

52421

BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the Matter of the Request for a)
 HOME OCCUPATION PERMIT by)
) HOPU 4-97
)
 RALPH JOSEPH FULK,)
)
) ORDER
) Applicant.)
 _____)

1. NATURE OF THE REQUEST:

The applicant wishes to establish a Home Occupation in conjunction with an established residential use. The request was heard by the Hearings Officer on January 16, 1998, pursuant to Ordinance Chapter 24. The request was reviewed for conformity with Land Development Code 85.020.

2. NAMES OF THOSE WHO PARTICIPATED:

The Hearings Officer in review of this application was Neal G. Buchanan. The applicant appeared (in person and through attorney Joan Marie Michelsen) and offered testimony in support of the application. Other persons who appeared and offered testimony included:

Joel Nelson
 Melba Windsor
 Virginia Stafford
 Dave Cagley
 Dorothy Starr
 Dorothy Spaulding
 Jack Starr
 Dorothy Littleton

The Planning Department was represented by Kim Lundahl, and the recording secretary was Karen Burg.

3. PROPERTY LOCATION:

The property under consideration is located at 2956 Summers Lane, Klamath Falls, Klamath County, Oregon.

4. RELEVANT FACTS:

The property has an implementing zone of RH (High Density Residential). The applicant lists the size of the lot or parcel as .93 acres. The applicant proposes to establish a home base for R. J. Fulk Distribution and Air Cargo Contract Services allowing the parking of 2 trucks and 1 Metro on the property.

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5. EVIDENCE RECEIVED:

Received were the Staff Report and Application with attachments together with Exhibits B-F and Exhibit denominated 1 through 7.

6. FINDINGS:

The Hearings Officer finds that a home occupation utilization is a permitted conditional use pursuant to Article 85 of the Code, with review to be conducted pursuant to Section 85.020. The Hearings Officer finds with reference to this application:

A. The applicant testified to the effect that the business will be conducted solely by a resident of the property on which the business is located. The applicant testified that no other employees are utilized. While this may be arguably the case, the spirit of the Home Occupation concept is still to some degree violated by the use of a number of what the applicant characterizes as "contractors." For purposes of this decision, the Hearings Officer finds that 85.020(A) can be satisfied.

B. At present, the home occupation is not conducted primarily within a dwelling or accessory building. Testimony was consistently to the effect that trucks were stored on the property, were allowed to idle for periods to "warm up," were driven in and out of the property and were on and off loaded. 85.015 outlines some examples of home occupations, but again the spirit of the present use is not in conformity with those examples outlined. However, for purposes of this decision, the Hearings Officer finds that 85.020(B) can be satisfied.

C. There was no testimony to the effect that the applicant engages in the outdoor storage of material or goods (excepting the parking of the referenced trucks). For purposes of this decision, the hearings Officer finds that 85.020(C) can be satisfied.

D. The present manner in which the home occupation is being conducted is simply not in conformity with 85.020(D). The machinery, tools, or equipment used at present is **NOT** typically associated with residential use and **DOES HAVE** an adverse or harmful effect (i.e. noise, odor or fumes) to the established land use of the area. Simply stated, the perceived solution to the failure to meet the criteria set forth in 85.020(D) is to discontinue the parking, "warming up," driving in and out, on and off loading and similar activity involving the trucks.

E. The occupation appears not to require internal or external alterations of the dwelling or accessory buildings.

F. There was no evidence to the effect that the use will utilize a sign or nameplate greater than 3 square feet in area.

7. ORDER:

Therefore, it is ordered that the request of Ralph Fulk for a Home Occupation permit is allowed, subject to the conditions as follows:

A. The business conducted on the premises shall be conducted by residents of the property on which the business is located. No other employees are permitted; and

B. The home occupation is to be conducted primarily within the dwelling or accessory buildings. In other words, if the applicant wishes to establish his office in the home, and such office otherwise meets the remaining criteria, such office within the home is allowable; and

C. There is to be no outdoor storage of materials or goods; and

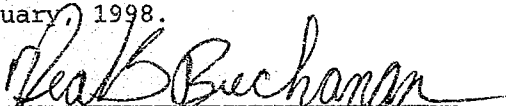
D. Machinery, tools or equipment used in the business is to be of the type typically associated with residential use and will not have an adverse or harmful effect (i.e. noise, odor or fumes) to the established land use of the area. Put simply, the trucks will need to be parked, "warmed up" and on and off loaded on other premises zoned for such uses; and

E. The occupation shall not require internal or external alterations of the dwelling or accessory buildings; and

F. The use will utilize a sign or nameplate not greater than 3 square feet in area.

The Planning Director or designee shall review the permit every 12 months following the date the permit was issued, and may continue the permit only if the home occupation continues to comply with the requirements of Article 85.

DATED this 30th day of January, 1998.


NEAL G. BUCHANAN
Hearings Officer

NOTICE OF APPEAL RIGHTS

You are hereby notified this application may be appealed to the Klamath County Board of Commissioners by filing with the Klamath County Planning Department a Notice of Appeal as set out in Section 33.004 of the Klamath County Land Development Code, together with the fee required within SEVEN DAYS following the mailing date of this order.

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 30th day
of January A.D., 19 98 at 11:35 o'clock A.M., and duly recorded in Vol. M98
of Deeds on Page 2953

Return: Commissioners Journal

Bernetha G. Letsch, County Clerk

FEE No Fee

By Kathleen Rose