

CITY OF GEARHART

698 PACIFIC WAY • P.O. BOX 2510 • GEARHART, OREGON 97138
(503) 738-5501 • (503) FAX 738-9385

January 12, 2017

MEMBERS: Carl Anderson, Jeremy Davis, Virginia Dideum, Terry Graff, Richard Owsley, David Smith and Russ Taggard.

STAFF: Chad Sweet and Carole Connell by telephone.

Minutes

The regular meeting of the Gearhart Planning Commission for January 12, 2017 was called to order at 6pm by President Richard Owsley.

After clarification by Sweet, Anderson nominated with Davis second Commissioner Virginia Dideum to Commission President. Dideum accepted the nomination.

By unanimous vote Commissioner Dideum was elected Commission President for 2017.

Davis nominated with Graff second Commissioner David Smith as Vice-president. Smith accepted the nomination.

By unanimous vote Commissioner David Smith was elected Commission Vice-president for 2017.

On **MOTION** by Anderson, 2nd by Owsley, the minutes of December 8, 2016 were unanimously approved.

The financial report as of January 9, 2017:

Planning Commission Expenses

Year to date 5,155.53

Balance 3,344.47

Planning Commission Secretary Expenses:

Year to date 13,110.65

Balance 16,889.35

On **MOTION** by Taggard, 2nd by Anderson, the financial report of January 9, 2017 was unanimously approved.

COMMISSIONERS REPORTS:

There were no Commissioners reports.

STAFF REPORTS:

Sweet reported on the Town Hall meeting regarding beach dune vegetation next step will be council discussion to develop plans. The beach dune project will come to the commission after a joint work session.

Council has a work session on January 31st to discuss RV with regards to Municipal Code vs Zoning Code.

Connell reported the Gearhart Hotel hearing has been continued to February 9th

CORRESPONDENCE:

None

VISITORS COMMENTS NOT RELATED TO AGENDA ITEMS:

None

Dideum read the disclosure statement into the record. Dideum asked if there was any conflict of interest, ex parte contact or personal bias for any of the hearing before the commission this evening. None was declared.

Dideum asked if there were any challenges to the commission hearing any of the applications before the commission this evening. None was voiced.

Dideum opened the public hearing to consider revising the approved Conditional Use application #16-001CU submitted by Sum Properties LLC to include 4 lottery machines for property at 599 Pacific Way and further described as Assessors Plat 6 10 9AA, Tax Lot 6200.

Connell review the staff report noting based on findings is recommending denial of the request.

Applicants Report

Terry Lowenberg, applicant, owns Sum Properties LLC owner of the grocery store, 3457 Highway 101 North – his request is to get permission to allow gambling (lottery machines). He has built the bar portion of the brewpub project keeping a large section of the building for quick pick up items from the grocery store. He has been financially subsidizing the store for the community for a very long time the store has never supported itself since they bought it. The store was not supported by the community, he could not buy inventory for what COSTCO sells goods for.

Most business that have lottery machines need them to survive during the winter months, if the brewpub does not make it he will no longer be supporting the business. He asked if the bowling

alley was required to come before the commission for approval to install lottery machines, lottery machines are not an outright use in any zone.

Commissioner Davis asked if any business will survive in the location without lottery machines. Lowenberg said he is trying to keep somewhat of a grocery business for quick things along with other ways to keep the business alive. He was very deliberate to keep the business children friendly. If any business is not supported by the community it will not stay open.

Commissioner Owsley asked how many total machines he was asking for.

Lowenberg stated the maximum number of machines allowed by the State of Oregon is 6; the state will not let a business start with any more than 4 machines.

Commissioner Owsley asked what kind of income could be anticipated from the machines.

Lowenberg noted talking with Randy Strickland from the lottery and was told approximately 80% of the business in the county would not survive without the lottery machines, Lowenberg estimating 30 to 40% of his income would need to come from the lottery to help the business. He finds drinking and gambling are not coordinated. Strickland informed him they start with 4 machines and can increase to a maximum of 6 depending on income the machines are producing. His intention would be to go with what the state would allow him. He further noted lottery monies come back to the city.

Commissioner Davis asked how it is segregated from the rest of the property.

Lowenberg said his walls go clear to the top you walk by a blank wall.

Commissioner Smith noted listing 5 video poker machines on the application and in the plan, narrative and drawing disagrees with wall sizes of 4 foot or 8 foot and said the application needs to be corrected for consistency.

Commissioner Dideum asked if he would be selling lottery tickets.

Lowenberg - No.

Commissioner Dideum asked what kind of signage would be outside the building.

Lowenberg said there would be no beer signs or lottery signs they want the business kid friendly/town friendly.

Correspondence was entered into the record:

Elizabeth Brooke, 2545 SW Terwilliger Blvd #1036, Portland, OR 97201
Opposed to request as creating a honky-tonk atmosphere in Gearhart.

Rick Sabol, P O Box 2528, Gearhart, OR 97138
Requests a no vote on the request.

Penny Sabol, P O Box 2528, Gearhart, OR 97138
We do not need gambling in Gearhart

Allen Smock, 14920 NE Rose Parkway, Portland, OR 97230
Does not approve of the proposed amendment, lottery machines are not necessary in Gearhart.

Steve & Kathy Roos, 5635 SW Merridell Ct., Portland, OR 97225
Cannot see this as an improvement to the City of Gearhart.

Lori & Dan Thurston, 22312 SW 107th Ave, Tualatin, OR 97062
Against lottery machines in neighborhood café.

Dianne Widdop, P O Box 2116, Gearhart, OR 97138
Lottery machines do not belong in Gearhart's small neighborhood commercial zone.

Maria Hall and Walter McMonies, 3131 SW Altadena Terrace, Portland, OR 97239
Brewpub with video poker is redundant and community negative.

Lisa Cerveney, P O Box 2368, Gearhart, OR 97138
Adamantly against adding gambling into the center of Gearhart it would be a negative addition to the family ambiance.

Testimony was open to proponents

Dave Eilenberger, 240 6th Ave, Seaside, OR 97138

Said he has walked through the place, it's a completely separate room, nicely done, he has worked in Gearhart for 15 years it is a nice resource, he does not think the business will survive without the machines; he encourages keeping the resource in the community and said it will also provide jobs.

Testimony was open to opponents

Susan Edy, 707 F Street, Gearhart, OR 97138

She feels there is no public need for lottery machines in the down town when video machines are available along the highway in Gearhart.

Wilson Mark, P O Box 2627, Gearhart, OR 97138

Does not want or need video poker when it is available a mile away, if he cannot make it without the video poker machines we don't need him, what he wants is a full-fledged grocery store.

Jeanne Mark, P O Box 2627, Gearhart, OR 97138

Video poker was not mentioned in prior hearings he should have brought it to everybody's attention that he needs video poker to survive. She further asked why it is the cities responsibility to keep him solvent.

