



NOTICE OF DECISION ON A TYPE II LAND USE PERMIT

Decision: Approved in Part with Conditions, and Denied in Part

Permit Type: Nonconforming Use Verification & Alteration

File No. Z0087-22-E

Proposal: Verification that an existing restaurant/bar/beer garden/grocery store use is lawfully nonconforming, and an alteration of the nonconforming use to: change the use to a “brew pub”, with certain modifications the interior of and entrance to an existing building; operate within certain specified hours; expand an existing outdoor seating/serving area (beer garden); include a covered area, and allow certain outdoor activities, in the beer garden; add storage and barbecue buildings; allow for amplified outdoor music/announcements; allow for quarterly “special events”; allow for an annual on-site American Legion car show and an annual on-site “business party”; allow for portable toilets; and replace signage

Decision Date: November 3, 2022

Deadline for Filing Appeal: November 15, 2022, at 4:00 pm

Unless appealed, this decision is effective on November 15, 2022, at 4:00 pm.

Issued By: Glen Hamburg, Sr. Planner, ghamburg@clackamas.us

Assessor’s Map & Tax Lots: T3S R3E Section 13, Tax Lots 2000 and 2100

Site Addresses: 20189 and 20195 S Springwater Rd, Estacada, OR 97023

Applicant: Richard E Strauss

Property Owner: Shadado Inc

Zoning: Rural Residential Farm Forest Five-Acre (RRFF-5) District

Community Planning Organization (CPO) for Area:

Redland – Viola – Fischer’s Mill CPO

Contact: Lance Ward (Tel: 503-631-2550, Email: lanceward@aol.com)

Community Planning Organizations (CPOs) are part of the County’s community involvement program. They are advisory to the Board of County Commissioners, Planning

Commission, and Planning and Zoning Division on land use matters affecting their communities. CPOs are notified of proposed land use actions and decisions on land within their boundaries and may review these applications, provide recommendations, or file appeals. If this CPO currently is inactive and you are interested in becoming involved in land use planning in your area, please contact Clackamas County Community Engagement at 503-655-8751.

OPPORTUNITY TO REVIEW THE RECORD: The submitted application is available for review online at <https://accela.clackamas.us/citizenaccess/>. Select the Planning tab and enter the file number to search. Select 'Record Info' and then select 'Attachments' from the dropdown list, where you will find the submitted application. The complete application file is available for inspection at no cost by contacting the Planner listed on the first page of this decision. Copies of all documents may be purchased at the rate of \$2.00 per page for 8.5" x 11" or 11" x 14" documents, \$2.50 per page for 11" x 17" documents, \$3.50 per page for 18" x 24" documents, and \$0.75 per square foot with a \$5.00 minimum for large format documents.

APPEAL RIGHTS: Any party disagreeing with this decision, or the conditions of approval, may appeal this decision to the Clackamas County Land Use Hearings Officer. An appeal must include a completed County Appeal Form and a \$250.00 filing fee and must be **received** by the Planning and Zoning Division by the appeal deadline identified on the first page of this decision. Appeals may be submitted in person during office hours (8:00 am to 4:00 pm, Monday through Thursday, closed Friday and holidays). Appeals may also be submitted by email or US mail.

The County Appeal Form is available at: www.clackamas.us/planning/supplemental.html

Any party or parties appealing this decision may withdraw their appeal at any time prior to the hearing or final decision by the Hearings Officer. A party wishing to maintain individual appeal rights may file an individual appeal and pay the \$250.00 fee, even if an appeal by another party or parties has been filed. A person who is mailed written notice of this decision cannot appeal this decision directly to the Land Use Board of Appeals under ORS 197.830.

APPLICABLE APPROVAL CRITERIA: This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Sections 202, 316, 1206, and 1307.

PUBLIC AND AGENCY COMMENTS:

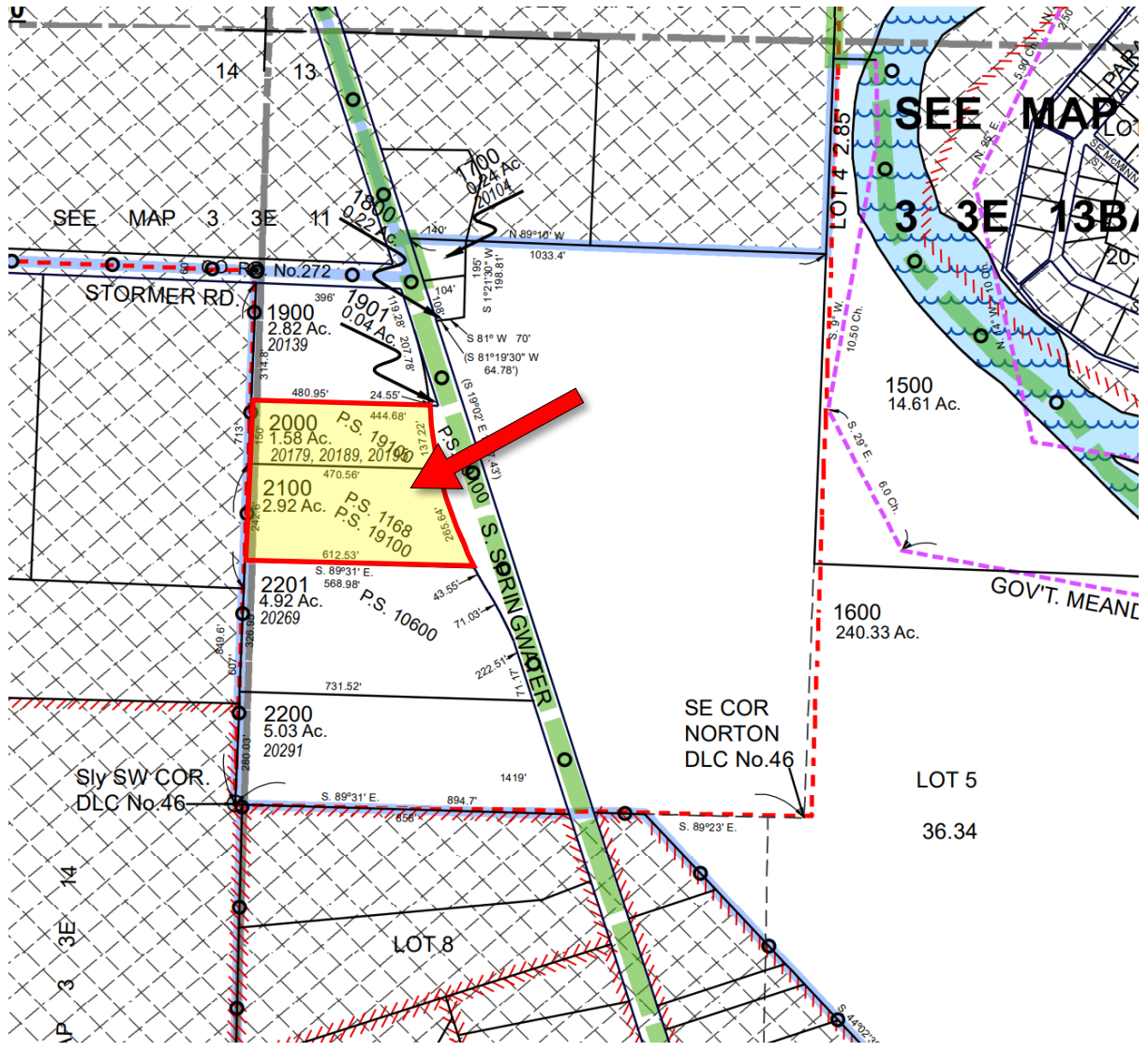
Notice was sent to applicable agencies and owners of property within 2,640 feet (half a mile) of the subject property. Written comments were received from: the Redland – Viola – Fischer's Mill CPO; the Estacada Fire District; Clackamas County Transportation Engineering; Clackamas County Septic and Onsite Wastewater Program; Judy Beaudoin; Pam Potter; Doug and Linda Towsley; and Bonnie Walter.

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.

Clackamas County is committed to providing meaningful access and will make reasonable accommodations, modifications, or provide translation, interpretation or other services upon request. Please contact us at 503-742-4545 or email DRenhard@clackamas.us.

503-742-4545: ¿Traducción e interpretación? |Требуется ли вам устный или письменный перевод? |翻译或口译? |Cần Biên dịch hoặc Phiên dịch? |번역 또는 통역?

