

BEFORE THE HEARINGS OFFICER
FOR KLAMATH COUNTY, OREGON

In the Matter of a

CONDITIONAL USE PERMIT

for

DARRELL D. HANKINS

) NO. 15-84
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FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DECISION

THIS MATTER came on for hearing before the Klamath County Assistant Hearings' Officer, JAMES R. UERLINGS, on April 19, 1984, at 1:30 P.M. in the Klamath County Commissioners' hearing Room. The hearing was held pursuant to notice given in conformity with the Klamath County Development Code and related ordinances. The applicant was present at the hearing and the Planning Department was represented by Jonathan Chudnoff. Also present at the hearing were opponents to the application.

The following exhibits were marked, entered into evidence and made a part of the record: Exhibits "A" through "D".

The Assistant Hearings Officer, after reviewing the evidence presented, makes the following findings of fact, conclusions of law and decision.

FINDINGS OF FACT:

1) The subject property is owned by DARRELL D. HANKINS and it is located at 1611 Kane Street, North of Shasta Way, Klamath Falls, Oregon; also described as Tax Lot 5700 located in the SE $\frac{1}{4}$ of Section 35, Township 38, Range 9, being a portion

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1 of Lot 40, FAIR ACRES SUBDIVISION, No. 1.

2 2. The plan designation for the property is rural
3 residential, the zone designation is RS and the adjacent and/or
4 surrounding zoning is RS.

5 3. The applicant has been using the property for
6 a period of several months as a small engine repair shop without
7 benefit of a conditional use permit. The applicant was contacted
8 by the Planning Department in order that he be advised that he
9 must obtain a conditional use permit in order to operate the
10 facility on the property. There currently exists apparently
11 two (2) other small engine repair shops along Kane Street,
12 north of the applicant's property. However, an investigation
13 by the Planning Department staff indicates that the business
14 conducted at those two sites is minimal.

15 4. The property's physical characteristics consist
16 of dimensions of 69.2' x 131' with a square footage of 9,065.2,
17 and a rectangular shape.

18 5. The applicant was previously granted a variance
19 in order to construct a garage/shop on the northeast corner
20 of the property adjacent to property owned by Mr. and Mrs.
21 Ross. Mrs. Ross appeared at the hearing in opposition to the
22 conditional use permit. The application is for a home occupation
23 involving small engine repair (lawnmowers, chain saws, etc.).
24 The business has been operating for approximately four (4)
25 years and has been the subject of complaints by the neighbors
26 to the North for approximately one (1) year. The principal cause

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1 for the complaints is that the applicant is employed at
2 Weyerhaeuser on swing shift and works from approximately
3 4 p.m. to midnight. He does most of his business from approxi-
4 mately 8 a.m. to noon during the week and occasionally on
5 Saturday. Mr. Ross, who lives on the property to the North,
6 also works at Weyerhaeuser but works the graveyard shift.
7 Mr. Ross sleeps during the morning hours at which time the
8 applicant does most of his repair work. He repairs lawnmowers,
9 chain saws and occasionally motorcycles which causes engine
10 noise which interrupts Mr. Ross' sleeping hours. Apparently,
11 none of the other surrounding property owners object to the
12 home occupation. The only other neighbor appearing at the
13 hearing lives across the street from the applicant's property.
14 This was Otto Ludwig who indicated that neither the noise, nor the
15 traffic, bothers him at his residence. It should be noted that
16 the garage/shop where the applicant does most of his repair
17 work is closest to the Ross home. Additionally, much of the
18 repair work is done outside of the garage, due to the carbon
19 monoxide danger from the engines. This intensifies the noise
20 interruption in the area.

21 KLAMATH COUNTY DEVELOPMENT CODE CRITERIA:

22 1) Klamath County Development Code Section 44.003
23 sets forth the criteria for consideration in the application of
24 a conditional use permit:

25 A. That the use is conditionally permitted in the
26 zone in which it is proposed.

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1 B. That the location, size, design and operating
2 characteristics of the proposed uses is in conformance with the
3 Klamath County Comprehensive Plan.

4 C. That the location, size, design and operating
5 characteristics of the proposed development will be compatible
6 with, and will not adversely effect, the livability or appropriate
7 development of abutting properties in the surrounding
8 neighborhood. Consideration shall be given to the harmony
9 in scale, bulk, and utilities; to harmful effects, if any,
10 upon desirable neighborhood character; to the generation of
11 traffic and the capacity of surrounding streets and to other
12 relevant impact of the development.

13 KLAMATH COUNTY DEVELOPMENT CODE FINDINGS AND CONCLUSIONS:

14 1) The proposed use is conditionally permitted
15 in the zone in which it is proposed.

16 2) The location, size, design and operating character-
17 istics of the proposed use is in conformance with the Klamath
18 County Comprehensive Plan.

19 3) The location, size, design and operating character-
20 istics of the proposed use will not be compatible with, and
21 will adversely effect, the livability and/or appropriate
22 development of abutting properties in the surrounding neighborhood.
23 In considering the location and operating characteristics of
24 the proposed development, it appears that they will not be
25 compatible with, and will have a significant adverse effect,
26 on the appropriate development and use of abutting properties in

1 the surrounding neighborhood, particularly the Ross residence
2 which will be duly disturbed so long as Mr. Ross is working
3 the graveyard shift and it interferes with his sleep period.
4 This will create a harmful effect upon the desirable neighborhood
5 characteristics and livability.
6

7 STATE-WIDE PLANNING GOALS AND REVIEW CRITERIA:

8 1) It appears that this request for a conditional
9 use permit violates Goals 2 and 6 as follows:

10 A. In regards to Goal 2, establishment of a
11 home occupation in this area would not be compatible with
12 the surrounding neighborhood in that it would specifically
13 interfere with the property owner who adjoins the property
14 to the north.

15 B. In regards to Goal 6, the home occupation
16 would result in some smoke and fumes and noise to the adjacent
17 properties. The Rosses, adjoining to the north, have already
18 complained about the noise problem which has occurred on the
19 property prior to the applicant applying for this conditional
20 use permit. The limiting of the hours and days of operation
21 would not be a possible condition in order to alleviate this
22 problem due to the conflict in the work schedules between
23 Mr. Hankins and Mr. Ross. Restricting the running of the engines
24 to the interior of the shop would not be possible due to the
25 carbon monoxide danger.

26 CONCLUSIONS OF LAW AND DECISION:

1) This request for a conditional use permit

1 on the subject property does not meet all applicable Klamath
2 County Development Code criteria and policies governing such.

3 2) This request for a conditional use permit is
4 not consistent with, nor does it comply with, all applicable
5 State-wide Planning Goals and review criteria.

6 THEREFORE, it is hereby ordered that this request
7 for a conditional use permit on the subject property herein
8 described is denied.

9 DATED this 30 day of April, 1984.

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13 James R. Uerlings
14 JAMES R. UERLINGS
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18 Return: Commissioners Journal
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STATE OF OREGON: COUNTY OF KLAMATH:ss

I hereby certify that the within instrument was received and filed for
record on the 1st day of May A.D., 19 84 at 9:39 o'clock A M,
and duly recorded in Vol M84, of Deeds on page 7184.

Fee: \$ None

EVELYN BIEHN, COUNTY CLERK

by: Sam Smith, Deputy