Shannon Smith, P O Box 20173, Gearhart, OR 97138

She believes in individual rights while abiding by the laws of the city. Talking to the state lottery she noting revenue numbers that return about ¼ of what is brought in by the machine back to the business. She feels lottery machines may not be the right type of character for down town and encourages Gearhart to support businesses so they thrive without video poker.

Testimony was open to neutral comments.

Marilyn Gilbaugh, P O Box 2076, Gearhart, OR 97138

She asked why lottery did not come up with the initial application. She noted lottery machines were at the last business at the junction of Highway 101 and Pacific Way that did not survive asking how valid the need is for lottery machines.

Applicant Rebuttal

Lowenberg noted his intention all along was a brewpub and retain as much of the grocery items that sell. When Randy Curs had the business there was no COSTCO, no huge Safeway and no

huge Fred Meyers, no small grocery store can compete with the large stores. He is trying to keep the corner alive. If the business is not wanted he can no longer afford to keep pumping money into the business. The new owner of Main Street Market in Warrenton is having a tough time being closer to COSTCO and Fred Meyers.

The public hearing was closed at 7:05 pm.

Discussion followed on the original proposal, need and other available sights, meeting café criteria and family atmosphere, on **MOTION** by Graff, 2nd by Owsley, a motion was made to deny application #16-001CU submitted by Sum Properties for property located at 599 Pacific Way to amend his conditional use application to include lottery machines. Motion passed 5-2 (Anderson-aye, Owsley –aye, Graff – aye, Davis-nay, Taggard – aye, Dideum – nay, Smith – aye) (see attached)

The public hearing to consider application #17-001CU submitted by Clover Hart Properties LLC to conditionally operate a neighborhood café at 567 Pacific Way and further described as Assessors Plat 6.10.9AA, Tax Lots 5900 & 6000 was called to order at 7:30 pm.

Connell reviewed the staff report noting the application is for remodel of the east side of the building into a neighborhood cafe, the west side of the building is a permitted use in the C-1 zone and not a part of the request.

Applicants Report

Traci Williams, P O Box 2337, Gearhart, OR 97138 owner

She has remodeled the apartment and wants to open the east side of the building primarily because the bathroom and cleaning cupboard for the ice cream shop are located there. That portion of the building has been boarded up for probably 20 years. She feels strongly about letting customers use the bathroom and providing handicap access. In clearing out the area it lends itself as an area for seating for the ice cream shop or other foods. She stressed she is not opening a wine bar, the allowed uses do not allow for seating, the area allows for seating for an 8 person table and a couple stools for a total of 16 seats, the whole building is a Wi-Fi hot spot. With approximately 450 feet of usable space according to restaurant guidelines 22 is the maximum number that could be squeezed into the space but 16 is workable. In response to finding on page 4 G because she resides in the building livability is important to her, regarding *need* she has had 10 people ask for a job, over 200 people ask when she is opening, one request to book a children's party, 2 groups have asked to hold meetings in the spot. She feels she is a similar use to By The Way severing coffee and limited food. The restaurant association reports figures of populations being able to support .2 to .354 restaurants per 100 Gearhart permanent

year round residents could support 3 to 5 restaurants in the C1 corridor. She is offering a different type of service than Pacific Way her offering being more like a coffee shop cafe. (Page 7) it is hard to address compliance since she is not open but will adhere to the code. A vacant shop does not fit into Gearhart's plan she feels she is opening the building with the highest and best use of the public. She has submitted all of the materials required, has conferred with restaurant professionals, grocery experts, and bankers, her plan has been approved by the Small Business Authority and Columbia Bank, she is working with Clatsop County Extension Office and Clatsop Economic Resource Group. The sale of wine is secondary in her business plan to the ice cream and coffee and understands the importance of protecting minors. Her signage plan has been submitted and the sign has already been repainted. There is currently a bicycle rack in front of the shop. She owns the property west of the shop providing a buffer to residential neighbors. She has filed for OLCC permits and health department permits. The use conforms to the conditional use criteria and would allow for seating.

Commissioner Anderson asked where the kitchen is.

Williams said it was a limited commercial kitchen behind the ice cream counter and will serve for both uses.

Commissioner Dideum asked about the couch if it was going to be for drinking wine.

Williams said the couch was for both it is part of the whole experience there is no way to segregate, counter ordering and sitting at a table or sitting at the couch.

Commissioner Dideum asked about her OLCC application asking for off premise sales and asked if she would be selling wine or beer to carry away, or selling mixed drinks.

Williams said she would not be selling mixed drinks and she plans is to sell beer and wine as well as high end specialty groceries.

Commissioner Dideum asked for clarification on the number of seating going back to the 16 referred to in her application and asked how she was going to make community seating work.

Williams said the 16 would be all seating; 2 tables, couch, bench and stools, seating would be first come first serve. She wants to be community friendly.

Correspondence was entered into the record.

Marcie & David House, 8485 SW Ridgeway Dr., Portland, OR 97225
Supports the new business as a family-friendly gathering place.

Mary Murphy, 1841 SW Montgomery Dr., Portland, OR 97201
In favor of Pops Ice Cream Coffee business receiving a business license and keeping all existing storefronts with thriving businesses.

Joy Sigler, P O Box 2443, Gearhart, OR 97138
The conditional use request is consistent with C1zone standards and consistent with current business activities in the zone.

James Folk, P O Box 2165, Gearhart, OR 97138
Pops Ice Cream shop has been missed in the community.

Robert Ames, 1136 NW Hoyt St., Portland, OR 97209
He supports the proposal the plan is a good fit for Gearhart.

Katy Walstra Smith, 234 Woodland Ave., Gearhart, OR 97138
Pops Sweet Shop has been missed and looks forward to supporting the new sweet shop business and feels it is not in direct completion with other options in downtown.

Craig Weston, PO Box 2838, Gearhart, OR 97138
Endorses the application to reopen Pops the closure created a massive void in downtown, ask the commission approve the application.

Susie Neighbors, 2889 NW Thurman St, Portland, OR 97210
Supports the re-opening of Pop's Sweet Shop and feels there is a need for another option to walk to.

Tracy & Henry Hooper, P O Box 2161, Gearhart, OR 97138
Pop's Sweet Shop has been missed; the new store will enhance the experience for residents and patrons.

Elizabeth Brooke, 2545 SW Terwilliger Blvd #1036, Portland, OR 97201
She is not opposed to the application.

Allen Smock, 14920 NE Rose Parkway, Portland, OR 97230

Does not approve of the proposal Gearhart does not need another restaurant.

Steve & Kathy Roos, 5635 SW Merridell Ct., Portland, OR 97225

Vote no on the neighborhood café.

Dianne Widdop, P O Box 2116, Gearhart, OR 97138

The applicant has not explained why there is a public need for three cafes within half block. It is inappropriate that children use the same entrance for ice cream that adults use for wine drinking.

