

BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the Matter of the Request)
 for a Conditional Use Permit)
 for JOHN LESLIE and SHERRY)
 LESLIE.)

C.U.P. 21-89
 FINDINGS OF FACT, CONCLUSIONS
 OF LAW AND ORDER

This matter came before Hearings Officer William M. Ganong on June 1, 1989 in the Klamath County Commissioner's Hearing Room. The Hearing was held pursuant to the Notice given in conformity with the Klamath County Land Development Code and related ordinances. The Applicants were present and represented themselves at the hearing. The Klamath County Planning Department was represented by Mr. J. Kim Lundahl and the Recording Secretary was Karen Burg. 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:

FINDINGS OF FACT:

1. The Applicants have applied for a Conditional Use Permit to establish a community recreational facility on land zoned R-1 and located in Keno, Oregon. The property is described as Tax Assessor Lot 3908-31CC-2300.

The property consists of a two story building which was constructed for and used as a church until approximately 1982. During the time it was used as a church it was also used for community purposes such as kindergarden and arobics classes. The Applicants then purchased the property and continued community uses, including allowing the use of the building for arobics classes, weight lifting classes and karate classes. None of the current uses are intensive. Testimony presented demonstrated that 10 to 11 people are enrolled in weight lifting classes and up to 13 people have been enrolled in the arobics

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class. The various uses are scheduled for different times so that rarely will the building be used for two uses at the same time.

2. The building is located on a dead end street. There is adequate off-street parking for the uses currently being made of the building. According to testimony presented by the Leslies and confirmed by people who testified in opposition to this request, the kindergarden was attended by in excess of 50 children, which generated traffic from 35 cars along the road each day. The road is a gravel road which the Leslies have oiled in some years and is graded by the County from time to time. The Leslies testified that there is inadequate traffic to justify the expenditure by the County to pave the road. In addition to the subject building there are 13 houses located on the same block as the building. Each house has 1 to 3 cars. The people who testified in opposition to the request stated that they have counted up to 22 cars parked on the street during an 1½ hour period of time.

3. The people who testified in opposition were concerned about the dust generated by the traffic using the road and also on at least one occasion have been bothered by the music played during the aerobics classes. Notwithstanding their opposition to this request, the opponents testified they have no objection to the use of the property as a church.

4. Both the Applicant and various users of the property testified that they are concerned about any adverse impact the use of the property may have on the neighbors and have cautioned the people that attend their class to be careful about the dust and noise they create.

KLAMATH COUNTY LAND DEVELOPMENT CODE CRITERIA

Klamath County Land Development Code Section 44.003 sets forth the criteria which must be addressed in reviewing an application for a conditional use permit.

CRITERIA FINDINGS AND CONCLUSIONS

The following findings and conclusions are made concerning the review criteria set forth in Section 44.003:

1. The proposed use as a privately owned community recreational facility is not conditionally permitted in the zone in which the proposed use is located. Land Development Code Section 51.004(C)(6) provides that community recreation is allowed in the R-1 zone, however, Code Section 92.006 defines "Community Recreation" as follows:

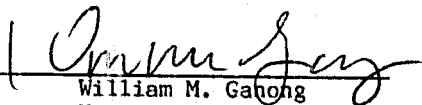
"The Community Recreation use type refers to recreational, social or multi-purpose uses within buildings, owned and operated by a governmental agency or a non-profit community organization."

The Leslies are private parties that own the building and therefore do not meet the definition requiring that a community agency or non-profit organization own the property.¹

ORDER

As the use proposed by the Applicant, a privately owned Recreational Center, is not conditionally allowed in the R-1 zone, this application for Conditional Use Permit is denied.

DATED this 20th day of June, 1989.


William M. Gahong
Hearings Officer

Klamath County Land Development Code Section 24.007 provides:

"An Order of the Hearings Officer shall be final unless appealed within ten (10) days of its mailing by a party having standing in accordance with the procedures set forth in Chapter 3, Article 33 of the Code."

Footnote 1. The evidence presented to the Hearings Officer demonstrates that the use of the building for aerobics, weight lifting, karate and other similar community recreational purposes existed prior to the adoption of the Klamath County Land Use Code and is therefore, a nonconforming use as that term is defined in Code Section 97.002. Code Section 97.003 provides that a nonconforming use can continue notwithstanding change of ownership, tenancy or management. Therefore, it appears to the Hearings Officer that the use of the property for community recreational and assembly purposes can continue without any permit required from the County Planning Department.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 23rd day
of June A.D., 19 89 at 3:51 o'clock PM., and duly recorded in Vol. M89,
of Drieda on Page 11293.
By Evelyn Biehn County Clerk
Pauline Mullendore

FEE none

Return: Commissioners Journal