Subject Property (Tax Lots 2000 and 2100) in Assessor's Map 33E13



Subject Property in Survey PS19100

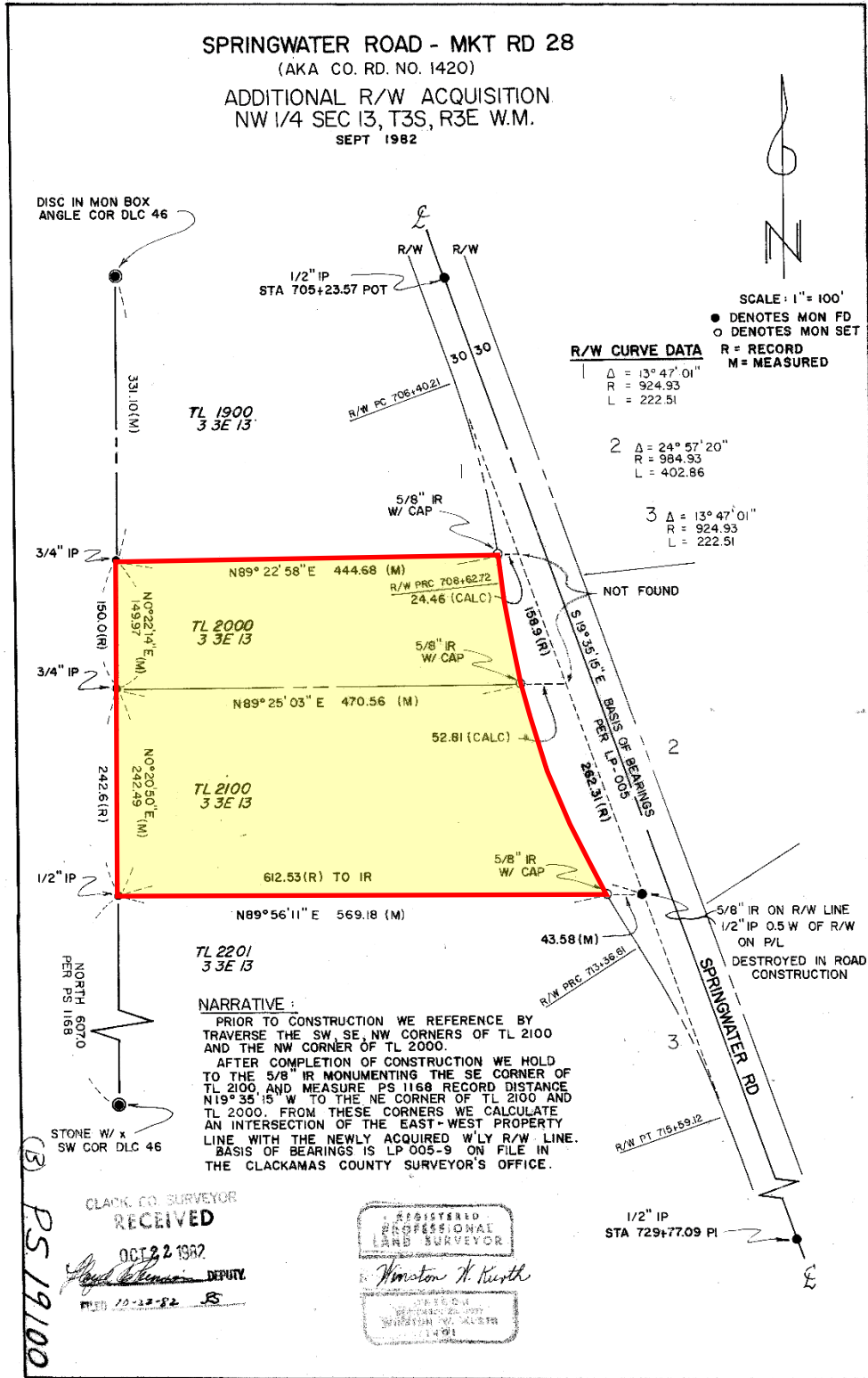
SPRINGWATER ROAD - MKT RD 28

(AKA CO. RD. NO. 1420)

ADDITIONAL R/W ACQUISITION

NW 1/4 SEC 13, T3S, R3E W.M.

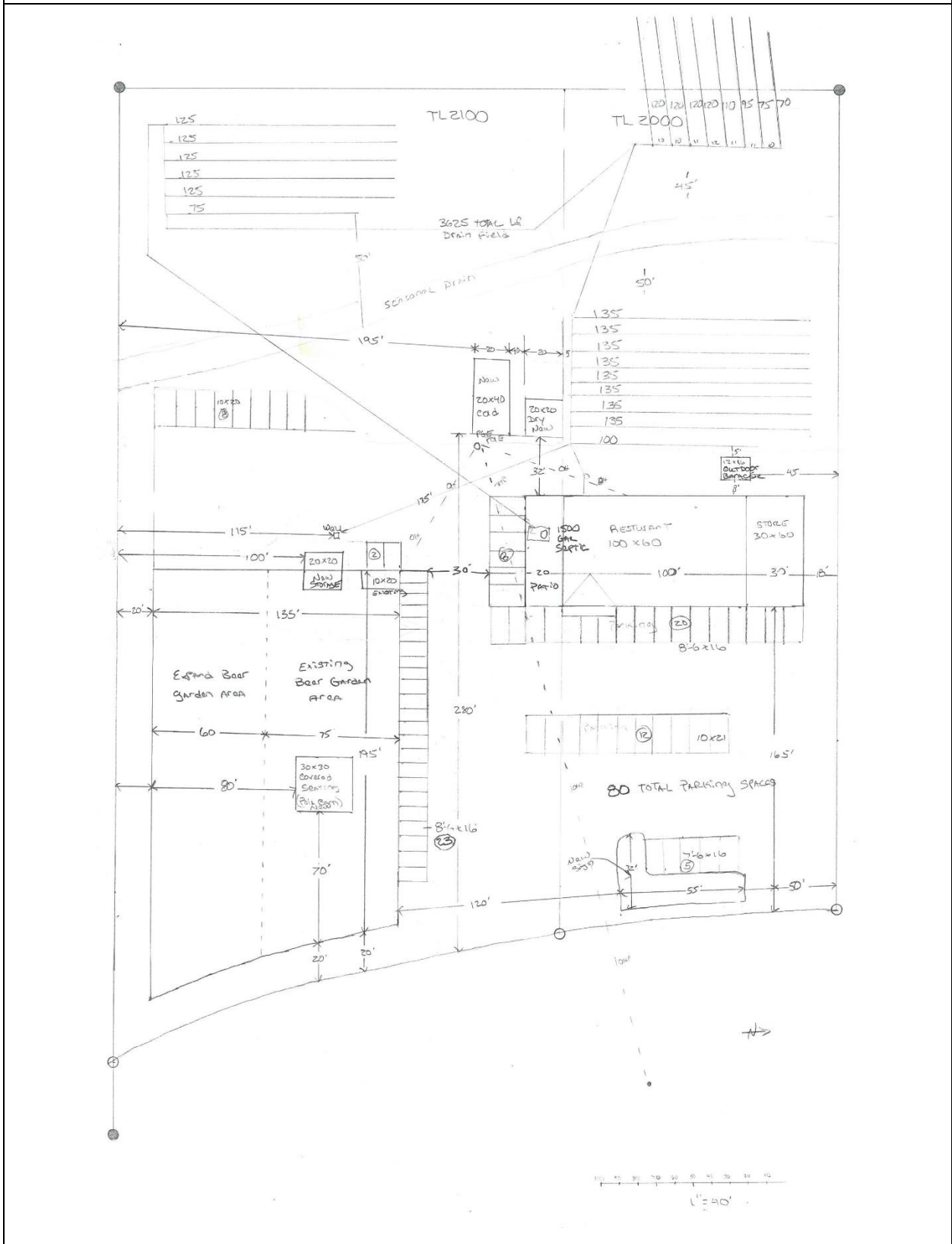
SEPT 1982



January 2022 Aerial Image of Subject and Surrounding Properties



August 16, 2022, Submitted Site Plan



CONDITIONS OF APPROVAL

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parentheses.

