

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Upholding the Planning Director's Decision to Approve Planning Docket SDR-13-24, a site design review for Tax Lot No. R3521 01000; Applicant: HOB Oregon, LLC

BOARD ORDER 24- 308

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on October 10, 2024, Commissioners Lindsay Berschauer, Kit Johnston, and Mary Starrett being present.

IT APPEARING TO THE BOARD as follows:

WHEREAS, The Applicant, HOB Oregon, LLC, submitted a site design review application for the temporary and limited placement and use of up to two (2) mobile restaurant facilities (food trucks) and to allow for the sale tasting service and consumption of local wines and alcoholic beverages in conjunction with the use of an approved existing indoor commercial recreational facility operating in the Recreation Commercial (RC) zone; and

WHEREAS, The Planning Director approved the request on July 12, 2024, as provided in the attached Exhibit A; and

WHEREAS, The Planning Director's decision was appealed to the Board and a hearing was held on September 26, 2024; and

WHEREAS, Following deliberation, the Board voted unanimously to uphold the Planning Director's decision, deny the appeal, and approve the request; and now, therefore,

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. Planning Docket SDR-13-24 is hereby approved, subject to the following conditions:

1. The development shall substantially conform to the site maps submitted with this application.
2. All permits required by Yamhill County for building construction, septic, and electrical installation shall be obtained.

3. Any lighting shall be shielded, deflected, or directed onto the subject lot so it does not shine onto the county road or adjacent lots.
4. Prior to issuance of permits, the access shall be required to meet the Carlton Rural Fire Department standards and conditions for approval.
5. There shall be no use of outdoor amplified music or sound in conjunction with the operation of the indoor commercial recreational facility.
6. Alcohol sales at the food trucks and/or at the existing, approved indoor commercial recreation facility shall be limited to locally produced wine, cider, and beer or other malt beverages. The local area is defined as all counties in Oregon.
7. Prior to the provision of wine tasting service or sale of locally produced wine, locally produced cider, and/or locally produced beer and other malt beverages, the Applicant shall obtain all permits required by the Oregon Liquor & Cannabis Commission (OLCC) and shall further abide by all OLCC rules.
8. Parking shall be established and permanently maintained for as long as the indoor recreational facility is in use so that there is one (1) parking space per 100-square feet of restaurant area, one (1) parking space per 400-square feet of floor area used in conjunction with the indoor commercial recreational facility, one (1) parking space per 300-square feet of floor area used in conjunction with the accessory retail use, and one (1) parking space for each employee working a maximum shift cumulatively when taking into account the uses occurring in the Recreation Commercial (RC) zone.
9. Any proposed sign shall be located at least five (5) feet from the property line, shall not be located in a clear vision area, shall conform to the provisions of Section 1006 of the YCZO, and is subject to permit approval.
10. This approval shall expire one year from the date of this approval unless the restaurant and/or alcoholic beverage services commence prior to the expiration date.
11. Modification of any of the above conditions requires approval under Section 1101.02 of the Yamhill County Zoning Ordinance. Violation of any of the above conditions may result in revocation of the site design review permit, with the process further detailed in Sections 1101.06 and 1101.07 of the Yamhill County Zoning Ordinance.

Section 2. The Board hereby adopts the findings set forth in Exhibit B, attached hereto and incorporated herein, in support of this approval.

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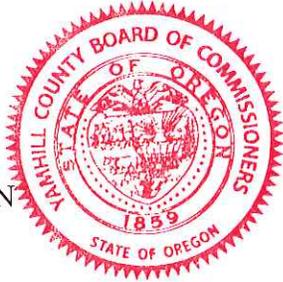
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DATED this 10 day of October, 2024, at McMinnville, Oregon.

