

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

Regarding an appeal of an administrative)	<u>FINAL ORDER</u>
decision denying verification and alteration of)	
a nonconforming use at 46881 SE Highway 26)	Z0088-25
in unincorporated Clackamas County, Oregon)	(Paxton NCU)

A. SUMMARY

1. On March 4, 2025, Michael Paxton (the “applicant”) filed an application for verification and alteration of a nonconforming use (File No. Z0088-25) on a 0.92 acre parcel located at 46881 SE Highway 26; also known as Tax Lots 00201, Section 27B, Township 2 South, Range 5 East of the Willamette Meridian, Clackamas County, Oregon (the “site”). The site and surrounding properties to the north, east, and west are zoned TBR (Timber). Properties to the south, across SE Highway 26 are zoned RRFF-5 (Rural Residential Farm Forest, five-acre minimum lot size).

a. The site is developed with a roughly 3,100 square foot structure with a roughly 850 square foot second floor area with a separate entry at the rear of the structure. (Exhibits 2a at 18 and 2c at 2).¹ According to County Assessor records, the structure was built in 1946 and used as a restaurant and bar. (Exhibit 1).

b. The site became subject to restrictive zoning on December 14, 1967, when it was zoned RA-1. (Exhibit 1). In 1974, the County Planning Commission verified that the use of the building on the site as a restaurant was legally established, as the building existed and was being used as a restaurant when restrictive zoning prohibiting restaurants was first applied to the site. The Planning Commission also approved a request to expand the nonconforming restaurant use at that time. The site was rezoned to (TT-20 Transitional Timber, 20-acre minimum lot size) on December 22, 1975, and the current TBR zoning was adopted on July 20, 1994. (Exhibit 1). Office uses are not a permitted use in the TBR zoning district. (ZDO 406.04).

c. By decision dated December 9, 2005, County staff again verified the nonconforming restaurant use and approved an alteration to convert the restaurant use to a commercial office for internet sales. (Z0797-05, Exhibit 3).

d. On March 4, 2024, Sandy Fire responded to a fire at the site. 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 hole to vent the building and a second hole from a firefighter falling through the roof. The back portion and upstairs of the building sustained significant smoke damage, broken windows, including smoke tracks visible at the back entrance door. (Exhibits 2e at 79-80, 19, and 20). According to

¹ Some exhibits contain multiple documents with separate page numbering. Therefore, the hearings officer refers to the .pdf page number of the cited exhibit, rather than any printed page numbers.

the fire marshals incident report and photographs, the structure was being used as a dwelling at the time of the fire. (Exhibit 19).

e. The applicant purchased the site on November 1, 2024. (Applicant testimony and Exhibit 2e at 42).

2. With this 2025 application the applicant requests verification of the upstairs rear portion of the subject structure as a nonconforming office space and an alteration to replace the roof and repair damages caused by the March 4, 2024, fire. (Exhibit 1 at 1).

3. On October 30, 2025, the planning director (the "director") issued a written decision denying the application, finding that the previously approved nonconforming office use of the building was discontinued for a period exceeding 24 months, as:

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

(Exhibit 1).

4. On November 12, 2025, the applicant filed a written appeal of the director's decision, arguing that "The decision lacks consistent factual or legal support, and the County did not meet its burden." (Exhibit 50).

5. County Hearings Officer Joe Turner (the "hearings officer") conducted an online public hearing regarding the appeal. County staff recommended that the hearings officer deny the appeal and affirm the director's decision. The applicant's representative testified in support of the appeal. No one else testified orally or in writing other than public agency staff. Principal contested issues in the case include the following:

a. Whether the applicant sustained its burden of proof that that office use of the building on the site was lawfully established as a nonconforming use on the site;

b. Whether the applicant sustained its burden of proof that that nonconforming office use continued without interruptions of 24 months or more. (ZDO 1206.04(A)); and

c. Whether restoration or replacement of the nonconforming office use was "[l]awfully commenced within one year of the occurrence of the damage or destruction. (ZDO 1206.06(B))

6. Based on the findings included or incorporated herein, the hearings officer concludes that the applicant demonstrated that a nonconforming office use was legally established on the site. However, the applicant failed to demonstrate that:

a. The previously approved nonconforming office use of the site continued without interruptions of more than 24 consecutive months; or that

b. The nonconforming office use was “lawfully resumed” within one year of the fire that damaged the structure.

7. Therefore the hearings officer denies the appeal and upholds the planning director’s decision, based on the findings and conclusions adopted or incorporated herein and subject to the conditions of approval at the end of this final order.

B. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at the public hearing about the appeal on January 8, 2026. All exhibits and records of testimony have been filed with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the hearing, the hearings officer made the statement required by ORS 197.763 and disclaimed any *ex parte* contacts, bias, or conflicts of interest. The following is a summary by the hearings officer of the testimony offered at the public hearing.