1. Approval of this land use permit is based on the submitted written narrative and plans and accompanying documentation deemed complete on August 16, 2022, as well as on the additional project details submitted on October 6, 11, and 18, 2022. No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions below. It shall be the responsibility of the property owner(s) to comply with this documents and the limitation of any approval resulting from the decision described herein.
2. **This decision approves certain elements of a nonconforming use alteration, as listed on Pages 11-12 of this decision. Approval of these elements is valid for four years from the date of the final written decision on this application.** 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 for these elements shall be implemented, or their approval will become void. "Implemented" means all major development permits are obtained and maintained for the approved elements, or if no major development permits are required to complete the approved elements, "implemented" means all other necessary County development permits (e.g., electrical permits, plumbing permits) shall be obtained and maintained. (*ZDO Subsection 1206.08(A)*)
3. If the approved elements are not implemented within the initial four-year approval period described in Condition 2 above, a two-year time extension may be approved pursuant to ZDO Section 1310, *Time Extension*. (*ZDO Subsection 1206.08(B)*)
4. The *verification* in response to ZDO Subsection 1206.07 that certain aspects of the nonconforming use are lawfully nonconforming **is valid for 12 months from the date of the County's final written decision on this application.** The approved elements of the nonconforming use alteration shall be implemented within this 12-month period, or a new nonconforming use verification approval *may* be required. (*ZDO Subsection 1206.03(A)*)
5. Operating hours shall be limited as follows: for the restaurant and patio, 11:00am-9:00pm on Wednesdays, Thursdays, and Sundays and from 11:00am-11:00pm Fridays and Saturdays; for the beer garden, noon until 8:00pm, Friday-Sunday during good weather, with additional operating days only from time to time; everything closed on Mondays and Tuesdays. (*ZDO Subsections 1206.06(B) and 1206.07(A)*)
6. The 1,000-square-foot outdoor covered patio on the south side of restaurant building shall continue to be surrounded by the six-foot-high board fence required

by File No. Z0470-00-E, the top part of which shall also continue to consist of lattice-type material. Customers shall continue to only enter this patio through the restaurant building. (ZDO Subsection 1206.06(B))

7. The beer garden in the southeast corner of the subject property shall continue to be limited to 12,000 square feet approved in File No. Z0261-12-E. The area shall also continue to be fenced with sight-obscuring materials on all sides. Any lighting of the beer garden area shall continue to be limited in height and directed in such a manner as to avoid lighting adjacent property. The beer garden shall continue to be required to comply with relevant building and electrical codes, and with fire district, health department, Oregon Liquor Control Commission (OLCC), and septic system requirements. (ZDO Subsection 1206.06(B))
8. Outside activities and “games for kids and families” (e.g., corn hole, large Jenga, giant Connect Four, board games) shall be located only in the 12,000-square-foot existing beer garden area, and shall be limited to the beer garden’s operating hours listed in Condition 5 above. (ZDO Subsection 1206.06(B))
9. The 200-square-foot barbecue area shall be: covered and enclosed as proposed in the application; located at least 100 feet from all property lines; and, unless otherwise authorized in writing by the County’s Septic and Onsite Wastewater Program, located at least 10 feet from all septic drainfield areas and replacement drainfield areas. (ZDO Subsection 1206.06(B))
10. All new structures (i.e., the 400-square-foot storage building south of the restaurant building by the beer garden, the 800-square-foot “pre-fab” cold storage building, the 400-square-foot dry storage building to the west of the restaurant building, and the 200-square-foot covered and enclosed barbecue area), and all modifications to the restaurant building, shall be permitted (e.g., with building permits, electrical permits, plumbing permits) as required by the County’s Building Codes Division, and shall comply with the requirements of the local fire district and the County’s Septic and Onsite Wastewater Program. (ZDO Subsection 1206.06(B))
11. The total sign area of a replacement business road sign shall be no greater than that of the existing pole sign shown in the photographs included with the submitted application, with “sign area” defined in ZDO Section 202, *Definitions*. **Prior to approval of any building permit, sign permit, or electrical permit for the replacement sign, and prior to the installation of the replacement sign**, the Applicant shall provide to Planning & Zoning a diagram prepared by a licensed architect showing the dimensions of both the existing and proposed replacement sign. The replacement sign shall be located entirely outside of a public right-of-way. (ZDO Subsection 1206.06(B))
12. Vehicle parking associated with the nonconforming use is prohibited in public right-of-way and on the east side of S Springwater Rd. The property owners shall: locate the right-of-way line in relation to their property; indicate (e.g., with signage) that

parking in the right-of-way by their customers and employees is prohibited; and inform customers and employees who are parking in the right-of-way to park their vehicles in the existing parking areas entirely on the subject property. (*ZDO Subsection 1206.06(B)*)

FINDINGS

The findings below identify the standards and criteria that are relevant to this decision, state the facts relied upon in rendering the decision, and explain the justification for the decision.

1. Property History:

The “subject property” is the approximately 4.5-acre area comprised of Tax Lots 2000 2100 of Assessor’s Map 33E13, located on the west side of S Springwater Rd, approximately 300 feet south of the intersection with S Stormer Rd and across S Springwater Rd from a northern portion of Milo McIver State Park.

The subject property was not zoned at all or subject to any County land use regulations until 1970, when it was zoned RA-1-5, a kind of rural residential zoning district that did not permit commercial uses such as restaurants, bars, pubs, or other retailing. The subject property was later rezoned to its current RRFF-5 zoning district in 1979, another rural residential zoning district that generally does not permit these commercial land uses either.

In 1982-1983 under File No. 851-81-E,D, the County formally determined that a commercial use that included a restaurant, lounge, and convenience store had been lawfully established prior to any zoning. 851-81-E,D also authorized the replacement of the original restaurant building, which had been damaged by a fire and approved an upstairs portion of the restaurant building to be used as a banquet room.

In July 2000 under File No. Z0470-00-E, the County determined that the restaurant/lounge/convenience store use had never discontinued for 12 consecutive months and was still lawfully nonconforming to land use restrictions of the RRFF-5 District. Z0470-00-E also approved an alteration to this nonconforming use to include a 20-foot by 50-foot patio for outdoor patron seating surrounded by a minimum six-foot-high board fence, the top part of which was to consist of “lattice type material”. Patrons were to only enter the patio through the restaurant/lounge area within the building. Z0470-00-E expressly prohibited the use of amplified public address systems and amplified music in the patio seating area.

In March 2003 under File No. Z0125-03-E, the County again determined that the restaurant/lounge/convenience store use had never discontinued for 12 consecutive months and was still lawfully nonconforming. Z0125-03-E also conditionally approved another alteration to the nonconforming use, specifically to include a 7.5-foot by 18-foot mobile drive-thru coffee stand at the southeast corner of the existing parking lot.

In June 2012 under File No. Z0261-12-E¹, the County yet again determined that the restaurant/lounge/convenience store use had never discontinued for 12 consecutive months and was still lawfully nonconforming. Z0261-12-E also approved a nonconforming use alteration for a rectangular 100-foot by 120-foot outdoor patron serving/seating area in a wooded area south of the existing building, along with a portable refrigerated trailer and barbeque to be placed near the area in the parking lot. The conditions of Z0261-12-E's approval required the seating area to be fenced with sight-obscuring materials on all sides. The conditions also: prohibited alcohol outside of the fenced seating area; prohibited outdoor amplified sound systems; required any lighting of the outdoor patron serving/seating area to be limited in height and directed in such a manner as to avoid the lighting of adjacent property; limited the use of the area generally to 11:00-10:00pm, Friday-Sunday "during good weather", with "additional operating days and hours...from time to time"; and required compliance with relevant building and electrical codes, and with fire district, health department, Oregon Liquor Control Commission (OLCC), and septic system requirements.

In November 2018, the County's independent Hearings Officer upheld on appeal a decision under File No. Z0227-18-E to *deny* a request to allow amplified sound systems and unamplified musical performances in the previously approved 100-foot by 120-foot outdoor patron serving/seating area, with the Hearings Officer agreeing with the Planning Director and public comments that such alterations would have additional adverse impacts on the neighborhood.

2. Current Proposal and Decision Summary:

The subject property is now under new ownership, and a new Applicant makes certain representations and requests that are reviewed in the decision herein as File No. Z0087-22-E.

Specifically, the application materials represent, and this decision verifies with findings further below, that a commercial restaurant/bar/lounge/retail use, with a patio, an outdoor customer serving/seating area, and certain accessory uses (e.g., vehicle parking), was lawfully established and has never discontinued for 12 consecutive months.

The application also requests, and **this decision approves** with the conditions and findings further below, certain elements of a proposed alteration to the verified nonconforming use:

Approved elements:

- Interior modifications to the existing restaurant building (e.g., removal of certain interior walls separating a lounge area from restaurant seating, conversion of some seating to a game room, and conversion of an upstairs dining area into

¹ The site plan submitted with the application for Z0261-12-E and aerial photos included with the record show the drive-thru coffee stand approved in 2003 had subsequently been removed.

