

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

Regarding an application by Leonid Paladiy for a home occupation for truck parts storage and an exception to allow the use of 3000 square feet of an accessory building at 8855 SE 172nd Avenue, unincorporated Clackamas County, Oregon) **FINAL ORDER**
)
) **Case No. Z0439-22**
) **(Paladiy Home Occup.)**

A. SUMMARY

1. Leonid Paladiy (“the “applicant”), requests approval of a level three home occupation on a 4.74-acre parcel at 8855 SE 172nd Avenue; also known as Tax Lot 00200, Township 1 South, Range 6 East, of the Willamette Meridian, Clackamas County (the “site”). The site and surrounding properties to the north and west are zoned FF10 (Farm Forest, ten acre minimum lot size). Properties abutting the west portion of the south boundary of the site are zoned R7 (Residential, 7,000 square foot minimum lot size). Properties abutting the east portion of the south boundary of the site are zoned SFA (Single-Family Attached Residential). Properties to the east, across SE 172nd Avenue, are zoned EC (Employment Center).

2. The applicant proposes to store truck parts and equipment associated with his existing trucking business in a portion of an existing 9,000 square foot accessory building on the site. The proposed use is projected to generate one truck delivery per week at the site. The applicant proposed to construct a new driveway from SE 172nd Avenue to access the accessory building, in order to avoid increased traffic on the existing shared driveway serving the site.

3. The applicant also requests approval of an exception to ZDO 822.04(L)(1) to allow the use of 3000 square feet of the existing 9,000 square too accessory building for the home occupation rather than the 1500 square feet allowed without an exception.

4. Hearings Officer Joe Turner (the "hearings officer") held a public hearing about the application. County staff recommended that the hearings officer approve the application, subject to conditions. See the Staff Report and Recommendation to the Hearings Officer dated November 10, 2022, (the “Staff Report”). The applicant accepted the findings and conditions of approval as recommended by County staff.

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

B. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at the public hearing about this application on November 10, 2022. All exhibits and records of testimony are filed at Clackamas County Department of Transportation and Development. At the beginning of the hearing, the hearings officer made the declaration required by ORS 197.763. The hearings officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The following is a summary by the hearings officer of selected testimony at the public hearing.

2. County planner Joy Fields summarized the Staff Report.

3. Attorney Fred Wilson appeared on behalf of the applicant, Leonid Paladiy and summarized the history of the proposed development. He noted that the applicant has been operating the proposed use, storing truck parts related to his business, on the site for several years without any issues. He accepted the findings and conditions in the Staff Report without exceptions. He waived the applicant's right to submit a written final argument.

4. At the end of the public hearing, the hearings officer closed the record and announced his intention to approve the application subject to recommended conditions as modified at the hearing.

C. DISCUSSION

The hearings officer finds that the Staff Report identifies all of the applicable approval standards for the application and contains sufficient findings showing the application does or can comply with those standards subject to conditions of approval in the Staff Report. These findings were not disputed and are supported by substantial evidence in the record. The hearings officer adopts the findings in the Staff Report as his own.

D. CONCLUSION

Based on the findings and discussion provided or incorporated herein, the hearings officer concludes that Case No. Z0439-22 (Paladiy Home Occupation) should be approved, because the application does or can comply with applicable standards of the Clackamas County ZDO, provided it is subject to conditions that ensure timely compliance in fact with the ZDO and relevant Comprehensive Plan Policies incorporated by reference in the Staff Report as amended at the hearing.

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 Z0439-22 (Paladiy Home Occupation) subject to the following conditions:

Conditions of Approval:

1. Approval is for three years only per ZDO 822.07. Continuation of the use beyond the three year approval period will require a renewal of this permit.
2. Continued compliance with Section 822 must be met. Failure to comply will be cause for revocation of this permit.
3. The business owner, Leonid Paladiy, is the current property owner and currently and will continue to reside in a dwelling on the property. This land use decision is not transferrable to other parties per ZDO 822.04 (A).
4. There shall be no more than five employees on the property at a given time per ZDO 822.04 (B).
5. Noise created by the business shall not exceed the average peak sound pressure level of 60db between the hours of 8 AM to 6 PM when measured off the property line. During all other hours the business noise levels shall not exceed levels detectable to normal sensory perception off the property per ZDO 822.04 (C). As noted in the application, Mr. Paladiy will ensure the delivery truck does not idle during deliveries to ensure the noise created does not exceed the noise, or fume levels allowed per ZDO 822.04 (C) and 822.04(D).
6. The home occupation shall not create vibration, glare, fumes, or odors detectable to normal sensory perception of the subject parcel per ZDO 822.04 (D).
7. The home occupation shall not create visual or audible electrical interference in any radio, television, or other electronic devise off the subject property or cause fluctuations in line voltage off the subject property per ZDO 822.04 (E).
8. Outdoor storage and activities are prohibited per ZDO 822.04 (F).
9. Any future signage is subject to Section 1010.06(B) of the Clackamas County Zoning Development Ordinance which limits signage to eight square feet and not to exceed a height of 6 feet and may be located within the setback behind the property line per ZDO 822.04 (G).
10. Home occupation vehicles shall not be stored, parked, or repaired on public rights-of-way per ZDO 822.04 (H).

