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7515 BEFORE THE STAFFORD OFFICE OF CLACKAMAS COUNTY, OREGON
In the matter of the Application
for Conditional Use Permit for
TERRY DRESSELL and JAMES DRESSELL

CUP No. 11-37

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION

This matter came before William S. Seeger, Hearings Officer, Clackamas County, Oregon on May 12, 1967 at the Clackamas County Commissioners' Hearing Room. The hearing was held pursuant to notice given to conformity with the Clackamas County Land Development Code and related ordinances. Terry Dressell, one of the applicants, represented himself at the hearing. Clackamas County Planning Department was represented by Jim Lundahl and the recording secretary was Janet Libracht. The Clackamas County Planning Department file and all contents thereof were transcribed in the record as evidence. The County Hearings Officer, after reviewing the evidence presented, makes the following Findings of Fact, Conclusions of Law and Decision:

1. The subject property is located at 3330 Franklin Road and is Clackamas County Tax Assessor Lot No. 3909-148C-700 1-300. The subject property contains approximately 1.38 acres. Located on the property are a single family residence and a large shop building located behind the residence.
2. The applicant desires to establish a dental office in the shop building located behind the residence as a home occupation. The shop building contains approximately 3000 square feet of which 1,100 square feet would be converted into the subject dental office.

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3. The subject office would employ three or four employees not including Dr. Dreswell and Mrs. Dreswell. Dr. Dreswell testified that he would expect approximately three cars per hour to visit the premises. The office would be a fully equipped dental office which would include X-ray units, examination chairs and other equipment normally found in a dental office.
 4. The area of the shop building which would be converted into the dental office is currently used as an apartment and has available to it city water and is hooked to a septic tank sewage disposal system.
 5. The areas immediately adjacent to this shop building and the driveway which accesses the property from Bonneale Road are paved. The paved areas would provide adequate parking for six to eight cars without the addition of any further parking areas.
 6. The subject property is zoned R-5 Suburban Residential. The general area is a residential area. The property lies close to the Concord Subdivision. There are other non-residential uses, including the Country Hills Market, a church and a public school, located within one half mile of the subject property.
 7. The applicants would reside in the house located on the property and conduct their dental practice in the shop building. The benefit to the applicants is that they could be closer to their family during work hours. The only witness, in addition to those provided by the Planning Staff and Mr. Dreswell, was a letter dated May 4, 1987 sent from Klamath County Building & Zoning to the City of Klamath Falls. Said letter generally objects to a

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commercial type activity being located adjacent to the Suburban Residential Subdivision and also alleges that a Finding required by the Land Use Code for a home occupation, that the home occupation not entail equipment other than that which is purely domestic or household cannot be sustained. The Building Officer viewed the property with Planning Department Staff on May 1, 1987.

CLARK COUNTY LAND DEVELOPMENT CODE CRITERIA

1. The Development Code in Section 31.006 provides that the primary permitted use in the Suburban Residential Zone is for single family residences.
2. Code Section 35.002 provides that home occupations are permitted conditionally in any zone that allows residential use. Section 35.003 sets out 10 criteria upon which Findings must be made in order to grant a Conditional Use Permit for a home occupation. The criteria most relevant to the subject application are:

- (1) "That the occupation is conducted entirely within a dwelling or permitted accessory building.
- (2) That the occupation is not the primary use and is operated by a resident of the property.
- (3) That the business will not employ more than 5 full or part-time persons.
- (4) That no equipment is used except such as may be used for purely domestic or household purposes.
- (5) That the occupation shall not require internal or external alteration or involve construction features that change the principal character or use of the dwelling involved."

3. Code Section 11.003 "g" defines accessory building as "a detached subordinate building the use of which is incidental to that of the main building or to the principal use of the land, and which is located on the

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same lot or parcel of land with the main building or
principal use of the land."

4. Section 11.002 "g" defines medical clinic as:

"Any facility providing physical or mental health service and medical or surgical care of the sick or injured, but shall not include inpatients or overnight accommodations. Medical clinic includes health center, health clinic and doctor's offices."

5. Code Article 93 defines the various types of commercial uses. Included in this Article is Section 93.018 which defines medical services as:

"The medical services use type refers to establishments, particularly engaged in the provision of personal health services ranging from prevention, diagnosis, and treatment or rehabilitation services provided by physicians, dentists, nurses and other health professionals, as well as the provision of medical testing and analysis services but excluding those classified as civic use types. Typical uses include medical offices, dental laboratories or health maintenance organizations."

