

APPLICANT'S RESPONSE TO ARGUMENTS AGAINST

APPLICATION OF TRUDY LOGAN FOR INTERPRETATION OF NEW USE

Introduction:

Applicant is seeking an Interpretation, pursuant to Springfield Development Code § 5.11-105 (A) to “[c]onsider the applicability of new uses within [the relevant] districts that are not specifically identified in [the] Code. Section 5.11-105 (B) of the Code establishes that

“[a] new use may be considered to be a permitted use when, after consultation with the City Attorney or other City staff, the Director determines that the new use:

- “1. Has the characteristics of one or more use categories currently listed in the applicable zoning district;
- “2. Is similar to other permitted uses in operational characteristics, including but not limited to, traffic generation, parking or density; and
- “3. Is consistent with all land use policies in this Code which are applicable to the particular zoning district.”

Applicant is requesting a new use for property located in Springfield, Oregon and zoned Low Density Residential (LDR) with an Urban Fringe Overlay (UF-10). Her property, which is located at 3092 Hayden Bridge Road in Springfield, is a parcel of property of approximately 12.9 acres, of which 12.0 acres lies in rural Lane County. The remaining 0.9 acres lies within the urban growth boundary of the city of Springfield is within an area zoned LDR and UF-10. No part of the property lies within the corporate limits of the city of Springfield.

The proposed new use is for a “banquet, wedding and event venue.” In written and oral comments the concern has been expressed that allowing the requested new use would result in banquet, wedding, and event venues to be permitted uses on all LDR and UF-10 zoned lands. Applicant submits that her requested new use not be defined by those five words, but be restricted in accordance with the restrictions of the use to which she contends her proposed use is similar: a home occupation. More particularly, Applicant proposes that her proposed new use be defined and restricted as follows:

A banquet, wedding and event venue is a lawful activity carried on within a dwelling, within an accessory structure, or on the grounds of the property, provided that:

A member or members of the family who occupy the dwelling shall be in attendance and supervise any banquet, wedding or event held on the venue;

The primary use of the dwelling as a dwelling will not be affected;

The use as a banquet, wedding and event venue shall be a secondary use that does not

significantly affect the residential character of the dwelling or neighborhood; and

There shall be no permanent display in public view which would indicate from the exterior that the property is being used for any purpose other than as a residence. Temporary signage before and during events to identify the property for guests and to direct traffic is allowed.

There shall be no outside storage of materials used exclusively for banquets, weddings or events visible from public property or adjacent private property.

Mechanical equipment, unless compatible with residential purposes, shall be prohibited.

There shall be no offensive noise. Amplified music and speech shall be considered offensive if it violates the guidelines established by the Department of Environmental Quality, OAR 340-35-035(1)(b)(B)(I) and (ii).

There shall be no unreasonable vibration, smoke, dust, odors, heat or glare noticeable at or beyond the property line resulting from any banquet, wedding or event held at the venue.

Banquets, weddings and events hosted on the property shall not create hazardous traffic conditions or utilize on-street parking of nearby properties.

If the proposed banquet, wedding and event venue requires any modification to the dwelling or accessory structure of a nature that is not typically found in a residential district, the proposed banquet, wedding and event venue is considered inappropriate and prohibited.

No merchandise, other than what is produced on-site shall be sold to the public from premises. However, the banquet, wedding or event may be catered by the occupants of the dwelling, by the organizer of the banquet, wedding or event, or by a professional caterer.

Alcohol use and sales shall be in compliance with the rules of the Oregon Liquor Control Commission.

In addition to the occupants of the premises, the venue may utilize the services of part-time employees or independent contractors to provide services for the event, including bartenders, security guards, traffic controllers, janitors, disc jockeys, and bands.

The use or storage of heavy equipment or heavy vehicles by shall not be permitted. Heavy equipment and heavy vehicles shall include, but not be limited to, the use of: semi-trucks, trucks and trackers, back hoes, bob cats, refrigerator trucks, livestock trucks, commercial buses, farm tractors, garbage trucks and log trucks. Deliveries to

the property by commercial carriers or services such as garbage removal by commercial trucks is permitted.

Any banquet, wedding and event venue which requires more than 1 vehicle for its operation shall be prohibited. The 1 vehicle permitted is limited to passenger vehicles, passenger vans or pick-up trucks. Vehicles may be used to accommodate the elderly and disabled.