- office space), and a new entrance to the restaurant building on the same side of the building as the existing entrance;
- A 400-square-foot storage building south of the restaurant building by the beer garden;
 - An 800-square-foot "pre-fab" cold storage building and a separate 400-square-foot dry storage building to the west of the restaurant building;
 - Replacement of the existing free-standing business sign near S Springwater Rd;
 - Outside activities and "games for kids and families" (e.g., corn hole, large Jenga, giant Connect Four, board games) in the beer garden area; and
 - Outdoor cooking during approved restaurant hours, within a roughly 200-square-foot covered barbecue area.

The application also requests, but **this decision denies** with the findings further below, the following elements of a proposed alteration:

Denied elements:

- Expansion of the beer garden area;
- A "pole barn" covering in the beer garden for sheltered seating;
- Annual "car shows";
- Amplified outdoor music/announcements;
- Use of portable toilets ("porta-potties"); and
- Operating hours as follows: for the restaurant/bar/event space/retail store and patio, 8:00am-midnight, seven days per week; for the beer garden, 11:00am-10:00pm, every Friday-Sunday.

3. ZDO Section 202, Definitions:

This section of the ZDO provides definitions to terms used elsewhere in the ZDO.

Section 202 defines a "nonconforming use" as:

"A use of any building, structure or land allowed by right when established or that obtained a required land use approval when established but, due to a change in the zone or zoning regulations, is now prohibited in the zone."

The application materials represent, and this decision concludes with the findings further below, that a commercial restaurant/lounge/retail use, with a patio, an outdoor patron serving/seating area, and certain accessory uses (e.g., vehicle parking), meets the definition of a nonconforming use.

4. ZDO Section 315, Rural Area Residential 1-Acre (RA-1), Rural Area Residential 2-Acre (RA-2), Recreational Residential (RR), Rural Residential Farm Forest 5-Acre (RRFF-5), Farm Forest 10-Acre (FF-10), and Future Urban 10-Acre (FU-10) Districts:

Section 316 lists land uses that may be allowed in the subject RRFF-5 District and terms under which those uses may be conducted.

ZDO Subsection 316.03(A) and Table 316-1, *Permitted Uses in the Rural Residential and Future Urban Residential Zoning Districts*, of Section 316 together identify that commercial restaurant/lounge/retail uses and their accessory uses are prohibited in the RRFF-5 District.

5. **ZDO Section 1206, Nonconforming Uses and Vested Rights**

This section of the ZDO provides standards, criteria, and procedures under which a nonconforming use may be verified, continued, restored, replaced, maintained, altered, and changed. The Applicant's request for verification and alteration of a nonconforming use is therefore subject to the criteria and standards of Section 1206 that are outlined and responded to with findings below:

1206.02 STATUS

A nonconforming use may be continued although not in conformity with the regulations for the zone in which the use is located. Nonconforming use status applies to the lot(s) of record on which the nonconforming use is located and may not be expanded onto another lot of record, except as provided under Subsection 1206.06(B)(3)(a) and (b) or, in the case of nonconforming premises for marijuana production, with an alteration approved pursuant to Subsection 1206.06(C). A change in ownership or operator of a nonconforming use is permitted.

Finding: The Applicant does not propose to expand a nonconforming use onto another lot of record. The application does not concern marijuana production. **This criterion is met.**

1206.03 DISCONTINUATION OF USE

A. *If a nonconforming use is discontinued for a period of more than 12 consecutive months, the use shall not be resumed unless the resumed use conforms to the requirements of the Ordinance and other regulations applicable at the time of the proposed resumption.*

Finding: The aspects of the nonconforming use verified as lawful in response to Subsection 1206.07 below did not discontinue for 12 consecutive months. **This criterion is met.**

1206.04 RESTORATION OR REPLACEMENT

If a nonconforming use is damaged or destroyed by fire, other casualty, or natural disaster, such use may be restored, replaced, or re-established consistent with the nature and extent of the use or structure lawfully established at the time of loss, subject to the following conditions:

- A. *Alterations or changes to the nature and extent of the nonconforming use as lawfully established prior to the fire, other casualty, or natural disaster shall not be permitted under Subsection 1206.04, but may be permitted pursuant to Subsection 1206.06.*
- B. *Physical restoration, replacement, or re-establishment of the nonconforming use shall be lawfully commenced within one year of the occurrence of the damage or destruction. Lawfully commenced means the lawful resumption of the nonconforming use or the issuance of a land use, building, on-site wastewater treatment system, grading, manufactured dwelling placement, residential trailer placement, plumbing, electrical, or other development permit required by the County or other appropriate permitting agency that is necessary to begin restoration or replacement of the nonconforming use or structures and resumption of the nonconforming use.*
- C. *The nonconforming use status of the use to be restored, replaced, or re-established, and the nature and extent of the nonconforming use, shall be verified pursuant to Subsection 1206.07.*

Finding: The Applicant does not propose the restoration or replacement of a nonconforming use damaged or destroyed by fire, other casualty, or natural disaster. **Subsection 1206.04 is not applicable.**

1206.05 MAINTENANCE

Normal maintenance of a nonconforming use necessary to maintain a nonconforming use in good repair is permitted provided there are not significant use or structural alterations as determined by the Planning Director. Normal maintenance may include painting, roofing, siding, interior remodeling, re-paving of access roads and parking/loading areas, replacement of landscaping elements, etc.

Finding: This proposal does not concern normal maintenance necessary to maintain an existing nonconforming use in good repair. Nonetheless, aspects of the nonconforming use verified pursuant to Subsection 1206.07, as well as the nonconforming use alterations approved pursuant to Subsection 1206.06, once established, may undergo normal maintenance, without significant use or structural alterations, to keep them in good repair. Such normal maintenance may occur without the need for approval of a nonconforming use alteration pursuant to Subsection 1206.06, but the property owner is encouraged to contact Planning & Zoning if they have questions as to whether any work constitutes “normal maintenance”.

1206.06 ALTERATIONS AND CHANGES

A. ALTERATIONS REQUIRED BY LAW:

Finding: The Applicant does not identify their proposed alteration to a nonconforming use as required by law. **Subsection 1206.06(A) is not applicable.**

B. ALTERATIONS NOT REQUIRED BY LAW:

Except as provided in Subsection 1206.06(C), an alteration of a nonconforming structure or other physical improvements, or a change in the use, requires review as a Type II application pursuant to Section 1307, Procedures, and shall be subject to the following standards and criteria:

1. *The alteration or change will, after the imposition of conditions pursuant to Subsection 1206.06(B)(4), have no greater adverse impact on the neighborhood than the existing structure, other physical improvements, or use; and*
2. *The nonconforming use status of the existing use, structure(s), and/or physical improvements is verified pursuant to Subsection 1206.07.*
3. *The alteration or change will not expand the nonconforming use from one lot of record to another unless [...]*

Finding: The lawful nonconforming use verified below pursuant to Subsection 1206.07(A) is a commercial restaurant/bar/lounge/retail use on property zoned RRFF-5. The verified nonconforming use includes:

- A 7,800-square-foot building (i.e., the “restaurant building”), with a 1,000-square-foot covered outdoor patio on the south side of the restaurant building, open 11:00am-9:00pm on Wednesdays, Thursdays, and Sundays and from 11:00am-11:00pm Fridays and Saturdays;
- An outdoor, 12,000-square-foot fully fenced beer garden in a wooded area in the southeast of the subject property, open from noon until 8:00pm, Friday-Sunday during good weather, with additional operating days only from time to time, and not including porta-potties or amplified music;
- A barbecue area in the southeast corner of the subject property near to the beer garden; and
- Vehicle parking, well housing, and business signage.

The Applicant proposes to alter this nonconforming use. **The proposed alteration includes 12 elements detailed on Pages 18-29 of this decision.** In addition to these 12 elements, the Applicant originally requested approval of a new 2,880-square-foot outdoor covered area on the south side of the existing restaurant building; however, on August 16, 2022, the Applicant asked to no longer include this new covering as part of their proposed alteration.

This decision finds that *some* elements of the proposed alteration will, with adherence to the adopted conditions of approval, have no greater adverse impacts to the neighborhood than the nonconforming use verified pursuant to Subsection 1206.07 below, and this decision therefore approves those elements subject to the adopted conditions. The remaining elements of the proposed alteration would have additional adverse impacts on the neighborhood and therefore, by law, cannot be approved. The findings below explain this determination.