2. County planner Mya Ganzer summarized the director’s decision (Exhibit 1) and her PowerPoint presentation (Exhibit 72) and responded to the appeal.

a. She noted restrictive zoning was first applied to the site on December 14, 1967, when the site was zoned RA-1. The current TBR zoning was adopted on July 20, 1994. Office uses were not permitted in the RA-1 and are not a permitted use in the current TBR zoning district.

b. In 2005 the County verified a nonconforming restaurant use in the existing building on the site and approved an alteration of the nonconforming use from a restaurant to an office use for internet sales, County file Z0797-05. The restaurant use ceased at that time. It is unclear whether the 2005 decision approved commercial use of the entire structure or only the downstairs portion of the building.

c. She argued that the 2005 nonconforming use alteration approval for commercial use of the building on the site was not fully implemented as required by the conditions of approval in Z0797-05 (Exhibit 3). Specifically, the property owner at that time failed to obtain change of occupancy approvals and inspections to change the use of the building from a restaurant, an A-2 occupancy, to an office use, a B-2 occupancy. Therefore, the 2005 alteration approval is void and the nonconforming use of the site was lost pursuant to ZDO 1206.04 once the restaurant use ceased for 24 consecutive months after the 2005 approval.

d. There is no evidence that any office use of the site continued without interruptions of more than 24 consecutive months after the 2005 alteration approval:

i. All use of the building on the site appears to have ceased for more than 24 consecutive months, as the City of Sandy water records show that no water was used at the site for 34 months, between March 2010 and January 2013. (Exhibits 2b at 14 and 2e at 49). A complete lack of water use is inconsistent with commercial use of the structure as water would be needed for employee restrooms and other office purposes.

ii. The applicant claims that Parkland Property Management used the building as an office between 2012 and 2024. However, none of the Parkland Property Management documents in the record list the address of or indicate any connection to the site. The documents indicate that Parkland Property Management is based in Washington State.

iii. Hood Alternative Medical Center listed the site as its principal place of business between 2015 and 2020. However, there is no evidence in the record demonstrating the nature of Hood Alternative Medical Center's use of the site and whether such use was consistent with an office use approved by the 2005 nonconforming use alteration decision.

iv. The applicant claims that Rockport Craine LLC began operating from the site in 2018. However, there is no evidence regarding the nature of Rockport Craine LLC's business and the corporate documents list the principal place of the business in Washington State.

v. The most recent prior owner of the site, Geoffry Parker, who is associated with Parkland Property Management and Rockport Craine LLC, stated that the building was "[u]sed as office space through July 31, 2024" and he used the upstairs portion of the structure for business related storage after the fire. However, no evidence was submitted about who used the site as an office and whether and how they used the upstairs of the building as an office prior to the fire.

vi. There is evidence that portions of the structure, including the upstairs, were converted to a residence. In 2014 Clackamas County Code Enforcement received a complaint that the building had been remodeled into a residence without permits. (Exhibit 39). Photos taken in 2015 by Code Enforcement staff show a residential kitchen in the ground floor portion of the building and residential living areas in the upstairs portion of the building: a couch, recliner, television, and other residential furniture. (Exhibit 37). A 2011 Zillow listing categorizes the site as a "live/work" space with "Living area in back half..." (Exhibit 38). The 2024 fire report states that two people were living in the structure on the site at the time of the fire. (Exhibit 19).

e. There is no evidence that the upper level of the building on the site was used as an office prior to the applicant's purchase of the site on November 1, 2025. There is no evidence that any of the prior businesses alleged to have used the site ever used the

upstairs portion of the building for office purposes but there is evidence that the upper portion of the building was used for residential purposes in 2015.

f. The applicant failed to demonstrate that “The existence, continuity, nature, and extent of the nonconforming use for the 10-year period immediately preceding the date of the application is proven.” ZDO 1206.05.B.

i. Hood Alternative Medical Center listed the site as their principal place of business from 2015 to 2020. However, the applicant failed to provide any evidence regarding the nature and extent of this business, whether they were operating a medical clinic, retail sales, or office use on the site and specifically the upstairs portion of the building as office space.

ii. Parkland Property Management and Rockport Craine LLC both list Geoffry Parker, a prior owner of the site, as their registered agent with a mailing address in Washington State. None of the documentation for Parkland Property Management reference the site address and the nature of either of these businesses is unclear. On October 28, 2024, Rockport Craine LLC listed Geoffry Parker as its registered agent at the site address. Geoffry Parker stated that he used the upstairs portion of the structure on the site for “office related storage” and indicated that he accessed the property several times a month to retrieve files and materials. Mr. Parker’s use of the site ceased on July 31, 2024.

iii. No businesses were registered at the site between December 2020 and October 2024, after Hood Alternative Medical Center closed, creating a gap in continuity of the use during the ten year period and the applicant failed to provide any explanation for this gap.

