

NOTICE OF DECISION ON A TYPE II LAND USE PERMIT

Decision: Denied

Permit Type: Nonconforming Use Verification and Alteration

File No. Z0088-25

Applicant's Proposal: The applicant requests verification of the upstairs rear portion of the subject structure as a commercial office space and an alteration to replace the roof and repair damages caused by a fire that occurred on 3/4/24.

Decision Date: October 30, 2025

Deadline for Filing Appeal: November 12, 2025, at 4:00 pm.

Issued By: Mya Ganzer, Planner I, MGanzer@clackamas.us, 503-742-4520

Applicant: Michael Paxton

Owner of Property: Michael Paxton

Zoning: TBR

Assessor's Map & Tax Lot(s): T2S R5E Section 27B Tax Lot 00201

Site Address: 46881 SE Highway 26, Sandy, OR 97055



Community Planning Organization (CPO) for Area:

Firwood Neighbors CPO: Marge Stewart, mesdes2003@yahoo.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 and Decision: The complete decision, including findings and conditions of approval, and the submitted application are 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. A copy of the decision, application, all documents and evidence submitted by or on behalf of the applicant, and applicable criteria are available for inspection at no cost by contacting the Planner listed above. Copies of all documents may be purchased at a cost established by the County fee schedule.

Appeal Rights: This decision will not become final or effective until the period for filing an appeal with the County has expired without the filing of an appeal. Any person who is adversely affected or aggrieved or who is entitled to written notice of the decision pursuant to Subsection 1307.09(C) of the Clackamas County Zoning and Development Ordinance may appeal this decision to the Clackamas County Land Use Hearings Officer by filing a written appeal. An appeal must include a completed Appeal Form available at www.clackamas.us/planning/supplemental.html and a \$250.00 filing fee and must be **received** by the Planning and Zoning Division by the appeal deadline identified above.

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.

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.

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.

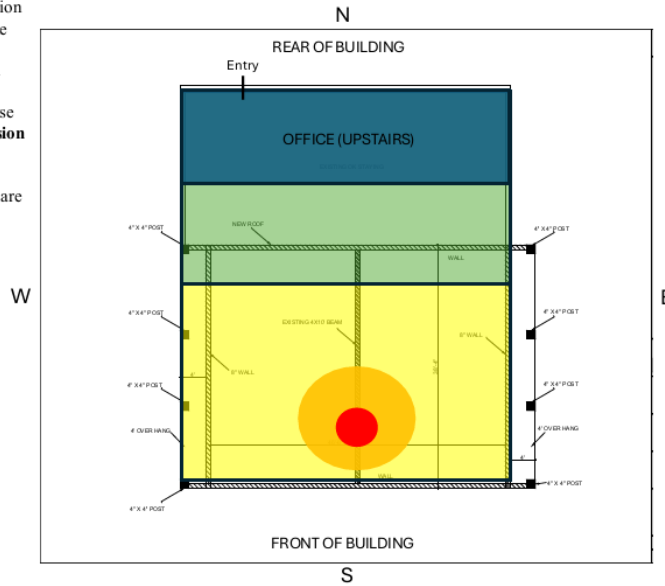
*Clackamas County is committed to providing meaningful access and will make reasonable accommodations, modifications, or provide translation, interpretation or other services upon request. Please contact us at 503-742-4545 or email DRenhard@clackamas.us.
503-742-4545: ¿Traducción e interpretación? | Требуется ли вам устный или письменный перевод? | 翻译或口译? | Cần Biên dịch hoặc Phiên dịch? | 번역 또는 통?*

Site Plan

NOTES

- Business access is through the rear door to the green and blue areas
- Diagram aligns with Section A (Use After Fire) and the notarized letters
- **NCU is requested** for all green and blue areas that remained in continuous use
- **NCU Alteration/Expansion** will be requested for the yellow, orange, and red regions once roof repairs are completed