Firstly, it is worth reiterating the strictness of the approval criteria for nonconforming use alterations, which were reviewed with the Applicant during a pre-application conference (File No. ZPAC0043-22) ahead of this application being deemed complete. State law in Oregon Revised Statutes Chapter 215, Section 130(9), as well as County law in ZDO Section 1206.06(B)(1), prohibit alterations to nonconforming uses that would have *any* greater adverse impact to the neighborhood; even if a proposed alteration would have only minor additional adverse impacts, it cannot legally be approved. These laws apply regardless of whether a proposed alteration would be beneficial to the property owner or their private business goals.

In its 1983 ruling *Michael v. Clackamas County*, the Oregon Land Use Board of Appeals (LUBA) reminded that “nonconforming uses are not favored in Oregon law” and that “Oregon law disfavors any change in a nonconforming use that would have a greater impact on the neighborhood than existed before the use was altered”.² In 1991 in *Scott v. Josephine County*, LUBA also reminded that state law provides a “limited” ability for counties to approve alterations to nonconforming uses.³ Nonconforming use alterations must be rigorously scrutinized by the County to ensure that they would have no greater adverse impact on the neighborhood and, per Subsection 1307.17(E), it is the Applicant’s burden to demonstrate that they can satisfy that criterion.

² *Michael v. Clackamas County*, 9 Or LUBA 70, 75 (1983)

³ *Scott v. Josephine County*, 22 Or LUBA 82, 88 (1991)

The “neighborhood” is generally considered the application notice radius, which, for this application concerning a property zoned RFFF-5, is half a mile around the subject property. The neighborhood is characterized by agricultural fields, timber lands, sparse residential development, and the northern extent of Milo McIver State Park directly across S Springwater Rd from the subject property.

The subject property has frontage on S Springwater Rd, a County right-of-way managed by the County’s Transportation Engineering Division (“Engineering”). Engineering has commented on the Applicant’s proposed alteration. The Applicant’s site plan does not show any other access to the subject property.

The dwelling nearest to the subject property appears to be on adjoining property to the north with address 20139 S Springwater Rd, currently owned by Douglas and Linda Towsley. Aerial images indicate the subject property is separated from the Towsleys’ property by mature trees. The Towsleys have raised certain concerns with and objections to the Applicant’s proposed alteration, which are reviewed further below.

Bonnie Walter identified themselves as a neighbor of the subject property, and commented with concerns about the proposed amplified music.

Pam Potter commented with concerns about the Applicant’s proposed alteration, specifically the “noise increase” from too many special events and alcohol consumption. Pam did not identify where their property is in relation to the subject property.

Judy A Beaudoin commented in favor of the Applicant’s proposed alteration. Judy did not identify where their property is in relation to the subject property.

The 12 elements of the Applicant's proposed nonconforming use alteration are listed below, each followed by findings addressing the approval criteria.

1. Interior modifications to the existing restaurant building (e.g., removal of certain interior walls separating a lounge area from restaurant seating, conversion of some seating to a game room, and conversion of an upstairs dining area into office space), and a new entrance to the restaurant building on the same side of the building as the existing entrance

The results of Applicant's proposed interior modifications and a new entrance to the restaurant building would not cause any additional noise impacts on the neighborhood, nor would they cause more vibrations, glare, fumes, or odors detectable off the subject property than the verified nonconforming use. The adopted conditions of approval would require the modified building to comply with the septic system requirements of the County's Septic and Onsite Wastewater Program. Because improperly modified structures can be a fire hazard, and because fire in a structure can spread to adjacent properties, a condition of approval is warranted to require that all structural modifications be permitted as required by the County's Building Codes Division and comply with the requirements of the local fire district. Element 1 would not, with adherence to these conditions, have greater adverse impacts on the neighborhood than the verified nonconforming use.

The CPO recommends approval of Element 1.

Element 1 is approved, subject to the adopted conditions.

2. A 400-square-foot storage building south of the restaurant building by the beer garden

The submitted plans show that the proposed storage building would not be located near a septic drainfield or replacement drainfield, and would be at least 100 feet from the nearest (southern) lot line. There is no evidence in the record the storage building would generate any additional noise, vibrations, glare, fumes, or odors detectable off the subject property. In order to mitigate additional fire hazards, staff finds that a condition of approval is warranted to require that the storage building be permitted with building and electrical

permits by the Building Codes Division and that it comply with the requirements of the local fire district.

Element 2 is approved, subject to the adopted conditions.

3. An 800-square-foot “pre-fab” cold storage building and a separate 400-square-foot dry storage building to the west of the restaurant building

The two new buildings in Element 3 would be located nearly 150 feet from the nearest (northern) lot line, which separates the subject property from property owned by the Towsleys (20139 S Springwater Rd, Tax Lot 33E13-01900). The buildings would be partially screened from view from the Towsleys’ property by the existing restaurant building and mature trees.

The Towsleys commented that the cold and dry storage buildings would contribute to a “significant escalation of commercial activity” and that “it is not plausible there wont [sic] be additional freight traffic, deliveries and noise” to the property because of them. However, the Towsleys did not provide evidence demonstrating how much additional freight traffic, deliveries, and noise they are certain these accessory buildings would generate. Additional freight traffic and additional deliveries are also not, on their own, necessarily additional adverse impacts on the neighborhood and it is unclear how the two buildings would themselves generate additional adverse noise impacts to the Towsleys given their function, enclosure, location, and partial screening. No other party raised concerns about the storage buildings. Staff of the County’s Transportation Engineering Division reviewed the Applicant’s proposal and did *not* find that the proposed storage buildings would generate additional vehicle traffic that could not be accommodated by the existing transportation system.

Staff therefore finds that the proposed cold and dry storage buildings would not generate additional adverse noise, vibrations, glare, fumes, or odors detectable off the subject property, and that they would not generate additional traffic that would cause any transportation facility to no longer function at current performance levels.

Staff does, however, find that conditions of approval are warranted to require that the cold and dry storage buildings

be permitted with building and electrical permits by the Building Codes Division and comply with the requirements of the local fire district in order to mitigate additional fire hazards.

The submitted site plan shows the cold and dry storage buildings would be located near a septic drainfield. Because locating a building on or too near to a septic drainfield or replacement drainfield can jeopardize the performance of a septic system, and because a failed septic system can create adverse public health and nuisance odor impacts on the neighborhood, a condition of approval is warranted to require that the location of the proposed cold and dry storage building be approved by the County's Septic and Onsite Wastewater Program.

Element 3 is approved, subject to the adopted conditions.

4. Replacement of the existing free-standing business sign near S Springwater Rd

The proposed replacement sign would be in generally the same location as the nonconforming use's existing free-standing business sign.

A sign that is too large can be a distraction to drivers and block sight distances, and any resulting traffic accidents could adversely impact the neighborhood. Therefore, a condition of approval is warranted to limit the total sign area to the same area as the existing sign, with "sign area" defined in ZDO Section 202, *Definitions*⁴. While the application materials include a photo of the existing sign, the application materials do not identify the dimensions of the existing sign. Therefore, prior to approval of any building, electrical, or sign permit for the updated/replacement sign, the Applicant shall provide a diagram prepared by a licensed architect showing the dimensions of both the existing and proposed sign.

In order to reduce the adverse traffic impacts of the updated/replacement sign, the replacement sign shall be located entirely outside of a public right-of-way.

⁴ ZDO Section 202 defines "sign area" (i.e., surface area) as the area, on the largest single face of a sign, within a perimeter which forms the outside shape of a sign. If the sign consists of more than one module, the total area of all modules will constitute the sign area. The area of a sign having no such perimeter or border shall be computed by enclosing the entire copy area within the outline of either a parallelogram, triangle, circle or any other easily recognized geometric shape and then computing the area. Where a sign is of a three-dimensional, round or irregular shape, the largest cross section shall be used in flat projection for the purpose of computing sign area.

Element 4 is approved, subject to the adopted conditions.

5. An expansion of the beer garden area to approximately 27,000 square feet, with the resulting beer garden having a customer capacity of 150 people

The nonconforming use verified pursuant to Subsection 1206.07 below includes a 12,000-square-foot outdoor seating/serving area (beer garden). The beer garden is in the wooded southeast corner of the subject property. As conditioned by Z0261-12-E, the beer garden is currently required to be fenced with sight-obscuring materials on all sides, and alcohol is prohibited outside the fenced area.

The Applicant proposes to expand the size of this beer garden area to 27,000 square feet. In an October 18, 2022, email included in the record, the Applicant states that the proposed expanded area would simply allow them to “spread out what we have now” and would provide “more area for people to sit outside”. The Applicant also acknowledges in the email that they would need to plant more vegetation for screening of the expanded beer garden area.