g. The applicant provided photos illustrating their use of the upstairs space as an office. However, this use appears to be in violation of the County building code, which require that places with “B” (business code) occupancies, such as offices, have running water and approved sewage disposal. The County has a denied septic evaluation from 2024 and there is not water service to the building. The building code also requires that offices have walls covered with fire retardant material, and building code staff have concerns with commercial ingress and egress to the upstairs portion of the building. (Exhibit 36).

h. ZDO 1206.06 provides that when a nonconforming use is damaged or destroyed by fire or other casualty, physical restoration or replacement of the nonconforming use must be “[l]awfully commenced within one year of the occurrence of the damage or destruction.” ZDO 1206.06(B).

i. The building on the site was damaged by fire on March 4, 2024. The Fire Department assessed the loss of the structure at 50% (Exhibit 19). The room on the upper floor off the building experienced significant smoke damage. (Exhibit 20). County building code staff stated that they could not determine if the structure was fit for

occupancy without a structural analysis, due to the damage to the lower floor. (Exhibit 36). The one-year period to commence physical restoration ended on March 4, 2025.

ii. The applicant did not lawfully commence restoration within one year of the occurrence of the fire. ZDO 1206.06(B) defines “lawfully commenced” as the lawful resumption of the nonconforming use or the issuance of a required development permit that is necessary to begin restoration or replacement of the nonconforming use or structures and resumption of the nonconforming use. The applicant did not apply for a building permit until February 13, 2025, 19 days prior to the expiration of the one-year period and no permits were issued by the County prior to March 4, 2025.

3. County planning manager Lindsay Nesbitt noted that condition 3 of the 2005 decision approving conversion of the site from a restaurant to a service commercial use provided “If any structural, electrical, plumbing, or similar alterations are required, the applicant shall obtain any permits deemed necessary by the County DTD, Building Codes Div.” That condition was not appealed. Building code staff stated that permits would be required to change the use of the building from a restaurant to a commercial use and no permits were obtained. Therefore, the prior owners of the site failed to comply with the conditions of the 2005 approval.

4. Tyler McDonald appeared on behalf of the applicant, Michael Paxton, and summarized his PowerPoint presentation (Exhibit 73). He argued that alleged building code violations are not relevant to whether the nonconforming use was legally established or continued. The building code is separate from the land use regulations.

a. He argued that the nonconforming office use was lawfully established. The County’s 1987 decision verified that a restaurant use was lawfully established on the site prior to zoning. The County’s 2005 decision verified that the restaurant use had been continued without interruption and approved an alteration to change the nonconforming use from a restaurant to an office use. Neither of these decisions was appealed, so they are now final. Whether building permits were required or issued for this change of use is not relevant to the establishment and continuation of the nonconforming use.

b. The nonconforming office use was never discontinued for a continuous period of 24 months or more. Any periods of discontinuance for less than 24 consecutive months are not sufficient to terminate the nonconforming use; periods of limited activity are sufficient to continue the use.

i. Water was continuously available to the site, the building was connected to public water via a water meter, and the site had a continuously active water account. There is also a groundwater well on the site. The 1987 decision did not require that the commercial use utilize public water. There were two sales of the site between March 2010 and January 2013, when there was no use of public water on the site; Juan B. Cortez purchased the site on March 31, 2020, and Geoffry Parker purchased the site on December 7, 2012.

ii. The photos included in the Zillow listing show that there was electrical power to the site and the building was being used as an office in 2011.

iii. The County approved mixed residential and commercial use of the site, approving use of a mobile home as a permanent single-family residence in 1980, when the site was also being used as a restaurant (Exhibit 65 at 3).² That approval did not include an expiration date.

c. The nonconforming office use was not extinguished by expiration of the one-year restoration requirement of ZDO 1206.06.

i. The fire primarily caused cosmetic damage to the interior of the building. The structure is still sound. The Fire Department cut a hole in the roof while fighting the fire. Repairing the hole in the roof is the only structural improvement needed to restore the building. Building permits are not required for cosmetic repairs to the interior of the building. The upstairs portion of the building was used for office purposes before and after the March 2024 fire.

ii. The applicant submitted two applications for septic permit approval in March and July 2024, and two building permit applications in February and March 2025.

iii. The applicant considered applying for a demolition permit or for an emergency repair permit, but staff discouraged those options.

iv. The County refused to issue building permits necessary to repair the roof until the nonconforming use application was resolved.

d. He argued that the code enforcement photos should be excluded from the record, as there is no evidence that code enforcement staff had permission to enter the building and take those photos. In addition, the enforcement case was never brought to hearing, so the County did not prove that the building was being used for residential purposes.

5. Clackamas County building code administrator Matt Rozell testified that a structure without potable water cannot be legally occupied for commercial or residential use. Changing the occupancy of the building from a restaurant to office use would require a change of use permit from the County. Based on the 2011 photos showing office use of the building, an electrical permit would have been required and changes to make the restroom ADA compliant would have required plumbing and electrical permits.