Marie Hall and Walter McMonies, 3131 SW Altadena Terrace, Portland, OR 97239

The proposal is fairly positive for the community.

Lisa Cerveny, P O Box 2368, Gearhart, OR 97138

Encourage commission to deny the request until a more thorough plan has been submitted.

Testimony was open to proponents.

Wilson Mark, P O Box 2627, Gearhart, OR 97138

She has an amazing business model and he likes everything about it.

Craig Weston, P O Box 2838, Gearhart, OR 97138

He wants to keep Gearhart special and encourages Gearhart support all of the small businesses.

Shannon Smith, P O Box 2173, Gearhart, OR 97138

She compared the diverse Cannon Beach eateries to the diversity of Gearhart's core; it would be a nice investment in the future.

Eve Marks, P O Box 2505, Gearhart, OR 97138

She agrees with Smith, she loves the concept.

Tom Thies, P O Box 2831, Gearhart, OR 97138

When Pop's originally opened he was concerned about Gearhart becoming a tourist town, there proved to be no traffic impact 90% of the business was foot traffic.

Testimony was open to opponents

None

Testimony was open to neutral testimony

Susan Edy, 707 F Street, Gearhart, OR 97138

She has concerns alcohol will be allowed in the garden. She said it is important for the city to do their best and adhere to the comprehensive plan and think about *need* and determine what the best is for Gearhart.

Jeanne Mark, P O Box 2627, Gearhart, OR 97138

Asked if walls could be removed, spaces combined and a new business could go in to seat 40 capacity if the business should fail.

Applicant Rebuttal

Williams felt the concern for future owners should not be a part of the thought process for this application, with change of ownership each new owner would need to apply. To change the space to seat 40 would be a massive undertaking and she asks her application be considered on its merits.

The public hearing was closed at 8:20pm.

Discussion followed on *need*, parking, maximum seating condition, restriction on alcoholic beverages, limiting commercial floor space, on **MOTION** by Graff, 2nd by Owsley, by unanimous motion application #17-002CU to conditionally operate a neighborhood café at 567 Pacific Way and further described as Assessors Plat 6 10 9AA, Tax Lots 5900 & 6000 was approved subject to conditions 1 thru 5 as listed in the staff report of January 5, 2017. (See attached)

The public hearing to consider application #17-002V submitted by Michael Sandberg requesting a variance from Section 3.520(22)(A) to allow for operation of a marijuana dispensary *within 1000 feet of a recreational facility attended primarily by minors*. Said property is located at 3095 Highway 101 and further described as Assessors Plat 6 10 10AC, Tax Lot 1300.

Connell reviewed the staff report recommending denial of the application.

Applicants Report

There was no applicant present

Correspondence was entered into the record

Jeanne Mark, P O Box 2627, Gearhart, OR 97138

Proposed site is too close to where children play; there is no need for the facility when there are 2 other shops within 2 miles.

Ohran Konez, 4021 SW 137th St, Vancouver, WA 98683, building owner.

He believes the applicant has met all the criteria; there is a demonstrated hardship for both the applicant and the property owner, the shop location is out of site from highway 101 or neighboring residents and not injurious to adjacent areas, the request is necessary to enable reasonable use of the property, although the property corner measures 731 feet from Sons of Norway the retail space is about 1000 feet from the ballfield.

Rick Sabol, P O Box 2528, Gearhart, OR 97138

Requests a no vote, the proposal has no positive attributes.

Penny Sabol, P O Box 2528, Gearhart, OR 97138

We do not need drugs in Gearhart.

Elizabeth Brooke, 2524 SW Terwilliger Blvd #1036, Portland, OR 97201

Opposed to the request, there are other locations to buy marijuana, too close to Sons of Norway.

Allen Smock, 14920 NE Rose Parkway, Portland, OR 97230

Opposed to the request marijuana dispensary is not necessary in Gearhart.

Steve & Kathy Roos, 5635 SW Merridell Ct., Portland, OR 97225

Please reject the application; this is not something that would make Gearhart a better place.

Lori & Dan Thurston, 22312 SW 107th Ave, Tualatin, OR 97062

Against marijuana dispensary

Dianne Widdop, P O Box 2116, Gearhart, OR 97138

No reason to approve the application, marijuana business needs to be located in a location that meets the zoning ordinance codes.

Lisa Cerveny, P O Box 2368, Gearhart, OR 97138

Against marijuana dispensary as it is within 1000 feet of where children frequent.

Testimony was open to proponents
None.

Testimony was open to opponents
Susan Edy, 707 F Street, Gearhart, OR 97138
Unsupervised minors regularly hang out at Sons of Norway, all are impressionable. There are enough marijuana facilities in Clatsop County already.

Tom Thies, P O Box 2831, Gearhart, OR 97138
No problem with the shop but there are other allowed locations where the business could locate without requesting a variance, commission should stick to the established requirements.

Testimony was open to neutral testimony
None

The public hearing was closed at 9:07pm.

On **MOTION** by Graff, 2nd by Owsley, by unanimous motion application #17-002V seeking relief from Section 3.520 (22)(A) to operate a marijuana dispensary within 1000 feet of where children frequent was denied. (See attached)

The public hearing to consider application #17-003CU a request by Gearhart Golf LLC to change the existing nonconforming structure to allow 16 guest rooms above the golf course cart barn at 1157 N Marion Avenue was open and is to be continued, no testimony will be taken.

On **MOTION** by Graff, 2nd by Owsley, by unanimous motion public hearing #17-003CU was continued to February 9, 2017.

OLD BUSINESS
None

NEW BUSINESS
None


CONCERNS OF THE COMMISSION
Anderson asked about the quarterly goals list.

Connell will include it in next month's planning commission packet.

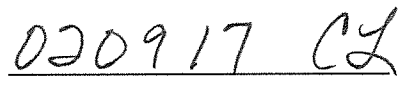
QUESTIONS FOR THE LAND USE ATTORNEY

None

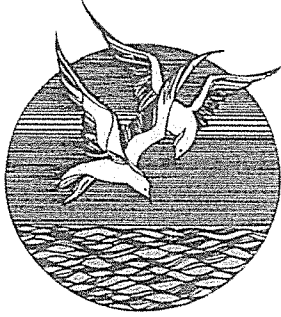
On **MOTION** by Graff, 2nd by Owsley, the meeting was adjourned at 9:10pm.