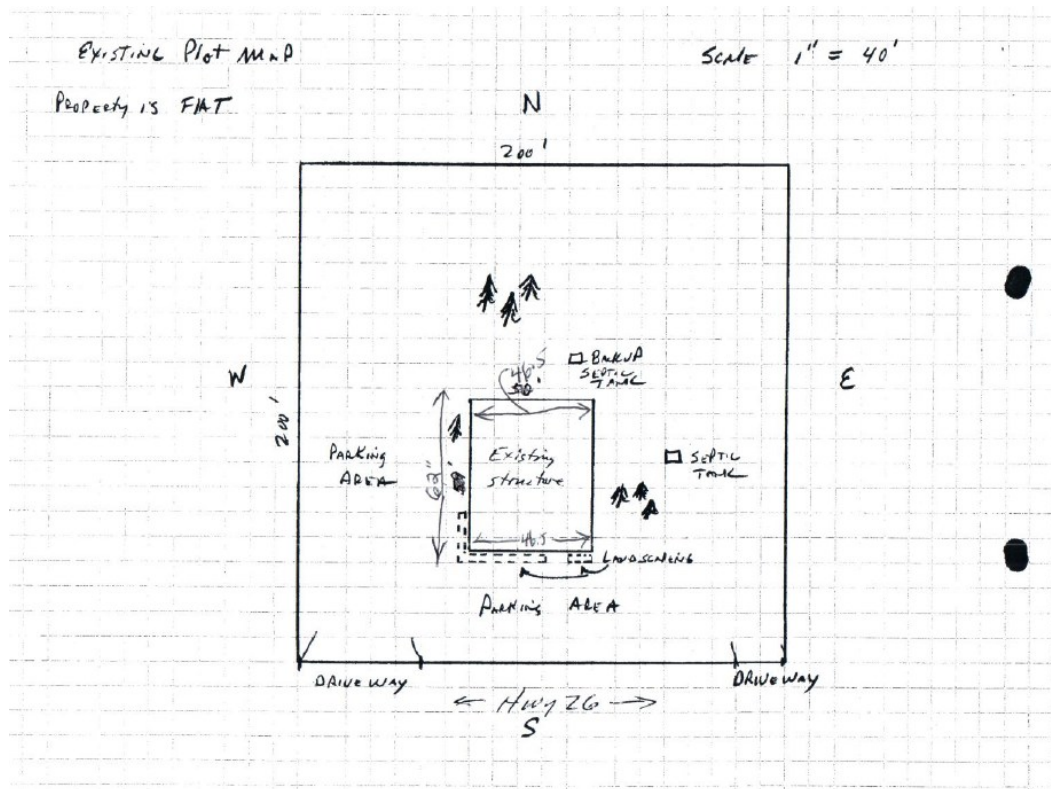
Site Map for NCU Verification



COLOR CODE

- Office (located on the second floor)
- Undamaged/Cosmetic improvements needed
- Fire-Affected / light damage / cosmetics issues but accessible
- Fire-Affected / damage occurred / repair is needed
- Fire-Affected / Hole in Roof

HIGHWAY 26



APPLICABLE APPROVAL CRITERIA

This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Section(s) 202, 406, 1206 and 1307.

PUBLIC AND AGENCY COMMENTS

Notice was sent to applicable agencies and owners of property within 2640 feet. Comments received relating to the applicable approval criteria listed above are addressed in the Findings Section. Comments from the following were received:

Building Codes and Clackamas Fire

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.

Property History and Proposal: The applicant is seeking to verify the commercial use (office) for the back upstairs portion of the subject structure. The applicant also seeks, as an alteration, to repair the structure and replace the damaged roof of the structure that was destroyed by a fire on March 4, 2024.

The property became subject to restrictive zoning on December 14, 1967, when it was zoned RA-1. On December 22, 1975, it was rezoned to TT-20. The current zoning designation of TBR was adopted on July 20, 1994. Commercial office uses are not a permitted use in the TBR zoning district.

According to County Assessor records, the subject structure was built in 1946 and used as a restaurant and bar. In 1974, the County Planning Commission approved a request to expand the Non-Conforming Use, as restaurants were not a permitted use in RA-1 zone. In 2005, County staff verified the nonconforming restaurant use. At this time a Mexican restaurant was operating in the structure. The 2005 Non-Conforming Use verification also approved an alteration to convert the restaurant use to commercial office for internet sales. The nonconforming use verification and alteration (Z0797-05) was approved on December 9, 2005.

