

Bill No. 4675

Ordinance No. _____

Requested by: Michael Hurlbert

Sponsored by: Joe Brazil

AN ORDINANCE GRANTING CONDITIONAL USE PERMIT CUP18-15 FOR A RESTAURANT TO SUNFLOWER HILL LLC, PROPERTY OWNER(S), AND MICHAEL KOEHNEMAN, APPLICANT

WHEREAS, the St. Charles County Charter, Article II, Section 2.529 grants to the County Council legislative power pertaining to planning and zoning in the part of the County outside incorporated cities, towns and villages; and

WHEREAS, Michael Koehneman submitted conditional use permit application No. CUP18-15 for the purpose of a restaurant; and

WHEREAS, the subject property is known as 245 Terry Road, is located on the southwest corner of the of intersection of Terry Court and Terry Road, and consists of 17.39 acres; and

WHEREAS, the property is zoned A, Agricultural District, with Floodway Fringe Overlay District zoning; and

WHEREAS, a “restaurant in association with any permitted or conditional use (except a single-family residence)” is a conditional use within the A, Agricultural District; and

WHEREAS, existing uses for the property include farm cultivation, a farm stand, a building to conduct weddings and private parties, and a single-family residence; and

WHEREAS, having conducted a public hearing, the Planning and Zoning Commission of the County of St. Charles, Missouri considered this application and by a vote of 8 ayes to 0 nays recommended that the County Council approve this application; and

WHEREAS, A simple majority of the County Council is required for passage of this bill pursuant to Section 405.510.A, Ordinances of St. Charles County, Missouri (“OSCCMo”); and

WHEREAS, consideration and decision on the application CUP18-15 is governed by the Administrative Review Procedures set forth in Section 405.511 OSCCMo., and

WHEREAS, all requirements of Section 405.511 OSCCMo, having been complied with, the County Council shall render written Findings of Facts and Conclusions of Law based upon receipt of a timely Stipulation Agreement, or upon conclusion of the administrative hearing, as the case may be, specifically set forth in the Findings of Facts and Conclusions of Law.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF ST. CHARLES COUNTY, MISSOURI, AS FOLLOWS:

Section 1. A conditional use permit to operate a restaurant on the property known as 245 Terry Road, located on the southwest quadrant of Terry Court and Terry Road, and further described on the attached **EXHIBIT A**, is hereby granted to Sunflower Hill, LLC, property owner, and Michael Koehneman, applicant.

Section 2. The Council hereby receives the following documents into the record: the St. Charles County Master Plan Year 2025; the Unified Development Ordinance of St. Charles County, Missouri; the audio/video recording of the public hearing before the Planning and Zoning Commission; and the documents attached hereto as **EXHIBIT B.**

Section 3. The record in this matter shall be supplemented with the video recording of the portion of the County Council's agenda item Conditional Use Permit - Bills for Introduction regarding application CUP18-15, the documents admitted into evidence at, and the video recording of, the administrative hearing conducted pursuant to the administrative review process set forth on Section 405.511, or the Stipulation Agreement entered into by the parties, as the case may be, and the record shall be closed by the Council and the closed record shall constitute the final and only record upon which the Council decision is based.

Section 4. The conditional use permit is approved based on the following conditions:

1. An updated site plan in substantial conformance with the approved CUP concept plan, and indicating compliance with all applicable UDO requirements and these conditions, shall be submitted to and approved by the Department of Community Development prior to any construction activities; and

2. No more than ninety-nine (99) guests shall be allowed in the event center building at any time; and
3. The restaurant/café shall not open to customers prior to 7:00 a.m. and shall close no later than 5:00 p.m.; and
4. No conditional use shall be active until all conditions of the approval have been met.

Section 5. The Director of the Planning and Zoning Division is hereby authorized to acknowledge the approval and conditions of the conditional use permit on Application CUP18-15.

Section 6. In any case where a conditional use is not in place and in active use within two years from the date of granting, and/or in accordance with the terms of the conditional use originally granted or subsequently amended, then, without further action by the Planning and Zoning Commission and/or the County Council, the conditional use, or authorization thereof, shall be null and void.

Section 7. The Council shall render written Findings of Facts and Conclusions of Law based upon the record following either the conclusion of the formal hearing, or upon receipt of the Stipulation Agreement between the Department of Community Development and the applicant, pursuant to Section 405.511 OSCCMo, as specifically set forth in the Findings of Facts and Conclusions of Law. Findings of Facts and Conclusions of Law are attached as **EXHIBIT C**.

Section 8. If the requested Application CUP18-15 is not approved, the denial decision will be documented in the written Findings of Facts and Conclusions of Law, attached as **EXHIBIT C.**

Section 9. This ordinance shall be in full force and effect from and after the date of its passage and approval by the Governing Body.

DATE PASSED

DATE APPROVED BY COUNTY EXECUTIVE

CHAIR OF THE COUNCIL

COUNTY EXECUTIVE

ATTEST:

COUNTY REGISTRAR

EXHIBIT A

CONDITIONAL USE PERMIT

APPLICATION NUMBER:	CUP18-15
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THE PROPERTY IS PRESENTLY ZONED:	A, AGRICULTURAL DISTRICT, WITH FLOODWAY FRINGE OVERLAY DISTRICT
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IT IS REQUESTED THAT A CONDITIONAL USE BE GRANTED FOR:	A RESTAURANT
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OWNER OR OWNERS OF PROPERTY:	SUNFLOWER HILL, LLC
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LOCATION OF PROPERTY:	THE PROPERTY IS KNOWN AS 245 TERRY ROAD, AND IS LOCATED ON THE SOUTHWEST QUADRANT OF TERRY COURT AND TERRY ROAD. THE PROPERTY CONSISTS OF 17.39 ACRES AND IS LOCATED IN COUNCIL DISTRICT 2.
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LEGAL DESCRIPTION OF THE SUBJECT PROPERTY:

