

ORDINANCE NUMBER 2021- 07

**MAJOR AMENDMENT TO THE SPECIAL USE PERMIT FOR A BANQUET FACILITY,  
NANO BREWERY, MICRO DISTILLERY, YEAR ROUND SEASONAL FESTIVAL WITH  
PETTING ZOO, PRODUCTION AND SALE OF SWEET CIDER AND RELATED VARIANCES  
GRANTED BY ORDINANCE 2016-21 AND REMOVING THE MAXIMUM BUILDING  
REQUIREMENT AT 3210 CREEK ROAD AND IDENTIFIED BY PARCEL IDENTIFICATION  
NUMBERS 01-16-300-007 AND 01-21-100-005 IN LITTLE ROCK TOWNSHIP**

*WHEREAS*, Section 13:08.O of the Kendall County Zoning Ordinance permits the Kendall County Board to approved major amendments to existing special use permits and place conditions on special use permits and provides the procedure through which special use permits are granted; and

*WHEREAS*, Section 13:04 of the Kendall County Zoning Ordinance provides the procedure through which variances are granted; and

*WHEREAS*, the property which is the subject of this Ordinance has been, at all relevant times, and remains currently located within the A-1 Agricultural Zoning District and consists of approximately 30.99 +/- acres located at the intersection of Creek Road and Frazier Road and is currently addressed as 3210 Creek Road (PINs: 01-16-300-007 and 01-21-100-005), in Little Rock Township. The legal description for the subject property is set forth in Exhibit A attached hereto and incorporated by reference, and this property shall hereinafter be referred to as “the subject property.”; and

*WHEREAS*, on October 18, 2016, the Kendall County Board approved Ordinance 2016-21 granting a special use permits allowing the operation of banquet facility, nano brewery, micro distillery, year round seasonal festival with petting zoo, production and sale of sweet cider and related variances on the portion of the subject property west of Creek Road; and

*WHEREAS*, the subject property is owned by L and P Nelson Trust and is represented by Larry Nelson and shall hereinafter be referred to as “Petitioner”; and

*WHEREAS*, on or about January 14, 2021, Petitioner filed a petition for a Major Amendment of an Existing Special Use Permit by expanding the uses and variances allowed by Ordinance 2016-21 to the portion of the property located on the east side of Creek Road and removing the maximum building requirement contained in Ordinance 2016-21 for the property located on the west side of Creek Road; and

*WHEREAS*, following due and proper notice by publication in the Kendall County Record on February 4, 2021, the Kendall County Zoning Board of Appeals conducted a public hearing on March 1, 2021, at 7:00 p.m., in the Kendall County Historic Courthouse at 109 W. Ridge Street in Yorkville at which the Petitioner and Petitioner’s son presented evidence, testimony, and exhibits in support of the requested Major Amendment to an Existing Special Use Permit and zero members of the public asked questions or testified in favor or testified in opposition to the request; and

*WHEREAS*, based on the evidence, testimony, and exhibits, the Kendall County Zoning Board of Appeals has made their findings of fact and recommended approval of the Major Amendment to an Existing Special Use Permit with restrictions as set forth in the Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals, dated March 1, 2021, a true and correct copy of which is attached hereto as Exhibit B; and

WHEREAS, the Kendall County Planning, Building and Zoning Committee of the Kendall County Board has reviewed the testimony presented at the aforementioned public hearing and has considered the Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals, and has forwarded to the Kendall County Board a recommendation of approval of the requested Major Amendment to an Existing Special Use Permit; and

WHEREAS, the Kendall County Board has considered the recommendation of the Planning, Building and Zoning Committee and the Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals, and has determined that said petition is in conformance with the provisions and intent of the Kendall County Zoning Ordinance; and

WHEREAS, this special use permit and variances shall be treated as a covenant running with the land and is binding on the successors, heirs, and assigns as to the same special uses conducted on the property; and

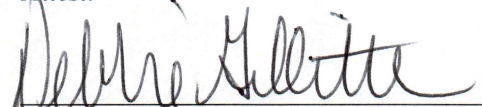
NOW, THEREFORE, BE IT ORDAINED, BY THE COUNTY BOARD OF KENDALL COUNTY, ILLINOIS, as follows:

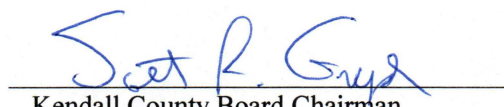
1. The Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals attached hereto as Exhibit B is hereby accepted and the Findings of Fact set forth therein are hereby adopted as the Findings of Fact and Conclusions of this Kendall County Board.
2. The Kendall County Board hereby grants approval of Petitioner's petition for a Major Amendment to an Existing Special Use Permit granted by Ordinance 2016-21 subject to the following conditions and restrictions:
  - A. The subject property shall be developed substantially in accordance with the site plan attached hereto as Exhibit C. The site plan for the property on the west side of Creek Road shall be governed by the concept plan attached to Ordinance 2016-21.
  - B. The uses and variances previously allowed by Ordinance 2016-21 shall be allowed on and applicable to the subject property with the following exceptions:
    1. Condition 5 of Ordinance 2016-21 shall not be applicable to the subject property. ADA accessible parking spaces shall be installed in locations and numbers required by Federal law and with a surface required by Federal law.
    2. Condition 12 of Ordinance 2016-21 shall not be applicable to the subject property. Instead, there shall be a maximum of thirty thousand (30,000) square feet of additional buildings constructed on the subject property in substantially the locations shown on the site plan attached hereto as Exhibit C. No individual building shall be larger than ten thousand (10,000) square feet.
  - C. Condition 12 of Ordinance 2016-21 shall be modified for the West Side of Creek Rd property to read: "there may be a maximum of thirty thousand (30,000) square feet of additional non-agricultural exempt buildings constructed on the property. No individual, non-agricultural exempt building shall be larger than ten thousand (10,000) square feet."
  - D. Condition 3 of Ordinance 2016-21 shall be interpreted as variances to Sections 7:01.E.10.i, 7:01.E.10.j, and 7:01.E.10.k of the Kendall County Zoning Ordinance regarding the hours of operation, number, and days of operation of seasonal festivals for the subject property and the property governed by Ordinance 2016-21.

- E. Condition 9 of Ordinance 2016-21 shall be interpreted as a variance to Section 7:01.E.10.d of the Kendall County Zoning Ordinance to allow the sale of alcohol at seasonal festivals.
  - F. Condition 8 of Ordinance 2016-21 shall be interpreted to apply only to those receiving residential lands with homes constructed or permitted (under construction) on them and platted residential lots that existed on the date of the issuance of this major amendment to an existing special use permit.
  - G. The owners of the uses allowed by this special use permit acknowledge and agree to follow Kendall County's Right to Farm Clause.
  - H. The owners of the uses allowed by this special use permit amendment agree to follow all applicable Federal, State, and Local laws governing these types of uses.
  - I. Failure to comply with one or more of the above conditions or restrictions could result in the amendment or revocation of the special use permit.
  - J. If one or more of the above conditions is declared invalid by a court of competent jurisdiction, the remaining conditions shall remain valid.
3. This special use permit and variances shall be treated as a covenant running with the land and is binding on the successors, heirs, and assigns as to the same special use conducted on the property.
4. The Zoning Administrator and other appropriate County Officials are hereby authorized and directed to amend the Official Zoning Map of Kendall County to reflect this Major Amendment to an Existing Special Use Permit.

IN WITNESS OF, this ordinance has been enacted by a majority vote of the Kendall County Board and is effective this 16<sup>th</sup> day of March, 2021.

Attest:

  
\_\_\_\_\_  
Kendall County Clerk  
Debbie Gillette

  
\_\_\_\_\_  
Kendall County Board Chairman  
Scott R. Gryder

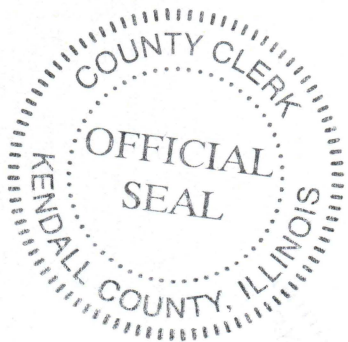


Exhibit A

LEGAL DESCRIPTION OF 30.9927-ACRE ZONING TRACT LYING EAST OF CREEK ROAD:

That Part of Sections 16 and 21, Township 37 North, Range 6 East of the Third Principal Meridian, described as follows: Commencing at the Northwest Corner of Section 20, Township and Range aforesaid; thence Southerly along the West Line of said Section 20, 330.3 feet; thence South  $41^{\circ}40'$  East, 312.2 feet to the center line of vacated Sedgewick Road; thence North  $88^{\circ}09'00''$  East along the center line of said vacated Sedgewick Road, 5796.01 feet to the center line of Creek Road; thence North  $09^{\circ}26'52''$  West along said center line of Creek Road, 591.65 feet; thence Northwesterly along said center line, being a curve to the left with a radius of 1494.95 feet and a chord bearing of North  $14^{\circ}29'40''$  West, an arc distance of 263.36 feet to the Southerly Line of a Tact conveyed to Barbara Yundt by Trustee's Deed recorded as Document No. 81-843 on March 11, 1981; thence South  $87^{\circ}39'00''$  East along said Southerly Line of the Yundt Tact, 575.0 feet for a point of beginning; then continuing South  $87^{\circ}39'00''$  East along said Southerly Line of the Yundt tract, 910.0 feet; thence South  $19^{\circ}16'54''$  West, 658.0 feet; thence South  $11^{\circ}36'04''$  West, 1037.0 feet; thence South  $40^{\circ}01'20''$  East, 639.14 feet to the center line of Little Rock Creek; thence South  $48^{\circ}30'00''$  West, along said center line, 82.0 feet; thence South  $29^{\circ}58'17''$  West, along said center line, 179.23 feet to the center line of Creek Road; thence North  $44^{\circ}01'24''$ , along said center line, 745.32 feet; thence North  $44^{\circ}54'15''$  West, along said center line, 514.15 feet; thence Northwesterly, along said center line, being a curve to the right with a radius of 875.40 feet and a chord bearing of North  $36^{\circ}38'03''$  West, an arc distance of 252.71 feet to the intersection of the center line of Frazier Road and the center line of Creek Road; thence continuing Northwesterly along the last described course and said Creek Road center line, being a curve to the right with a radius of 875.40 feet, and a chord bearing of North  $27^{\circ}02'41''$  West, an arc distance of 40.32 feet to the Easterly Extension of the North Line of Fraizer Road; thence North  $55^{\circ}49'05''$  East along said Easterly Extension of the North Line of Fraizer Road, 555.60 feet to a line drawn South  $09^{\circ}26'52''$  East from the point of beginning; thence North  $09^{\circ}26'52''$  West, 935.73 to the point of beginning, all in Little Rock Township, Kendall County, Illinois.

## Exhibit B

The Kendall County Zoning Board of Appeals approved the following Findings of Fact and Recommendation at their meeting on March 1, 2021, by a vote of seven (7) in favor and zero (0) in opposition.

### **FINDINGS OF FACT-SPECIAL USE PERMIT**

§ 13:08.J of the Zoning Ordinance outlines findings that the Zoning Board of Appeals must make in order to recommend in favor of the applicant on special use permit applications.

*That the establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare. **True. The Petitioner has submitted a concept plan indicating that measures will be taken to ensure that the use will not have a negative impact on public health, safety, morals, comfort, or general welfare including a one-way traffic flow.***

*That the special use will not be substantially 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. The Zoning classification of property within the general area of the property in question shall be considered in determining consistency with this standard. The proposed use shall make adequate provisions for appropriate buffers, landscaping, fencing, lighting, building materials, open space and other improvements necessary to insure that the proposed use does not adversely impact adjacent uses and is compatible with the surrounding area and/or the County as a whole. **True. Conditions were included in the original special use permit ordinance that will regulate noise, lighting, and sanitation provisions.***

*That adequate utilities, access roads and points of ingress and egress, drainage, and/or other necessary facilities have been or are being provided. **The project will have a one-way circulation system, with vehicles entering from Creek Road and exiting onto Creek Road at the intersection with Frazier Road. Site plan, stormwater management plans, and appropriate Health Department regulations will be reviewed and approved prior to construction for all commercial improvements.***