6. At the conclusion of the hearing the hearings officer held the record open for three weeks, subject to the following schedule:

² The applicant asserts that the residence was approved in 1987. (Exhibit 65 and Mr. McDonald's oral testimony). However, the decision is clearly dated September 11, 1980. (Exhibit 65 at 3)

- a. For one week, until January 15, 2026, for anyone to submit any new testimony and evidence;
- b. For a second week, until, January 22, 2026, for anyone to respond to the testimony that was submitted during the first week of the open record period; and
- c. For a final week, until January 29, 2026, for the applicant alone to submit a final written argument, without any new evidence.

7. Exhibits 74-81 were submitted during the open record period.

C. DISCUSSION

1. ZDO 1305.02.D(2) authorizes the hearings officer to hear appeals of planning director decisions. Pursuant to ORS 215.416(11)(a), appeals of administrative decisions must be reviewed as a *de novo* matter. The hearings officer is required to conduct an independent review of the record. He is not bound by the prior decision of the planning director and does not defer to that decision in any way. New evidence may be introduced in an appeal, and new issues may be raised. The hearings officer must decide whether the applicant carried the burden of proof that the application complies with all applicable approval criteria in light of all relevant evidence in the whole record, including any new evidence.

2. The hearings officer adopts as his own the findings in the director's decision, Exhibit 1, except to the extent that those findings are inconsistent with the findings in this final order.

3. A nonconforming use is "A use of any building, structure or land allowed by right when established or that obtained a required land use approval when established but, due to a change in the zone or zoning regulations, is now prohibited in the zone." ZDO 202.

a. A nonconforming use may be continued although not in conformity with the regulations for the zoning district in which the use is located. ZDO 1206.02. Violations of fire and building code requirements do not make a nonconforming use unlawful unless applicable zoning or land use regulations themselves require compliance with such other regulations and laws. *Coonse v. Crook County*, LUBA No. 91-073, 22 Or LUBA 138, 144-145 (1991).

b. A nonconforming use that has been discontinued for a period of more than 24 consecutive months may not be resumed unless the resumed use complies with the current zoning requirements. ZDO 1206.04.A. The applicant bears the burden of proof to demonstrate with a preponderance of evidence that the use has not been discontinued. *Besseling v. Douglas County*, LUBA No. 2000-155 (Or. LUBA 2001); *Jurgenson v. County Court for Union County*, 42 Or. App. 505, 510, 600 P2d 1241 (1979); *Lawrence v. Clackamas County*, 164 Or. App. 462, 468-469, 992 P.2d 933 (1999).

4. In *Spurgin v. Josephine County*, LUBA No. 94-087, 28 Or LUBA 383 (1994) The Land Use Board of Appeals (“LUBA”) held that the proponent of the existence of a nonconforming use must show:

- a. The use lawfully existed at the time the restrictive zoning was applied;
- b. The nature and extent of the use at that time;
- c. The use has not been discontinued or abandoned; and
- d. If the use has been altered since restrictive zoning, the alterations comply with applicable standards.

Id. at 386–387.

“At a minimum, the description of the scope and nature of the nonconforming use must be sufficient to avoid improperly limiting the right to continue that use or improperly allowing an alteration or expansion of the nonconforming use without subjecting the alteration or expansion to any standards which restrict alterations or expansions.”

Id. at 390-391.

5. In this case the hearings officer finds that office use of the building on the site was lawfully established as a nonconforming use on the site.

a. In 2005 the County determined that “[t]he existing restaurant building and use were lawfully established as a nonconforming use upon the adoption of restrictive zoning regulations on December 14, 1967,” pursuant to Z097-05-E. (Exhibit 3 at 6).

b. Z097-05-E approved alteration of the nonconforming restaurant use to “a service commercial office use limited to the operational characteristics stated in the application materials...” (*Id.* at 7, condition 2). The application materials describe the use as a “promotional products internet company” with five full-time and one part-time employees working from the site, operating from 6:00 a.m. to 3:00 p.m., Monday through Friday, “with almost no walk-in traffic.” (*Id.* at 17 and 20).

c. The application states “There are no structural or physical changes planned other than necessary maintenance to put the building back into good repair...” (*Id.* at 20). Condition 3 of that decision provided “If any structural, electrical, plumbing, or similar alterations are required, the applicant shall obtain any permits deemed necessary by the County DTD, Building Codes Div.” However, the decision goes on to state “The applicant has indicated that interior remodeling and repairs will be necessary to accommodate the office use ... The Building Codes Div. has indicated that no building, electrical, plumbing, or similar specialty code permits appear to be necessary unless any

structural, electrical, plumbing, or similar changes are needed to convert the use from restaurant to office use.” (*Id.* at 6-7).