ATTEST

KERI HINTON
County Clerk



By: Carolina Rook
Deputy CAROLINA ROOK

FORM APPROVED BY:

Jodi Gollehon
JODI GOLLEHON
Assistant Yamhill County Counsel

YAMHILL COUNTY BOARD OF
COMMISSIONERS

Lindsay Berschauer
Chair LINDSAY BERSCHAUER

Kit Johnston
Commissioner KIT JOHNSTON

Mary Starrett
Commissioner MARY STARRETT

Approved by the Yamhill County Board of
Commissioners on 10/10/2024
via Board Order 24-308

Yamhill County

DEPARTMENT OF PLANNING AND DEVELOPMENT

400 NE BAKER STREET | McMinnville, Oregon 97128

Phone: (503) 434-7516 | Fax: (503) 434-7544 | TTY: (800) 735-2900 | Internet Address: www.yamhillcounty.gov

July 12, 2024

HOB Oregon, LLC
Attn: Frank Foti
15990 NW Red Shot Lane
Carlton, OR 97111

Re: **Docket SDR-13-24, Tax Lot 3521-01000**

Regarding your site design review application for the temporary and limited placement and use of up to two (2) mobile restaurant facilities (food trucks) and to allow for the sale, tasting service, and consumption of local wines and alcoholic beverages in conjunction with the use of an approved existing indoor commercial recreational facility operated in the Recreation Commercial (RC) zone, planning staff has reviewed your application and finds the request complies with the requirements of the *Yamhill County Zoning Ordinance*. Your application for site design review is approved subject to the following conditions:

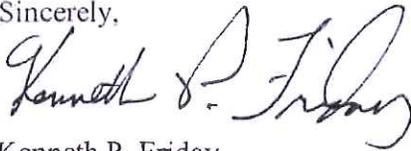
1. The development shall substantially conform to the-site maps submitted with this application.
2. All permits required by Yamhill County for building construction, septic, and electrical installation shall be obtained.
3. Any lighting shall be shielded, deflected, or directed onto the subject lot so it does not shine onto the county road or adjacent lots.
4. Prior to issuance of permits, the access shall be required to meet the Carlton Rural Fire Department standards and conditions for approval.
5. There shall be no use of outdoor amplified music or sound in conjunction with the operation of the indoor commercial recreational facility.
6. Alcohol sales at the food trucks and/or at the existing, approved indoor commercial recreation facility shall be limited to locally produced wine, cider, and beer or other malt beverages. The local area is defined as all counties in Oregon.
7. Prior to the provision of wine tasting service or sale of locally produced wine, locally produced cider, and locally produced beer and other malt beverages the Applicant shall obtain all permits required by the Oregon Liquor & Cannabis Commission (OLCC)
8. Parking shall be established and permanently maintained for as long as the indoor recreational facility is in use so that there is one (1) parking space per one-hundred (100) square feet of restaurant area, one (1) parking space per 400-square feet of floor area used in conjunction with the indoor commercial recreational facility, and one (1) parking space per 300-square feet of floor area used in conjunction with the accessory retail use, and one (1) parking space for each employee working a maximum shift cumulatively when taking into account the uses occurring in the Recreation Commercial (RC) zone.

9. Any proposed sign shall be located at least 5 feet from the property line, shall not be located in a clear vision area and shall conform to the provisions of Section 1006 of the YCZO and is subject to permit approval.
10. This approval shall expire one year from the date of this letter unless the restaurant and/or alcoholic beverage services commence prior to the expiration date.
11. Modification of any of the above conditions requires approval under Section 1101.02 of the *Yamhill County Zoning Ordinance*. Violation of any of the above conditions may result in revocation of the site design review permit with the process detailed in Sections 1101.06 and 1101.07 of the *Yamhill County Zoning Ordinance*.

The *Yamhill County Zoning Ordinance* provides for appeal of any action or ruling of the Planning Director to the Board of Commissioners within fifteen (15) days of the decision on a proposed action. Anyone wishing to appeal the Director's decision must file an appeal form, together with a ~~\$270.00~~ fee, with this Department no later than **5:00 p.m., July 29, 2024**. If no appeal is filed, the Director's decision will be final and this letter will serve as your official notice of decision.

If you have any questions, please contact this office.

