

BEFORE THE PLANNING DIRECTOR OF
KLAMATH COUNTYIN THE MATTER OF CONDITIONAL USE PERMIT 34-91
FOR JOHN N. BROOKS AND WILLIAM W. BUEHLERFINDINGS AND
ORDER

This matter is before the Klamath County Planning Director on the application of John N. Brooks and William W. Buehler for a conditional use permit to establish a family restaurant on real property zoned Neighborhood Commercial (CN) at 3310 Madison Street, Klamath Falls, Oregon 97603. Criteria for review of this application includes standards of the Klamath County Land Development Code, Articles 44 and 52, specifically Sections 52.210 through 52.240, Neighborhood Commercial Zone; Conditional Use Permit criteria found in Sections 44.010 through 44.060; definitions implemental of this Code found in Section 11.030, and provisions of the Klamath County Comprehensive Plan. This application is subject to Klamath County Planning Director Type III Administrative Review under Section 22.050.

Relevant information, data, and evidence considered in this application includes the staff report, applicants' conditional use permit application, evidence and testimony submitted by those for the request and those in opposition. All letters within this application have been made part of the record.

Notice and opportunity to comment was duly mailed May 30, 1991, setting forth the comment period through June 25, 1991. All evidence duly submitted has been considered in review of this application. The Planning Director finds that notice was duly given to all persons interested in this application. According to the Klamath County Land Development Code, related statutes, ordinances and case law, the Planning Director makes the following findings of fact and conclusions of law:

1. The applicants are requesting a conditional use permit in the Neighborhood Commercial (CN) zone for the purpose of establishing a restaurant at 3310 Madison Street, Klamath Falls, Oregon 97603. Co-applicant, John Brooks, previously made application for a conditional use permit to establish a tavern on that location, which application was denied by Hearings Officer, Neil D. Smith, on May 17, 1991. Letters in opposition to this application have been received citing Section 44.040:

"Time, Limitation - No request for a Conditional Use Permit shall be considered by a review body within a one-year period immediately following a previous denial of such request."

Prior application was made under Section 52.230(F) "Food and Beverage Service" and was for a tavern. The present application is for a restaurant. Section 11.030 cites certain types of activities considered within this definition:

"Food and Beverage Service - Establishments or places of business primarily engaged in the sale of prepared food and beverages for on-premise consumption. Typical uses include restaurants, cafes, fast food outlets including drive-through or drive-in establishments, and taverns."

Implicit in the Klamath County Land Development Code, and in review of conditional use permits is a review of each proposed use to determine its suitability to particular locations. Section 44.030(C) and (D). The Planning Director concludes that a restaurant and a tavern, both accepted common uses and definitions, are two separate and distinct types of facilities. The record of the previous conditional use permit reflects that a large number of opponents of the earlier request would not oppose the application had it been for a neighborhood restaurant. Accordingly, the Planning Director concludes that the use is different and that this is not a renewal of a request for issuance of a conditional use permit for a tavern.

2. The property is located on Madison Street and within the urban growth boundary (UGB). The property is located in Township 39, Range 9, Section 11AA, Tax Lot 5800 and is located approximately 9 blocks south of Sixth Street, south of the OC&E Railroad grade crossing. The property is generally trapezoidal in shape with approximately 118 feet of frontage on Madison Street, a paved County road. Currently, the property has been developed with a concrete block structure formerly housing the Circle K Market with a paved parking area along the front frontage with Madison Street and towards the railroad right-of-way. The property has been vacant for some time, and prior to applicant's acquisition, was the site of vandalism, graffiti, and contained trash and refuse, which had been dumped on the site. Utilities include water provided by the City of Klamath Falls, sewer provided by South Suburban Sanitary District, power by Pacific Power and Light Company, telephone by U.S. West, and fire protection provided by Klamath County Fire District No. 1. The property lies within the area of the Klamath County School District.

3. Certain letters in opposition question whether the intended restaurant would serve only a "limited, local market" and whether the restaurant would create "adverse impact that is incompatible with nearby residences." The site was deemed suitable for permitted and conditionally permitted uses which would serve limited local markets. The uses are found in Section 52.220. These uses were found not to create incompatible adverse impacts. The issue is not whether these might be a potential for adverse impact, but whether these adverse impacts would be so significant as to be "incompatible."

In review of this application, it becomes necessary to consider what are outright permitted uses and what are conditionally permitted use. Section 52.220 provides for 11 categories of permitted uses. Among them are food and beverage sales which are defined:

"Food and Beverage Sales - Retail sales of groceries, beverages and household items. Typical uses include grocery stores, convenience stores and bakeries."

Personal services are similarly permitted. Personal services are defined:

"Personal Services - Typical uses include barber and beauty shops, shoe repair, office maintenance services, health and fitness studios, photographers, processing shops, funeral and mortuary services, travel agencies, laundry and dry cleaning establishments, and secretarial services."

