



CITY OF
GEARHART

Staff Report

For City Council Meeting of 08/02/2017

Subject - Old Business - Approval of final lottery reconsideration

Synopsis - City planning staff have updated the final findings and order in the Gearhart Crossing neighborhood cafe.

Council Options:

- *Review the document and resolve to approve the findings and order*
- *Make minor changes to the document and resolve to approve.*

Recommendation:

- None

Legal Analysis:

Financial Analysis:

Respectfully submitted,

A handwritten signature in black ink, appearing to be the name 'Chad', written in a cursive style.

Chad

**BEFORE THE CITY COUNCIL
OF THE CITY OF GEARHART**

IN THE MATTER OF A CONDITIONAL USE)
PERMIT FOR LOTTERY MACHINES)
CITY FILE #16-001 CU REVISED) **FINAL FINDINGS
AND ORDER**

This **Final Findings and Order** is to **APPROVE** a revised conditional use permit request to install lottery machines in the Gearhart Crossing neighborhood café on reconsideration from the Land Use Board of Appeals (LUBA).

Applicant: Sum Properties LLC
 3457 Hwy 101 North
 Gearhart, Oregon 97138

Property Owner: Sum Properties LLC

Location: 599 Pacific Way; Tax Lot 6200 Map 06N10W09AA

Completeness: 12-01-16
Notice mailed: 12-23-16
Notice published: 12-23-16
120-day deadline: 03-28-17, extended by the applicant to the end of April 2017
City Council decision: 04-14-17, affirmed decision of denial by Planning Commission
Appeal to LUBA: 05-04-17 by Sum Properties LLC
Reconsideration withdrawal: 05-25-17 by City
Reconsideration hearing: 07-05-17

Exhibits:

- Application submitted by Sum Properties 11-29-16
- Gearhart Fire Chief, no comments email 12-05-16
- Gearhart Building Inspector, no comment
- Gearhart Police Chief, no concerns email 12-06-16
- Gearhart Public Works, no comment
- Gearhart City Manager, 12-05-16 said the public needs to be notified of the lottery machines
- Letters of objection from Dianne Widdop 12-28-16, Alan Smock 12-28-16, Lisa Cerveny 1-9-17, Steve & Kathy Roos 1-11-17, Penny Sabol 1-11-17, Lori & Dan Thurston 1-4-17
- Letter of support from Greg Hathaway 07-05-17

Gearhart Zoning Code Review Criteria:

- GZO Section 1.030 Definition of Neighborhood Cafe
- GZO Section 3.4 Neighborhood Commercial C-1 Zone
- GZO Section 8.040 Conditional Use Review Criteria
- GZO Section 8.060 Additional Modification of Standards for CUP
- GZO Article 13 Application, Notice & Hearing Procedures

I. FINDINGS

- A. Background:** The Applicant requests approval to modify a conditional use permit granted by the City on May 3, 2016 for a neighborhood café. The requested modification would permit a room separated from the main dining room by an eight-foot wall to locate and install four (4) to six (6) video poker lottery machines. The Applicant submitted the current conditional use application on November 29, 2016. The current application is a request to revise or amend the neighborhood café conditional use.

On January 5, 2017, the Planning Commission denied the application for the revised conditional use permit. On January 19, 2017, the Applicant filed an appeal of the denial to the Gearhart City Council. On April 5, 2017, the City Council affirmed the Planning Commission's denial. On April 14, 2017, the Mayor signed the Final Order. On May 4, 2017, the Applicant filed a notice of intent to appeal the City Council's decision to LUBA. On May 25, 2017, the City filed a notice with LUBA to withdraw its decision for reconsideration. The matter is currently before the City Council for reconsideration from LUBA.

- B. Site Information:** The subject parcel is an established existing commercial building located at Pacific Way and Cottage Ave. The 4100 square foot building has two existing street entrances, no off-street parking and handicapped access.