PARCEL NO. 1:

A tract of land being part of Section 4 and part of U.S. Survey 59, Township 44 North, Range 2 East of the 5th P.M. in St. Charles County, Missouri to-wit:

Commencing at an iron rod at the Southwest corner of the Northwest 1/4 of Section 4, Township 44 North, Range 2 East; thence along the 1/4 section line East 251.72 feet to a stone; thence leaving said 1/4 section line North 50 degrees 35' East, 1,008.91 feet to an iron bar on the South line of U.S. Survey 59, thence along said South line South 67 degrees East, 315.22 feet to an iron rod at the point of beginning of the tract of land herein described, thence continuing along the South line of said U.S. Survey South 67 degrees East, 266.24 feet to an iron rod; thence North 37 degrees 22' East, 442.89 feet to an iron rod; thence South 34 degrees 28' East, 569.25 feet to an iron rod in the centerline of Terry Road; thence along the centerline of said road, South 66 degrees 16' West, 148.0 feet to a point; thence South 73 degrees 26' West, 70.72 feet to a point, thence South 46 degrees 30' West, 85.92 feet to a point; thence South 53 degrees 30' West, 119.30 feet to a point; thence South 59 degrees 32' West, 85.28 feet to a point; thence South 66 degrees 24' West, 88.23 feet to a point; thence South 78 degrees 04' West, 108.69 feet to a point; thence North 88 degrees 14' West, 373.90 feet to a point, thence North 80 degrees 54' West, 105.26 feet to an iron rod, thence leaving said road North 27 degrees 38' East, 569.46 feet to the Point of Beginning, according to plat of survey by Muser & Associates, dated November 1, 1982 and revised March 18, 1986.

PARCEL NO. 2:

A tract of land being part of U.S. Survey 59, Township 44 North, Range 2 East, St. Charles County, Missouri, and being more particularly described as follows:

Commencing at the Southwest corner of the Northwest 1/4 of Fractional Section 4, Township 44 North, Range 2 East, thence East, 251.72 feet to an old stone; thence North 50 degrees 35' East, 1,008.91 feet to an iron bar on the South line of U.S. Survey 59; thence South 67 degrees 00' East, along said South line, 581.46 feet to an iron rod; thence North 37 degrees 22' East, leaving said South line, 442.89 feet to an iron rod marking the true point of beginning of the tract herein described; thence continuing North 37 degrees 22' East, 153.62 feet to an old steel post at a fence corner; thence South 70 degrees 18' 12" East, 664.58 feet to an iron rod set in the centerline of Terry Road; thence along said centerline, the following courses and distances; South 35 degrees 19' 32" West 276.24 feet to a point; thence South 44 degrees 30' 02" West, 119.25 feet to a point; thence South 60 degrees 23' 26" 75.30 feet to an old iron rod; thence South 77 degrees 12' 08" West, 89.92 feet to an old iron rod; thence North 34 degrees 29' 05" West, leaving said centerline, 569.53 feet, (621.18 feet, record), to the Point of Beginning, as surveyed by Landmark Surveying, Inc., during March, 1986.

Excepting from the above parcels that part conveyed to the County of St. Charles by deed recorded in Book 4869 page 364.

EXHIBIT B
CONDITIONAL USE PERMIT

APPLICATION CUP18-15

CONDITIONAL USE PERMIT REQUEST - 245 TERRY RD

Application:	CUP18-15
Owner:	Sunflower Hill, LLC
Applicant:	Michael Koehneman
Property Zoning:	A, Agricultural District, with Floodway Fringe Overlay District
Use Requested:	A Restaurant
2025 Land Use Plan:	Recommends Agricultural-Tourism Uses
Parcel Size:	17.39 acres
Location:	On the southwest corner of the of intersection of Terry Court and Terry Road
Council District:	2
Parcel Account Nos.:	189000D000 & 189000C000

CONTENTS:

- Synopsis
- Staff Recommendation
- Photo(s) of Site
- Aerial Photo
- Surrounding Zoning Map
- Preliminary Concept Plan
- Letters Received:
 - ◆ None
- Planning and Zoning Commission minutes from the November 21, 2018 meeting

November 30, 2018

This communication summarizes the following application and bill to be introduced at the December 17, 2018 County Council meeting:

CONDITIONAL USE PERMIT REQUEST - 245 TERRY RD

Application: CUP18-15
Owner: Sunflower Hill, LLC
Applicant: Michael Koehneman
Property Zoning: A, Agricultural District, with Floodway
Fringe Overlay District
Use Requested: a restaurant
2025 Land Use Plan: recommends Agricultural-Tourism uses
Parcel Size: 17.39 acres
Location: on the southwest quadrant of Terry Court and Terry Road
County Council District: 2
Parcel Account Nos.: 189000D000 & 189000C000

Approval of this bill would grant a conditional use permit to operate a restaurant. Currently, the property is used for farm cultivation, a farm stand, a single-family residence, and to host special events (weddings and other private parties) inside a newly-built facility. The proposed restaurant would operate inside the existing event center, using the existing kitchen, and would be open to the public during daytime hours. The applicant proposes that the restaurant would be open between 7:00 AM and 5:00 PM, and these hours are reflected in the conditions recommended by the Planning & Zoning Commission. Special events taking place in the same building would be held mostly during evening hours meaning that the existing parking lot could be shared without having to expand.