Professional offices are also permitted as are repair services. Repair services are defined:

"Repair Services - Typical uses include appliance repair shops, alteration and tailor shops, instrument repair shops."

Retail sales are similarly permitted. As defined by the Code, retail sales include:

"Retail Sales - Typical uses include bicycle shops, book stores, camera stores, clothing and shoe stores, florists, stereo and record stores, toy stores and video rentals."

Accordingly, the conditional uses must be analyzed against the outright permitted uses allowed under the zone. The Planning Director concludes that a restaurant would serve the same limited local market as other permitted uses and that such use would not create incompatible adverse impact over existing permitted uses.

4. The site plan previously submitted establishes that the application meets the property development standards of Section 52.040 as to minimum lot size, gross floor area, lot size and shape, building heights and setbacks, fences, walls and screening, landscaping, signs, parking, and access.

5. In reviewing this application, the Planning Director considers the traffic, use, and operation of a restaurant in the same zone and neighborhood; Mia and Pia's Pizzeria. The Planning Director concludes that as opposed to other lawful, outright permitted uses as cited above, the operation of a family restaurant on the site subject to certain conditions as set forth below would not have a significant adverse impact on the livability, value, or appropriate development of abutting properties. Concerns at the prior hearing by neighbors were that children would be traveling by the tavern, that the appearance of the facility might jeopardize property values, the facility might breed fights, and that a tavern might attract undesirable people into the neighborhood and that the convenience store previously in operation had been robbed are of legitimate concern. The establishment of another convenience store, video store, laundromat or similar facility have significant adverse impact.

6. Concerns regarding pedestrian traffic; essentially, that Madison Street is unlighted at night, it has no sidewalks or curbing, and is used by children enroute to Ferguson School. The Planning Director finds that the stop sign at the gate crossing on Madison Street effectively slows traffic in front of the location, that with the requirement that the applicants install sidewalks, barrier fences and clearly mark driveways for access and egress and also install a street light, that pedestrian safety will be enhanced. The Planning Director further finds that a restaurant facility would likely be visited by patrons walking from their residences and that the traffic generated by motor vehicles would be substantially less than from a convenience store, video rental establishment, laundromat or other similar permitted use. The Planning Director further considers the testimony of opposition witnesses to the prior application for a tavern. These concerns were that the tavern would breed fights, drug dealing, discourage home sales, there would be drunks on the premises, fighting, loud music and cars coming and going all hours of the night, and patrons would be leaving the premises in an intoxicated state and not be safe upon the roadway, were issues involving opinions. However, witnesses testified that these concerns

would be alleviated by the establishment of a family restaurant. The Planning Director finds that the operation of a family restaurant as opposed to other uses would eliminate the concerns expressed.

7. The Planning Director further finds that the statement submitted from William W. Buehler that the facility to be operated is a restaurant and will rely primarily upon food sales and not on the sale of alcoholic beverages.

8. The Planning Director further finds that while not the sole criteria to approval of this application, the petition of John and Lori Brooks and Bill Buehler with 25 signatures suggests public support of numerous people living within the immediate vicinity of this application.

9. Accordingly, the Planning Director concludes that the location, size, design, and operating characteristics of the proposed use would not have a significant adverse impact on the livability, value, or appropriate development of abutting properties in the surrounding area. Subject to the following conditions Section 44.030(C) is therefore met.

10. Section 44.030(D) provides that the reviewing body may grant a conditional use permit subject to reasonable conditions based upon findings of fact necessary to ensure compliance with the Klamath County Land Development Code and sound land use planning principles. The Planning Director concludes that for public safety, the applicant should be required to install appropriate lighting, install sidewalks and a driveway and limit access and egress to that people do not back from the property onto Madison Street, but drive through. Operating hours of the restaurant shall be from 10 a.m. to 12 a.m.(midnight). Accordingly, it is required that applicants develop the property according to the site plan previously submitted.

11. Based upon the foregoing findings of fact and conclusions of law, the Planning Director hereby orders that the conditional use permit is granted subject to the conditions described above.

DATED this 25th day of June, 1991.

Carl Shuck
Carl Shuck, Planning Director

NOTICE:

Klamath County Land Development Code, Section 22.050(C) provides as follows:

"Appeal. The decision reached under the Type III review procedure may be appealed to the Board of County Commissioners within 7 days of the mailing of notification of the final decision as set forth in Article 33."

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 28th day
of June A.D., 19 91 at 10:40 o'clock A M., and duly recorded in Vol. M91,
of Deeds on Page 12418.

FEE none

Evelyn Biehn County Clerk
By Evelyn Biehn

Return: Commissioners Journal