- C. Plan and Zone Standards:** The site is designated Commercial by the Gearhart Comprehensive Plan and is designated Neighborhood Commercial C-1 by the Gearhart Zoning Ordinance. The definition of a neighborhood café is:

Section 1.030 Definition #122 Neighborhood Café: *A business devoted to the serving of prepared food to the public where food is consumed on the premises while customers are seated at tables and having no more than 1300 square feet of eating area or seating at tables for no more than 40, whichever is less. Service may also include the sale of wines and malt beverages on the premises, where appropriate OLCC licenses have been obtained.*

FINDING: The Applicant proposes to revise the floor plan of the existing building in order to install between four (4) and six (6) video poker machines as determined by the Oregon

Liquor Control Commission (OLCC). The video poker machines will be located in a separate and enclosed area behind an 8-foot wall adjoining the deli kitchen. The Applicant is proposing to install the lottery machines behind the 8-foot wall so that minors under 21 can dine in the deli. OLCC regulations require this limitation if the lottery machines can be seen by minors.

Each lottery machine will have a table beside it allowing each person using the machine to consume prepared food at the table. The café is currently allowed 40 seats in the main dining room. That number will be reduced from the main dining room by the number of lottery machines allowed by the OLCC and the seats in the enclosed area.

The City does not interpret the definition of Neighborhood Café as prohibiting the lottery machines behind the 8-foot wall in the enclosed area so long as food and beverage service is made available to customers at tables in the enclosed separated area. The definition does not distinguish between food service in the main deli area or in an area where customers are seated behind an 8-foot wall where tables and seats are available for food service. The City finds that the Applicant will provide tables and seats for patrons at the lottery machines in the enclosed area. Therefore, the City finds that the Applicant's proposal meets the definition of Neighborhood Café.

- D. **Agency Coordination:** The proposal was referred to city departments. No objections were raised by any of the City departments regarding the request to install lottery machines in the Gearhart Crossing neighborhood café.
- E. **GZO Section 3.4.C-1 Neighborhood Commercial Zone:** The site is zoned C-1, Neighborhood Commercial Zone. GZO 3.410 provides that the purpose of the C-1 zone is to provide the location of needed small businesses and services in the City for the convenience of nearby residents. Businesses are intended to fit into the residential character of the neighborhood and not create either architectural or traffic conflicts.

FINDING: The City finds there are no structural changes to the exterior of the building therefore no architectural conflicts will occur. Existing streets, parking and circulation of vehicles will remain the same.

Section 3.420 and 3.430, C-1 Outright Permitted and Conditional Uses. Outright permitted uses in a C-1 zone include retail business for the convenience of nearby residents (grocery, drug, barber and beauty shops), Home Occupations, Post Offices, Offices, Manufactured Dwellings, recreation vehicles or construction offices, subject to certain limitations, and soda fountains. Conditional Uses include Neighborhood Cafes (as defined above) and Variety Stores. This section of the code permitting a neighborhood café as a conditional use is subject to specific café conditions.

FINDING: A request for a Conditional Use for a Neighborhood Cafe must comply with the provisions of Article 8 (Conditional Uses) which are addressed below in these Findings.

- F. **GZO Section 8.020 Planning Commission Authority:** This section provides that the Planning Commission shall have the authority to approve, approve with conditions or disapprove Conditional Use Permits in accordance with the standards and procedures of the section, addressed below.

FINDING: The Planning Commission previously denied the Applicant's request for a conditional use to install the lottery machines. The City Council previously affirmed the Planning Commission's decision of denial. The Applicant appealed the City's decision to LUBA. The City withdrew its decision to allow reconsideration of its decision at a public hearing. The City Council held a reconsideration hearing on July 5, 2017 and heard testimony and argument. The City Council hereby adopts this **Final Findings and Order** approving the conditional use subject to conditions of approval.

- G. **GZO Section 8.040 General Conditional Use Review Criteria:** Before a conditional use is approved, findings will be made that the use will comply with the following standards:

1. The proposed use is consistent with the policies of the Comprehensive Plan;

The Comprehensive Plan and the Zoning Code designate the subject property C-1 Neighborhood Commercial for limited commercial use suitable for the surrounding neighborhood character. Comprehensive Plan policies that are relevant to the request include the following:

Existing Plan Policies:

- a. Commercial Development Policy 1 – The City will limit commercial activities in the City, in terms of both land devoted to commercial uses and the types of uses permitted in commercial zones, to a level that is compatible with Gearhart's residential character;*

FINDING: The amount of land devoted to commercial zones is not affected by the proposal because the site is currently zoned commercial. The types of uses allowed in commercial zones, in this case Neighborhood commercial zones, are set out in the GZO, as provided above. These uses define whether the use of the property is compatible with Gearhart's residential character. The Applicant's proposed use of installing lottery machines in an area separated by an 8' tall wall, with seats and tables for food service meets the definition of an allowed or conditional use (Neighborhood Café) in the C-1 zone. Therefore, this Policy is satisfied.