The subject property has had many owners over the years, and the subject upstairs rear area of the building appears to have been converted to a residential use without permits

or approval sometime in 2014 or 2015. The 2024 incident fire report indicated that the upstairs portion of the building was used as a residence when the fire occurred.

On March 4, 2024, Sandy Fire responded to a fire at the subject property. The fire destroyed much of the interior of the front portion of the building, and there are holes in the roof as a result of the fire department cutting one to vent the building and one from a firefighter falling through the roof. The back portion of the building sustained significant smoke damage, broken windows, including smoke tracks protruding from the back entrance door. Included below are photos the applicant provided demonstrating the damage to the front portion of the structure.



Figure 1 – Hole in the roof of the front portion of the building

Below is the exterior, and the two upstairs windows are where the office space is, also shown.



Figure 2 – Outside of subject structure

The applicant's proposal relies on the upstairs space in the rear of the subject structure being in continuous use as commercial office space in compliance with Zoning and Development Ordinance (ZDO) Sections 1206.04 (Discontinuation), 1206.05 (Verification), and 1206.06 (Restoration and Replacement after Damage or Destruction). If this portion of the subject structure meets these criteria, the front portion of the structure could be subject to an alteration to allow for a replacement of the damaged roof and expansion of the nonconforming commercial office space. The applicant's proposal is to verify the office use in the rear upstairs portion of the building and, as an alteration, repair the damaged building and replace the roof on the front portion of the structure.



Figure 3 – Upstairs space on 6/2/25



Figure 4 – Upstairs space on 8/15/25

The nonconforming use application was submitted on March 4, 2025. Staff deemed the application incomplete on March 28, 2025, and sent written notice of the incomplete application to the applicant. The initial completeness review was done within 30 days of the application submission. When an application is deemed incomplete, the applicant has 180 days from the date the application was submitted to make the application complete.

On May 22, 2025, the applicant submitted materials in response to the March 28 incomplete notice. Staff emailed the applicant on May 23, 2025, notifying them that their application was still incomplete as all items listed in the March 28 incomplete notice were not submitted. On June 2, 2025, the applicant submitted additional application materials.

1. ZDO SECTION 406, Timber District (TBR): Table 406-1, lists Permitted Uses in the TBR District, and the terms under which those uses may be conducted. The Applicant's stated existing use of the subject property is commercial office space, which is currently not a permitted use in the TBR zoning district. Therefore, this proposal is being reviewed as a nonconforming use subject to ZDO Section 1206.

2. ZDO SECTION 1206, NONCONFORMING USES AND VESTED RIGHTS

Section 1206 is adopted to provide standards, criteria, and procedures under which a nonconforming use may be continued, maintained, verified, restored, replaced, and altered and under which a vested right may be determined.

1206.02 – STATUS

A nonconforming use may be continued although not in conformity with the regulations for the zoning district 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 1206.07(B)(3)(a) and (b) or, in the case of nonconforming premises for marijuana production, with an alteration approved pursuant to Subsection 1206.07(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. **This criterion is met.**

1206.03 – 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. Normal maintenance may include painting; roofing; siding; interior remodeling; re-paving of access roads, parking areas, or loading areas; replacement of landscaping elements; and similar actions.

Finding: This proposal does not involve normal maintenance necessary to maintain an existing nonconforming use in good repair. This alteration is for structural maintenance, specifically replacement of the roof due to fire which exceeds the purview of what is allowed by Subsection 1206.03. **This criterion is not applicable.**

1206.04 – DISCONTINUATION OF USE

A. If a nonconforming use is discontinued for a period of more than 24 consecutive months, the use shall not be resumed unless the resumed use conforms to the requirements of this Ordinance and other regulations applicable at the time of the proposed resumption.

Finding: As discussed below staff found the nonconforming use has been discontinued for a period exceeding 24 months for a number of reasons:

- The 2005 NCU alteration was not lawfully implemented.
- Water supply records demonstrate a consecutive 34-month disruption in water consumption and use.
- The applicant failed to demonstrate the upper level of the building was continually used as an office as required by ZDO 1206.04.
- Evidence demonstrates the upper level was converted to residential space.