Banquet, weddings and events shall limit customer access to the property to the hours of 10:00 a.m. to 11:00 p.m. on Friday or Saturday, and to the hours of 10:00 a.m. to 8:00 p.m. on any other day. The time between 10:00 a.m. and 2:00 p.m. may be used only for preparation. Guests shall not be invited before 2:00 p.m. No amplified sound shall be allowed before 2:00 p.m. or after 10:00 p.m. on Friday or Saturday, and before 2:00 p.m. or after 7:00 p.m. on any other day. Reasonable access on the days before and after the event shall be allowed for rehearsals, set-up, clean-up and tear-down of any necessary materials used for the banquet, wedding or event.

Attendance at any banquet, wedding or event shall not exceed 200 guests and not more than 75 vehicles. There shall be no more than 4 weddings, and no more than 6 total banquets, weddings and events hosted on the property in any calendar month.

The applicant shall sign an agreement with the City acknowledging any applicable standards listed above.

Applicant recognizes that approval of her requested Interpretation for a new use in the particular zoning districts does not constitute approval of the particular banquet, wedding and event venue proposed for her property. However, she contends that her venue does, or can with some modification, meet the conditions she has proposed.

CRITERIA

As stated above, the Springfield Development Code §5.11-105 (B) will allow Applicant's proposed new use only if the proposed new use:

- “1. Has the characteristics of one or more use categories currently listed in the applicable zoning district;
- “2. Is similar to other permitted uses in operational characteristics, including but not limited to, traffic generation, parking or density; and
- “3. Is consistent with all land use policies in this Code which are applicable to the particular zoning district.”

“Use category” is defined in Springfield Development Code §6.1-110 as “[a] grouping of land uses which have similar operating characteristics and land use impacts.” Thus criteria #1 and #2 are essentially the same: both criteria require “similar operating characteristics.”

Springfield Development Code §3.2-210 allows commercial use of property in Low Density Residential Districts for “home occupations.” Springfield Development Code §3.3-800 also allows use of property in an Urbanizable Fringe Overlay District for “home occupations.” Thus, for Applicant’s proposed new use to be a permitted use, a banquet, wedding and event venue and a home occupation must be found to have similar operating characteristics.

The staff report submitted by the city argues that Applicant has failed to show that her proposed use does meet the criteria of a home occupation. The arguments miss the point. The question is not whether applicant’s currently operating venue meets the requirements of a home occupation. If it did, there would be no need for this application. Rather, the question is whether, in general, the proposed new use is similar to use for a home occupation.

Considering that Applicant’s requested definition of a “banquet, wedding and event venue” is derived from the definition of a “home occupation” found in SDC 4.7-165, with only minor variations, the proposed use is indeed similar to a home occupation. The most significant characteristics of each are that the use is conducted primarily by the residents of the property, no additional development beyond the existing structures or other structures that are inconsistent with residential property is required, and perhaps most importantly, the land remains in a condition suitable for any use that might ultimately be needed under the provisions of state and local land use planning regulations.

Furthermore, the staff report takes such a restrictive view of the requirements of a home occupation, that it is hard to believe that any use would satisfy the city’s interpretation of that section. In particular the city claims that the Applicant’s is not consistent with use as a home occupation in the following particulars:

Applicant intends to rely upon employees for certain operational aspects of the venue:

The staff report cites SDC 4.7-165 for the proposition that no employees may assist in the operation of a home occupation. However, that section states only that a home occupation is “carried on” “by a member of members of the family who occupy the dwelling.” There is no mention of employees. The word “exclusively” does not appear in the section.

Applicant’s proposal provides the occupants of the dwelling be actively involved in the operation of the venue but does not require them to act without paid assistance.

The proposed use is carried on in 5 accessory structures. The dwelling will not be used as part of the event center:

The description of a “home occupation” in the development code is inconsistent. It states that a home occupation may be carried on in a dwelling or accessory structure. It then states that the “primary use of the building is a dwelling.” By definition, an accessory structure is not a dwelling (SDC §6.1-110), therefore, the code cannot be read to require the primary use of an accessory structure be a dwelling. The clear intent would seem to be that the primary use of the dwelling as a dwelling cannot be affected by a home occupation. Applicant does not seek to have a different restriction for a banquet, wedding and event venue, and in fact, the primary use of her dwelling as

a dwelling will not be affected at all by her proposed use.

No development applications have been submitted to convert the accessory buildings to commercial use.

Applicant does not intend to convert her accessory buildings to commercial use. She intends to use existing accessory buildings which are currently used in conjunction with her use of the property as a residence. However, Applicant recognizes that the permit process is a separate issue for the issue of permitted uses. She understands that there may be permit processes required by other provisions of the Code that are required for any particular property to be used under her proposed new use.