- b. Commercial Development Policy 6 – The City will maintain a commercial zone in the center of the City that provides for the needs of residents;*

FINDING: The City maintains a commercial zone through its zoning ordinance and zoning designations and regulations. The C-1 Neighborhood commercial zone narrowly lists outright permitted and conditional uses, as set forth above. The Applicant's proposed use of installing lottery machines in an area behind the 8-foot wall with four (4) to six (6) seats/tables, meets the definition of a neighborhood café, as described above, because the area will have seats and tables for food service. Therefore, this Policy is satisfied.

c. Commercial Development Policy 6 – The City will establish Zoning ordinance standards to protect residential areas from adjacent commercial development;

FINDING: The C-1 zone uses and ordinance standards were carefully created to assure uses would be allowed only if they could operate with low impacts on adjacent residential areas. The City's zoning ordinance allows a neighborhood café as a conditional use permit if the proposed use meets the definition of a neighborhood café and satisfies all of the other conditional use criteria. The proposed use and revision to the Applicant's original conditional use permit meets the definition of a neighborhood café as stated in the Findings above. Therefore, this Policy is satisfied.

2. GZO 8.040(2) provides, A demand exists for the use at the proposed location. Several factors which shall be considered in determining whether or not this demand exists include: accessibility for users (such as customers and employees), availability of similar uses, availability of other appropriately zoned sites, particularly those not requiring conditional use approval, and the desirability of other suitable zoned sites for the use;

FINDING: The City finds that Applicant's proposed use meets the definition of a Neighborhood Café and is allowed as a conditional use in the C-1 zone. The City further finds that the Applicant's original request for a Neighborhood Café conditional use adequately addressed this requirement.

3. GZO 8.040(3) provides, The location, size, design and operating characteristics of the proposed use are such that the development will have a minimum impact on surrounding properties;

FINDING: The City finds that the Applicant's proposed use meets the definition of a neighborhood café and is permitted as a conditional use in the C-1 zone. The City finds there are no changes in the location of the previously approved conditional use permit. The size, design and operating characteristics of the proposed use will not have more than a minimum impact on surrounding properties. Therefore, this Section is satisfied.

4. GZO 8.040(4) states, The use will not generate excessive traffic when compared to the traffic generated by uses permitted outright and adjacent streets have the capacity to accommodate the traffic generated.

FINDING: The City finds that Applicant's proposed use meets the definition of a Neighborhood Café and is permitted as a conditional use in the C-1 zone. The City finds

there is no evidence that the proposed use will generate excessive traffic or reduce the capacity of adjacent streets. Therefore, this Section is satisfied.

5. GZO 8.040(5) provides, Public facilities and services are adequate to accommodate the proposed use.

FINDING: The City finds that the Applicant's proposed use meets the definition of a Neighborhood Café and is permitted as a conditional use in the C-1 zone. The City finds the public facilities and services that were adequate to serve the use of the property as a neighborhood café, as originally approved by the City, would also be adequate to accommodate the proposed use. Therefore, this Section is satisfied.

6. GZO 8.040(6) provides, The site's physical characteristics in terms of topography, soils and other pertinent considerations are appropriate for the intended use; and:

FINDING: The City finds that the Applicant's proposed use meets the definition of a Neighborhood Café and is a permitted conditional use in the C-1 zone. The City further finds the site has functioned appropriately for limited commercial activity since the building was originally approved and constructed. There are no known constraints related to topography or soil conditions on the parcel. Therefore, this Section is satisfied.

