

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR THE COUNTY OF KLAMATH

In the Matter of the Appeal of the Denial of)
the Application to Amend the Home Occupation) ORDER
Permit for Chauncey and Penny Farrell,)

1. Nature of the Proceeding.

This an appeal by Chauncey and Penny Farrell of an Order denying their application to amend their Home Occupation Permit No. 2-94. The application was originally heard by the Klamath County Hearings Officer on October 7, 1994 and on October 18, 1994 he issued an Order denying the application. The applicants timely filed a Notice of Appeal on October 24, 1994. On November 30, 1994, the Board of County Commissioners convened to consider the appeal but decided to not hear the appeal and entered their Order on December 7, 1994. The applicants appealed that decision to the Oregon Land Use Board of Appeals. Before LUBA could consider the matter, the applicants requested a reconsideration by the Board of County Commissioners and on March 1, 1995, the Board granted the request for reconsideration and vacated its Order of December 7, 1994. LUBA remanded the matter to the County on March 8, 1995. The appeal hearing was held on March 20, 1995 and the matter was continued to April 19, 1995 for a decision.

2. Names of those Involved.

Members of the Board of Commissioners who participated in the hearing were Clif McMillan, Jean Elzner and David Henzel. The applicants were present and represented by their attorney, Michael L. Spencer. The Planning Department was represented by Carl Shuck, Planning Director and Kim Lundahl, Senior Planner. Karen Burg was the Recording

ORDER - Page 1

Secretary. Opponents to the application were represented by William P. Brandsness.

3. Scope of and Criteria for Review.

This was an application to amend an existing home occupation permit. The scope of and criteria for review was to consider the record in the case and determine if the applicants qualified for the amendment under the criteria set forth in Article 85.020 of the Land Development Code, which sets out all of the criteria for a Permitted Home Occupation Permit.

4. Findings of Fact.

After hearing the arguments of attorneys for the parties and having considered the record of all prior proceedings which was contained in the record of this proceeding, the Board finds:

1. The testimony was clear and unrefuted that all aspects of the use would be conducted wholly within the dwelling.
2. The testimony clearly established that the applicants, who are the residents of the dwelling, each conduct counseling or therapy sessions and that they employ one part time bookkeeper/receptionist.
3. The evidence was clear and unrefuted that there is no outdoor storage of materials or goods.
4. The evidence was clear and unrefuted that no equipment was used and therefore there could be no adverse or harmful affect from such equipment to abutting properties.
5. The evidence was clear and unrefuted that no internal or external alterations of the dwelling or accessory buildings has occurred. The only alterations to the site were the paving of a portion of the lot for off street parking but this is not an alteration of the dwelling

or of an accessory building.

6. The evidence, in the form of photographs, shows that the use utilizes a sign not greater than 3 square feet in area.

7. The County has approved numerous other home occupation permits, including one several blocks from this location for a tanning and toning salon which has four tanning beds and some toning tables with the ability to have between 110 and 140 people per day using their facility between the hours of 7:00 a.m. and 7:00 p.m without restriction. The evidence also established that other permitted home occupations had employees other than the resident, who would also be involved in the occupation.

8. The primary objection raised by the opponents to this application was not directed at this use, but rather generally at home occupations in residential areas. The Board finds that those objections do not relate to the criteria under which this application is to be considered.

9. The Hearings Officer based his denial upon the possibility that up to forty four (44) clients per day could be involved under the request for an amendment. The Board finds that the testimony established that the maximum number of people who could be seen in one day would be sixteen (16) but that due to the possibility of couples being involved and potential overlap, up to four (4) people per hour could come to the property.

5. Conclusions of Law.

After careful consideration of the facts as found by the Board and after reviewing the criteria found in Article 85.020, the Board concludes that the applicants have established that their request for an amendment to their home occupation permit should be granted. Of the

criteria outlined in Article 85.020, only section C dealing with the question of the interpretation of the meaning of that section is of issue.

The Board concludes that the prior interpretations of the County, in granting home occupation permits to other applicants who indicated on their applications that their use would employ more than just the single applicant, along with the provisions of Article 85.020A which requires that the use be operated by the resident, supports the position earlier taken by the Planning Department and the position of the applicants that the owners of the property were not intended to be counted as a person being employed by the use and that this is a reasonable interpretation of the specific section.

The remaining issue raised by the opponents to this application deals with an interpretation of Article 85.010 which sets out the purpose of the Article and states:

"The purpose of this article is to ensure that home occupations conducted within one's own property are compatible with the neighborhood in which it is located, and maintain the character and appearance of both the use and the neighborhood."

The opponents to this application contend that this section vests discretion in the County to deny or limit applications for home occupation permits even when all of the criteria set forth in Article 85.020 are otherwise met. The applicants contend that such an interpretation would violate Article 1 Section 20 of the Oregon Constitution by allowing the County to deny to the applicants an advantage to which they would be entitled but for a choice made by the County when there are no established permissible criteria which have been consistently applied. The Board concludes that it may limit the scope of the permitted use to reduce conflicts with surrounding properties. A limitation of 16 patients per day between the hours of 8:00 a.m.

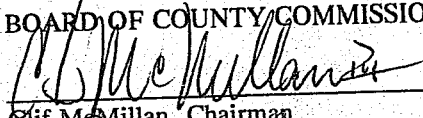
and 7:00 p.m. with no more than 4 patients per hour, along with a limitation that only the applicants and their part time bookkeeper/receptionist who will work half time will be involved, would accomplish this.

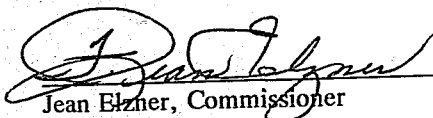
6. Order.

Based upon the Findings of Fact and Conclusions of Law contained herein, the Board of County Commissioners hereby Orders that the home occupation permit for Chauncey and Penny Farrell shall be amended to allow up to an average of 16 patients per day and that the hours of operation be expanded to between 8:00 a.m. and 7:00 p.m., Monday through Friday. Only the Farrells and their half time bookkeeper/receptionist may be involved. All other conditions of the original permit shall remain in full force and effect as if fully set forth herein and this permit shall be subject to an annual review one year from the date of this Order.

DATED this 25th day of April, 1995.

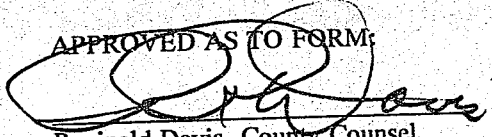
BOARD OF COUNTY COMMISSIONERS


Cliff McMillan, Chairman


Jean Elzner, Commissioner


David Henzel, Commissioner

APPROVED AS TO FORM:


Reginald Davis, County Counsel

NOTICE OF APPEAL RIGHTS

You are hereby notified that this decision may be appealed to the Land Use Board of Appeals within 21 days following the date of mailing of this ORDER. Contact the Land Use Board of Appeals for information as to how to file this appeal. Failure to do so in a timely manner may affect your right to appeal.

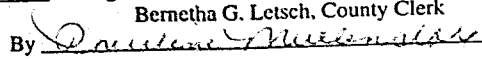
ORDER - Page 5

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 28th day
of April A.D., 19 95 at 10:48 o'clock A M., and duly recorded in Vol. M95,
of Deeds on Page 10907.

FEE

Comm. Journal

By 
Bernetha G. Letsch, County Clerk