Sincerely,



Kenneth P. Friday
Planning Director

Enclosure

cc: Board of Commissioners
Assessor
Public Works
Carlton Fire Department
ODOT
SPO's

EXHIBIT B
FINDINGS IN SUPPORT OF APPROVAL
(Board Order _____)

HEARING DATE: September 26, 2024

DOCKET NO.: SDR-13-24

REQUEST: Site design review for the temporary and limited placement of up to two (2) mobile restaurant facilities (e.g., food trucks) and to allow for the sale, tasting service, and consumption of local wines and alcoholic beverages in conjunction with the use of an approved existing indoor commercial recreational facility in the Recreation Commercial (RC) zoning district on the subject parcel. The proposed food and beverage uses will occur within or adjacent to the existing, approved indoor commercial recreation facility and will not require any expansion to the building's footprint.

APPLICANT: HOB Oregon, LLC

TAX LOT: 3521-01000

LOCATION: 17405 NW Panther Creek Road, Carlton

ZONE: RC, Recreation Commercial District; AF-80, Agriculture and Forestry District; PALF, Public Airports and Landing Fields District

CRITERIA: Sections 601.02 and 1101.02 of the *Yamhill County Zoning Ordinance*.

FINDINGS:

A. Background Facts

1. *Parcel Size:* Approximately 61.3 acres
2. *Access:* The property has access to NW Panther Creek Road.
3. *On-site Land Use and Zoning:* The subject parcel is split-zoned. The area to be used for the hosting of the proposed mobile restaurant facilities, hereafter referred to as "food truck" or "food trucks," will be placed and operated in conjunction with an existing, approved indoor commercial recreation facility located in the RC zoned area of the subject lot. A single-family dwelling is located on the property so there are rural residential uses occurring onsite in addition to the recreation commercial use of the fitness facility. Farm uses appear to include livestock pasturage with barns located onsite, in addition to a vegetable garden. Panther Creek flows along the subject parcel's northern

property line, and a portion of the creek has a mapped floodplain that is within the county's Floodplain Overlay District. There are no planned or proposed development activities occurring in the Floodplain Overlay District.

4. *Surrounding Land Use and Zoning:* Lots to the east, southeast, and northwest are located in the Agriculture/Forestry Large Holding (AF-80 and AF-20) zones. Land to the south, southwest, and north of the subject parcel are zoned for Forestry (F-80) use. Further to the north and northeast are properties zoned for Exclusive Farm Use (EF-20). Forest uses, both passive and active timber harvesting/replanting, appear to be the most common land uses evident in the area. Farm uses, while not common, are evident in the surrounding area and appear to include hay production and livestock grazing.
5. *Water:* Onsite well.
6. *Sewage Disposal:* Onsite septic systems serve the dwelling and the fitness facility. Portable toilets and hand washing stations will be required for all of the proposed events.
7. *Fire Protection:* Carlton Rural Fire Protection District.
8. *Previous Actions:* A comprehensive plan amendment request, from AFLH (Agriculture/Forestry Large Holding) to C (Commercial), and zone change request, from AF-20 (Agriculture/Forestry Large Holding) to RC (Recreation Commercial) was approved in 1977 for an approximately 3-acre area of the subject lot, Docket Z-123-77/PA-44-77. A comprehensive plan amendment, from AFLH (Agriculture/Forestry Large Holding) to PALF (Public Airstrip & Landing Field), and zone change request, from AF-20 (Agriculture/Forestry Large Holding) to PALF was approved for an approximately 3.1-acre area of the subject lot in 1977, Docket Z-123-77/PA-44-77. Also in 1977, a conditional use request was approved for the construction and operation of an indoor tennis court was approved, Docket C-226-77. The indoor tennis court is located within the RC-zoned area of the subject parcel, and is the structure proposed for use as the indoor recreation facility. A lot line adjustment was approved in 2018, Docket L-02-18, for an exchange of 3.5-acres between the subject parcel and the neighboring lot to the east, Tax Lot 3522-01700. A lot line adjustment was approved in 2023, Docket L-01-23, for the transfer of 63.83-acres from Tax Lot 3522-01700 to the subject parcel. An expedited agri-tourism event request was approved earlier this year, Docket E-07-23. A request to host up to six (6) agri-tourism events was also approved in 2023, Docket E-21-23. A site design review was approved in 2023, for the operation of an indoor commercial recreation facility in the Recreation Commercial zoned area of the parcel, Docket SDR-19-23.
9. *Deferral:* The Tax Assessor's records indicate that 130.52-acres of the subject lot are receiving farm tax deferral.
10. *Overlay Districts:* A small area along the northern property line of the subject parcel is located within the Floodplain Overlay District for Panther Creek, per FIRM panel 41071C0175D. The parcel is not located in an area identified as sensitive wildlife habitat, nor is it located within the Willamette River Greenway. A landing strip is located on the property which is located in the Public Airstrip and Landing Field (PALF) zone, however