The Planning and Zoning Commission held a public hearing on this application at its November 21, 2018 meeting and received the following public input:

Speakers: 3 Support 0 Opposed 1 Concerns
Letters on file: 0 Support 0 Opposed 0 Concerns

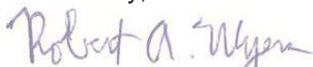
Having conducted the public hearing, the Planning & Zoning Commission voted as follows:

8 Approval 0 Denial 0 Abstentions

Recommendation:

Following the public hearing, the Planning & Zoning Commission unanimously recommended approval of this CUP, subject to conditions. The Planning and Zoning Division concurs with this recommendation.

Sincerely,



Robert Myers, AICP
Director of Planning & Zoning

cc: Steve Ehlmann, County Executive
Joann Leykam, Director of Administration
Keith Hazelwood, County Counselor

STAFF RECOMMENDATION

To: St. Charles County Planning & Zoning Commission **Prepared by:** Ellie Marr

Application No.: CUP18-15

Date: November 21, 2018

GENERAL INFORMATION

Owner/Applicant: Sunflower Hill LLC

Requested Action: Conditional Use Permit for a restaurant in association with conditional uses permitted under CUP17-10 and also with the permissive use of a farm stand in Agricultural zoning.

Existing Zoning: A, Agricultural District with FF, Floodway Fringe Overlay District.

Location: On the southwest corner of the intersection of Terry Court and Terry Road; 245 Terry Road

Existing Land Use: Agricultural and private event facility

Size: 17.39 Acres

Adjacent Land Uses and Zoning:

Direction	Zoning District	Existing Land Use
North	A, Agricultural District with FF/Floodway Fringe Overlay District and CUP	Vacant Agricultural
South	A, Agricultural District with FF/Floodway Fringe Overlay District and CUP	Single Family Residence and Vacant Agricultural
East	A, Agricultural District with FF/Floodway Fringe Overlay District and CUP	Single Family Residence and Farm
West	A, Agricultural District	Vacant Agricultural

Year 2025 Plan: Agri-Tourism

Zoning History: This property has been zoned Agriculture since the inception of zoning in 1959. In 2017, CUP 17-10 was granted for 1.) A building for conducting weddings and private parties, and 2.) Rural recreational activity

SPECIAL INFORMATION

Public Services: County Council District 2 – Joe Brazil
School District – Washington School District
Fire District – Augusta Fire District

Utilities: Water – Public Water Supply #2
Sewer – Individual Wastewater Treatment System

PETITIONER'S REQUEST

The petitioner is requesting a Conditional Use Permit to operate a restaurant in association with a conditional use (event center) granted under CUP17-10. The restaurant would be located inside the existing event center and would use the existing parking. The hours of operation for the proposed restaurant/café would be Monday through Friday from 7 a.m. to 2 p.m. and on Saturday and Sunday from 7 a.m. to 5 p.m. unless there is a private event when the hours would be from 7 a.m. to 12 p.m.

ANALYSIS

Section 405.510.B of the Unified Development Ordinance specifies the following factors in considering and reporting on Conditional Use Permit applications:

“Before authorizing the issuance of a conditional use permit, the County Council may impose such conditions and will, in the County Council’s judgment

- ensure that the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger public health, safety, or general welfare;
- that the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted nor substantially diminish and impair property values within the neighborhood;
- and that the establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.”

Staff has reviewed this criterion relative to the subject site and finds the proposed usage of this property for a restaurant/cafe with proposed conditions to conform with the conditional use permit criteria. The submitted concept site plan outlines the location of the event barn with a square footage of 2,584. The facility does have a commercial kitchen that is currently used for events held there and the applicant is proposing to make use of this facility with a café. The café would provide a limited breakfast and lunch menu while incorporating produce from the farm into the limited menu.

Access to the property is off of Terry Road. The driveway has been improved to meet St. Charles County standards for ingress/egress onto Terry road after approval of CUP17-10. The current parking lot has forty-three (43) parking spaces with four (4) handicapped parking spaces adjacent to the event barn. In addition, there are six (6) separate parking spaces for employees.

Landscape buffering was not required along adjacent properties for the previous conditional uses approved under CUP17-10; however, the property does have a well-established tree line along the northern, eastern, and western boundaries of the property with all activities currently approved at no less than fifteen hundred (1,500) feet from any residence. In addition, the applicant has provided landscaping that enhances the barn and the parking area along with other outdoor areas.