Cheryl A. Lund, secretary



approved



CITY OF GEARHART

698 PACIFIC WAY • P.O. BOX 2510 • GEARHART, OREGON 97138
(503) 738-5501 • (503) FAX 738-9385

BEFORE THE PLANNING COMMISSION OF THE CITY OF GEARHART

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

This is a **DENIAL** of a request for a Revised Conditional Use Permit to install lottery machine in the approved neighborhood café

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

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 Cerveney 1-9-17, Steve & Kathy Roos 1-11-17, Penny Sabol 1-11-17, Lori & Dan Thurston 1-4-17

Gearhart Zoning Code Review Criteria:

- 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 locate poker lottery machines in the approved cafe in an enclosed area adjoining the deli. The state regulates the use of lottery machines. The Conditional Use for a deli/pub/café was approved by the Planning Commission, which was also approved by City Council on appeal May 3, 2016.
- 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.

The narrow definition of a neighborhood cafe does not include or allude to lottery machines, gambling or gaming. The applicant proposes to revise the floor plan in order to install at least four (4) poker machines enclosed behind an 8-foot wall adjoining the deli kitchen. The machines would add four seats to the café. But the café floor plan has been modified reducing the seating area, reducing the number of tables from 9 to 7, adding 7 seats at a bar counter and 4 seats at the gambling machines, for a total of 39 seats.

D. Agency Coordination: The proposal was referred to city departments who raised no objections. City staff determined the inclusion of lottery poker machines was not included in the original application for a neighborhood cafe.

E. GZO Section 3.4 C-1 Neighborhood Commercial Zone

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.

FINDINGS: The City finds there are no structural changes proposed to the exterior of the building therefore no architectural conflicts will occur. Existing streets, parking and circulation of vehicles will remain the same. The City found the lottery machines were not included in the initial application to convert the grocery store to a pub/ neighborhood café. City staff determined the machines are a significant change to the original application. Therefore the public should be notified the Planning Commission would consider the change in a public hearing.

Section 3.420 C-1 Conditional Uses. This section of the code permits a neighborhood cafe as a conditional use subject to specific café conditions and compliance with the provisions of Article 8 Conditional Use.

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.

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. The Gearhart Comprehensive Plan policies do not provide guidance regarding gambling and gaming uses. Comprehensive Plan policies that are relevant to the request include the following:

Existing Plan Policies

- a. *The City will limit commercial activity 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;*

FINDINGS: The amount of land devoted to commercial zones is not affected by the proposal because the site is currently zoned commercial. The type of use is proposed adds lottery gambling machines to the planned neighborhood café. The Planning Commission and City Council carefully considered the recent decision to replace the grocery store with a neighborhood café. Gambling and gaming in the cafe was not considered at the time. City officials and residents were willing to interpret the café use as suitable because the applicant indicated it would serve as a community gathering place for eating and drinking on a limited basis. The community hopes there may also be a few essential grocery items available for the convenience of the community. This proposal to occupy a portion of the relatively small café with poker gambling machines does not coincide with the intent of the original approval. Lottery machines in a bar environment condone gambling and drinking. According to several studies, gambling and alcohol addictions are on the rise. This activity is not compatible with the intent of the C-1 zone or the residential character of the historic downtown. A neighborhood café is narrowly defined as a business "devoted to the serving of prepared food to customers seated at tables, and may include the sale of wine and beer". The City finds gambling stations that encourage alcohol consumption do not coincide with the intent of a neighborhood café as defined.

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

FINDINGS: The C-1 Neighborhood Commercial zone narrowly lists outright retail commercial uses for the convenience of nearby residents, and "these uses are limited to grocery, drug, a soda fountain, barber or beauty shops, offices or a post office and a home occupation in a residence. The zone specifies only two conditional uses, including a neighborhood café and a variety store. The City Council and Planning Commission determined the neighborhood café was permissible, but only after considerable thought and assurance that the café would be a family-friendly place for residents to gather for food and drink. There is no evidence that adult-only gambling and drinking is a use that Gearhart resident's need.

- c. *The City will establish Zoning ordinance standards to protect residential areas from adjacent commercial development.*

FINDINGS: The C-1 zone was carefully crafted to assure uses would be allowed only if they could operate with low impacts on adjacent residential areas. Approval of the proposed cafe came with some concern over the loss of a convenient grocery, and the addition of a drinking establishment that may result in negative impacts on the adjoining residential areas. The proposed revision to add adult-only gambling conflicts with the promised intent to create a family-friendly café and community gathering place.

The neighborhood café is described as “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.” The City finds the lottery machines are not a use “devoted to the serving of food while customers are seated at tables”.

Plan Compliance Summary: At the time of the original café approval the City found that the proposal is in compliance with a number of the relevant Comprehensive Plan policies and the intent of the C-1 zone. The limited size of the building and the limited hours of operation will provide some assurance that the use may be able to maintain compatibility with the low-key residential character of Gearhart, while providing a viable use for the historic corner of town”. But the proposal to convert some of the limited space exclusively for drinking and gambling conflicts with the original plan and diminishes the assurance that the café will maintain compatibility with the adjacent residential character and needs of Gearhart citizens.

2. 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;

PROPOSED FINDINGS: There are two other locations in the Gearhart city limits that have lottery machines, the Great Wall restaurant and the bowling alley. These are restaurant and bar services located on Highway 101 for tourists and residents, which are allowed in the C-2 commercial zone and are not as narrowly defined as in the C-1 zone. In contrast, The Sandtrap bar and restaurant adjoining the golf course, also zoned C-2 does not have gambling machines, an amenity that no McMEnamin’s restaurant or bar provides. Multiple McMEnamin’s establishments in the state are advertised as family-friendly and are regularly filled with multiple family events. The City finds there is no evidence of demand for additional gambling machines, and further that gambling machines are more suitable and appropriate in the C-2 zone.

3. The location, size, design and operating characteristics of the proposed use are such that the development will have a minimum impact on surrounding properties:

FINDINGS: The installation of poker lottery machines in the approved neighborhood cafe will devote space to adult-only activity that may operate in conflict with surrounding properties. The machines encourage drinking and conflict with the family-friendly character described in the original proposal. The machines conflict with the definition of a neighborhood café which is to devote the serving of prepared food to customers seated at tables.

4. 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.

FINDINGS: The City finds there is no evidence that the gambling machines will generate excessive traffic or reduce the capacity of adjacent street.

5. Public facilities and services are adequate to accommodate the proposed use:

FINDINGS: The vacant building has existing utility connections and access that will be re-established and re-permitted by the city and DEQ prior to occupancy.

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

FINDINGS: 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.

7. 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.

FINDINGS: The site has previously been shown to have adequate area for small scale commercial use. 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. The City finds the addition of gambling machines will reduce the area devoted to serving customers seated at tables and will reduce the family-oriented clientele.

H. Section 8.050 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 similar uses, 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.*

FINDINGS: The City finds there is no evidence that a demand exists for gambling machines in the central city C-1 zone. The C-2 zone allows eating and drinking establishments as an outright use and two existing businesses in the C-2 zone have been permitted to install lottery machines.

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

FINDINGS: The City finds the applicant agreed to abide by this condition of approval in the original approval.