d. The interior of the building was converted to an office use sometime between 2005 and 2011. (Exhibit 38). However, there is no evidence that this conversion involved any structural, plumbing, electrical, or other alterations that would require permits. Based on the photos in Exhibit 38, it is conceivable that the applicant or prior owner merely removed the restaurant furniture and décor, leaving an open room in the main portion of the building where commercial style carpeting, desks, bookshelves, and other office furniture was installed. There is no evidence in the record that these alterations involved any changes to existing structural, electrical, plumbing, or other systems requiring permits.

i. Removal or alteration of the restaurant kitchen would likely require plumbing, electrical, and other specialty permits. However, the kitchen area of the structure is not shown in the photos, so there is no evidence that the kitchen was actually removed or altered in order to convert the building to an office use.

ii. Based on Mr. Rozell’s expert testimony, plumbing permits would have been required make the bathroom ADA compliant as shown in Exhibit 38 at 2. However, there is no evidence in the record demonstrating when the bathroom was improved; whether that occurred before, during, or after the restaurant was converted to an office pursuant to

e. Condition 3 of Z097-05-E expressly requires compliance with building and other permit requirements, effectively incorporating those permit requirements into the decision. *Coonse*. Therefore, absent the finding by “The Building Codes Div.” that no permits appear to be necessary to convert the use from restaurant to office use, the hearings officer would find that the prior owners of the site failed to implement the decision and any nonconforming use rights were lost when the nonconforming restaurant use ceased for 24 consecutive months. However, the County expressly found that permits were likely not required.

i. Staff are correct that this finding is not a definitive statement that permits would not be required for this conversion. But it seems unlikely that the County would have included this explicit finding in the 2005 decision if they were not relatively confident that permits would not be required. If, as staff argue, “[p]ermits would have been required to convert the use from restaurant to office use” (Exhibit 79 at 2), then building staff presumably would not have included this finding in the decision.

ii. It is impossible to determine the basis for this finding that permits would likely not be required based on the current record. As staff note, there are no plans, photos, or other documentation in the record from which building staff could determine whether permits would be required to convert the building from a restaurant to an office use. Building staff may have based their 2005 determination that permits would likely not be required off of the applicant’s statement that they were not doing any “structural or physical changes,” or it could be based off staff’s inspection of the interior

of the building. There is no evidence in the record regarding the basis for this finding. But building staff made an explicit finding that “[n]o ... permits appear to be necessary...to convert the use from restaurant to office use” at the time conversion from a restaurant to office use was approved. (Exhibit 3 at 7).

f. Mr. Rozell, the current County building code administrator, opined that permits would have been required to convert the building from a restaurant use to office use. (Rozell testimony and Exhibits 36 and 79). However, he failed to specify which changes would have required permits. As noted above, there is no evidence that the restaurant kitchen was altered or removed and it is conceivable that changing a restaurant dining room to the office space shown in Exhibit 38 could occur without permits. In addition, building staff who reviewed the application in 2005 expressly reached a different conclusion. Therefore, given the County’s contemporaneous finding that “no building, electrical, plumbing, or similar specialty code permits appear to be necessary...” (Exhibit 3 at 7), the hearings officer cannot conclusively find that the prior owners of the site were required to obtain such permits and that failure to do so precludes establishment of office use of the building as a nonconforming use.

6. Once the applicant demonstrates that the nonconforming use was legally established, the applicant must demonstrate that the nonconforming use continued without interruptions of 24 months or more. (ZDO 1206.04(A)).

a. The applicant, not the County, bears the initial burden of proving that the nonconforming use continued without interruptions exceeding 24 consecutive months. Therefore, contrary to applicant’s assertion, the issue is NOT “[w]hether the nonconforming use ceased entirely for a defined, continuous 24-month period.” (Exhibit 80 at 2) nor must the evidence establish “[w]hat ceased, where it ceased, [and] for how long...” (*Id.* at 3. Bullets omitted). The issue is whether the applicant demonstrated that the nonconforming use “continued without interruption[s]” of more than 24 consecutive months. *Fraley v. Deschutes County*, 31 Or. LUBA 566, 569 (1996).

i. The applicant repeatedly attempts to reframe the standard through negative construction, arguing that there must be “[p]roof of a specific, unbroken period of total cessation” (Exhibit 81 at 2) and “That inquiry requires findings supported by substantial evidence of complete cessation of use...” (Exhibit 80 at 2). However, the applicant is incorrect. ZDO 1206.04(A) and *Fraley* require that the applicant demonstrate that the use was not “[d]iscontinued for a period of more than 24 consecutive months...”

b. IF the applicant demonstrates “The existence, continuity, nature, and extent of the nonconforming use for the 10-year period immediately preceding the date of the application...” a rebuttable presumption is created that the nonconforming use was legally established and continued without interruption. (ZDO 1206.05(B)). “The rebuttable presumption ...shifts the burden of going forward with evidence to the county or any party opponents.” *Lawrence v. Clackamas County*, 36 Or. LUBA 273, 280 (1999).