The use spans a total of 13 acres

The vast majority of the property consists of a filbert orchard. The portion of the property within the urban growth boundary includes Applicant's residence, which is not going to be used as part of her particular venue. A view of the property, and the aerial photographs submitted by applicant, demonstrate that less than ½ of the 0.9 acres is available for use for a banquet, wedding and event venue. The portion along the river used in conjunction with some of the weddings contemplated for the property in the future, is a small clearing not within the urban growth boundary. The portion of the property proposed for parking is a small clearing in an area of poor filbert growth, across a gravel driveway from a motorcycle racing course.

The residential character of the dwelling or neighborhood will be significantly affected:

The statements of the applicants and others at the hearing do not support the city's conclusion that there will be a significant impact on the neighborhood for up to 4 days per week. The proposed use contemplates 2 hours the day before an event, several hours on the day of the event, and only about an hour the day after the event. Only one neighbor objected to any impact on any day except the event days.

The existing screening cannot be verified as complete or permanent

The city staff report seems to contemplate that no portion of the buildings used in the proposed use may be visible from any other property. Applicant does not propose such a restriction. The home occupation rules do not contemplate such a restriction. All that is required is that there be "no display" on the exterior of a building indicating it is being used as something other than a dwelling.

In this case there can be no display indicating that the dwelling is used as other than a dwelling because that is not a fact. There can be no requirement that the accessory buildings have no display indicating it is not used as a dwelling because, as indicated above, by definition it is not a dwelling.

Applicant submits that the intent of the provision of the home occupation restrictions is that there be no signage advertising that the property is a home occupation rather than a residence.

JONES Brenda

From: Ed Spinney <edspinney@gmail.com>
Sent: Tuesday, February 17, 2015 5:50 PM
To: Lauren King; DONOVAN James; Dave Logan; DARNIELLE Gary L; JONES Brenda
Subject: Trudy Logan Application
Attachments: Closing argument.pdf

Attached is my brief in response the the staff memo.

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Applicant does not propose allowing any signage or display for proposed banquet, wedding and event venues, other than day-of-event signs to direct attendees to the correct property and to the correct driveways to the parking areas.

The use contemplates the outside storage of materials visible from public property of adjacent private property:

The staff report suggests that parked cars are “materials” that are “stored” on the property.

Neither of those terms is defined in the code. However, SDC §6.1-105 J provides that:

“Where words are not defined in this Section, the following sources shall be consulted: the Metro Plan, State statute, the Springfield Code and any dictionary of common usage, all of which will be interpreted by context.”

The term “materials” has a common dictionary definition of “the elements, constituents, or substances of which something is composed or can be made.” The term “stored” means “to collect and put (something) into one location for future use.” The suggestions that “parked cars” constitute “stored materials” stretches the definition of those terms beyond the breaking point.

The city cannot determine whether there is any “mechanical equipment” such as a heater or air conditioner.

If this provision of the requirements for a home occupation were subjected to judicial review it would have to be construed to be void for vagueness. There is no definition of the term “mechanical equipment” in the Springfield Development Code. The common dictionary definition of “mechanical” is “working or produced by machines or machinery.” A “machine” is “a piece of equipment with moving parts that does work when it is given power from electricity, gasoline, etc.” A “simple machine” is

“a mechanical device that changes the direction or magnitude of a force. In general, they can be defined as the simplest mechanisms that use mechanical advantage (also called leverage) to multiply force. Usually the term refers to the six classical simple machines which were defined by Renaissance scientists: Lever, Wheel and axle, Pulley, Inclined plane, Wedge, Screw.” *Wikipedia*

It is without question that Applicant, and any person operating a banquet, wedding and event venue, a home occupation, a household, or virtually any activity other than sleeping or meditating, will require the use of “mechanical equipment.” In particular, for use in a banquet, wedding and event venue, the use of a bottle opener (lever), ramp (inclined plane), dolly (wheel and axle), lawn mower, dish washer, faucet (screw), and thousands of other machines might be necessary.

The home occupation does have a limiting factor in that only mechanical equipment “not compatible with residential purposes” shall be prohibited. Heaters and air conditioners, and all of the machines mentioned in the previous paragraph are not incompatible with residential purposes. Applicant does not suggest her proposed use should be restricted any less than whatever the

restriction for a home occupation is construed to mean.