11. Parking of all business related vehicles shall be located to the west of the pre-existing 75'x90' detached accessory structure per ZDO 822.05(A)(c).
12. All business related activities shall use the new driveway access as provided for through a development permit and the 3,000 square feet of the existing detached accessory structure located on tax lot 200 of map 13E30B. If the private access easement is used, evidence of compliance with per ZDO 822.04 (I) will have to be provided.
13. Storage of hazardous materials in quantities not normally associated with residential use or exempt amounts allowed by the current edition of the Oregon Structural Specialty Code are prohibited per ZDO 822.04 (K).
14. The applicant has request an exception to Subsection 822.04(L) (1), which allows a maximum of 1,500 *square feet of accessory building space*. In conformance to Subsection 822.05(C) (2) the applicant upon approval is allowed use 3,000 square feet of the existing 75'X90' detached accessory structure for the home occupation use.
15. The applicant shall contact DEQ to ensure the necessary permits are acquired and business storage of hazardous materials is in compliance with the DEQ standards and regulations as identified at the following link
<https://www.oregon.gov/deq/Hazards-and-Cleanup/hw/Pages/default.aspx>
16. As specified in the application materials (Exhibit 2) the home occupation business:
 - a. Shall not generate more than thirty (30) trips per day (fifteen (3) round trips) per day over the new permitted access drive. A vehicle trip is defined under Subsection 822.02 as “*A vehicular movement either to or from the subject property by any vehicle used in the home occupation, any delivery vehicle associated with the home occupation, or any customer vehicle*”; and
 - b. Only one vehicle in excess of 11,000 pound GVW, is allowed on site as part of the home occupation activities per ZDO 822.04 (L).
17. No more than five vehicles total associated with the home occupation (employees, customers/clients, deliveries) may be located on the property at any one time per ZDO 822.04 (L)(3).
18. Marijuana business activities are a prohibited use as a home occupation.

Prior to conducting the home occupation on site the following conditions shall be met:

19. Within **45 days from the date of this approval** the applicant shall apply for a “Change of Occupancy” permit from the Building Codes Division for the existing 90’X75’ detached accessory structure and receive final approval for occupancy of 3,000 square feet of the structure for the home occupation per ZDO 822.04 (L).

20. The applicant shall consult with the Engineering Department and obtain the appropriate Development Permit for the new access onto 172nd Ave. This permit shall be obtained prior to initiation of construction, and the applicant shall pay a plan review and inspection fee. The fee will be calculated as a percentage of the construction costs if it exceeds the minimum permit fee. The minimum fee and the percentage will be determined by the current fee structure at the time of the Development Permit application. These plans shall either be signed and stamped by a Professional Engineer registered in the State of Oregon, or shall be prepared in a manner complying with requirements acceptable to the Engineering Division. The permit will also ensure approval of erosion control Best Management Practices, sight distances, and the driveway improvements. The permit shall address:
 - a. All frontage and on-site improvements shall be in conformance with the *2010 Clackamas County Roadway Standards*.

 - b. The driveway and parking area shall meet the following standards:
 - i. A minimum 20-foot wide paved driveway approach shall be constructed onto SE 172nd Avenue, per Roadway Standards drawing D500.

 - ii. The applicant shall provide and verify minimum intersection sight distance at the driveway serving the home occupation. A minimum of 500 feet shall be provided to the north and south, measured in accordance with Section 240 of the Clackamas County Roadway Standards.

 - iii. Beyond the paved approach, a minimum 12-foot wide gravel driveway shall be constructed, per Roadway Standards drawing R100.

 - iv. The applicant shall provide adequate on site circulation for the parking and maneuvering of all vehicles anticipated to use the site. Adequate area shall be provided so vehicles can turnaround on-site, including a 24-foot wide back up aisle adjacent to all 90-degree parking spaces.

 - v. The parking and maneuvering area shall be surfaced with screened gravel or better, in accordance with Roadway Standards drawing R100.

 - vi. Parking spaces shall meet minimum *ZDO* section 1015 requirements. The site plan shall include dimensions for the parking stalls and back up areas.

The applicant shall provide a wheel stop/bumper or similar physical feature for each parking space in accordance with ZDO subsection 1015.

21. The applicant shall contact Wendi Coryell at the Engineering Division for her to calculate if System Development Charges are applicable to the proposed home occupation. Wendi Coryell can be reached at wendicor@clackamas.us
22. The applicant shall work with Clackamas Fire District #1 to ensure the fire related requirements are met per ZDO 822.05 (B).
23. If the on-site septic system is to accommodate the use by an employee then an Authorization Notice is required to ensure the existing septic system can accommodate the extra usage of the onsite septic system per ZDO 822.05 (B).
24. The permit is granted for the proposed home occupation as submitted; to the extent it is consistent with these conditions of approval.
25. Approval is subject to the above stated conditions. Failure to comply with all conditions of approval shall be cause for revocation of this permit.

DATED this 11th day of November 2022.



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

ENDANGERED SPECIES ACT NOTICE

The approval of the application granted by this final order concerns only the applicable criteria for this decision under the Clackamas County Zoning and Development Ordinance. This final order does not address whether the activities allowed herein will or will not conflict or comply with the provisions of the federal Endangered Species Act (the “ESA”). This final order should not be construed to or represented to authorize any activity that will conflict with or violate the ESA. It is the responsibility of the applicant, in coordination with federal agencies responsible for the administration and enforcement of the ESA, to ensure that the activities approved herein also are designed, constructed, operated, and maintained in a manner that complies with the ESA.

APPEAL RIGHTS

ZDO 1304.01 provides that the Land Use Hearings Officer's decision is the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules adopted by LUBA describe when and how an appeal must be filed. Presently, ORS 197.830(8) 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." ZDO 1304.02 provides that 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).