RECOMMENDATION

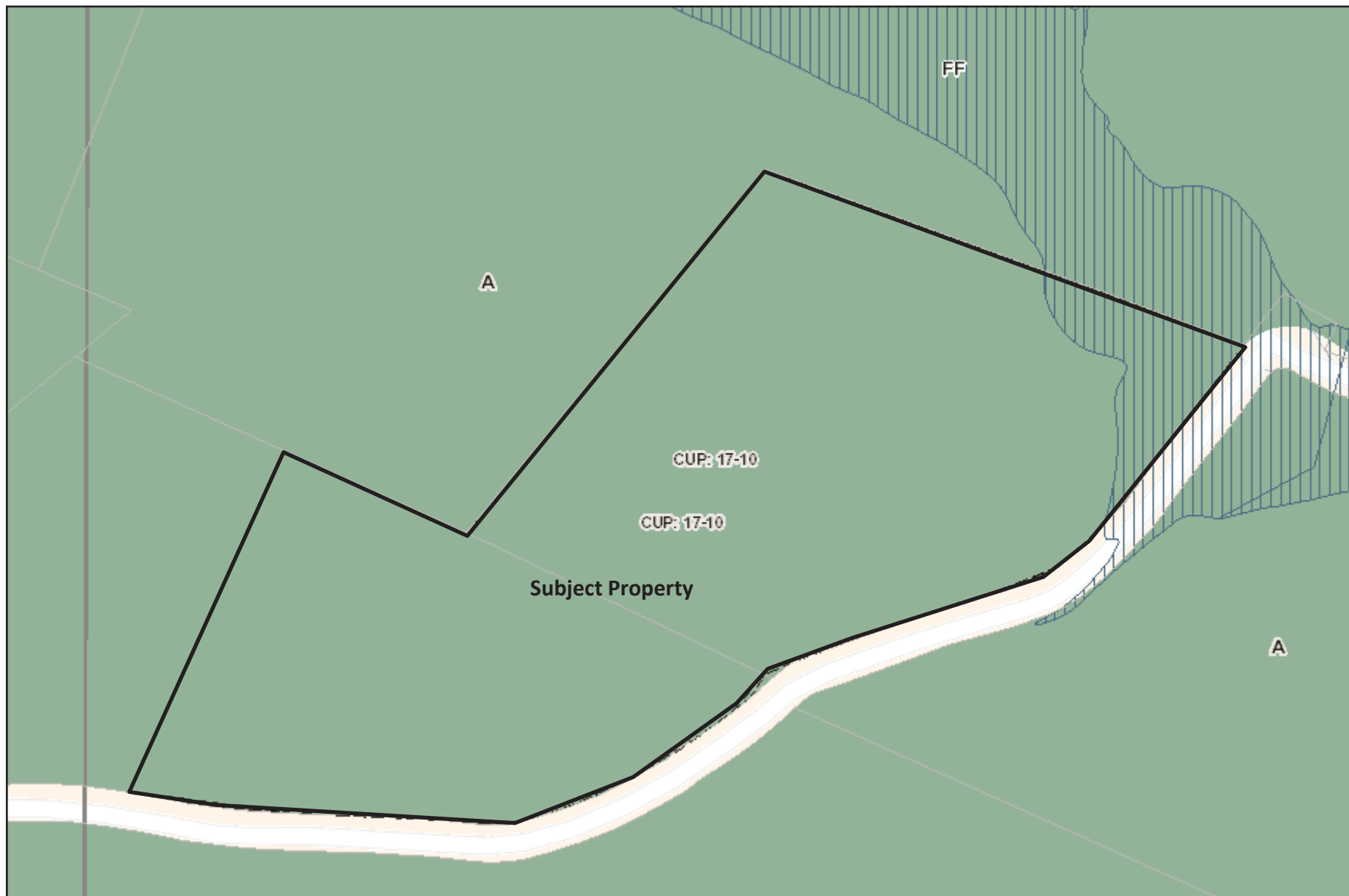
The Planning and Zoning Division recommends that the Planning and Zoning Commission recommend approval of the application as conforming to the criteria of Section 405.410.B. of the County Code and subject to the following conditions:

- 1. An updated site plan in substantial conformance with the approved CUP concept plan, and indicating compliance with all applicable UDO requirements**

and these conditions shall be submitted to and approved by the Department of Community Development prior to any construction activities.

2. No more than ninety-nine (99) guests shall be allowed in the event center building at any time.
3. The restaurant/café shall not open to customers prior to 7 a.m. and shall close no later than 5 p.m.
4. No conditional use shall be active until all conditions of the approval have been met.