7. The fact that the site was continuously assessed as a commercial property during this period (Exhibit 2a at 24-26) is irrelevant to whether the nonconforming use

continued. *Sabin v. Clackamas County*, LUBA No. 90-077, 20 Or LUBA 23, 32-33 (1990).

8. The applicant asserts that the following businesses used the building on the site for office purposes during the following periods:

a. The applicant testified that Parkland Property Management Inc., an “Administration & Business Support Services” business, was registered at the site and associated with the site from November 30, 2012 “to present.” (Exhibit 2b at 7, 9-10, and 30). Geoffrey A. Parker owned the site between December 7, 2012 and December 19, 2018 (Exhibit 2b at 9-10) and “Geoff Parker” is the registered agent for Parkland Property Management Inc. (Exhibit 2b at 30).

b. Hood Alternative Medical Center LLC listed the site as its principal place of business between October 9, 2014 and December 10, 2020. (Exhibit 2b at 26).

c. The applicant testified that Rockport Crain LLC, a “Real Estate” business, was associated with the site from October 5, 2018 “to present.” (Exhibit 2b at 7 and 10). Rockport Crain LLC owned the site between December 19, 2018, and November 1, 2024. (Exhibit 2b at 10). Rockport Crain LLC listed its “principal place of business” in Washougal, Washington and listed Geoffrey Parker as its registered agent at the site address. (Exhibit 2b at 27). However, other documents list Geoffrey Parker as Rockport Crain LLC’s registered agent at the Washougal, Washington address. (Exhibit 2b at 29). Rockport Crain LLC owned the site between December 19, 2018, November 1, 2024. (Exhibit 2b at 10).

d. The applicant testified that Parkland Property Management Inc. and Rockport Crain LLC “[w]ere owned by Geoffrey Parker (the previous property owner) and were actively operated from the property at 46881 SE Hwy 26.” (Exhibit 2b at 28).

e. Geoffrey Parker stated that “The building at 46881 SE Hwy 26 in Sandy, Oregon, was used as office space through July 31, 2024. Following the fire on March 4, 2024, the upstairs portion of the building continued to be used for office-related storage” (Exhibit 2b at 11).

f. The applicant purchased the site on November 1, 2024, and “immediately resumed physical use in the same [upstairs] area for office-related storage and business activity.” (Exhibit 2e at 42). However, there is no evidence that this portion of the building was ever used as an office, as opposed to storage.

9. However, the applicant did not submit documentation demonstrating whether and how these business were operating at the subject property.

a. There is no evidence demonstrating any use of, or association with, the site by Parkland Property Management Inc., other than the fact that Geoffrey Parker owned both Parkland Property Management Inc. and the site between December 7, 2012, and December 19, 2018, when he sold the site to Rockport Crain LLC, which he also

owns. There is no other evidence associating Parkland Property Management Inc. with the site, let alone any evidence demonstrating that Parkland Property Management Inc. used the site as an office. Geoffrey Parker testified that the building was used as office space through July 31, 2024. However, he failed to specify when such “office space” use began and which person(s) or business[es] were using the building as “office space” and there is no indication in his letter that Rockport Crain LLC used the site as an office.

b. Hood Alternative Medical Center LLC listed the site as its principal place of business between October 9, 2014, and December 10, 2020. (Exhibit 2b at 26). However, there is no evidence in the record that Hood Alternative Medical Center LLC used the site as an office, as opposed to a medical clinic, retail sales of alternative medicines, or other non-office uses.

i. The decision in Z097-05-E approved use of the site as an office use for internet sales. (Exhibit 3 at 17 and 20).

ii. The Code distinguishes between offices, healthcare offices³ and outpatient clinics, various types of retailing, commercial storage, and commercial services. (See e.g., ZDO Tables 510-1, 511-1, 512-1, and 513-1).

iii. If Hood Alternative Medical Center LLC used the site as an “office,” that use would be sufficient to continue the established nonconforming office use. However, use of the site as a “medical center,” a medical office, clinic, retail sales of alternative medicines, or other non-office uses would have required County approval of an alteration of the nonconforming office use to allow these uses on the site. Absent such approval, failure to use the site as an office would discontinue the nonconforming office use.

iv. Therefore, absent some evidence demonstrating that Hood Alternative Medical Center LLC used the site as an office, rather than a medical center or other use, between 2014 and 2020, the hearings officer must find that the nonconforming office use of the site was discontinued during this period and may not be resumed.

c. Rockport Crain LLC listed the site as one of two addresses for its registered agent, Geoffrey Parker. (Exhibit 2b at 27). Mr. Parker owned both the site and Rockport Crain LLC between December 19, 2018, and November 1, 2024, when he sold the site to the applicant. However, there is no other evidence associating Rockport Crain LLC with the site, let alone any evidence demonstrating that Rockport Crain LLC used the site as an office. Mr. Parker stated that the site was used as office space through July 31, 2024. But he does not indicate when that office use began and there is no statement that *Rockport Crain LLC* used the site as an office. Rockport Crain LLC’s business registry records list its principal place of business in Washougal, Washington.