none of the proposed events will utilize the landing strip.

B. Ordinance Provisions and Analysis

1. Section 601.02 of the Yamhill County Zoning Ordinance (YCZO) lists certain uses to be permitted in the RC District, with the following permitted uses being applicable to the Applicant's request:

- B. Entertainment facility, food store (maximum floor area of two thousand (2,000) square feet), gift, souvenir or antique shop, motel, restaurant or other similar uses in conjunction with a resort;*

The Applicant's request is to allow for the sale, provision of tasting service, and consumption of local wines and alcoholic beverages in conjunction with the existing approved indoor commercial recreation facility. The Applicant is further proposing the placement and use of up to two (2) food trucks as uses similar to a more traditional brick and mortar restaurant facility. However, the food trucks would not be in permanent use, and no new buildings or structures will be added.

Friends of Yamhill County ("Friends") provided comments to the County that the approved uses under YCZO 601.02(B) are only allowed as a similar use "in conjunction with a resort." The County disagrees with Friends' interpretation of the code language, as the phrase "in conjunction with a resort" is intended to be a limitation on "other similar uses", not a limitation on "restaurants".

The County finds that a food truck may be considered substantially similar to the restaurant use allowed under YCZO 601.02(B) due to the fact that a food truck is essentially a mobile commercial kitchen and serving space operated to provide food service while seating for these mobile restaurant facilities is typically held outdoors or in other congregational seating spaces. The Applicant's request meets the intent of YCZO 601.02(B) and is a logical extensions of the County's prior approval of the Applicant's request to prepare and sell snacks and soft drinks as part of the commercial indoor recreation facility under Planning Docket SDR 19-23, which was not appealed.

- H. Accessory uses;*

The County further finds that the proposed use is allowed as an "accessory use" to the existing recreational center, as permitted under YCZO 601.02(H). The consumption of food and beverage will be conducted either/both outdoors and/or within the existing approved indoor commercial recreation facility. The proposed food trucks will be parked in the Recreation Commercial zoned area of the subject parcel, adjacent to the indoor commercial recreation facility.

An "accessory use" is defined under YCZO 202 as a "use which is incidental and secondary to the principal use." The Applicant states in their application that the food trucks will not be placed permanently on the property because they will not

be hooked into septic. Rather, the food trucks will be used on a limited basis to service customers attending or participating in recreational activities, such as tournaments, hosted at the indoor commercial recreation facility.

The County finds that the Applicant's request is in keeping with the purpose of the RC zone, as provided in YCZO 601.01, which is to provide specialized commercial services in conjunction with a recreational use. The Applicant's request to allow alcohol sales and service, plus two temporary food trucks are valid accessory uses to the indoor commercial recreation facilities on the subject parcel. Furthermore, the approval is consistent with the County's prior decisions to allow food and alcohol service at multiple golf courses in the RC zone, as well as consistent with the prior County decision in SDR-19-23, which approved existing buildings at this property as recreational facilities with uses of tennis, racquetball, pickleball, educational programs, indoor/outdoor fitness, and other related uses for which fees may be charged, along with preparing and selling snacks, soft drinks, and hosting fitness-related tournaments.