The 2005 NCU alteration was not lawfully implemented

In 2005, use of the subject building was verified as a service commercial use for an existing restaurant through land use application Z0797-05. The application also requested an alteration of the NCU to convert the restaurant into office space for an internet sales business. A condition of approval for the NCU alteration required the applicant to obtain any necessary building permits for the office conversion. The NCU decision with the condition requiring that the applicant obtain building permits for the conversion was not appealed and the decision is final.

Clackamas County Building Codes Officials verified that a change of occupancy would have been required to convert the restaurant into office space. The occupancy would have required a change from the A-2 (Assembly) occupancy to a B (Business) occupancy. The change in occupancy process would have required the property owner/applicant to obtain electrical, mechanical, plumbing, and structural permits.

Based on 2011 photos from Zillow, provided by the applicant, the interior restaurant space was converted to a commercial use of office space. The photos show the converted office in the lower level of the building. Photographs of the upper level being used as or converted to an office prior to the 2024 fire were not submitted by the applicant.

There is no record that required permits for the office conversion were applied for or issued. As a result, the conditions of approval for the original alteration (Z0797-05) were not met and the restaurant use was not lawfully altered to commercial office space. The nonconforming use of the property ceased to exist at the time of the unlawful alteration to office space. Because building permits for the office conversion were not obtained, staff believes the unlawful alteration to office space occurred sometime between issuance of the 2005 land use approval and 2011 as demonstrated by the photos submitted by the applicant. The non-conforming use status was lost 24 months after the restaurant use ceased due to the unlawful office conversion.

No water consumption for 34 months

The applicant provided staff with water records that showed there was no water consumption on the property for 34 consecutive months from March 22, 2010, until January 29, 2013. The timeframe for the lack of water consumption coincides with gaps in business information provided by the applicant (discussed below). The water usage gap exceeds the 24-month discontinuation limitation of ZDO 1206.04. The lack of water usage demonstrates the building was not being used as a commercial space, as

business activities cannot take place without water consumption due to employees need for things such as restroom facilities. The lack of water usage indicates the building was not being used. The building code require commercial business to have a potable water source and an operating sanitation system.

Continual use

The applicant provided a timeline of businesses associated with the subject property from 2005 until 2025. In the timeline, the applicant states that from 2007 to 2011 Naked Promos Incorporated and Click 4 Promos both operated at the property. However, the applicant did not submit documentation demonstrating that these business were operating at the subject property or demonstrating the type of commercial activity provided by the businesses (for example, office use, retail/sales). Supporting evidence was not submitted demonstrating these businesses operated out of the subject property. Additionally, the lack of water usage between 2010 and 2013 (discussed above) approximately coincides with the end of these businesses alleged use of the property, and the gap in the applicants narrative regarding businesses at the property. The applicant claims Click 4 Promos stopped operation in October of 2011, and that Parkland Property Management purchased the property a little over a year later.

The applicant states that on November 30, 2012, Parkland Property Management began business operations in the building and continued the operations until November 2024. The applicant submitted a notarized letter from Geoffrey Parker stating, "Although day to day operations were limited due to fire damage, the space continued to be used for storage and file access." The letter states the building was used as office space through July 31, 2024, but does not provide a clear date of when the office use began. The applicant submitted a screen shot of Business Information for Parkland Property Management where the primary office is listed as being located in Washougal Washington. The applicant did not provide evidence that Parkland Property Management was ever registered at the subject property, and the relevant addresses provided were all in Washington State. Geoffrey Parker, the previous property owner, was the registered agent for the LLC, but had a mailing address listed in Washington.

The timeline indicates that between October 2014 and 2020 Hood Alternative Medical Center operated a business at the subject property. However, the applicant did not describe or provide evidence demonstrating the types of business activities the alternative medical center provided such a commercial office, retailing, or medical use. The applicant did not provide documentation demonstrating what portions of the building the business utilized use or that the business operated from the upper level of the building. The applicant submitted a Business Registry Business Name Search

screen shot demonstrating the principal place of business for Hood Alternative Medical Center was 46881 SE Highway 26. The business summary history indicates the business was started on October 9, 2014, and states administrative dissolution on December 10, 2020.