Noise, dust, and glare may be noticeable at or beyond the property line

The provision of the code restricting home occupations from noticeable vibration, smoke, dust, odors, heat or glare suffers from vagueness problems similar to the “mechanical equipment” provision discussed above. A strict interpretation of this provision would prohibit talking, aromatic food, cigarette smoking, heat lamps, sand boxes, and any kind of lighting. The city staff reports suggests that even the headlights of people attending an event would constitute prohibited “glare.” However, “glare” has a general definition of “to shine with or reflect a very harsh, bright, dazzling light.”

Much of the testimony at the hearing centered around the issue of noise. Applicant’s proposed use, particularly as a wedding venue, will require the use of amplified sound for the ceremonies themselves and for post-wedding music and entertainment. There was some conflicting testimony about the effect of the amplified sound on neighbors. Applicant has taken steps to mitigate the effects of noise on her neighbors, and her proposal includes adherence to rules of Department of Environmental Quality, specifically OAR 340-35-035(1)(b)(B)(I) and (ii) which provide:

(I) No person owning or controlling a new industrial or commercial noise source located on a previously unused industrial or commercial site shall cause or permit the operation of that noise source if the noise levels generated or indirectly caused by that noise source increase the ambient statistical noise levels, L10 or L50, by more than 10 dBA in any one hour, or exceed the levels specified in Table 8, as measured at an appropriate measurement point, as specified in subsection (3)(b) of this rule, except as specified in subparagraph (1)(b)(B)(iii).

(ii) The ambient statistical noise level of a new industrial or commercial noise source on a previously unused industrial or commercial site shall include all noises generated or indirectly caused by or attributable to that source including all of its related activities. Sources exempted from the requirements of section (1) of this rule, which are identified in subsections (5)(b) - (f), (j), and (k) of this rule, shall not be excluded from this ambient measurement.

Preliminary measurements, as testified to by Applicant’s expert witness, shows that Applicant can meet those criteria.

Hazardous traffic conditions may be created and on-street parking utilized

Any use of the roadway contains some hazard. In this case, the potential hazard consists of vehicles pulling into and out of Applicant’s driveway. No aspect of the proposed use suggests a greater hazard. Although applicant acknowledges one prior occasion resulted in some on-street parking it has not occurred since and is not proposed as part of the general use or her specific use.

The proposed use requires modification of accessory structures to commercial standards

Applicant has a “drying shed” on her property. There have been some modifications to the

drying shed to turn it into what Applicant calls a pavilion. Applicant testified that she uses it for family purposes, such as family gatherings and meetings. It is not a structure that is atypical in a residential district.

Merchandise produced off-site may be sold to the public from the premises

Applicant's intended venue does include either on-site catering or off-site catering. However, only her own on-site product will be sold from the premises. Any off-site catering will be purchased by the bride and groom or other host from businesses not located on the premises.

Heavy equipment will be used in the venue

Applicant does not propose the use of heavy equipment for her banquet, wedding and event venue. A limited number of trucks may be used by independent contractors, such as delivery trucks, to provide related services. Construing delivery trucks to constitute the disqualifying "use" of heavy equipment would prevent the use of even Fed-Ex in a home occupation.

More than one vehicle will be used in the venue

Applicant intends to use just one vehicle as described in the application, primarily to assist elderly and disabled guests to different parts of the venue.

The venue will operate past 6 p.m. on days of banquets, weddings or events.

Applicant has acknowledged that she cannot operate a wedding venue that closes before 6 p.m. In the middle of summer, brides do not want to be having their weddings in the middle of the day. However, to qualify for a new use, Applicant only needs to show that her proposed use is "similar" to an existing use, not the same as an existing use. Except for this provision, Applicant's proposed use arguable fits every other qualification for a home occupation. Applicant contends that her proposed use is similar to the operating characteristics of a home occupation, even if it does not precisely fit the definition of that use.

Applicants proposed new use is not consistent with all land use policies

The arguments presented in the staff report seemingly would lead to the conclusion that no new use can ever be allowed under the City Development Code. Their argument seems to be as follows:

- In order to gain approval of a new use, an applicant must show that the proposed new use is consistent with all land use policies in the Springfield Development Code which are applicable to the relevant zone.
- The land use policies for the particular district do not contain the proposed new use (which is why Applicant is requesting a new use).
- Therefore, the new use is not consistent with the policies of the SDC.