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

FINDINGS: The City finds the applicant agreed to abide by this condition of approval in the original approval.

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.*

FINDINGS: This criterion is not applicable

I. Section 8.060 Additional Modifications of Standards for Conditional Uses

The Planning Commission 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;

FINDINGS: This criterion is not applicable 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;

FINDINGS: This criterion is not applicable because the height is not affected by the request.

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

FINDINGS: This criterion is not applicable because the location and number of access points is established.

4. Increasing the street width;

FINDINGS: The City finds the street width is established and adequate for the proposed use.

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

FINDINGS: This criterion is not applicable to an existing structure in the C-1 zone.

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

FINDINGS: The applicant has not provided a signage plan, but will be required to locate signage in accordance with C-1 sign regulations. C-1 signs are limited to flush signs on the front of the building facing the street that are no more than 2 feet in height. Temporary signs with a maximum height of 8 feet may be permitted. It is possible that lottery signage would be requested if the machines were approved.

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

FINDINGS: The City finds no diking, fencing or additional landscaping is required to protect adjacent or nearby property.

8. Designating sites for open space; and

FINDINGS: The subject use is not required to provide designated open space.

9. Hours of use or operation.

FINDINGS: In the original approval the café is required to close at 10 p.m.

II. SUMMARY CONCLUSION

The City finds that the request to install poker lottery machines in the proposed cafe is a use that is not in compliance with some of the Comprehensive Plan policies, is not in compliance with the intent of the C-1 zone or the definition of a neighborhood cafe. Further, there is no evidence of demand for the machines in the central city core.

III. DECISION

Based on the above findings and the public testimony on January 12, 2017 the Planning Commission decided to DENY City File #16-001 MODIFIED CU.

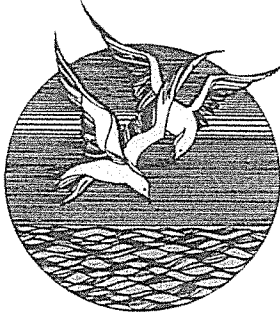
Signed: Virginia Dideum
Virginia Dideum, Planning Commission President

Date: 1/19/17

DATE MAILED: 012017

APPEAL

In accordance with the Gearhart Zoning Code Section 13.060, the decision of the Planning Commission may be appealed to the City Council within 15 days of the date the final order is signed. The notice of appeal filed with the City shall contain the information described in Section 13.060.



CITY OF GEARHART

698 PACIFIC WAY • P.O. BOX 2510 • GEARHART, OREGON 97138
(503) 738-5501 • (503) FAX 738-9385

BEFORE THE PLANNING COMMISSION OF THE CITY OF GEARHART

IN THE MATTER OF A PERMIT FOR A) FINAL FINDINGS
NEIGHBORHOOD CAFÉ CONDITIONAL USE) AND ORDER
CITY FILE #17-001 CU)

This is an **APPROVAL** of a Conditional Use Permit to remodel the east side of the former Pop's Sweet Shop for a neighborhood café offering lunch, dinner, wine and select grocery items. The re-opening of the adjoining soda fountain business is a permitted use and not a part of this request.

Applicant: Traci Williams
Sweet Shop LLC
PO Box 2337
Gearhart, Oregon 97138

Property Owner: Cloverhart Properties LLC
PO Box 2337
Gearhart, Oregon 97138

Location: 567 Pacific Way; Tax Lots 5900 & 6000 Map 06N10W09AA

Completeness: 11-28-16
Notice Mailed: 12-23-16
Notice Published: 12-23-16
120-day deadline: 03-28-17

Exhibits:

- Application submitted by Sweet Shop Gearhart LLC, 11-18-16

- Gearhart Fire Chief, no concerns by email dated 12-01-16
- Gearhart Building Inspector, restrooms & septic approval required - email dated 11-02-16
- Gearhart Police Chief, no concerns by letter dated 12-06-16
- Gearhart Public Works, no concerns
- Gearhart City Manager, unsure how to account for “need”, by email dated 12-05-16
- Letters of objection from Dianne Widdop 11-28-17, Allen Smock 12-28-16, Steve & Kathy Roos 1-11-17, Lisa Cerveney 1-9-17
- Letters in support from Marie & David House 1-10-17, Katy Smith 1-11-17, Joy Sigler 1-12-17, Mary Murphy, 1-11-17, Craig Weston 1-11-17, Robert Ames 1-11-17, James Folk 1-11-17, Maria Hall & Walter McMonies 1-11-17

Gearhart Zoning Code Review Criteria:

- GZO Section 1.030 Definitions
- GZO Section 3.4 Neighborhood Commercial C-1 Zone
- GZO Section 6.130 Off-Street Parking Requirements
- 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 owns the building and is in the process of remodeling the interior space to utilize both sides. The west side of the building is being renovated to re-open the soda fountain. The east side of the building, most recently used for storage, is proposed to offer lunch and dinner dining and limited grocery sales. An interior doorway opening is planned between the two spaces. The tentative name of the café is The Salon, reminiscent of the hair salon that once occupied the space. There is an existing apartment in the rear of the building where the applicant/owner lives. See applicant’s floor plans.

Site information: The subject parcel is an established historical commercial building located in the heart of Gearhart. The building covers the entire lot (38’ x 100’). The building has two existing separate entrances from a common front porch on Pacific Way. Outside on the west side of the building is a garden with benches for customer seating. The garden area is also the location of the building’s septic system that was installed in 2003. The septic system is regularly serviced under contract by Septech.

B. Article 13 Administrative Provisions: The application for a Conditional Use Permit is a quasi-judicial decision made by the Planning Commission. The applicant submitted the required forms and materials. The public hearing was advertised at least 20-days before

the hearing and notices were mailed to properties within 200 feet of the subject parcel. The public hearing was conducted in accordance with Section 13.050. A party to the decision by the Planning Commission may appeal the decision to the City Council.

- 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 C-1 allows a “Soda Fountain” as a permitted use. The remodel of the Sweet Shop is permitted by a Building Permit and septic approval from Clatsop County. Therefore, the Sweet Shop remodel is not a part of this approval request.

The request is for of a Conditional Use Permit to operate a neighborhood café in the east side of the building. The applicant proposes interior improvements to the vacant space by remodeling the restroom, installing a ramp for handicapped access, providing an entry with seating, some display shelving and coolers for food items, 3 bar stools at marble top wi-fi stations, and one dining table with an estimated 8 seats.

Land designated C-1 is a small geographic area consisting of 13 parcels in the city center at Pacific Way and Cottage Avenue. Except for a vacant corner lot and the subject vacant storefront, parcels are primarily occupied by retail or office use. A neighborhood cafe is specifically listed as a conditional use in the C-1 zone, which is the zone’s land use category most comparable to the proposed business. There are two approved neighborhood cafes in the C-1 zone.