The submitted timeline indicates that Rockport Craine LLC operated out of the building from 2018 to present day. However, the applicant did not provide evidence demonstrating the type of business and did not verify the Rockport Craine LLC was a commercial office business. The applicant submitted a registration for the LLC, Rockport Craine LLC, listing Geoffrey Parker as a Registered Agent with the subject property as the address. However, the Principal Place of Business and his mailing address are listed as Washington State.

As discussed above, Geoffrey Parker's notarized letter stated the space in the upper portion of the building was used for "business related storage" and did not provide evidence that commercial office business activities take place on the subject property. As a result, use of the building for storage does not support that continuation of the NCU occurred.

As discussed above, the applicant provided insufficient information about the use of the space by previous businesses for staff to find the upstairs space was consistently used as office space as required by ZDO Section 1206.05. Additionally, it is not clear if these other businesses were consistent with the "promotional product internet sales" office use approved by the previous alteration.

The information provided about the various businesses is also not sufficient in determining if the use continued without gaps not exceeding 24 months. The applicants supplied information states that Geoffrey Parker used the property for business related storage until Parker's stated last date of use on July 31, 2024, but did not document when the use began. Based on supplied statements, after the fire, the upstairs use was for storage of materials and files and not an office space. The storage aspect is corroborated by the March 4, 2024, fire report and photographs taken after the fire, which states there was some furniture storage occurring on site.

Dwelling Conversion

Additionally, the upstairs office the applicant has requested verification for was being used as a residential in 2015, according to Code Enforcement photos. A code enforcement violation was opened related to the alleged residential use of this portion of the building (V00029614). The 2024 Fire Marshal Report indicated the upper level was

also a residential use when the fire occurred. The report indicated the two tenants told the fire department they were subletting from another person. Shown below are photos from the Code Enforcement file and the Fire Report, of the upstairs space.



Figure 5 – Upstairs space in 2015



Figure 6 – Upstairs space in 2024

The above records do not document how long the space was used for residential purposes, however the fire marshals incident report and photographs from the 2024 fire demonstrate the structure was being used as a dwelling at the time of the fire. In addition, the code enforcement file included a Zillow listing from December 24, 2019, for the subject structure. It advertised a remodeled office space with a living area in the back half, where the subject area is. The space was clearly used as a residence at multiple points within the last 10 years. This residential use is not consistent with the stated commercial office use of the upstairs rear space, and indicates the space was not continually used as a commercial office.

Conclusion

The information provided by the applicant did not meet the burden of proof in demonstrating the upstairs rear portion of the building was continually used as a commercial office. Due to the lack of information provided by the applicant on the commercial office use of the upstairs space, the lack of water usage/supply to the building, and failure to lawfully implement the 2005 NCU alteration, staff has determined the use discontinued for a period exceeding 24 months. **This criterion is not met.**

B. Notwithstanding Subsection 1206.04(A) and pursuant to Oregon Revised Statutes (ORS) 215.130(7)(b), a nonconforming surface mining use shall not be deemed to be discontinued for any period after July 1, 1972, provided:

- 1. The owner or operator was issued and continuously renewed a state or local surface mining operating permit, or received and maintained a state or local exemption from surface mining regulation; and*
- 2. The surface mining use was not inactive for a period of 12 consecutive years or more. Inactive means no aggregate materials were excavated, crushed, removed, stockpiled, or sold by the owner or operator of the surface mine.*

Finding: This proposal does not involve surface mining. **This criterion is not applicable.**

1206.05 – VERIFICATION

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

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: On the original application form the applicant indicated they wished to be evaluated under 1206.05(A) however later statements indicated they wished to be assessed under 1206.05(B). Staff found that the applicant does not meet either standard as discussed above or summarized below.

As addressed above, the information provided shows gaps of commercial office use for periods greater than 24 consecutive months in the 20 years immediately preceding the date of application for verification. The use was previously verified in 2005, and an alteration was approved for the conversion of the restaurant use to an office use. The final land use decision adopted a condition of approval requiring the applicant to obtain all required permits for the office conversions. The required permits were not obtained for the office conversion therefor the alteration was not lawfully implemented. The photos below were provided by the applicant and demonstrate the completion of the office conversion and were dated 2011. The restaurant ceased operation sometime between the approval of the 2005 land use decision and when the 2011 office photographs were taken. The non-conforming use status was lost 24 months after the restaurant use ceased.