The Towsleys commented that the proposed beer garden expansion is “grossly too large and not supported by infrastructure and parking”, and that “there is no way such a [sic] expansion will not adversely increase traffic and noise and thus impact residential homes in the vicinity.” They did not identify what the threshold is for “too large”. They also did not explain what additional infrastructure, and how much more additional parking, they believe is needed to serve an expanded outdoor seating area that would, as claimed by the Applicant, accommodate the same number of customers as the existing beer garden.

Staff finds that, in theory, expanding the beer garden area, *without increasing the lawful customer capacity*, would not itself necessarily generate additional traffic to the subject property, require additional parking, or even require changes to the existing septic system.

However, as noted in response to Subsection 1206.07(A) below, there is no evidence in the record substantiating the Applicant’s October 11, 2022, claim that the existing beer garden area lawfully accommodates 150 people. Even if it did, the Applicant does not explain how they will practically ensure

that, when expanding the beer garden by more than 100 percent of its current authorized size, there are not more than 150 people in the expanded area.

Because there is no information in the record substantiating the Applicant's assertion that the existing beer garden lawfully accommodates 150 people, staff cannot evaluate whether the proposed expanded beer garden can accommodate 150 people without causing any additional adverse impacts on the neighborhood. Moreover, it is reasonable to assume that by expanding the size of the beer garden by more than 100 percent of its current authorized area, without any proposed methods for limiting the number of people in the expanded area, the expanded area *would* accommodate more customers than the current area. More customers could cause additional traffic-related impacts and could necessitate additional off-street parking to prevent parking in public rights-of-way, changes to the existing septic system, and additional screening measures to mitigate additional noise impacts. Without being able to evaluate potential impacts, the proposal cannot by law be approved.

The CPO has recommended denial of the expanded beer garden.

For the reasons above, **Element 5 is denied**. The outdoor seating/serving area shall continue to be only 12,000 square feet.

6. A “pole barn” covering with a concrete floor and openings on two sides in the beer garden for sheltered seating

The Applicant's original site plan showed that the proposed covering would be 36 feet by 36 feet (1,296 square feet), but their later, August 16 site plan shows that it would only be 30 feet by 30 feet (900 square feet). Elsewhere in the application, the structure is described as 1,296 square feet. Therefore, staff considers the proposal to be, and evaluates, a 1,296-square-foot structure.

The lawful nonconforming use verified pursuant to Subsection 1206.07 below includes an outdoor (i.e., unenclosed and unsheltered) seating/serving area that is open during certain hours Friday-Sunday only “during good weather”, with additional operating days only “from time to time”. While “good

weather” is not defined, it is understood that the outdoor beer garden would generally only be used when it is not raining or snowing, or when it is not too cold or too windy for customers to be comfortable sitting outside in an unenclosed area.

Adding a shelter to the beer garden area would make the beer garden usable more often, no doubt the Applicant’s intention for the shelter in the first place. The Applicant has not articulated how having the beer garden operating more often would not have greater adverse impacts on the neighborhood.

The Towsleys comment that the proposed structure’s concrete floor and metal materials, and the Applicant’s proposal to remove trees in the beer garden area for the structure, would cause the beer garden to produce more noise than the existing beer garden that is currently on an unpaved surface. The Applicant has not provided evidence to rebut these concerns.

For the reasons above, **Element 6 is denied**. The outdoor seating/serving area (beer garden) shall continue to be entirely outdoors and shall not include any shelters.

7. Outside activities and “games for kids and families” (e.g., corn hole, large Jenga, giant Connect Four, board games) in the expanded beer garden area

The Applicant stated in an October 11, 2022, email that the outside activities and games for kids and families would occur in their proposed “expanded beer garden area”. The proposal to expand the outdoor beer garden in Element 5 is denied, for the reasons above. However, staff finds that the proposed outside activities and games for kids and families in the currently lawful 12,000-square-foot, fully fenced and screened beer garden, during the beer garden hours verified pursuant to Subsection 1206.07 below, would not have any greater adverse impacts on the neighborhood than the eating and drinking activities that are authorized to occur in the same area during the same hours. There is no reasoning in the record demonstrating that kids and families playing games such as corn hole, large Jenga, giant Connect Four, board games, and similar activities outdoors in a wooded area surrounded by fenced screening would cause any greater adverse noise impacts to neighbors than customers eating, drinking, and socializing in the same area during the same hours.

Outside activities and “games for kids and families” (e.g., corn hole, large Jenga, giant Connect Four, board games) are **approved** in the 12,000-square-foot existing beer garden, subject to the adopted conditions, including conditions related to fencing/screening and days and hours of operation.

8. Quarterly events, including anniversary/business parties and an annual American Legion “car show”, with car show parking in existing parking areas as well as in a grass area behind the beer garden and event attendees otherwise only in the expanded beer garden area

The Applicant proposes a car show to occur once per year and for the other large events to occur up to three times per year, for a total of four large events per year.

ZDO Subsection 1015.01(B) requires that, in areas outside the Portland Metropolitan Urban Growth Boundary (UGB), such as the subject property, areas used for parking, loading, and maneuvering of vehicles be surfaced with screened gravel or better, and shall provide for suitable drainage. The application does *not* propose for all areas where car show parking and maneuvering will occur to be surfaced, nor do they describe or propose any drainage system for the area. Approving the Applicant’s proposal without the required surfacing and drainage would not comply with Subsection 1015.01(B).

The Applicant’s submitted site plan indicates that the grass area behind the beer garden includes a septic drainfield area. Surfacing on top of, as well as driving and parking on or near, a drainfield area can undermine the effectiveness of the drainfield and thereby result in adverse impacts on the neighborhood. The Applicant has not explained how they will ensure parking does not occur on or near to the drainfield area.

The Towsleys also commented with concerns about vehicle parking on grass sparking a grass fire, and provided examples of event parking on grass that led to fire. Staff notes that there have been severe wildfires in the nearby Estacada, Heiple Rd, and Dowty Rd areas in the last few years, and a large brush fire in 2022 about a mile south of the subject property, indicating a legitimate concern for fire hazard in the area. The Applicant has not addressed these concerns, or explained

how their proposed additional activities will not result in greater fire hazard to the neighborhood.

The Applicant does not quantify the number, or describe the type, of vehicles that would be associated with the car show, nor do they detail the amount of area the car show parking would occupy. The Applicant does not explain how they would limit the car show to any specific number of attendees. Without these details, staff cannot evaluate whether the car shows would have greater adverse impacts on the neighborhood than the nonconforming use verified pursuant to Subsection 1206.07.

For the reasons above, the annual car show proposed in **Element 8 is denied**. Any parties or other events shall be limited to the existing restaurant building and attached patio, and to the 12,000-square-foot outdoor seating and serving area, during approved business hours.

9. Amplified outdoor music/announcements

The Applicant states in an October 18, 2022, email, that the amplified music/announcements would occur “one night every [three] months”, on the south side of the property in the outdoor seating/serving area (beer garden), which, according to an October 11 email, would occur “during beer garden hours” and “ending by 10:00pm”.

The County has previously denied requests for the nonconforming use of the property to include amplified outdoor music, finding that it would cause additional adverse impacts on the neighborhood. This application now makes the request again.

While the Applicant’s proposed music/announcements amplification may be less frequent than previously requested in earlier proposals that were denied, greater adverse impacts on the neighborhood that occur less frequently are still greater adverse impacts on the neighborhood, and cannot by law be approved without sufficient mitigation. The Applicant has declined to explain how they would sufficiently mitigate greater adverse impacts from their proposed amplification, particularly given that they have proposed to remove five trees in the beer garden area that may help to buffer noise. Neighbors and the active CPO continue to comment in opposition to amplified outdoor music and announcements.

For the reasons above, **Element 9 is denied.** The nonconforming use shall not include amplified outdoor music/announcements.

10. Porta-potties for undefined and unquantified “special occasions”

The use and cleaning of porta-potties can generate and spread pathogens, bacteria, parasites, and viruses, and runoff from porta-potties can pollute soil, waterways, and groundwater, adversely impacting the neighborhood.

The Applicant did not indicate on their site plan where on the subject property their proposed porta-potties would be located. They also did not state how many there would be on the subject property, nor how often they would be used and serviced. The Applicant did not identify the scope of the special occasions they would be used for. Therefore, staff cannot fully evaluate whether the porta-potties would cause greater adverse impacts on the neighborhood.

