

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

Regarding an Appeal of a Planning Director	)	<b>Case File No.</b>
Decision Approving an Application for a Home	)	<b>Z0094-20-HO Appeal</b>
Occupation Permit to Park Commercial Vehicles.	)	<b>(Brundidge Appeal)</b>

**A. SUMMARY**

1. The applicant and owner is Lauren Brundidge.
2. The appellant is Lauren Brundidge.
3. The subject property is located at 15460 South Redland Road, Oregon City, Oregon 97045. The legal description is T2S, R2E, Section 34B, Tax Lot 300 W.M. The subject property is approximately 5.05 acres and is zoned RRRF-5 – Rural Residential Farm Forest 5-Acre District.
4. On June 18, 2020, the Hearings Officer conducted a public hearing to receive testimony and evidence about the application. At the conclusion of the public hearing, the record was left open one week for the submission of new evidence, testimony, and legal argument; one additional week for responses to the new evidence, testimony, and legal argument; and one additional week for the applicant’s final legal argument.

**B. HEARING AND RECORD HIGHLIGHTS**

1. The Hearings Officer received testimony at the public hearing on this application on June 18, 2020. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. The public hearing was conducted virtually on the Zoom platform due to the corona virus. At the beginning of the hearings, 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 Planning Director’s decision, 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 Lorraine Gonzales discussed the Planning Director's decision and recommended affirming the decision.
3. The applicant testified in favor of the application.
4. No one testified against the application.
5. At the conclusion of the public hearing, the Hearings Officer left the record open one week for the submission of new evidence, testimony, and argument; one additional week for responses to the new evidence, testimony, and argument; and one additional week for the applicant's final legal argument.

### **C. FACTS**

This case involves the appeal of a Planning Director decision approving an application for a home occupation to park commercial vehicles and for 50 square feet inside the residence for office use. A home occupation application is subject to a type II procedure, whereby the decision is made by the Planning Director. The Planning Director approved the home occupation application.<sup>1</sup> This appeal followed.

The subject property is a 5.05 RRFF-5 parcel located at 15460 South Redland Road, Oregon City, 97045. The property is developed with a single family residence. There is also a detached accessory structure that was originally approved but the building permit has expired. The accessory structure is located at the north of the property along South Redland Road, while the residence is located in the south closer to South Unity Lane which runs along the eastern boundary of the property. The applicant's commercial vehicle storage business provides parking for commercial vehicles in the northern portion of the property near the accessory structure.

### **D. DISCUSSION**

The applicants' property is zoned RRFF-5, which allows home occupations pursuant to Clackamas County Zoning and Development Ordinance (ZDO) 822.04. The Planning Director reviewed the approval criteria of ZDO 822.04 and found that the

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<sup>1</sup> Under ZDO 1307.03(B), the Planning Director includes "any County staff member authorized by the Planning Director to fulfill the responsibilities assigned to the Planning Director by the [ZDO]."

applicants satisfied all of the approval criteria. The Planning Director's findings were not challenged. It would be waste of the County's money and resources to review and repeat the unchallenged findings. I have reviewed the Planning Director's decision, and I agree with the findings and conclusions. I therefore adopt and incorporate the findings and conclusions in the Planning Director's decision in this decision.

The only issues on appeal are the applicant's concerns about two of the conditions of approval in the Planning Director's decision.<sup>2</sup> The first condition of approval at issue is Condition of Approval #7, which provides:

“The applicant shall maintain a schedule book to account for arrive and departure times of deliveries and transfer of home occupation equipment or vehicles in relation to the home occupation use from and to the site.”

The applicant is concerned that she would be required to make a schedule out in advance that would clearly establish which clients would be parking which vehicles on which days and at which times. The applicant proposes to store four vehicles – three trucks and a trailer - and one piece of construction equipment – a skid steer. The skid steer will have to be stored on the trailer, so there is a total of four vehicles that could be stored at one time. The Planning Director imposed the condition of approval to ensure that the applicant can demonstrate that the applicant is limiting the number of vehicles to the permissible amount. The applicant does not need to schedule the activities out in advance, the condition of approval is just to ensure that there is proof that the applicant is complying with the limits on the number of vehicles that may be stored. A log book is perhaps a better way to describe the requirement. As long as there is documentation of when vehicles arrive and when they leave, that is sufficient.<sup>3</sup> The condition of approval is modified as follows:

“The applicant shall maintain a log book to account for arrival and departure times of vehicles associated with the home occupation.”

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<sup>2</sup> Rod and Jenny Lucich, who opposed the application before the Planning Director, submitted an e-mail stating that although they were not appealing the Planning Director's decision, that was based on the understanding that the conditions of approval would not be changed. As explained later, the only changes to the conditions of the approval are clarifications. The clarifications only explain what the conditions of approval mean – they do not expand the activities permitted under the home occupation.

<sup>3</sup> The applicant testified that she already maintains a log book, so that should not provide an additional burden on her.

The other condition of approval at issue is Condition of Approval #16, which provides:

“Vehicles in relation to the home occupation use shall not exceed five vehicles parked at any given time on the property. This will require that only one employee/customer at a time may commute to the site to park their personal vehicle and transport the home occupation construction equipment to a job site and back.”