³ Although the Code does not use the term “healthcare,” the uses listed under “offices and outpatient clinics” are all healthcare related.

d. Based on the applicant's timeline Parkland Property Management Inc.'s use of the site overlapped with Hood Alternative Medical Center LLC's use of the site between October 9, 2014, and October 5, 2018, Parkland Property's use of the site overlapped with Hood Alternative Medical Center LLC and Rockport Crain's use of the site between October 5, 2018, and December 10, 2020, and Parkland Property's use of the site continued to overlap with Rockport Crain's use of the site after Hood Alternative Medical Center LLC was dissolved on December 10, 2020. (Exhibit 2b at and 26). However, there is no evidence to support the inference in the applicant's timeline that all of these entities simultaneously used the site for office purposes during this period. (Exhibit 2b at 10).

e. The applicant submitted Google Maps images of the site showing vehicles parked on the site in August and September 2007, May 2018, October 2022, and August 2023, a "business sign in driveway" in April 2009 (although the text on the sign is not legible), landscape materials placed on the site in October 2021, and a handmade "flags for sale" sign and a painted flag outside the building on in October 2022. (Exhibit 2b at 9-10 and at 31-33). However, these photos are insufficient to show that the building was being used as an office at those times.

10. There is evidence that the building was not used as an office use for periods of time.

a. The building has been continuously connected to public water. (Applicant testimony and Exhibit 2b). However, according to City of Sandy utility records, no water public water was used on the property for 36 consecutive months between January 22, 2010, and January 24, 2013. (Exhibit 2b at 14-17). The applicant testified that there is a well on the site. However, there is no evidence the building is connected to the well or that well water was used to support an office use on the site during this period when no public water was being used. The applicant is currently using the upstairs portion of the building as an office without water or electric services, using bottled water, a portable restroom, solar panels, and a generator to support their office use. (Exhibits 2d at 2 and 10-15, 3e at 82, and 64 at 20). But there is no evidence that these temporary utilities were in use on the site between January 22, 2010, and January 24, 2013, when no public water was used.

b. The ground floor of the building was not being used as an office when the Zillow photos were taken in 2011. The photos show a large open space with desks, bookcases, and cabinets pushed up against the walls. However, the desks and bookcases are all empty. There are no chairs, computers, photos, calendars, papers, or other evidence the space is actually being used as an office. (Exhibit 38). The fact that the ground floor of the building on the site was set up for office use is not sufficient to continue the nonconforming office use. As LUBA held, "[i]t is how the structure is used, not the structure itself, that defines the nature of the nonconforming use." *Marquam Farms Corporation v. Multnomah County*, LUBA No. 98-044, 35 Or LUBA 392, 404, *aff'd*, 159 Or App 681 (1999). The 2011 photos coincide with the period between January 22, 2010, and January 24, 2013, when no public water was used at the site. (Exhibit 2b at 14-17).

c. The lower floor of the building was gutted and in the process of being reframed on May 21, 2014. (Exhibit 76 at 5-7 and 11-13). The remodeling was apparently for residential use, as a bathtub was being installed in the building at that time (Exhibit 76 at 12) and a residential kitchen existed in the building as of March 4, 2024, (Exhibit 19 at 3 and 37).

d. The PGE electric meter at the site has been off since May 16, 2023. (Exhibit 78).

e. The upstairs portion of the site was occupied as a residence in May 2015 (Exhibit 37 at 1), the rear of the building was occupied as a residence between June 2, 2015, and January 27, 2020 (Exhibit 76 at 52-54 and 56), and the entire ground floor of the structure was occupied as a residence prior to the fire on March 4, 2024 (Exhibit 19 at 4).

i. Residential use of the building was never approved by the County and was therefore illegal. The County's approval of a mobile home authorized use of a mobile home as a permanent residence. It did not approve use of the structure as a residence.

ii. Illegal residential use of a portion of the building would not terminate the nonconforming office use, provided the office use continued in other portions of the building. *Coonse*. However, the evidence in the record demonstrates that the residential use displaced and precluded any office use of the upstairs portion of the building in 2011, in the rear of the building between June 2, 2015, and January 27, 2020, and the entire ground floor of the building in 2024.