The provision for consideration of new uses obviously refutes that interpretation. Furthermore, Applicant's proposal **IS** consistent with all land use policies. As recited in the staff report, the purpose of the urban growth boundary is to control the potential for urban sprawl and scattered urbanization to achieve the goal of compact growth. The Eugene/Springfield Metro Plan contains similar expressions of the principles, goals, objectives and policies with regard to Urban Growth Boundaries, for example:

- The Metro Plan and most of its elements are oriented to and require that urban development occur in a compact configuration within the metropolitan UGB.
- Use urban, urbanizable, and rural lands efficiently.
- Encourage orderly and efficient conversion of land from rural to urban uses in response to urban needs, taking into account metropolitan and statewide goals.
- Protect rural lands best suited for non-urban uses from incompatible urban encroachment.
- Broaden, improve, and diversify the metropolitan economy while maintaining or enhancing the environment.
- Maintain a variety of open spaces within and on the fringe of the developing area.
- Continue to minimize urban scatteration and sprawl by encouraging compact growth and sequential development.
- Insure that land supply is kept in proper relationship to land use needs.
- Conserve those lands needed to efficiently accommodate expected urban growth.
- Protect rural land and open space from premature urbanization.
- When necessary to meet urban needs, utilize the least productive agricultural lands for needed expansion.
- Encourage new and maintain existing rural land uses where productive or beneficial outside the urban growth boundary.
- The key to addressing the needs stated at the beginning of this section is not so much the establishment of a UGB, but maintaining an adequate and reasonable supply of available undeveloped land at any point in time. The "adequate" and "reasonable" tests are the key to the related phasing and surplus land issues.
- The Metro Plan Diagram reflects the concept of compact urban growth, sequential development, and opportunities for the least costly provision of public services and facilities.

- Again, the Metro Plan Diagram reflects compact urban growth which, in turn, should achieve maximum efficiency of land uses within and on the fringe of the existing urban area.
- In order to promote the greatest possible degree of diversity, a broad variety of commercial, residential, and recreational land uses shall be encouraged when consistent with other planning policies.
- Public and private facilities shall be designed and located in a manner that preserves and enhances desirable features of local and neighborhood areas and promotes their sense of identity.
- Carefully develop sites that provide visual diversity to the urban area and optimize their visual and personal accessibility to residents.

Applicant's proposed use of land in the urban growth boundary promotes all of these objectives. The new use will preserve the land for whatever use the city ultimately decides is needed for the city. The vast majority of the 12.9 acres will remain a filbert orchard. The remainder will retain its residential qualities. Applicant's proposed use does not limit the city's ability to designate the land in the future for expansion or to keep its current rural nature.

Applicant must seek a location in a commercial zoning district where the use is permitted

The suggestion that a banquet, wedding and event venue like the one proposed by applicant could be moved to a commercial zone ignores the nature of the proposed use and the potential market for the proposed use. The location of the property along a river and nestled into a filbert orchard is what makes it a viable use of the property, and a use in demand by members of the public. Moving such a venue to a commercial zone, with smokestacks instead of trees for background, streets instead of a river for a border, and concrete instead of grass for landscaping, changes the enterprise into a use that Applicant does not wish to promote and brides would not wish to utilize.

New uses are prohibited in UF-10 zones.

SDC 3.3-805 states that the purpose of the Urbanizable Fringe (UF-10) Overlay District is

“to effectively control the potential for urban sprawl and scattered urbanization to achieve the goal of compact growth. This concept will remain the primary growth management technique for directing geographic patterns of urbanization in the City. The UF-10 Overlay District limits the division of land and **prohibits urban development of unincorporated urbanizable land** which will eventually be annexed to the City. All interim development shall be designed and constructed to City standards.” (Emphasis added).

The term “development” is defined in the Springfield Development Code to mean

“Any human-made change to improved or unimproved real estate, **including, but not**

limited to, a change in use; construction, installation or change of a structure; subdivision and partition; establishment or termination of a right of access; storage of materials, equipment or vehicles on the land; drilling and site alteration due to land surface mining, filling, grading, dredging, paving, excavation or clearing of trees and vegetation.” (Emphasis added). (SDC 6.1-110)

Further, the term “change of use” is defined as follows:

“A change from one existing permitted use to another permitted use in the applicable zoning district. Change of use includes changes that require construction or alteration to land or water outside of existing buildings, structures, or open storage areas; and that substantially alters or affects land or water—also, as used in Section 3.4-280C., making a different use of the land or water. **Change of use does not include a change of use of a building or other structure that does not substantially alter or affect the land or water upon which it is located,** the sale of property, or modifications of existing structures, as may be permitted by this Section.” (Emphasis added). (SDC 6.1-110).

Nothing in Applicant’s proposal requires “human-made change to improved or unimproved real estate.” Her proposed use will not “substantially alter or affect the land or water upon which” the buildings to be used in her proposed use are located. The restrictions on new uses in a UF-10 Overlay District are therefore inapplicable.

Respectfully submitted
February 17, 2015

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