*That the special use shall in all other respects conform to the applicable regulations of the district in which it is located, except as such regulations may in each instance be modified by the County Board pursuant to the recommendation of the Zoning Board of Appeals. **The Petitioner was granted variances in the original special use permit ordinance. The Petitioner would like those variances extended to cover the special use expansion area.***

*That the special use is consistent with the purpose and objectives of the Land Resource Management Plan and other adopted County or municipal plans and policies. **True, the proposed use is consistent with an objective found on Page 6-34 of the Kendall County Land Resource Management Plan which calls for "a strong base of agricultural, commercial and industrial uses that provide a broad range of job opportunities, a healthy tax base, and improved quality of services to County residents" through the encouragement ". . . of locally owned businesses."***

### **FINDINGS OF FACT-VARIANCES**

§ 13:04.A.3 of the Zoning Ordinance outlines findings that the Zoning Board of Appeals must make in order to grant variations.

*That the particular physical surroundings, shape, or topographical condition of the specific property involved would result in a particular hardship or practical difficulty upon the owner if the strict letter of the regulations were carried out. **While the subject property is not on an existing collector road, Creek Road is a well maintained Township Road which frequently accommodate truck traffic from the nearby Hillside Nursery. Commercial uses are called for in the vicinity of the subject property on the Future Land Use Maps for both Kendall County and City of Plano.***

*That the conditions upon which the requested variation is based would not be applicable, generally, to other property within the same zoning classification. This is true. This is a unique combination of uses and is not likely to be replicated in other areas of the County.*

*That the alleged difficulty or hardship has not been created by any person presently having an interest in the property. The Petitioner did not create the setback requirements or access requirements.*

*That the granting of the variation will not materially be detrimental to the public welfare or substantially injurious to other property or improvements in the neighborhood in which the property is located. The surrounding area is primarily agricultural, and many of the proposed uses are also agricultural in nature. Appropriate conditions have been included to ensure limits to noise and lighting to protect the public welfare.*

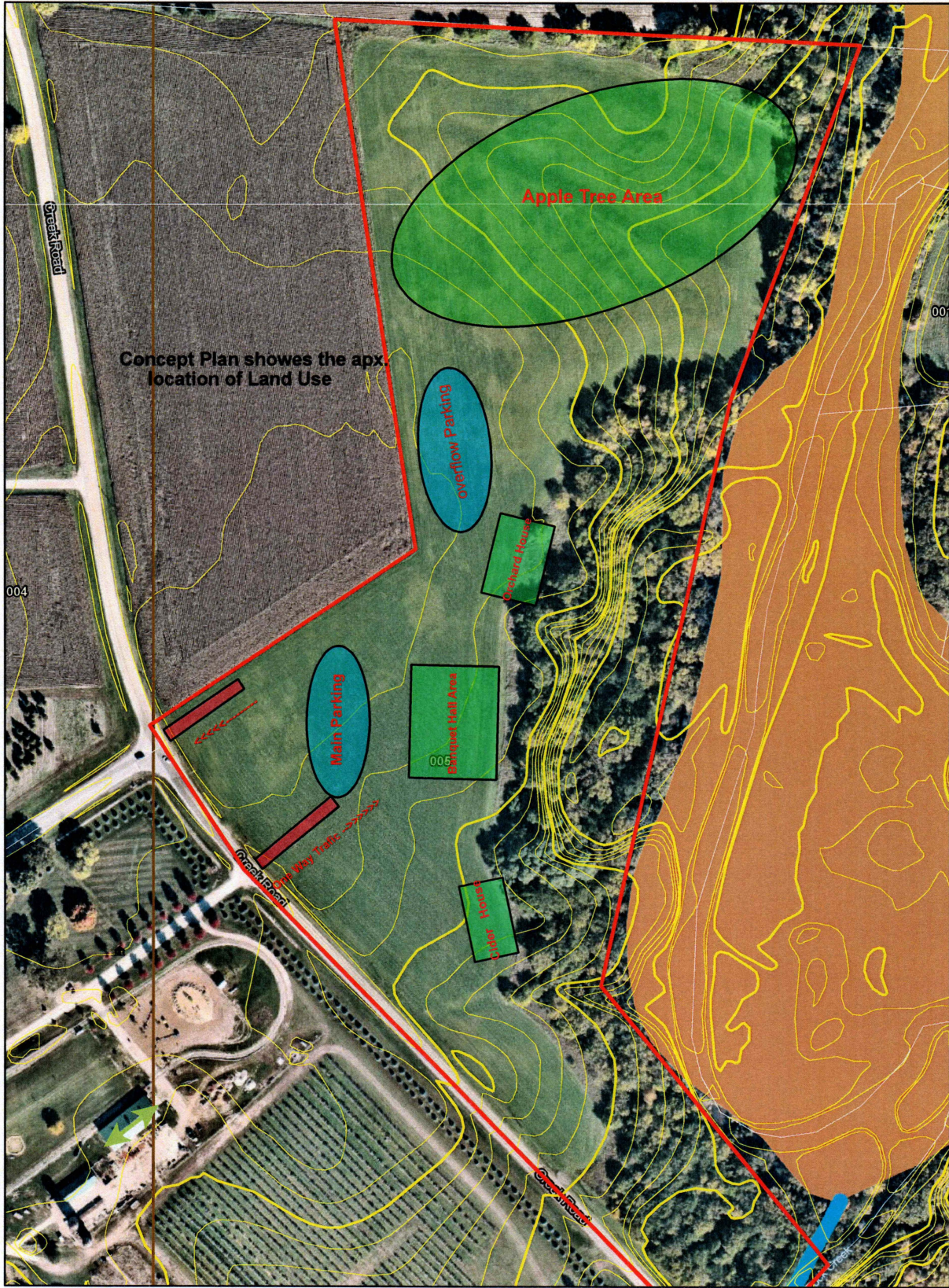
*That the proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion in the public streets or increase the danger of fire, or endanger the public safety or substantially diminish or impair property values within the neighborhood. The proposed variances will not impair the supply of light or air to neighboring properties. Since 2016, the Petitioner has demonstrated no increased congestion on public streets by the uses allowed by the special use permit. There will be no increase in the danger of fire and no negative impacts to property values are foreseen.*