As noted by staff in the County’s Septic and Onsite Wastewater Program, and as indicated to the Applicant, Oregon Administrative Rules (OARs) also have limitations on the use of porta-potties.⁵

For the reasons above, **Element 10 is denied.** Porta-potties shall not be used in association with the nonconforming use.

11. Outdoor cooking during restaurant hours, within a roughly 200-square-foot covered barbecue area

This element of the Applicant’s proposal is, essentially, to expand the areas where commercial cooking associated with the nonconforming use can occur. As the Applicant notes in an October 11, 2022, email, the proposed covered barbecue area is “to support the restaurant” and that the need is to be as close to the restaurant kitchen as possible. The August 16 site plan indicates that the covered barbecue area would be located behind (to the west of) the restaurant building, approximately 45 feet from the nearest (northern) property line, though in the October 11 email, the Applicant stated that they would be willing to locate it “a little further south”, without specifying how much further south. While there are missing

⁵ OAR 340-071-0330

labels on the August 16 site plan, the site plan seems to indicate that the covered barbecue area would be located just five feet from a septic drainfield area, despite staff in the County's Septic and Onsite Wastewater Program recommending that there be no development within 10 feet of a drainfield.

The Towsleys, who are the property owners closest to the proposed barbecue, commented with concerns about this element of the Applicant's proposal as well. They describe the proposed barbecue as being "near" to the property line they share with the subject property, but the Applicant proposes for it to be at least four times further away from the lot line that would generally be required for an accessory structure in the RFFF-5 District. The barbecue would also be located opposite a stand of mature trees. The Towsleys state they "enjoy occasional smells" of barbecue, but that smoke and odors would impact them, and they ask that the barbecue be located on the south side of the restaurant building.

The Towsleys did not themselves provide evidence of wind patterns that would direct the barbecue odors toward their property. However, a wind pattern map accessed by staff on November 2, 2022, and included in the record indeed shows winds blowing from the location where the barbecue is proposed toward the Towsleys' residence.

Staff does find that barbecue smells and other odors generally are not atypical of a rural area where there are state park campgrounds, farming activities, and other residences.

Staff also finds that the Applicant's proposed enclosure of the barbecue area, and the existing mature trees between the subject property and the Towsleys' residence, will help to limit the amount of odors detectable from the Towsleys' property. A condition of approval is warranted to require that all barbecuing occur only in an enclosed structure, as proposed by the Applicant.

Based on the Applicant's October 11 email, staff further finds that the barbecue area can be located 100 feet from the northern property line, which is equal to the setback required by the County for odorous outdoor marijuana production. The additional setback distance can help to mitigate the odor impacts of the barbecue. A condition of approval is adopted

to require the barbecue area be at least 100 feet from all property lines.

Because improperly constructed buildings used for cooking can be a fire hazard, and because fire in a structure can spread to adjacent properties, a condition of approval is warranted to require that the barbecue structure be permitted as required by the County's Building Codes Division and comply with the requirements of the local fire district. In order to ensure that the structure does not compromise a septic drainfield, a condition of approval is also warranted to require the barbecue area be at least 10 feet from a septic drainfield, unless otherwise authorized in writing by the County's Septic and Onsite Wastewater Program.

Element 11 is approved, subject to the adopted conditions.

12. Operating hours as follows: for the restaurant/bar/event space/retail store and patio, 8:00am-midnight, seven days per week; for the beer garden, 11:00am-10:00pm, every Friday-Sunday

The lawful operating hours verified pursuant Subsection 1206.07 below are as follows: for the restaurant/bar/event space/retail store and patio, 11:00am-9:00pm on Wednesdays, Thursdays, and Sundays and from 11:00am-11:00pm Fridays and Saturdays; for the beer garden, noon until 8:00pm, Friday-Sunday during good weather, with additional operating days only from time to time; everything closed on Mondays and Tuesdays.

The Applicant's proposal would result in the restaurant/bar/event space/retail store and patio being open 58 hours more per week, and the beer garden being open nine more hours per week, than the current, verified nonconforming use.

Extending hours of operation would mean that traffic, noise, and odor impacts from the nonconforming use would occur more frequently. The Applicant has not addressed how these extended hours would not result in greater adverse impacts on the neighborhood.

Element 12 is denied. The operating hours shall continue to be as follows: for the restaurant/bar/event space/retail store

and patio, 11:00am-9:00pm on Wednesdays, Thursdays, and Sundays and from 11:00am-11:00pm Fridays and Saturdays; for the beer garden, noon until 8:00pm, Friday-Sunday during good weather, with additional operating days only from time to time; everything closed on Mondays and Tuesdays.

Notice of this application was mailed to owners of property within half a mile of the subject property (approximately 125 separate parties, including Oregon Parks and Recreation Department who owns and operates Milo McIver State Park), as well as to the active local CPO, the local fire district, the County's Transportation Engineering Division, and the County's Septic and Onsite Wastewater Program. This application has also been available online for review and comment by any party.

The County's Transportation Engineering Division provided written comments on September 11, 2022, assuming an expanded outdoor seating/serving (beer garden) area and certain other alterations that this decision has since denied. Because the expanded beer garden area, expanded hours of operation, and other elements of the proposed alteration are denied, the frontage and site improvements recommended in the September 11 comments are not necessary to mitigate additional adverse traffic impacts those elements would create.

The Applicant does not propose to expand a nonconforming use onto another lot of record. However, photos included in the record show vehicle parking in the S Springwater Rd right-of-way, including on the east side of the road opposite of the subject property. The County's Transportation Safety Program Manager provided comments on October 14, 2022, in response to these photos. Those comments explain that, from a traffic safety standpoint, there are several areas of concern with parking in the right-of-way, and with visitors to the subject property crossing the road, which has a 55 mile-per-hour posted speed, to get to the property. In their words:

"[V]ehicles parking and maneuvering on the shoulder poses a considerable risk of a crash as drivers on Springwater are not expecting to come upon vehicles parked on one or both sides of the road. Additionally, continuous parking like this results in damage to our road shoulders, requiring additional maintenance and costs to the County...Because of past realignments due to landslides, the road has a few horizontal curves which may limit sight distance for some vehicle operators...[D]epending on where a person is parked, visibility of traffic coming up on them is likely less than our

standards are outlined in the Roadway Standards...[T]he crash rate is elevated over what we would expect on similar rural roadways so creating a condition where there is additional risk of crashes is not consistent with the County goal to eliminate fatal and serious injury crashes by 2035."

The Applicant has not proven they have a nonconforming use right to park in a public right-of-way, or on the east side of S Springwater Rd. In order to mitigate adverse impacts of parking in the right-of-way or on the east side of the road, a condition of approval is warranted to prohibit any vehicle parking associated with the nonconforming use in public right-of-way or on the east side of the road. The property owners shall: locate the right-of-way line in relation to their property (e.g., with the help of a licensed surveyor, if necessary); indicate (e.g., with signage) that parking in the right-of-way by their customers and employees is prohibited; and inform customers and employees who are parking in the right-of-way to park their vehicles in the existing parking areas entirely on the subject property.

C. *ALTERATIONS TO NONCONFORMING MARIJUANA PRODUCTION PREMISES NOT REQUIRED BY LAW*

Finding: The Applicant does not propose an alteration to a nonconforming marijuana production premises. **Subsection 1206.06(C) is not applicable.**

1206.07 *VERIFICATION OF A NONCONFORMING USE*

Verification of nonconforming use status requires review as a Type II application pursuant to Section 1307, Procedures, and shall be subject to the following standards and criteria:

- A. *The nonconforming use lawfully existed at the time of the adoption of zoning regulations, or a change in zoning regulations, which prohibited or restricted the use, and the nonconforming use has not been subsequently abandoned or discontinued. Once an applicant has verified that a nonconforming use was lawfully established, an applicant need not prove the existence, continuity, nature, and extent of the nonconforming use for a period exceeding 20 years immediately preceding the date of application for verification; or*

Finding: The asserted nonconforming use is a commercial restaurant/bar/event space/retail store use in an existing 7,800-square-foot building (i.e., the "restaurant building"), along with: a 1,000-square-foot covered outdoor patio on the south side of the

restaurant building; an outdoor, roughly 14,625-square-foot “beer garden” in a wooded area in the southeast of the subject property; certain accessory uses (e.g., vehicle parking, well housing, signage); porta-potties; and certain events (e.g., an annual car show), all on a property zoned RRFF-5. The asserted nonconforming use does *not* include on-site brewing.