The definition of a neighborhood café is:

Section 1.030 Definition #122 Neighborhood Café: A business devoted to the serving or 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.

According to the applicant the proposed café has a total of 1,230 square feet in which 590 square feet provide a dining area for 16 customers. The proposal is under the size and seating limitations allowed for a neighborhood café. An approval for the sale of wines and malt beverages on the premises is subject to OLCC approval.

- D. Agency Coordination: The proposal was referred to city departments. No objections were raised. Clatsop County Health Department approval of the existing septic system for the new use is required.

E. GZO Section 3.4 C-1 Neighborhood Commercial Zone

The purpose of the C-1 zone is to provide for 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.

FINDINGS: The City finds there are no structural changes or architectural conflicts proposed to the exterior of the historic building. Existing streets, parking and circulation of vehicles in the vicinity will remain the same. It is not expected that traffic patterns will change as a result of the new business. The parcel of land is fully occupied by the building therefore no new off- street parking can be made available on-site. The City supports small businesses that provide services to nearby residents.

Section 3.420 C-1 Conditional Uses. This section of the code permits Planning Commission approval of a neighborhood cafe as a conditional use subject to specific café conditions and compliance with the provisions of Article 7 Conditional Use.

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 approval criteria. Oregon land use courts have held that a conditional use is a permitted use subject to ameliorating conditions.

G. GZO Section 8.040 General Conditional Use Review Criteria

A conditional use approval shall find 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. The following Comprehensive Plan policies are relevant to locating a neighborhood cafe in a portion of the subject building:

Existing Plan Policies

- a. *The City will limit commercial activity 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;*

FINDINGS: The amount of land devoted to commercial zones is not affected by the proposal because the site is already zoned commercial. The type of use proposed is a small neighborhood cafe. The size of the space and the amount of seating is limited

and in itself increase the level of commercial activity to such an extent as to be incompatible with Gearhart's residential character.

b. The City will prevent the City from becoming a tourist destination. To achieve this policy the City, through its land-use regulations shall seek to accommodate only a limited level of tourist development;

FINDINGS: The City created zone regulations to limit the amount of tourist development west of the highway to two very small geographic areas in which all but one parcel is built on and occupied. The commercial uses allowed by the C-1 zone are strictly limited, including seating and hours of operation restrictions. The proposal does not enlarge the zone and it puts a new use in an unoccupied portion of the building. The proposed cafe use could attract additional tourists from outside Gearhart coming for a meal, beverages, or take-out food. But the proposed amount of seating for only 16 customers limits the number of residents and tourists able to frequent the café. There is no evidence that tourism will increase to an incompatible level with potentially three neighborhood cafes in the C-1 zone.

c. The City will work to achieve a level of commercial development that supports the needs of the residents of Gearhart, rather than serving a regional commercial center role, or providing for major tourist destination facilities;

FINDINGS: The City finds the size and scale of the proposed use is not a use that serves a regional commercial role or provides a major tourist attraction.

d. The City will maintain a commercial zone in the center of the City that provides for the needs of residents;

FINDINGS: The C-1 zone limits land uses so as to accommodate only a limited level of tourist development. The zone narrowly lists outright retail commercial uses for the convenience of nearby residents, and "these uses are limited to grocery, drug, a soda fountain, barber or beauty shops. Non-retail uses are limited to offices or a post office and a home occupation in a residence. The zone specifies only two conditional uses, including a neighborhood café and a variety store. The proposal coincides with the neighborhood café use category. There are three variety stores, and this request will result in three cafes.

Existing uses in the C-1 zone are as follows:

- U.S. Post Office
- By the Way variety store

- Windemere Real Estate and Eagle Financial Group offices/ Gallery
- The Lowenburg neighborhood café under construction
- Pacific Crest Cottage variety store
- The Natural Nook variety store
- Pacific Way Café
- Jennifer's Barber Shop
- Ter Har Real Estate and mortgage offices

Based on the permitted uses in the zone, the subject space could either be an office, a hair salon, a barber shop or a grocery store, or by conditional use a variety store or café. The owner has determined that residents need another food service option in the neighborhood that is accessible on foot or bicycle. The applicant provided a business plan and evidence that the city could support another neighborhood café.

e. The City will limit the number of business uses in the C-1 zone so that the zone does not become a destination for tourists;

FINDINGS: The small size of the C-1 zone limits the number of businesses that can locate in the city center. The proposed neighborhood cafe would provide 16 seats for an alternative sit-down food and beverage service for Gearhart residents, as well as tourists and vacationers. It is not expected that the business will attract more tourists than residents are currently accustomed to.

f. The City will achieve a compact town center in the vicinity of Pacific Way and Cottage Avenue;

FINDINGS: The proposed interior remodel will replace an existing underutilized commercial space with a small café connected to a soda fountain. The Comprehensive Plan promotes a central, compact commercial zone at Pacific Way and Cottage Avenue. The proposal reuses an existing commercial space in the compact C-1 zone, therefore maintaining the compact character and occupying an existing vacant storefront.

g. The City will establish Zoning ordinance standards to protect residential areas from adjacent commercial development.

FINDINGS: The residential uses in the vicinity will continue to be adequately separated from commercial use of the subject building. The building has historically been occupied by commercial uses. The City established zoning standards to protect residential areas from commercial development after the subject building was

constructed. Initial zoning districts buffered the low density residential R-1 areas by surrounding the C-1 zone with a medium density R-2 zone buffer. The applicant owns the adjoining garden space of the Sweet Shop, which is zoned R-2. The garden area cannot be built on because of the underlying septic system for the Sweet Shop. In addition the owner lives in the building which provides full time oversight of the business and its impacts on residents in the vicinity.

h. It is a goal of the City to ensure a stable and healthy economy in Gearhart through all available resources, both human and natural resources.

FINDINGS: The subject café space has been used for storage for over two years. The reuse of an existing building by a local resident for a small service business opportunity that will provide an estimated 5 jobs will help to ensure a stable and healthy city center business district in accordance with the above plan policy.

Plan Compliance Summary: It can be found that the proposed café is in compliance with all of the relevant Comprehensive Plan policies and the intent of the C-1 zone. The 16-seat neighborhood cafe is not expected to increase traffic, parking problems, odors or noise. The limited size of the space and the limited hours of operation would provide some assurance that the use will maintain compatibility with the low-key residential character of Gearhart. Use of the vacant space would revitalize the building and contribute to a healthy city center business district by adding an estimated 5 jobs.

2. 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;

FINDINGS: There is currently one café and one pending café in the C-1 Zone. The applicant provided evidence that there is a demand for the proposed café.

It can be found that:

- Accessibility: The building space is accessible to employees and all customers with the same on-street parking, loading and pedestrian access currently adjoining the site. The applicant will increase accessibility by adding a new ADA ramp.
- Other C-1 sites: There are no other empty storefronts in the C-1 zone. The applicant bought the subject building for the opportunity to live in the rear apartment, to re-open the soda fountain and to expand her food business into the

vacant portion. Only in this building can the owner live and also develop the kind of business plan in which she has the experience to operate.