11. Given the above, the hearings officer finds that the applicant failed to sustain its burden of proof that the nonconforming office use of the site was not “[d]iscontinued for a period of more than 24 consecutive months...” (ZDO 1206.04(A) during “the 10-year period immediately preceding the date of the application...” (ZDO 1206.05(B)), i.e., between March 4, 2015, and March 4, 2025, the date this application was submitted. Therefore, the hearings officer must find that the nonconforming office use of the site was discontinued may not be resumed. ZDO 1206.04(A).

a. The applicant argues that the photos taken by Code Enforcement staff must be excluded from the record because the code enforcement case has never been adjudicated. However, the hearings officer finds that the photos are relevant documentary evidence of how the building was being used on the dates the photos were taken. The photos and utility records conflict with the applicant's assertion that the site was continuously used as an office and the applicant failed to provide evidence of actual office use of the site during these periods.

b. The applicant argues that the photos merely infer that the use changed from commercial to residential and that inference is legally insufficient. (Exhibit 81 at 1 and 2). The hearings officer disagrees. As noted above, the photos are documentary evidence of how the building was being used on the dates the photos were taken. In

addition, the applicant is also relying on inferences that the building was used as an office based solely on ownership of the site by businesses located in Washington State, with limited or no documentary connection to the property. The applicant carries the burden of proof to show that the nonconforming office use continued without interruptions of more than 24 months between March 4, 2015, and March 4, 2025. The hearings officer finds that the preponderance of the evidence in the record is insufficient to meet that burden, to demonstrate that the office use continued without interruptions of more than 24 months.

12. The hearings officer further finds that any right to continue any remaining nonconforming office use on the site was lost when the nonconforming use was not “lawfully commenced within one year of the occurrence of the damage or destruction.” ZDO 120.06(B).

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.

Id.

a. In this case, the preponderance of the evidence in the record demonstrates that the extent of the nonconforming office use was limited to the downstairs portion of the building, which was converted to office use prior to 2011. (Exhibit 2e at 33-35). At some point after purchasing the site on November 1, 2025, the applicant began using the upstairs portion of the building as an office. (Exhibits 2c at 3-4, 2d at 10-15, and 2e at 84-90). However, there is no evidence that this portion of the building was ever used as an office, as opposed to storage. Therefore, post-fire office use of this portion of the structure is insufficient to resume the nonconforming use on the site. The applicant must demonstrate the nature and extent of the nonconforming use *Spurgin* at 386–387. “It is how the structure is used, and not the structure itself, that defines the nature of the nonconforming use under ORS 215.130(5) (1995).” *Marquam Farms Corporation v. Multnomah County*, 35 Or. LUBA 392, 404 (1999).

i. There is evidence that the upstairs portion of the building was being used for residential purposes on May 18, 2015. (Exhibit 37 at 1). It was being used for storage at the time of the fire. (Exhibit 20 at 1 and 3). Mr. Parker used this portion of the building for “office related storage” after the fire. (Exhibit 2b at 11). The applicant also used the upstairs “to store office furniture, filing cabinets, and business materials. (Exhibit 2b at 12). However, storage of business documents, equipment, etc. does not convert the area where such storage is occurring to an office use. As noted above, the Code distinguishes between office and storage uses. Therefore, the hearings officer finds that use of the building for “office related storage” is insufficient to continue the previously established nonconforming office use on the site. (See e.g., ZDO Tables 510-1

and 513-1). Office use of the upstairs portion of the building would constitute an expansion of the nonconforming use, which would require County approval pursuant to ZDO 1206.07(B).

ii. For the sake of clarity, the hearings officer finds that assertions that post-fire office use of the upstairs portion of the building was in violation of the building code due to the exposed insulation paper, a single exit, a lack of handrails, and a lack of egress lighting in the upper portion of the building (Exhibit 36 at 1) are not relevant to whether the applicant's office use of this portion of the building could continue the nonconforming office use. *Coonse v. Crook County*, LUBA No. 91-073, 22 Or LUBA 138, 144–145 (1991).

b. The structure on the site was damaged by fire on March 4, 2024. No permits necessary to begin restoration or replacement of the nonconforming use were issued for the site prior to March 5, 2024, one year after [t]he occurrence of the damage or destruction. *Id.* The hearings officer has no jurisdiction to consider the applicant's assertions that he was unable to obtain required permits due to delays by the County. The Code requires that a permit be issued within one year, without any exceptions for delays, regardless of the cause. No permits were issued. Therefore, the nonconforming use was not "lawfully resumed" as defined by ZDO 120.06(B).

D. CONCLUSIONS

1. Based on the findings adopted or incorporated above, the hearings officer concludes that the applicant demonstrated that a nonconforming office use was legally established on the site. However, the applicant failed to demonstrate that:

a. The previously approved nonconforming office use of the site continued without interruptions of more than 24 consecutive months; and

b. The nonconforming office use was "lawfully resumed" within one year of the fire that damaged the structure.

E. DECISION

Based on the above findings and discussion, the hearings officer hereby denies the appeal, affirms the director's decision, and denies File No. Z0088-25 (Paxton NCU).

DATED this 23rd day of February 2026.



Joe Turner, Esq., AICP
Clackamas County Land Use Hearings Officer

APPEAL RIGHTS

ZDO 1307.10.F provides that the Land Use Hearings Officer's decision is the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules adopted by LUBA describe when and how any appeal must be filed. Presently, ORS 197.830(9) requires that any appeal to LUBA "[s]hall be filed not later than 21 days after the date the decision sought to be reviewed becomes final."