7. GZO 8.040(7) provides, The site has adequate area to accommodate the proposed use. The site layout has been designed to provide appropriate access points, on site drives, parking area, loading areas, storage facilities, setbacks, buffers, utilities or other facilities which are required by city ordinance or desired by the applicant.

FINDING: The City finds that the site has previously been shown to have adequate area for small-scale commercial use when the City approved the original conditional use permit. The adjoining sidewalk and street furniture, the loading area, storage and garbage facilities have been well managed and maintained by the current owner. The building has historically operated effectively despite the lack of on-site parking spaces. Therefore, this Section is satisfied.

H. Section 8.050(5) Conditions for a Neighborhood Café

If approved, a neighborhood café shall conform to the following standards:

- 1. A public need exists for the use at the proposed location. The following factors shall be considered in determining whether a public need exists: availability of other appropriately zoned locations, particularly those not giving call for a conditional use approval; and availability of other suitably zoned sites for the use.*

FINDING: The City finds that the proposed installation of the lottery machines in the separated and enclosed area meets the definition of a Neighborhood Café. Therefore, the City finds that the public need established for the original conditional use for a neighborhood café also applies to the proposed conditional use.

2. *The neighborhood café shall be in operation during a minimum of eleven months in a calendar year.*

FINDING: The City finds that the Applicant intends to comply with this requirement as previously determined in the original conditional use request for a neighborhood café.

3. *The neighborhood café shall be closed by 10 p.m.*

FINDING: The City finds that the separated and enclosed area with the lottery machines will be subject to the same hours of operation limitation as previously imposed in the original conditional use request for a neighborhood café.

4. *The neighborhood café, if located in a new structure, shall provide off-street parking spaces in the proportion of one space per 200 square feet of floor area plus one per employee.*

FINDING: The lottery machines will be located in the same neighborhood café as previously approved by the City. Therefore, this requirement is not applicable.

I. Section 8.060 Additional Modifications of Standards for Conditional Uses

The City may impose additional conditions if necessary to protect the best interest of the City as a whole. These additional conditions are:

1. **Increasing the required lot size or yard dimension;**

FINDING: The City finds that it is not necessary to impose this condition since the parcel or the existing building cannot be required to be modified to increase setbacks or property lines.

2. **Limiting the height of buildings;**

FINDING: The City finds that it is not necessary to impose this condition because the height is not affected by the request.

3. **Controlling the location and number of vehicle access points;**

FINDING: The City finds that it is not necessary to impose this condition because the location and number of access points is established.

4. **Increasing the street width;**

FINDING: The City finds that it is not necessary to impose this condition because the street width is established and adequate for the proposed use.

5. **Increasing the number of required off-street parking space;**

FINDING: The City finds that it is not necessary to impose this condition.

6. **Limiting the number, size, location and lighting of signs;**

FINDING: The City finds that no signage will be visible from the exterior of the building related to the lottery machines based on a condition of approval.

7. **Requiring diking, fencing, landscaping or other facilities to protect adjacent or nearby property;**

FINDING: The City finds that it is not necessary to impose this condition because no diking, fencing or additional landscaping is required to protect adjacent or nearby property.

8. **Designating sites for open space; and**

FINDING: The City finds that it is not necessary to impose this condition because the subject use is not required to provide designated open space.

9. **Hours of use or operation.**

FINDING: The City finds that the area where the lottery machines are located will also be required to close at 10 p.m., the same time as for the neighborhood café, as a condition of approval.

II. CONCLUSION

The City Council **APPROVES** the Applicant’s conditional use request to install four (4) to six (6) video poker machines in an area separated by an 8-foot wall, in the building located at 599 Pacific Way, for the reasons set forth above subject to the following conditions of approval: (1) no signage will be visible from the exterior of the building related to lottery machines; (2) food and beverage service shall be available to patrons at tables inside the separated area; (3) tables will be available for patrons at the lottery machines for the purpose of consuming food and beverages; and (4) the area where the lottery machines are located will be required to close at 10 PM.

Signed: _____ Date: _____

Matt Brown, Mayor of Gearhart

DATE MAILED: _____

APPEAL

In accordance with the Gearhart Zoning Code Section 13.060, the decision of the City Council may be appealed to the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days of the date the final order is signed.