Finding: The County finds that the Applicant's proposed food and alcoholic beverage services are consistent with the uses permitted under the provisions of Sections 601.02(B) and 601.02(H) of the Yamhill County Zoning Ordinance.

2. During the public hearing, the Applicant requested approval as a "similar use" under the provisions of YCZO 1206. The uses in the Applicant's application may be valid similar uses. However, due to the additional procedural requirements that apply to a similar use approval under YCZO 1206, the County declines to base its decision on a similar use analysis.

C. Site Design Review

1. In the RC District, uses are subject to site design review pursuant to Section 1101.02(A) of the YCZO. Specifically, review of a site development plan shall be based upon consideration of the following provisions:

- *Section 1101.02(A)(1): Characteristics of adjoining and surrounding uses;*

Regarding standard (1), the uses occurring in the surrounding area are as described under *Background Facts*, Section A.4 above.

- *Section 1101.02(A)(2): Economic factors relating to the proposed use;*

Regarding standard (2), the proposed use is to provide food and beverage service to guests participating in or observing the athletic or other approved activities hosted in the previously approved indoor commercial recreation facility space used by residents and visitors of Yamhill County. The Applicant notes that the sale, tasting service, and consumption of locally produced wines, ciders, and other beverages will benefit the local economy. The Applicant did not identify economic challenges that would prevent the Applicant from completing the proposed development, and it is further noted that

the proposed use will not require construction. Thus, it is reasonable to conclude that the Applicant will not face economic challenges to completing the development.

- *Section 1101.02(A)(3): Traffic safety, internal circulation and parking;*

Regarding standard (3), the application indicates that the primary access for guests and staff is via an easement driveway through a southeastern property line. The easement drive provides ingress/egress to NW Panther Creek Road. Section 1007.02(C) of the YCZO provides the parking standards for land uses in the county. The standard for service commercial uses is one (1) parking space per 400-square feet of floor area and one (1) parking space per 300-square feet of floor area for retail commercial use which account for the parking requirements for the indoor commercial recreation facility. Additional parking will be required to account for the new food truck (restaurant) uses in the form of one (1) parking space per one-hundred (100) square feet of restaurant area, plus one (1) space for each employee on maximum working shift. The indoor commercial recreation facility has a total of 12,180-square feet of area, with between 1,285 to 1,680-square feet of floor area used for retail use in the form of a snack bar. The Applicant has calculated that based on the respective recreation, food, and beverage service along with the retail commercial uses conducted in the RC zone that a total of 46-parking spaces will be available and sufficient for use by guests and employees.

Friends noted as a safety concern that the subject parcel has access and egress from a remote rural location on a windy road. The County does not find that the nature of the access presents a unique concern for traffic safety. As the Applicant notes, in some respects, allowing additional service of food and local alcoholic beverages will likely reduce traffic for guests and community residents participating in recreational activities because they will not be required to leave for meals and then return. The County finds this reasoning persuasive. Furthermore, the County notes that the Carlton Rural Fire Department did not submit any comments relating to the application, and a condition of approval will require that the existing driveway meet the Carlton Rural Fire Department access and water standards prior to commencement of the provision of the proposed food or beverage services.

- *Section 1101.02(A)(4): Provisions for adequate noise and/or visual buffering from noncompatible uses;*

Regarding standard (4), the Applicant notes that Panther Creek, the adjacent embankments, and the vegetation in the area act as a natural visual and auditory buffer from surrounding parcels. The County finds that there is no need for additional developments to provide noise or visual buffering from surrounding properties.

Friends argued for “stringent” conditions limiting hours of operation and adding other regulations on the proposed uses. However, they did not provide any reasonable legal justification for such conditions. Nothing in YCZO 601, nor in the analogous Commercial District YCZO 602, provides for a limit on hours of operation for a standard commercial use. Rather, the additional conditions Friends proposed would defeat the County’s underlying policy of flexibility in RC zones. Furthermore,

operations will be limited by the reasonable conditions already included in this decision, as well as the limits promised in the application itself.