**RECOMMENDATION**











Approval subject to the following conditions and restrictions:

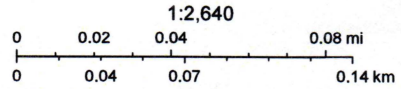
1. The subject property shall be developed substantially in accordance with the concept plan. The site plan for the property on the west side of Creek Road shall be governed by the concept plan attached to Ordinance 2016-21.
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  - b. Condition 12 of Ordinance 2016-21 shall not be applicable to the subject property. Instead, there shall be a maximum of thirty thousand (30,000) square feet of additional buildings constructed on the subject property in substantially the locations shown on the concept plan (Attachment 2). No individual building shall be larger than ten thousand (10,000) square feet.
3. Condition 12 of Ordinance 2016-21 shall be modified for the West Side of Creek Rd property to read: "there may be a maximum of thirty thousand (30,000) square feet of additional non-agricultural exempt buildings constructed on the property. No individual, non-agricultural exempt building shall be larger than ten thousand (10,000) square feet."
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5. Condition 8 of Ordinance 2016-21 shall be interpreted to apply only to those receiving residential lands with home constructed or permitted (under construction) on them as of the date of the issuance of this major amendment to an existing special use permit.
6. Condition 9 of Ordinance 2016-21 shall be interpreted as a variance to Section 7:01.E.10.d of the Kendall County Zoning Ordinance to allow the sale of alcohol at seasonal festivals.
7. The owners of the uses allowed by this special use permit acknowledge and agree to follow Kendall County's Right to Farm Clause.

8. The owners of the uses allowed by this special use permit amendment agree to follow all applicable Federal, State, and Local laws governing these types of uses.
9. Failure to comply with one or more of the above conditions or restrictions could result in the amendment or revocation of the special use permit.
10. If one or more of the above conditions is declared invalid by a court of competent jurisdiction, the remaining conditions shall remain valid.



January 7, 2021

-  Kendall County Address Points
- USA Wetlands**
-  Marine
-  Estuarine
-  Palustrine
-  Riverine
-  Lacustrine
- Parcels**
-  parcel
-  Kendall County FEMA FIRM Panels
- 2018 Contours**
-  Contour
-  Index Line



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