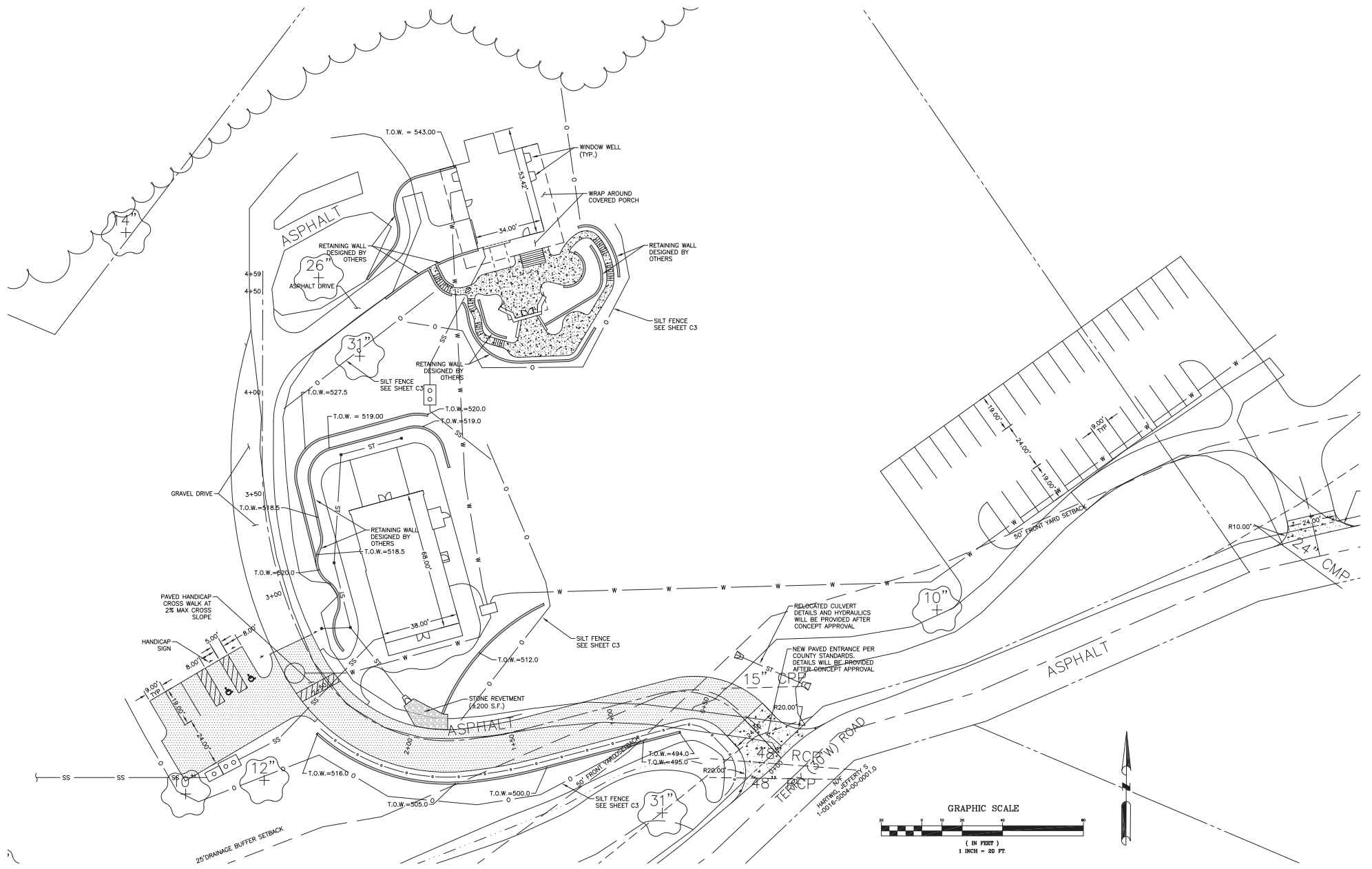


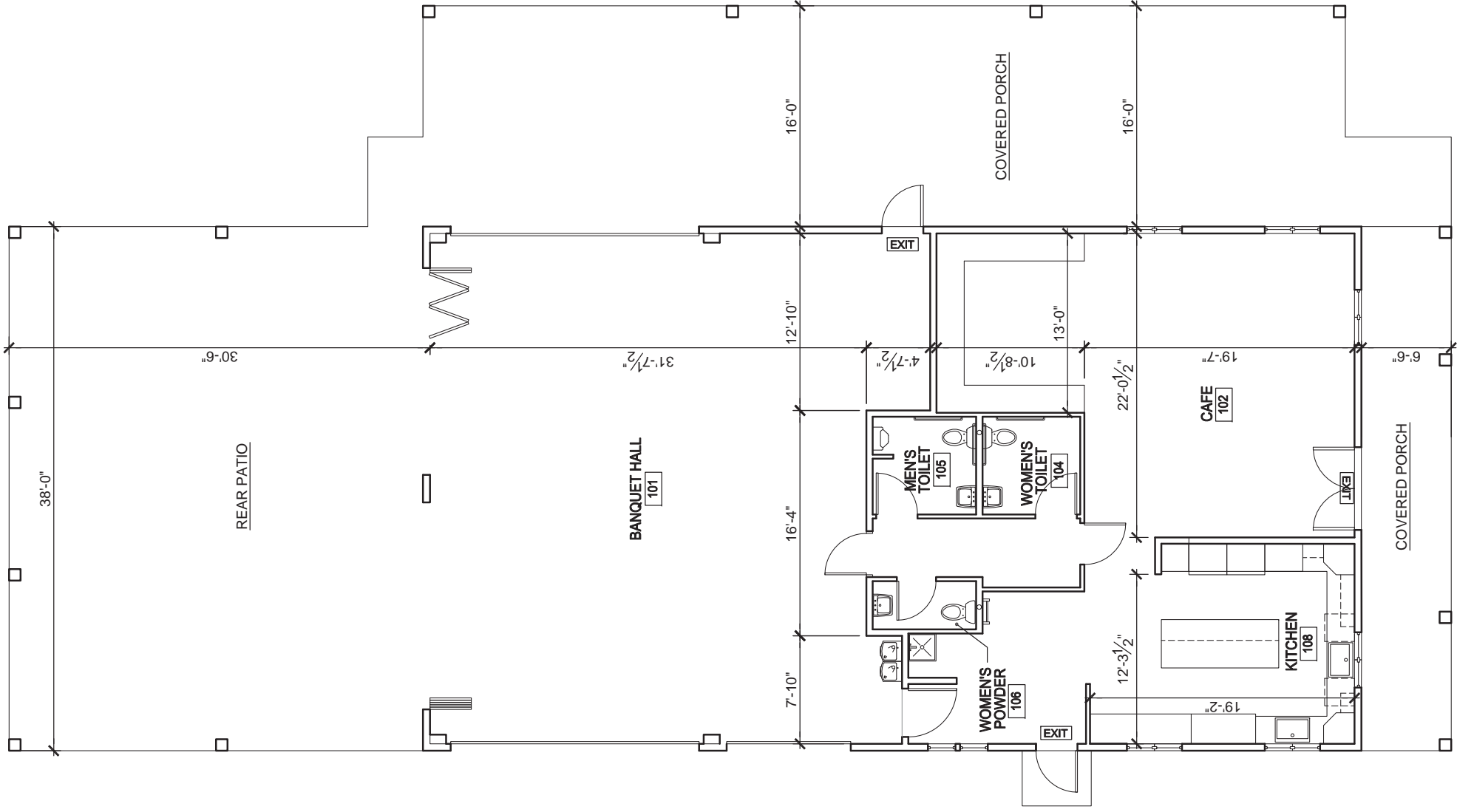


CUP18-15 - Zoning



CUP18-15 - Aerial





MINUTES OF REGULAR MEETING

MINUTES OF REGULAR MEETING

ST. CHARLES COUNTY PLANNING AND ZONING COMMISSION

DATE: NOVEMBER 21, 2018

TIME: 7:00 P.M.