The applicant argued that permits were submitted for the conversion of the restaurant to office space and listed file PR247705. PR stands for Project and at the time was used as a file keeping system where multiple permits from different departments could be stored and accessed in one location. Additionally, the date the PR permit was created is the same date as the 2005 NCU application was applied for (October 10, 2005).

PR247705 was created for and is associated with the 2005 NCU application review and not with a building permit review. Building permits begin with the letter B.



Figure 7 - Interior area of lower floor in 2011

As discussed in the finding above, the water usage gap from 2010 to 2013 is a 34-month gap continuity of any building use within the 20-year period.

The applicant provided photos from Google street view showing that in 2022 flags were being sold from the front of the property. This is also a change in the nature of the nonconforming use from an office use to a retail sales use which would likely have required approval of an alteration of NCU application.

Within the 10-year period, March 2015 to March 2025, the applicant states that Parkland Property Management, Hood Alternative Medical Center LLC, Rockport Craine LLC, and the applicant used upper level space of the building as commercial office use. The property was taxed as “Commercial Land Improved” during this time. However, as discussed above the applicant did not submit detail supporting the commercial office use for all of the businesses and there appear to be gaps in office use for the property which align with the timing in lack of water usage for the building discussed above.

The applicant states there were several permits filed during the previous 10 years to support the commercial activity, however none of the permits were issued or received a final inspection. A 2017 electrical permit was withdrawn; a 2020 building permits record status is “lobby”, which means it has not yet met the minimum requirements to complete the review process; a 2024 septic permit for a residence was denied and another is in prescreen, which means the relevant department is determining if the application meets the minimum submittal requirements or the applicant needs to provide additional information. Other building permits were applied for in 2025 and are pending the outcome of this Land Use review. Staff finds that unissued permits do not demonstrate that the upper level has consistently been used as an office.

The applicant states that the upstairs office space maintained its office use before and after the fire. However, photos from 2015 indicate the space was being used as a residence and building permits were not obtained for a residential conversion or an office conversion. The space was also being used as a residence in 2024, when the fire occurred, according to the fire report. A 2019 Zillow listing indicated this portion of the building was residential use. Residential use is not consistent with an office use, and demonstrates the nature of the upstairs room was not a commercial office use at multiple times within the past 10 years.

The applicant demonstrated that Hood Alternative Medicine operated a business at the subject property from September 22, 2015, until its administrative dissolution on December 10, 2020. However, the applicant did not provide evidence demonstrating the types of business activities that are provided by the business, such as office or retailing, or medical use. The applicant did not provide evidence that the business was operating on the upper level of the building.

Both Parkland Property Management and Rockport Craine LLC have their principal office listed as Washougal, WA. Geoffrey Parker is listed as a registered agent for both companies and has a mailing address in Camas, WA. Geoffrey Parker and the subject address is listed as a Registered Agent starting on October 28, 2024, for Rockport Craine LLC. This leaves an LLC registration gap between December 10, 2020, and October 28, 2024, for the subject property, the gap demonstrates the upstairs rear space wasn’t used as commercial office.

Geoffrey Parker states he was doing business at this address as a Registered Agent after the property sale and fire. The applicant and Parker stated the space was used for business-related storage and would occasionally come to the property for documents. The applicant provided LLC registrations showing that the property owner was a

registered agent for a business based in Washington State, but did not provide any additional documentation demonstrating the nature of the businesses occupying the upper level or evidence that there was no interruption of the office use more than 24-months on the subject property, especially since the LLC primary places of business were out-of-state.

Moreover, even if the 10 years had been proven, it creates a rebuttable presumption that the office use was legally established. As stated earlier, the 2005 nonconforming use alteration to convert the restaurant to an office was never implemented as the required permits and change of occupancy were not obtained. As a result, staff can rebut this presumption. As established in the finding regarding ZDO Section 1206.04, there were also interruptions in use of the structure exceeding 24-months in both the 20-year and 10-year period.