- Other commercial zones: The C-2 zone is the only commercial zone in the city that allows a café as an outright use without a conditional use permit. The Gearhart Golf Links property is zoned C-2 and it includes the Sandtrap restaurant with dining and drinking service. There are no vacant properties in that vicinity. There are also five restaurants on Hwy 101 zoned C-2 that offer eating and drinking. There are vacancies in the C-2 zone on the highway which do not require a conditional use permit for the proposed neighborhood café. But the speeding highway traffic, the large lots, the non-cohesive neighborhoods and the lack of bicycle and pedestrian accessibility are undesirable conditions for a neighborhood café intended to serve a compact population within walking distance.

FINDINGS: There are vacant properties on Highway 101 where a café is permitted, but the highway location is not desirable for the use in terms of size, scale, accessibility and historic character. There is currently one café and one pending café in the C-1 Zone. The applicant provided evidence of demand for her business and the Commission found it will not negatively tip the balance of compatibility with the residential character of the neighborhood.

3. The location, size, design and operating characteristics of the proposed use are such that the development will have a minimum impact on surrounding properties:

FINDINGS: The long term commercial use of the historic building is evidence that the location, size and operating characteristics have had little adverse impact on surrounding properties. Most recently the east side of the building was a hair salon and an antique store, followed by closing the space and utilizing it for storage. Adapting the use to a café and small grocery will bring customers back to the empty space for light dining and take-out primarily from mid-day to evening. The café may be open until 10 p.m. but the applicant indicates it will close at 8 pm. Truck deliveries and garbage service will continue to serve the use as before. There may be pleasant but not odorous impacts from the business. The limited size of the space and the type of operation will have minimal impacts on surrounding properties.

4. 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.

FINDINGS: The small 1,230 square foot space was originally designed for commercial use and associated customer traffic. The scale of the space and the limited number of dining seats will help to control the amount of traffic generated by the café. As with most uses in the C-1 central city zone, the café and soda fountain will continue to attract a significant amount of foot and bicycle travel and is not solely dependent on vehicle access.

5. Public facilities and services are adequate to accommodate the proposed use:

FINDINGS: The subject vacant portion of the building has existing connections and access to public facilities and services that will be re-established and re-permitted by the city and Clatsop County Health prior to occupancy.

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

FINDINGS: The site has functioned appropriately for limited commercial activity since the building was originally approved and constructed decades ago. There are no known constraints related to topography or soil conditions on the parcel.

7. 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.

FINDINGS: The site has previously been shown to have adequate area for small commercial uses. The adjoining sidewalk, street furniture, garbage facilities and outdoor garden are well designed to serve customers. The applicant is the owner, resident and the operator of the business providing full time management of the site. The building has historically operated effectively with the existing on-street parking spaces because many customers arrive on foot or by bicycle. An additional bicycle rack near the entry is an appropriate condition of approval.

H. Section 8.050 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 similar uses, 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.

FINDINGS: The owner provided evidence there is a need for an additional food service option to serve Gearhart residents and visitors. The C-1 zone does not include standards by which to measure or determine a public need. Of the 13 properties in the C-1 zone there are two approved neighborhood cafes and no other vacancies. A variety store is the only other permitted conditional use in the C-1 zone. There are currently three variety stores.

There are building vacancies on Highway 101 which is zoned C-2 and allows eating and drinking establishments without a conditional use permit. However, the purpose of the two zones are different, whereby the Neighborhood Commercial C-1 zone is a very limited-use commercial zone designed to serve nearby neighborhoods. In contrast, the General Commercial C-2 zone allows a broader list of commercial uses designed to serve tourists and travelers passing through Gearhart in vehicles, or at the golf course. The C-1 parcels are small while the C-2 parcels are generally large in comparison. The C-2 zone on the highway relies on exposure to fast-moving vehicles. The C-1 zone does not depend on highway exposure and signage to attract customers. The C-1 zone encourages customers to arrive by foot or bicycle while the C-2 zone and its highway environment do not. Although there are vacancies for a café in the C-2 zone that does not require Planning Commission approval, the Commission found the owner's planned concept for the business is more compatible with the purpose of the C-1 zone "to provide a location for needed small businesses and services in the City Center for the convenience of nearby residents that fit into the residential character of the neighborhood" than with the purpose of the C-2 zone "to provide a broad range of commercial uses and activities to serve the needs of the City and its visitors."

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

FINDINGS: The applicant is aware of this condition and indicated that her business will be open year around. However, the operational requirement shall be a condition of approval.

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

FINDINGS: The applicant is aware of this condition and indicated that her business will close at 8 pm seven days a week. However, the closing hour limitation shall be a condition of approval.

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.*

FINDINGS: The proposed café is to be located in an existing building on a site with no opportunity to provide off-street parking. Since the above standard only applies to new structures the application is not required to add off-street parking.

I. Section 8.060 Additional Modifications of Standards for Conditional Uses

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

1. Increasing the required lot size or yard dimension;

FINDINGS: This criterion is not applicable 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;

FINDINGS: This criterion is not applicable because the existing building height is not affected by the request.

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

FINDINGS: This criterion is not applicable because the location and number of access points is established and not proposed to change.

4. Increasing the street width;

FINDINGS: The City finds the street width is established and adequate for the proposed use.

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

FINDINGS: This criterion is not applicable because the code does not require off-street parking for a café in an existing structure.

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

FINDINGS: The applicant has not provided a signage plan, but will be required to locate signage in accordance with C-1 sign regulations. C-1 signs are limited

to flush signs on the front of the building facing the street that are no more than 2 feet in height. Temporary signs with a maximum height of 8 feet may be permitted.

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

FINDINGS: The City finds no diking, fencing or additional landscaping is required to protect adjacent or nearby property.

8. Designating sites for open space; and

FINDINGS: The subject use is not required to provide designated open space.

9. Hours of use or operation.

FINDINGS: The proposed café is required to close at 10 p.m. which should be a condition of approval for the use.

II. SUMMARY CONCLUSION

The City finds that overall the proposed neighborhood cafe is a use in compliance with the Comprehensive Plan policies, the intent of the C-1 zone and the Zone Code development standards.

III. DECISION

Based on the findings above and the public testimony on January 12, 2017 the Planning Commission APPROVED the neighborhood café City File # 17-001 CU subject to the following conditions:

1. The applicant shall file a sign permit request with the City prior to installation of any signs.
2. The hours of operation may not extend past 10 p.m. The neighborhood café shall be in operation during a minimum of eleven months in a calendar year.
3. The applicant shall provide a bicycle rack in a location approved by the City Manager.
4. Prior to occupancy the applicant shall obtain a license from the OLCC to serve beer and wine.
5. Prior to issuance of a building permit or occupancy permit the applicant shall obtain septic approval from DEQ/Clatsop County and health permit approval from the Clatsop County Health Department.