PLACE: COUNTY EXECUTIVE BUILDING
300 N. THIRD ST.
THIRD FLOOR COUNCIL CHAMBERS
ST. CHARLES, MO 63301

MEMBERS PRESENT: Gary Griffin; Kevin McBride; Kevin Cleary; Roger Ellis; Jim Leonhard; Craig Frahm; Robert McDonald; and Mike Klinghammer, County Councilman

MEMBERS ABSENT: Tom Kuhn

STAFF PRESENT: Ellie Marr, Senior Planner; Ardita Roark, Associate County Counselor; and Jhimae Brock, Recording Secretary

SPEAKERS: **CUP18-15:** Michael Koehneman, applicant; Teresa Waddington, 4521 Killdeer Drive, Augusta, Missouri

CALL TO ORDER

Chairman Roger Ellis called the meeting to order at 7:00 PM. Following the Pledge of Allegiance, Chairman Ellis welcomed the audience; explained the procedures for speakers; and explained the functions of the Planning and Zoning Division, the Planning and Zoning Commission and the County Council. He explained to the audience that the Planning & Zoning Commission will make a recommendation on applications heard during the meeting, which will then be submitted to the St. Charles County Council for their final decision. Public comment on conditional use permit applications will be taken during tonight's meeting, and at the County Council meeting on Monday, December 17, 2018. Public comment on conditional use permit applications will not be taken at any meeting of the County Council held thereafter.

Chairman Ellis introduced the following documents into the record: The Unified Development Ordinance of St. Charles County (UDO), including zoning maps; and the Year 2025 Master Plan for St. Charles County, which includes the Year 2025 Future Land Use Plan Map.

PUBLIC HEARINGS

CONDITIONAL USE PERMIT REQUEST - 245 TERRY RD

Application: CUP18-15
Owner: Sunflower Hill, LLC
Applicant: Michael Koehneman
Property Zoning: A, Agricultural District, with Floodway
Fringe Overlay District
Use Requested: A Restaurant
2025 Land Use Plan: Recommends Agricultural-Tourism Uses
Parcel Size: 17.39 acres
Location: On the southwest corner of the of intersection
of Terry Court and Terry Road
Council District: 2
Parcel Account Nos.: 189000D000 & 189000C000

Ellie Marr, Senior Planner, described the zoning of the subject property, the surrounding zoning, and the 2025 Future Land Use Plan. The applicant is requesting a Conditional Use Permit to operate a restaurant in association with an existing conditional use (event center) that was granted under CUP17-10. Ms. Marr stated that the facility has a commercial kitchen that is currently used for events held there, and the applicant is proposing to make use of this facility by opening a café. The café would provide a limited breakfast and lunch menu while incorporating produce from the farm. She stated that County Staff has already reviewed the applicant's site plan from CUP17-10. Everything is in order and the submitted concept plan shows adequate parking. The applicant has been operating under the existing conditional use permit, and everything has been in conformance with St. Charles County Ordinances.

The Planning and Zoning Division recommends that the Planning and Zoning Commission recommend approval of the application as conforming to the criteria of Section 405.410.B. of the County Code and subject to the following conditions:

1. An updated site plan in substantial conformance with the approved CUP concept plan, and indicating compliance with all applicable UDO requirements and these conditions shall be submitted to and approved by the Department of Community Development prior to any construction activities.
2. No more than ninety-nine (99) guests shall be allowed in the event center building at any time.
3. The restaurant/café shall not open to customers prior to 7 a.m. and shall close no later than 5 p.m.
4. No conditional use shall be active until all conditions of the approval have been met.

For the record, staff did not receive any written communications regarding this application.

Chairman Roger Ellis asked if the Commission had any questions for the Planning & Zoning staff.

Kevin Cleary asked if the conditional use permit request negates CUP17-10 or is it an addition to it.

Ellie Marr responded that this conditional use permit request requires an additional conditional use permit. Therefore, they are required to come back before both the Planning & Zoning Commission and the County Council for approval.

Chairman Roger Ellis asked if the Commission had any further questions for staff. Seeing none, Chairman Ellis opened the public hearing and asked the applicant to come forward.

Michael Koehneman, Karen Koehneman, and Dylan Louis, were sworn in.

Michael Koehneman stated that after the conditional use for the event center was granted under CUP17-10, they had an area cordoned off to sell produce that has become a community gathering place. The commercial kitchen is next door, and they would like to open a coffee shop during the morning hours and serve coffee and a limited breakfast menu. He stated that for the afternoon, they would like to serve food items from their farm for lunch. It will be more like a café rather than a full restaurant, and they envision having four tables inside and a couple of tables outside.

Chairman Ellis asked Mr. Koehneman if they will sell alcohol.

Michael Koehneman responded that they will only sell alcohol if they are granted a liquor license.

Chairman Ellis asked if there were any further questions for the applicant. There being no further questions, Chairman Ellis asked if anyone from the audience wished to make public comments on this application.

Teresa Waddington, 4521 Killdeer Drive, Augusta, Missouri, was sworn in. Ms. Waddington is in support of the conditional use permit request. She stated that Sunflower Hill Farm is an incredible addition to the area, and the café will be a compliment to their business.

There being no other speakers from the audience, Chairman Ellis closed the public hearing and called for discussion from the Commission.

Gary Griffin stated that he was familiar with the area of the subject property, and the improvements that have been made to this property are fantastic. He stated that there aren't any nearby restaurants that serve breakfast in this part of the County. He and believes the applicant's business would be very successful, and would be a great addition to St. Charles County.

Kevin Cleary stated that he thinks that the proposed café would be a natural evolution under the existing CUP, and he thinks it makes sense for the applicant to add the proposed café.

There being no further discussion, Mike Klinghammer made a motion to recommend approval of Application No. CUP18-15, subject to the staff recommended conditions. Craig Frahm seconded the motion.