The County regards this application similar to other food and alcohol service applications. The Applicant's representative persuasively testified that: (1) the applicant is well versed in serving food and alcohol to customers responsibly in compliance with OLCC regulations, as well as food safety regulations; (2) cities and counties do not typically impose stricter rules and regulations on food and beverage establishments than what is required of all organizations serving food and beverages. The County agrees with the Applicant that the additional conditions proposed by Friends would require imposition of conditions unusual in the food and beverage industry, and it is not necessary to impose the type of additional conditions Friends is seeking because the Applicant will be required to comply with OLCC rules as part of its licensing and as a condition of the approval.

- *Section 1101.02(A)(5): Retention of existing natural features on site;*

Regarding standard (5), the new proposed uses will not require any new development or construction activities, and no natural existing natural features will be disturbed.

- *Section 1101.02(A)(6): Problems that may arise due to development within potential hazard areas.*

Regarding standard (6), there are no construction activities proposed with the application, and the subject buildings are not located within the Floodplain Overlay District. The County cannot identify any apparent hazards associated with the property or area that may arise or be exacerbated by the applicant's proposed use.

- *Section 1101.02(A)(7): Comments and/or recommendations of adjacent and vicinity property owners whose interests may be affected by the proposed use.*

Regarding standard (7), neighbor Maria Paola raised concerns that there was "no provision for the maintenance of the private road that provides access," and focused on "road wear and tear" that will increase "maintenance" costs. She requested that the County consider "converting the involved private roads to county maintained roads."

Allocation of maintenance costs for a private road is not part of the applicable County decision criteria, and at this time, the County declines to convert the private road to a County-maintained roadway. That is a private matter governed by laws regarding private road maintenance and/or private road maintenance agreements. Furthermore, the Applicant provided persuasive and un rebutted evidence that the Applicant has paid significant amounts for maintenance and improvement of the private road, which shows that there is no need for a condition on this matter.

Finding: The County finds that, with certain conditions imposed, the Applicant's request is consistent with the site design review standards provided in Section 1101.02(A) of the Yamhill County Zoning Ordinance.

D. Procedural Claims

1. Friends provided testimony that the County incorrectly processed the application and provided incorrect notice. The County disagrees with that assertion. The hearing was properly noticed on the Yamhill County Board of Commissioner's (BOC) meeting agenda for September 26, 2024 as a Public Hearing for:

Docket SDR-13-24, An appeal of the Planning Director's approval to allow for the temporary and limited placement of up to two (2) mobile restaurant facilities (e.g., food trucks) and to allow for the sale, tasting service, and consumption of local wines and alcoholic beverages in conjunction with the use of an approved existing indoor commercial recreational facility in the Recreation Commercial (RC) zoning district on the subject parcel. Applicant – HOB Oregon, LLC / Appellant – Maria Paola.

Although the County is not aware of any process or notice errors, if there were any such errors, they were either nonsubstantive and nonprejudicial, as evidenced by Friends full participation in the proceeding via both written commentary and oral testimony at the hearing. Furthermore, any errors were further cured through a *de novo* hearing with the BOC. The County fully considered written and oral testimony raising concerns from Friends and Applicant's neighbor, Maria Paola, but did not find such concerns persuasive.

2. The Applicant provided testimony that the appeal was procedurally invalid because it was untimely filed. The County rejects that argument as it has a longtime custom and practice of extending an appeal deadline to the following Monday when that deadline falls on a weekend.

CONCLUSION:

Based upon the above findings, the request by HOB Oregon, LLC for site design review for the temporary and limited placement and use of up to two (2) mobile restaurant facilities (food trucks) and to allow for the sale, tasting service, and consumption of local wines and alcoholic beverages in conjunction with the use of an approved existing indoor commercial recreational facility in the Recreation Commercial (RC) zoning district on Tax Lot R3521 01000, is approved, subject to the following conditions:

1. The development shall substantially conform to the site maps submitted with this application.
2. All permits required by Yamhill County for building construction, septic, and electrical installation shall be obtained.
3. Any lighting shall be shielded, deflected, or directed onto the subject lot so it does not shine onto the county road or adjacent lots.
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END