Under ZDO 822.04(L)(3), the “maximum number of vehicles that are associated with a \* \* \* home occupation and located on the property shall not exceed five at any time \* \* \*.” The applicant’s vehicle counts as one vehicle, so there may only be four other vehicles parked on the property at the same time. There does not seem to be any dispute that this requirement is applicable and that Condition of Approval is meant to enforce this provision. The applicant is concerned that often a client arrives in one vehicle to pick up a construction vehicle but has another person in the car at the time. The applicant is concerned that Condition of Approval #16 does not allow two people to arrive in one car. While I do not think that is what Condition of Approval #16 was meant to prevent, I see how it could possibly read that way. As long as there are not more than five vehicles associated with the home occupation on the property then ZDO 822.04(L)(3) is satisfied.<sup>4</sup> Condition of Approval #16 is modified as follows:

“There shall not be more than five vehicles associated with the home occupation at any given time on the property.”

All of the approval criteria are satisfied with the conditions of approval.

#### **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** the application for a home occupation in Z0094-20-HO, with the following conditions of approval.

#### **F. CONDITIONS OF APPROVAL**

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<sup>4</sup> For instance, if there is only one construction vehicle parked on the property then obviously more than one car and one person could come to pick that construction vehicle up. As long as no more than five vehicles are parked on the property at once then the applicant is in compliance with the home occupation requirements.

1. The permit is granted for the proposed home occupation as submitted; to the extent it is consistent with these conditions of approval.
2. Approval is for **three years only**. Continuation of the use beyond the three year approval period will require resubmittal of a home occupation application to renew this permit. This approval is not transferrable to any parties other than Lauren Brundidge, the business owner and resident of the property.
3. Continued compliance with Section 822 shall be met. Failure to comply will be cause for revocation of this permit.
4. ***Approval is subject to the stated conditions. Failure to comply with all conditions of approval shall be cause for revocation of this permit.***
5. The operator and business owner, Lauren Brundidge, of the home occupation shall reside in a dwelling unit on the property. This decision is not transferrable to any other parties.
6. There shall be no more than five employees on the property at any given time. Employees as defined under Subsection includes any full or part-time person in the home occupation, including, but not limited to, the operator, partners, assistants, and any other persons participating in the operation of the home occupation. This definition includes parties contracted to pick up the construction equipment.
7. The applicant shall maintain a log book to account for arrival and departure times of vehicles associated with the home occupation.
8. Use of incidental square footage not to exceed 50 square feet in the residential dwelling shall provide office space for the proposed home occupation use.
9. Hours of operation shall be limited to between the hours of **8 AM to 6 PM** where noise levels to normal perception do not exceed 60 dBA or the ambient noise levels whichever is the lessor as measured off the property if the business is operated between the hours of 6pm to 8am noise levels shall not exceed the ambient noise level. Noise levels include loud conversations or shouting that is clearly audible and exceeding the allowed noise levels as measured off the property lines.

10. The home occupation shall not create noise associated with the truck idling in excess of 10 to 15 minutes, a necessary time frame to ensure the truck can operate safely on the road.
11. No vibrations, glares, electrical interferences, fumes, odors detectable off the subject parcel shall be a result of the proposed home occupation activities.
12. Outside storage of equipment or materials associated with the home occupation use is prohibited.
13. The Bobcat Skid-steer shall be loaded and stored on the flatbed trailer anytime it is on the property.
14. **Within 10 days of the date of this decision** the application shall remove all outdoor storage of equipment and materials associated with the home occupation and not defined under Subsection 822.02(F) as a vehicle.
15. Any signage on the property is subject to Subsections 1010.07(B) and 1010.06(B) of the Zoning Development Ordinance (ZDO) that limits signage to no more than eight (8) square feet per side and no higher than six (6) feet. The applicant shall provide elevations, dimensions, and location of the any signage proposed for the home occupation use.
16. There shall not be more than five vehicles associated with the home occupation at any given time on the property.
17. Vehicles in excess of five vehicle, to include detached trailers, and in association with the home occupation, are prohibited.
18. No vehicle associated with the home occupation use shall be parked, repaired, or stored in the public right of way.
19. The proposed home occupation shall not generate more than 30 vehicle trips (15 round trips) per day.

20. No more than one vehicle parked on the property at a given time and associated with the home occupation use shall exceed 11,000 pounds gross vehicle weight (GVW).
21. No hazardous materials shall be stored on the subject property in quantities that exceed the normal usage of a residential property.
22. Maintenance and washing of the equipment is prohibited on the property.
23. Contact Wendi Coryell of the Clackamas County Engineering Division at 503 742-4657 or at [wendicor@co.clackamas.or.us](mailto:wendicor@co.clackamas.or.us) to assess and calculate if a Transportation System Development Charge (TSDC) is required for the home occupation use.

DATED this 21<sup>st</sup> day of July, 2020.



Fred Wilson  
Clackamas County Hearings Officer

### **APPEAL RIGHTS**

ZDO 1307.10(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such 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 the decision (which date appears above my signature).