required.
- 2) Compliance with the following conditions is required prior to the commencement of any new use or occupancy:
 - a. All necessary development permits (septic, building, electrical, grading, driveways, etc.) for the property, facility, and associated buildings shall be obtained.
 - b. The plans must meet the minimum structural integrity and life safety requirements of the applicable Oregon Specialty Codes.
 - c. Any additional information required by the Building Codes Division, such as engineering, details, and specifications, must be provided to the Plans Examiner reviewing the project.
 - d. All necessary permits and approved plans must be issued and maintained onsite as required.
 - e. All required inspections, corrections, and final approval must be obtained.

IV. Engineering Division Conditions: Kaylin Hangartner, (503) 742-4711,
Khangartner@clackamas.us

- 1) All frontage improvements in, or adjacent to Clackamas County right-of-way, or on site, shall be in compliance with *Clackamas County Roadway Standards*. Frontage improvements in, or adjacent to State of Oregon right-of-way, shall be in compliance with Oregon Department of Transportation standards.
- 2) The applicant shall obtain a Development Permit from Clackamas County Engineering - Department of Transportation and Development prior to the initiation of any construction activities associated with the project. Issuance of a Development Permit is dependent upon the formal approval, by Engineering staff, of a set of plans in compliance with Roadway Standards section 140.
- 3) The applicant shall close one driveway approach, and shall only have one shared driveway approach to Henrici Road, or submit an approved Design Modification to have two driveway approaches to the Engineering Department.
- 4) The applicant shall verify by a professional survey that the one-half right-of-way width of Henrici Road is a minimum of 30 feet wide when measured from the existing centerline.

- 5) The driveway shall be designed and constructed, consistent with the following:
 - a) A minimum 20-foot wide, paved or gravel driveway, with 4-foot shoulders on both sides in conformance with Standard Drawing R100. The minimum vertical clearance shall be 13.5 feet for the full length of the driveway.
 - b) A 20-foot wide and 20-feet long paved driveway approach in conformance with Standard Drawing D500.
 - c) A turnaround in conformance with Standard Drawing C350, or other turnaround configuration if approved by the local Fire Marshal.
- 6) The applicant shall design and construct on-site parking and maneuvering areas as follows:
 - a) All parking and maneuvering areas shall be screened gravel or better, except for ADA parking spaces, which shall be paved. The applicant shall provide adequate on site circulation for the parking and maneuvering of all vehicles anticipated to use site, including a minimum of 24 feet of back up maneuvering room for all 90-degree parking spaces. Loading spaces shall also be afforded adequate maneuvering room.
 - b) All curbs shall typically be type "C", or curb and gutter if curb line slope is less than one percent, if they carry, direct or channel surface water. Alternative curbs will be considered when it is determined by the Clackamas County Department of Transportation and Development that type "C" curbs or curb and gutter are not appropriate. Extruded curbs for carrying, directing or channeling surface water, or used as a vehicle wheel stop, shall not be allowed.
 - c) The applicant shall design and construct a five-foot wide minimum, unobstructed, hard-surfaced walkway from the ADA parking spaces to the building entrance or gathering area.
 - d) Parking spaces shall meet minimum *ZDO* section 1007 dimensional requirements. The plans shall list the number of parking spaces required and the number of parking spaces provided. Parking spaces shall be striped, and all compact, carpool, disabled, and loading berth spaces shall be labeled on the plans. A plastic grid shall be utilized underneath the parking area to reduce dust and dirt.
 - e) All traffic control devices on private property, located where private driveways intersect County facilities shall be installed and maintained by the applicant, and shall meet standards set forth in the *Manual on Uniform Traffic Control Devices* and relevant Oregon supplements.
- 7) The applicant shall provide and maintain adequate intersection sight distances at the driveway approach intersection with Henrici Road. In addition, no plantings, at

maturity, retaining walls, embankments, rock outcroppings, fences or any other objects shall be allowed to obstruct minimum sight distance requirements. Minimum intersection sight distance at the driveway approach with Henrici Road shall be 500 feet in both directions.

- 8) Prior to certificate of occupancy, the applicant shall provide an Engineer's cost estimate to Clackamas County Engineering for any unfinished improvements required by the Engineering conditions of approval. The estimate shall be submitted for review and approval of quantities of asphalt concrete, aggregates, curbs, sidewalks and any other required improvements and associated construction costs. The applicant shall provide a performance bond in the amount of 125% of the approved Engineer's cost estimate for the incomplete improvements.
- 9) The applicant shall design and construct drainage facilities to serve the buildings, parking and maneuvering areas, and the remainder of the site in conformance with Roadway Standards chapter 4.

The applicant shall submit written approval from the Clackamas Fire District #1 for the planned access, circulation, fire lanes and water source supply. The approval shall be in the form of site and utility plans stamped and signed by the Fire Marshal

V. Septic & Onsite Wastewater Systems Programs Conditions: Aaron Dennis, (503) 742-4614, adennis@clackamas.us

(No comments received as of this staff report. Application plant to use restrooms in the proposed building. Has had site evaluation from the Soils Division which indicates this is possible.)

- 1) Applicant to satisfy requirements from this Division.

DATED this 21st day of February, 2019.



Fred Wilson
Clackamas County Hearings Officer

ENDANGERED SPECIES ACT NOTICE

The federal Endangered Species Act (ESA) is not a criterion for approval of this application. The County has reviewed the approval standards in light of the requirements of the ESA, believes that the criteria for approval are consistent with the terms of the ESA and has submitted the Development Ordinances for consideration for a "4(d)"

programmatic limitation. However, the analysis included in this decision does not include an evaluation by the County of the applications for consistency with the ESA nor does the decision reach any conclusions concerning that federal law. The applicant are responsible for designing, constructing, operating and maintaining the activities allowed by an approval of this application in a manner that ensures compliance with the ESA. Any question concerning this issue should be directed to the applicant, their consultants and the federal agencies responsible for administration and enforcement of the ESA for the affected species.

APPEAL RIGHTS

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