The applicant is requesting verification specifically of the upstairs “office” which he claims was not damaged by the fire (addressed below by ZDO Section 1206.06). However, in photos provided by the fire department, staff can see there was significant smoke damage. Additionally, there was no power provided to the entire structure at the time of the fire, and there was no electrical permitting on file showing that the electrical system was restored after the fire. The applicant has made cosmetic improvements to the upstairs, adding insulation and tarp, repairing windows, and cleaning the smoke damage. They have added desks and a water barrel, but the property uses a generator and does not have a functioning bathroom. After reviewing the photos, a County Building Codes official stated that due to the fire damage below, it is hard to say if the building is structurally safe, without seeing a structural analysis to determine if the structure is safe for occupancy. This rebuts the applicant’s statement that the upstairs has been consistently used as a commercial office after the fire because it currently does not meet building codes for a commercial office space due to:

- Non-fire retardant material on the walls.
- Appearance of only one exit.
- Lack of guardrails and egress lighting on the stairs, which are needed for a commercial space.
- Commercial spaces require running water and an approved sewage disposal system.
- Required permits to repair damage to the upstairs after the fire were not obtained.

The applicant provided water records showing the structure was connected to City of Sandy water until November 8, 2024, with significant gaps in water consumption as addressed above. It is unclear if the structure is currently connected to running water.

As stated above, there was a denied septic permit in 2024, and Septic is determining if another application meets the minimum application standards. The lack of an approved sewage disposal system does not comply with commercial building codes standards, according to the Building Codes Official.

As discussed above and throughout this decision, Staff cannot verify the commercial office use of the upstairs, or of any portion of the structure under the timeline standards in Section 1206.05 of the ZDO.

These criteria are not met.

1206.06 – RESTORATION OR REPLACEMENT FOLLOWING DAMAGE OR DESTRUCTION

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

- 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 1206.06, but may be permitted pursuant to Subsection 1206.07.*
- B. Physical restoration or replacement 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 or replaced, and the nature and extent of the nonconforming use, shall be verified pursuant to Subsection 1206.05.*

Finding: The subject structure was substantially damaged by fire on March 4, 2024. The responding fire department assessed the property loss at 50% according to the fire department. After reviewing photos provided by the fire department and the applicant, Clackamas County Building Codes stated they

could not determine if the structure was fit for occupancy, without a structural analysis due to the damage to the lower floor. The applicant argues that since the previous property owner states he used the space until July 31, 2024, it is not subject to the 1-year lawful commencement. Staff has addressed verification of the upstairs space above and how the use cannot be verified, and therefore does not meet the standards of 1206.06(C).

Additionally, physical restoration of the structure did not commence within 1 year of the occurrence of the fire. Physical restoration would have required the applicant resume the nonconforming use, or have an issued land use, building, on-site wastewater treatment system, plumbing, electrical, or other development permit. No permits were issued by March 4, 2025. As the use cannot be verified and no lawful commencement occurred by March 4, 2025, the proposal does not meet the standards of Section 1206.06. **These criterion are not met.**

1206.07 – ALTERATION

A. *Alterations Required by Law:*

Finding: The applicant is not proposing an alteration to a nonconforming use as required by law. **Subsection 1206.07(A) is not applicable.**

B. *Alterations Not Required by Law:*

Except as provided in Subsection 1206.07(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 1206.07(B)(4), have no greater adverse impact on the neighborhood than the existing structure, other physical improvements, or use.*
- 2. The nonconforming use status of the existing use, structure(s), and/or physical improvements is verified pursuant to Subsection 1206.05.*
- 3. The alteration or change will not expand the nonconforming use from one lot of record to another unless:*
 - a. The lot of record on which expansion is proposed and the lot of record on which the nonconforming use currently is established have been part of the same tract continuously*

since the date the nonconforming use became nonconforming; or

b. The expansion would allow only for facilities necessary to support the nonconforming use, such as driveways, storm water management facilities, and on-site wastewater treatment systems.

4. Conditions of approval may be imposed on any alteration of a nonconforming structure or other physical improvements, or a change in the use permitted under Subsection 1206.07(B), when deemed necessary to ensure the mitigation of any adverse impacts.

Finding: The non-conforming status of the existing use and structure could not be verified under 1206.05. Therefore, the proposed alteration cannot be considered as there is no verified non-conforming use on the property. **This criterion is not met.**

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. **This criterion is not applicable.**

3. 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.