The vote on the motion was as follows:

Gary Griffin	- Yes	Kevin McBride	- Yes	Kevin Cleary	- Yes
Roger Ellis	- Yes	Jim Leonard	- Yes	Craig Frahm	- Yes
Robert McDonald	- Yes	Mike Klinghammer	- Yes		

Application No. CUP18-15 was recommended for **APPROVAL**, subject to conditions.

The Vote Count was 8 Yeas, 0 Nays, and 0 Abstentions.

EXHIBIT C

BEFORE THE ST. CHARLES COUNTY COUNCIL
ST. CHARLES COUNTY, MISSOURI

In the matter of Bill No. 4675 to approve)
Conditional Use Permit CUP18-15 for)
a Restaurant, on property owned by) Bill No. 4675
Sunflower Hill, L.L.C.)

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

On this 7th day of January 2019, the St. Charles County Council (“**County Council**”), by an affirmative vote of its majority, passes Bill No. 4675, approving Conditional Use Permit CUP18-15. The Planning and Zoning Commission (“**Commission**”) considered the application No. CUP18-15 approving Conditional Use Permit for a “Restaurant”, noted hereinafter as “**CUP18-15**“. Upon consideration of CUP18-15, the Commission, on a vote of eight (8) yeas to zero (0) nays decided to recommend it for approval. Pursuant to Section 2.600 of the St. Charles County Charter, an affirmative vote of a majority of the County Council is necessary to pass any bill, unless passing the subject bill would override a negative recommendation of the Commission, in which case, Section 405.510.A of the Ordinances of St. Charles County, Missouri (“**OSCCMo**”) requires the supermajority vote of five (5) Council Members to pass the bill. Because the County Council decided to uphold the positive recommendation from the Commission, only the affirmative vote of a majority of the County Council is necessary to pass Bill No. 4675 approving the CUP18-15.

The County Council receives for its consideration the record as it is stipulated and agreed by and between Michael Koehneman, general manager of the Sunflower Hills, LLC, applicant and property owner, (collectively referred to as “**Applicant**”), and St. Charles County Department of Community Development, Planning and Zoning Division (“**Division**”), in that certain Agreement to Stipulate as to the Relevant Facts and the Record and Waiving Formal Hearing, dated 12/17/18, (“**Stipulation Agreement**”). Said Stipulation Agreement is attached hereto as **EXHIBIT I** and incorporated herein. The record set forth in the Stipulation Agreement constitutes the entire record relied upon by the County Council in making its decision. Having been duly advised in the premises, the County Council hereby makes its Findings of Fact and Conclusions as required by law.

FINDINGS OF FACT

APPLICABLE PROVISIONS OF THE UNIFIED DEVELOPMENT ORDINANCE

1. At all times relevant to this decision, St. Charles County has had in effect the Unified Development Ordinance for St. Charles County, Missouri (“**UDO**”), including its zoning regulations codified as Chapter 405 of the OSCCMo.
2. Chapter 405 of the UDO sets out zoning regulations applicable to the unincorporated part of St. Charles County.

3. Section 405.080.C.27 of the UDO provide that in “A” Agricultural Districts, the category “Restaurant” is an authorized conditional use only when it is “in association with any permitted or conditional use”.
4. Section 405.510.A of the UDO provides that applications for conditional use permits for uses specifically authorized for consideration in the district use regulations shall be made to the Division, which shall refer the application to the Commission for public hearing. After holding the public hearing, a report and recommendation shall be filed by the Commission with the County Council.
5. Section 405.510.B of the UDO provides,

Before authorizing the issuance of a conditional use permit, the County Council may impose such conditions as will, in the County Council's judgment, ensure that the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger public health, safety, or general welfare; that the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted or to the esthetic and/or scenic values of the vicinity, nor substantially diminish and impair property values within the neighborhood; and that the establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.

THE SUBJECT PROPERTY AND ITS ZONING

6. The property subject to the above-captioned conditional use permit application (“**Subject Property**”) is a parcel of land known as 245 Terry Road, is located on the southwest corner of the intersection of Terry Court and Terry Road and consists of 17.39 acres. (Ex. I.)
7. The Subject Property is within an “A” Agricultural Zoning District with Floodway Fringe Overlay District. (Ex. I.)

THE CONDITIONAL USE PERMIT APPLICATION AND ITS REVIEW

8. Through the application for CUP18-15 for the Subject Property, the Applicant is requesting a Conditional Use Permit to operate a restaurant in association with a conditional use (event center) granted under CUP17-10. The restaurant would be located inside the existing event center and would use the existing parking. The hours of operation for the proposed restaurant/café would be Monday through Friday from 7 a.m. to 2 p.m. and on Saturday and Sunday from 7 a.m. to 5 p.m. unless there is a private event when the hours would be from 7 a.m. to 12 p.m. (Ex. I.)

The Conditional Use Permit Application Review at
Planning and Zoning Commission Meeting

