

In the matter of the Application  
for Conditional Use Permit for  
TERRY DRESSILL and JANET DRESSILL.

CSP No. 11-47

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND DECISION

This matter came before William E. Gering, Hearings Officer, Klamath County, Oregon on May 22, 1947 in the Klamath County Commissioners' Hearing Room. The Hearing was held pursuant to notice given in conformity with the Klamath County Land Development Code and related ordinances. Terry Dressill, one of the applicants, represented himself at the hearing. Klamath County Planning Department was represented by Eln Lundahl and the recording secretary was Janet Libertoff. The Klamath County Planning Department file and all contents thereof were incorporated 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 Homedale Road and is Klamath County Tax Assessor Lot No. 3909-144C-700 & 800. 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 3500 square feet of which 1,200 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. Dressell and Mrs. Dressell. Dr. Dressell 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 area immediately adjacent to this shop building and the driveway which accesses the property from Homedale Road are paved. The paved area would provide adequate parking for six to eight cars without the addition of any further parking area.

6. The subject property is zoned RS-Suburban Residential. The general area is a residential area. The property lies close to the Greenwood Subdivision. There are other non-residential uses, including the Country Villa Market, a church and a public school, located within one half mile of the subject property.

7. The applicants would reside in the home 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 testimony, in addition to that provided by the Planning Staff and Dr. Dressell, was a letter dated May 1, 1967 marked Elsworth County Exhibit F from the City of Elsworth Falls. Said letter generally objects to a

commercial type activity being located adjacent to the Gateway 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 Hearings Officer viewed the property with Planning Department Staff on May 1, 1987.

#### ELAMER COUNTY LAND DEVELOPMENT CODE CRITERIA

1. The Development Code in Section 51.005 provides that the primary permitted use in the Suburban Residential Zone is for single family residences.

2. Code Section 55.002 provides that home occupations are permitted conditionally in any zone that allows residential use. Section 55.003 sets out 10 review 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 11.002 "3" 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

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

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4. Section 11.000 "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 inpatient 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 that Article is Section 93.015 which defines medical services as

"The medical services use type refers to establishments primarily 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.

#### CLAYTON COUNTY CODE FINDINGS AND CONCLUSIONS

1. With respect to the Findings required by Section 85.003, Board Commission, the Hearings 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

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 accessory, 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 not more than five 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

provision is to limit the size of any home 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. Dransell employed 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.

B. 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.

C. 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.

As the proposed home occupation does not comply with the criteria set forth above, it is not necessary to address the other criteria set forth in Section 85.003.

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:

- 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 Elsworth County Comprehensive Plan Code Sections detailed above.
- C. The location, design and operating characteristics of the proposed use would be compatible with and would not have significant adverse effect on the appropriate development and use of adjoining properties in the surrounding neighborhoods. The subject property borders a major residential area. However, it fronts on a major street, Homedale 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, chain saw repair shops or lawn mower repair shops, or other such repair shops carried on as a home occupations, because of the noise associated with these uses, are more obtrusive than a professional office where the activity is conducted entirely within a building and no audible noises, obnoxious 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 Elsworth 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

with the very limiting criteria set forth in Article 83 of the Code.

### CONCLUSIONS OF LAW 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.

*William S. Gandy*  
William S. Gandy  
Hearings Officer

CITY OF CHICAGO, COUNTY OF KANE

Find the record in respect of Chicago County Planning Department on May 27, 1987 at 12:12 A.M. and duly recorded in Vol. 272 of Books

SEE NO FOR  
Record: Commissioners' Journal

By [Signature]  
Deputy Clerk

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