6. Article 11 of the Code sets out the criteria which must be considered in granting a Conditional Use Permit.

CLARK COUNTY CODE FINDINGS AND CONCLUSIONS

1. With respect to the Findings required by Section 25.003, the Hearing Officer makes the following Findings and Conclusions:

1. The construction of the dental office in the shop building located on the subject property will change the use of that building from an accessory building to a building which is not accessory to the residential use of the property. The Code definition for an accessory building set forth above specifies that the use of the building must be incidental to that of the

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main building or the principal use of the land. Incidental is defined by Black's Law Dictionary as:

"depending upon or appertaining to something else as primary; something necessary, appertaining to, or depending upon another which is termed a principal; something incidental to the main purpose."

By converting a portion of the existing shop building to a dental office, the dental office as a commercial use type will not be incidental to the residential use of the property. The dental office does not depend upon the residential use of the property, nor does it appertain to the residential use of the property. Rather, the construction of the dental office changes the use of the shop building so that its primary use is for a commercial purpose, rather than as an accessory building to the house located on the property.

B. The evidence does not sustain a finding that the construction and operation of the dental office is not the primary use of the property. There would be co-primary uses of the subject property. The house would be used primarily for residential uses and the shop would be used primarily for a commercial use.

C. The code requires that the business employ no more than three full time or part-time employees. Dr. Dressell's testimony was that there would be three or four employees excluding himself and his wife, but that he and his wife would be directly engaged in the operation of the office. Depending upon a structure of Dr. Dressell's practice, he may be an employee or he may be self-employed in the practice. Either way, the intent of the code

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provision is to limit the size of any business occupation conducted in a residential zone and for the purposes of the criteria contained in the code, any member of the family who participates in the occupation is considered an employee. Therefore, if Dr. Dressell employs four people in addition to himself and his wife, he would violate the restriction that the business involved no more than five full or part time people.

2. The evidence is undisputed that a dental office includes equipment which is not purely domestic or household in nature. The most obvious example of equipment that is not purely domestic or household in nature is the x-ray machine. In addition, many other dental implements and machinery are not purely domestic or household in nature.

3. The undisputed testimony is that the conversion of a portion of the shop building to a dental practice will require internal alterations including construction and may also include some external alterations. As stated above, the finding cannot be made that the construction of the dental office in the shop will not change the principal character or use of the subject property. Although, the single family residence will remain a residence.

If the proposed business occupation does not comply with the criteria set forth above, it is not necessary to address the other criteria set forth in Section 25.003.

2. With respect to the criteria for the granting of a Conditional Use Permit set forth in Section 44.003, the following Findings and Conclusions are made:

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- A. A home occupation is conditionally permitted in the zone in which the property is located.
 - B. The design and operating characteristics of the proposed dental office are not in conformance with the Elmont County Comprehensive Plan Code Sections detailed above.
 - C. The location, design and operating characteristics of the proposed use would be incompatible with and would not have significant adverse effect on the appropriate development and use of abutting properties in the surrounding neighborhoods. The subject property borders a major residential area. However, it fronts on a major street, Boardale Road, and is in the general proximity of other commercial and non-residential land uses. The location of a professional office in a residential neighborhood is generally less intrusive to the residential character of a neighborhood than many other home occupations. For example, auto and repair shops or lawn mower repair shops, or other such repair shops carried on as a home occupation, because of the noise associated with those uses, are more obtrusive than a professional office where the activity is conducted entirely within a building and no audible noises, odorous odors, or other impacts on the residential character of the neighborhood would be emitted from the dental practice. Nevertheless, Land Use Planning, as embodied in Elmont County Comprehensive Plan, is intended to separate by area or physical boundaries residential, commercial and industrial uses. The establishment of the dental practice does not comply

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with the very limiting criteria set forth in Article 85 of the
Code.

CONCESSIONS OF LOT AND ORDER

The request for a Conditional Use Permit to construct a
dental office and operate a dental practice as a home occupation
in the suburban residential zone on the subject property does not
comply with the criteria set forth in the Land Development Code
and is therefore denied.

DATED May 27, 1987.

John R. Lang
Planning & Zoning
Assistants
Planning Officer

STATE OF NEW YORK
COUNTY OF KLAUSNER

Plat No. 1	Plan No. 1	Plat Date	Plan Date	Plat by	Plan by	Plat C.R.	Plan C.R.
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See Plat for further details							
Counselor's Journal							

John R. Lang

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