9. On November 21, 2018, the Commission conducted a hearing on that application. (Ex. I.)
10. At that hearing, the Commission received a Division staff recommendation in favor of approval of CUP18-15. Ellie Marr, Senior Planner, described the zoning of the subject properties and the surrounding properties, and gave a summary of the CUP application CUP18-15 explaining that the facility has a commercial kitchen that is currently used for events held there, and the applicant is proposing to make use of this facility by opening a café. The café would provide a limited breakfast and lunch menu while incorporating produce from the farm. Planning and Zoning Division staff has already reviewed the applicant's site plan from CUP17-10, deeming everything to be in order and the submitted concept plan showing adequate parking. The applicant has been operating under the existing conditional use permit in conformance with St. Charles County Ordinances. (Ex. I.)
11. At that hearing, the Commission heard testimony in support of the application by the Applicant who stated that after the conditional use for the event center was granted under CUP17-10, they had an area cordoned off to sell produce, which area has since become a community gathering place. The commercial kitchen is next door, and the applicant would like to open a coffee shop during the morning hours and serve coffee and a limited breakfast menu. He stated that for the afternoon, he would like to serve food items from their farm for lunch. The applicant stated this operation will be more like a café rather than a full restaurant, planning on having four tables inside and a couple of tables outside. When asked if the applicant plans to sell alcohol at this café, the applicant responded that he will only sell alcohol if he is granted a liquor license. (Ex. I.)
12. At that hearing, the Commission heard testimony in support of the application from Teresa Waddington (4521 Kildeer Drive, Augusta, MO), who stated that Sunflower Hill Farm is an incredible addition to the area, and the café will be a compliment to their business. (Ex. I.)
13. At the conclusion of the public hearing, Commissioner Griffin commented that he was familiar with the area of the subject property, and the improvements that have been made to this property are fantastic. He stated that there aren't any nearby restaurants that serve breakfast in this part of the County. He believes the applicant's business would be very successful and would be a great addition to St. Charles County. Commissioner Cleary stated that he thinks that the proposed café would be a natural evolution under the existing CUP17-10 as it makes sense for the applicant to add the proposed café. (Ex. I.)
14. No person testified in opposition to the CUP application and no letters of concern or opposition were received at the November 21, 2018 Commission meeting.

15. Upon closing the hearing, the Commission considered a motion duly made and seconded to recommend approval of application for CUP18-15 and approved that recommendation by a vote of eight (8) ayes to zero (0) nays. (Ex. I.)

The Conditional Use Permit Application Review at
County Council Meeting

16. At its meeting on December 17, 2018, the County Council introduced Bill No. 4675 to consider the Commission's recommendation to approve the application for CUP18-15. (Ex. I - Video-recording of the Conditional Use Permits – Bills for Introduction and Public Comment session of the 12/17/18 County Council meeting.)
17. At the County Council's meeting on December 17, 2018, Robert Myers, Division Director, presented a summary of the application for CUP18-15, explaining that the applicant is requesting a Conditional Use Permit to operate a restaurant in association with a conditional use (event center) granted under a previous CUP17-10. The restaurant would be located inside the existing event center and would use the existing parking lot. Meyers reviewed the hours of operation which are during the day and would not interfere with the event center's activities in the evening. (Ex. I - Video-recording of the Conditional Use Permits – Bills for Introduction and Public Comment session of the 12/17/18 County Council meeting.)
18. At the County Council's meeting on December 17, 2018, the Applicant was sworn in and, in response to Councilman Brazil's question on whether any of the conditions to be placed on the CUP as proposed by the Division staff were unreasonable, stated he had no opposition to the conditions and noted that the facility was a good operation. (Ex. I - Video-recording of the Conditional Use Permits – Bills for Introduction and Public Comment session of the 12/17/18 County Council meeting.)
19. At the County Council meeting on December 17, 2018, the County Council heard sworn testimony in support of the CUP application from A.C. Dienoff. (Ex. I - Video-recording of the Conditional Use Permits – Bills for Introduction and Public Comment session of the 12/17/18 County Council meeting.)
20. No person testified in opposition to the CUP application and no letters of concern or opposition were received at the December 17, 2018 Council meeting.

CONCLUSIONS OF LAW

21. The County Council hereby concludes as a matter of law that it has the authority to grant the application for CUP18-15, because, through the conditions placed on the CUP18-15 the County Council can, as the UDO requires,

...ensure that the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger public health, safety, or general welfare; that the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes

already permitted nor substantially diminish and impair property values within the neighborhood; and that the establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.

Section 405.510.B, OSCCMo.

- A. Given Applicant's, Division staff's, and individual's testimonies in support of the application, stating that the proposed use for a restaurant is consistent with the operation of the existing event center, that the property has a record of no complaints, and that the restaurant would be provide the current patrons with much desirable services, we find that the proposed restaurant will not be detrimental to or endanger public health, safety or general welfare.
- B. Given Applicants' testimony that the operation of the restaurant is an extension of the event activities already taking place at the event center facility and that the new proposed uses would be utilizing the already existing kitchen equipment on a more constant basis, with no opposition from anyone, we find that use of the property for a restaurant will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted or to the esthetic and/or scenic values of the vicinity, nor substantially diminish and impair property values within the neighborhood.
- C. Given the conditional use permit does not affect the Subject Property's agricultural zoning district, and that the activities proposed are within the realm of the activities provided with an event center, already permitted as conditional uses of the areas by the existing event center establishment, we find that the use of the property for a restaurant under this conditional use permit will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.

Therefore, the proposed uses of the subject property for a "restaurant" when subject to the conditions listed in the CUP18-15 granted herein, are appropriate uses for this area.

DECISION AND ORDER

On this 7th day of January 2019, the St. Charles County Council hereby:

- 1. Grants, for the reasons set out above, the application for conditional use permit CUP18-15; and
- 2. Directs the County Registrar to mail or send certified copies of this Decision and Order to the Applicant and property owners at their record addresses and to the Department of Community Development; and

3. Directs the Department of Community Development to retain its certified copy of this Decision and Order with the records on the application for conditional use permit CUP18-15.

ST. CHARLES COUNTY COUNCIL

By: _____
David Hammond, Chairperson

ATTEST:

By: _____
Brenda Hinton, County Registrar

Certificate of Service

The undersigned certifies that on this ____ day of _____, 2019, she mailed or sent certified copies of this Decision and Order to Applicant, Sonflower Hill L.L.C, care of Michael Koehneman at _____ and to Michael Hurlbert, Director of Community Development, St. Charles County, 201 North Second Street, St. Charles, Missouri 63301.

Brenda Hinton, County Registrar