The evidence in the record, which includes dated aerial photos and tax assessment records, supports the Applicant’s assertion that the existing 7,800-square-foot restaurant building, 1,000-square-foot outdoor covered patio, and accessory uses (e.g., parking, signage) have continued to be used for a restaurant/bar/event space/retail store use since such uses were verified as lawfully nonconforming in June 2012 under File No. Z0261-12-E. Notice of this application was mailed to owners of property within half a mile of the subject property (approximately 125 separate parties), as well as the active local CPO. No party has alleged that these uses have ever discontinued for 12 consecutive months. Therefore, **this decision verifies that the use of the restaurant building, the outdoor covered patio, and accessory uses (e.g., parking, signage) for a commercial restaurant/bar/event space/retail store use is lawfully nonconforming to the land use allowances and restrictions of the RRFF-5 District.**

Z0261-12-E also approved a 12,000-square-foot outdoor seating/serving area in the wooded area at the southeast of the subject property, as well as picnic tables in the area. The outdoor seating/serving area is the same area now referred to by the Applicant as the “beer garden”. Z0261-12-E authorized an area of just 12,000 square feet, not the 14,625 square feet the Applicant represents the beer garden to currently be. The evidence in the record supports the Applicant’s assertion that an outdoor seating/serving area in a wooded area in the southeast of the subject property has continued since being established following its approval by Z0261-12-E, without a gap of 12 consecutive months. However, the approved area was only 12,000 square feet and the seating/serving area was not approved to operate on every Friday, Saturday, and Sunday every week. The outdoor seating/serving area was to be open “during good weather”, with additional operating days only “from time to time”. Therefore, **this decision verifies that a 12,000-square-foot outdoor seating/serving area located in a wooded area at the southeast of the subject property, along with an accessory refrigerated trailer and barbecue, and open Friday-Sunday only “during good weather”, with additional operating days only “from time to time”, is lawfully nonconforming to the land use allowances and restrictions of**

the RRFF-5 District. Z0261-12-E required the outdoor seating/serving area to be fenced with sight-obscuring materials on all sides, prohibited alcohol outside the fenced area, and expressly prohibited the use of amplified sound systems in this area.

In an email on October 11 included in the record, the Applicant stated there has been outdoor cooking “in the beer garden area every weekend for close to 10 [years] now”, but no outdoor cooking area was indicated on their submitted site plans. Z0261-12-E approved a refrigerated trailer with a barbecue placed near to this area in the adjacent parking lot, not a barbecue in the wooded area within the outdoor seating/serving area.

The Applicant states that the beer garden area has a customer seating capacity of 150. In an October 18 email included in the record, the Applicant stated that there are tables in the beer garden area, but the Applicant did not indicate the number of tables nor show those existing tables on their site plan. The Applicant has not themselves provided evidence substantiating their claim that the approved outdoor seating/serving area does, or even could, already lawfully provide seating for 150 customers. Previous land use approvals did not expressly authorize 150 customers in the beer garden area, and no septic system approvals have been provided to demonstrate that the existing septic system has been sized to serve customers and staff in the restaurant building and outdoor patio, as well as 150 people in the beer garden. No evidence has been provided showing how many tables have historically been in the beer garden area. **Therefore, this decision does not verify that the existing beer garden area has a customer seating capacity of 150 people.**

The Applicant states that they have porta-potties in the beer garden area “available on special occasions”. Z0261-12-E did not approve the outdoor seating/serving area to include porta-potties. The record includes no evidence that porta-potties have ever been authorized by the County on the subject property. No porta-potties are shown on the Applicant’s submitted site plans or on site plans included with previous applications involving the subject property. Therefore, **this decision does not verify an existing nonconforming use right to porta-potties accessory to the commercial use of the subject property, either in the outdoor seating/serving area or elsewhere on the property.**

The Applicant states that the current nonconforming use includes an annual American Legion car show and an annual “party for business”, but they do not provide historic details of the location or

size of these events, nor do they explain how the business parties differ, if at all, from the standard functions of the property's commercial uses. There is no evidence in the record that car shows have ever been permitted on the subject property. There is also no evidence in the record that annual business parties have been permitted on the property beyond the scope of the lawful nonconforming uses of the restaurant building, patio, and beer garden (i.e., use of the restaurant building, patio, and beer garden during standard operating hours, at existing authorized capacity). Therefore, **this decision does not verify an existing nonconforming use right to car shows on the subject property, or annual business parties that exceed the scope of the lawful nonconforming uses of the restaurant building, patio, and beer garden detailed above.**

The Applicant states that the restaurant/bar/event space/retail store and patio are open 8:00am-midnight, seven days per week, and that the "beer garden" is open 11:00am-9:00pm, Friday-Sunday. The Applicant has not provided evidence to substantiate their claims that they have been operating during these hours, or that they have a nonconforming use right to do so. Rather, on the business's own website, accessed by staff on October 27, 2022, and included in the record, the business states: they are closed on Mondays and Tuesdays; that the "pub house" (presumably the restaurant building and patio) is open 11:00am-9:00pm on Wednesdays, Thursdays, and Sundays and from 11:00am-11:00pm Fridays and Saturdays; and that the beer garden is open from noon until 8:00pm, Friday-Sunday. These publically posted current operating hours may be within the longer/later/more frequent operating hours of past commercial uses of the property, but the Applicant has not demonstrated they have continued such longer/later/more frequent operating hours of any past use without a gap of 12 consecutive months. Nonetheless, no party has argued or provided evidence that the commercial uses of the subject property have been operating at hours *shorter/earlier/less* frequent than those posted on the website. **Therefore, based on the information in the record, staff finds that the lawful hours of operation of the nonconforming use are as follows, with the Applicant having discontinued a nonconforming use right to any longer/later/more frequent hours of operation: for the restaurant and patio, 11:00am-9:00pm on Wednesdays, Thursdays, and Sundays and from 11:00am-11:00pm Fridays and Saturdays; for the beer garden, noon until 8:00pm, Friday-Sunday during good weather, with additional operating days only from time to time; everything closed on Mondays and Tuesdays.**

- B. *The existence, continuity, nature, and extent of the nonconforming use for the 10-year period immediately preceding the date of the application is proven. Such evidence shall create a rebuttable presumption that the nonconforming use, as proven, lawfully existed at the time of, and has continued uninterrupted since, the adoption of restrictive zoning regulations, or a change in the zoning or zoning regulations, that have the effect of prohibiting the nonconforming use under the current provisions of this Ordinance.*

Finding: The elements of the asserted nonconforming use verified pursuant to Subsection 1206.07(A) above do not also need to be verified pursuant to Subsection 1206.07(B).

The Applicant has not provided evidence that the outdoor seating/serving area (beer garden) has had a customer capacity of 150 continuously for the 10-year period immediately preceding the date of their application.

The Applicant has not provided evidence that they have continuously used porta-potties in the beer garden for the 10-year period immediately preceding the date of their application. Moreover, the record indicates that porta-potties were never approved as part of the nonconforming use, and that porta-potty use is restricted by Oregon Administrative Rules.

Similarly, the Applicant has not provided evidence that they have had car shows on the subject property, or annual business parties that exceed the scope of the lawful nonconforming uses of the restaurant building, patio, and beer garden detailed above, each year for the past 10 years. The record indicates such uses have never been approved as part of the nonconforming use.

The Applicant has not provided evidence the restaurant/bar/event space/retail store and patio have been open 8:00am-midnight, seven days per week, and that the beer garden has been open 11:00am-9:00pm, Friday-Sunday. Rather, the record includes evidence suggesting shorter/earlier/less frequent operating hours.

The Applicant has not provided evidence that the bar garden has been, over the last 10 years, the 14,625 square feet their application materials represent it to currently be. The area was permitted to be only 12,000 square feet.

6. ZDO Section 1307, Procedures:

This section provides standards and criteria for processing land use applications according to their type. This application is being processed as a **Type II Permit**, pursuant to Section 1307. No further written findings regarding Section 1307 are warranted.

ADVISORY NOTES

Advisory notes are not a part of the decision on this land use permit. The guidance listed below are not conditions of land use approval and are not subject to appeal; they are advisory and informational only. The Applicant is advised to contact the following agencies, as relevant, for information on their requirements for establishing the approved alteration:

- Clackamas County Building Codes Division (e.g., for information on building permit requirements): www.clackamas.us/building
- Estacada Rural Fire District #69 (e.g., for information on fire district access, building, and addressing requirements): www.estacadafire.org
- Clackamas County Septic and Onsite Wastewater Program (e.g., for information on septic system requirements): www.clackamas.us/septic
- Clackamas County Transportation Engineering Division (e.g., for information on system development charges): www.clackamas.us/engineering