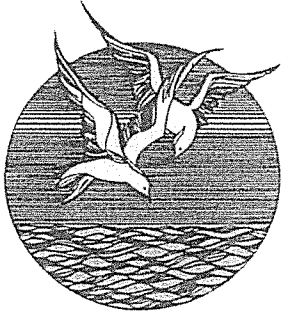
Signed: Virginia Dideum
Virginia Dideum, Planning Commission President

Date: 2/19/17

DATE MAILED: 012017

APPEAL

In accordance with the Gearhart Zoning Code Section 13.060, the decision of the Planning Commission may be appealed to the City Council within 15 days of the date the final order is signed. The notice of appeal filed with the City shall contain the information described in Section 13.060.



CITY OF GEARHART

698 PACIFIC WAY • P.O. BOX 2510 • GEARHART, OREGON 97138
(503) 738-5501 • (503) FAX 738-9385

BEFORE THE PLANNING COMMISSION OF THE CITY OF GEARHART

IN THE MATTER OF A PERMIT) FINAL FINDINGS
FOR A LOCATIONAL VARIANCE) AND ORDER
CITY FILE #17-002V)

DENIAL of a Variance to allow a marijuana retail store in Building A at 3095 North Highway 101, property that is an estimated 731 feet from the Sons of Norway ballfield

Property Owner: Orhan Koner
4021 SE 137th Street
Vancouver, WA 98683

Applicant: Michael Sandberg
3217 SE 146th Place #155
Vancouver, WA 98683

Location: 3095 Hwy 101 North; Tax Lots 1300 Map 06N10 10AC

Completeness: 12-02-16
Notice Mailed: 12-23-16
Notice Published: 12-23-16
Initial hearing: 01-12-17
120-day deadline: 03-28-17

Exhibits: Applicant's application, site plans, & photos
Aerial photo with distance measurement 12-20-16
Gearhart Volunteer Fire Dept.: no comment
Gearhart Building Inspector: no comment

Gearhart Police Chief: comments by email 12-06-16
Gearhart City Manager: comments by email 12-05-16, 12-28-16
Letter from Seaside School District 12-23-16
Letters of objection from: Dianne Widdop 12-28-16, Allen Smock
12-28-16, Steve & Kathy Roos 1-11-17, Lori & Dan Thurston 1-
11-17, Penny Sabol 1-11-17, Rick Sabol 1-10-17, Lisa Cerveney 1-
9-17

Review Criteria: GZO Section 3.5 General Commercial C-2 Zone
GZO Section 9.010 Variances
GZO Article 13 Application, Notice and Hearing Procedures

I. FINDINGS

- A. Background: The City adopted regulations for the location of a marijuana medical dispensary and retail stores whereby said uses area permitted use only in the C-2 zone, subject to limitations. This is the first request to locate a retail recreational marijuana store in the city. The applicant must first obtain a variance approval because the store is within 1,000 feet of the Sons of Norway ballfield, “a public recreation facility attended by minors”.
- B. Site information: The subject parcel is located on the east side of the highway. The parcel is developed with four commercial buildings, parking and circulation area. There is one access onto the highway. The proposed store is located in a portion of Building A. Building B is occupied by Pacific Periodontics, Building C by Restorative Body LLC, and Building D by EZ Auction. There is a single pole sign on the highway that advertises the businesses on site.
- C. Plan and Zone Standards: The site is designated commercial by the Gearhart Comprehensive Plan and is designated General Commercial C-2 by the Gearhart Zoning Ordinance. GZO Section 3.5 C-2 General Commercial Zone permits a medical or recreational marijuana dispensary subject to the following:

Section 3.520 Outright Uses Permitted

In the C-2 Zone the following uses and their accessory uses are permitted outright:

22. Medical or Marijuana and Marijuana Infused Product Dispensary subject to:

- a. Dispensary must not be located within 1,000 feet of another marijuana dispensary nor within 1,000 feet of real property of a public or private elementary, secondary*

or career school, an established day care or preschool; nor student training facility such as a dance studio, athlete, music and similar training facilities; nor public recreation facilities attended primarily by minors. (Within 1,000 feet means a straight line measurement in a radius extended for 1,000 feet or less in every direction from a specific location or from any point on the boundary line of a specified unit of property)

D. Agency Coordination: The proposal was referred to city departments, the Seaside School District and ODOT. No objections were received but comments were provided. The City Manager measured the shortest distance between property lines is 731 feet. He said the ball field is busy from April through July, and a few possible tournaments in August. The Police Chief said there are less than 30 children players at a time for a couple of hours. There may be multiple games on a Saturday. He suggested limiting the signage to small signs, no sign on the pole sign, no neon signs in the windows or elsewhere on the plaza property. The Seaside School District said Norway Field is used in the spring and summer for youth baseball and softball; participants are under the supervision of coaches and other adults and youth who come as spectators may be unaccompanied by an adult.

E. GZO Section 3.5 C-2 Zone

The purpose of the C-2 zone is to provide for a broad range of commercial uses and activities to serve the needs of the City and its visitors. The C-2 zone permits marijuana sales as an outright use, subject to the 1,000 foot locational limitation described above.

FINDINGS: The closest distance from the field property line to the plaza property line is an estimated 731 feet.

F. GZO Section 6.040 Sign Requirements

1. Subsection 2. I. Height: No sign including its supporting structure shall be placed so that its height exceeds eighteen (18) feet.
2. Subsection 4. B. Sign requirements for the C-2 zone: Permitted and conditional uses shall have permanent signs limited to one free standing sign per business not to exceed 32 square feet, and/or one sign, flush to the building, limited to 2 feet high by 12 feet long.

FINDINGS: The applicant said store signage would be limited to the existing pole sign on the highway frontage. He said the windows and doors on the building face east and would not be visible from the highway.

G. GZO Section 9.030 Criteria for Granting Variances

Variance to a requirement of this ordinance with respect to lot area and dimensions, setbacks, yard area, lot coverage, height of structures, vision clearance, decks and walls, and other quantitative requirements may be granted only if, on the basis of the application investigation and evidence submitted, findings are made based on the four criteria listed below. No variance may be granted which will permit a use not permitted in the applicable zone.

1. The request is necessary to prevent a hardship to the applicant: and

FINDINGS: The City finds a variance to city locational limitations developed for retail marijuana sales is not necessary to prevent a hardship. The applicant does not own the subject building and there is no evidence that the applicant will suffer a hardship if the business cannot be located in the subject space.

a. Relevant factors to be considered in determining whether a hardship exists include:

(1). Physical circumstances related to the property involved;

FINDINGS: The City finds there are no physical circumstances related to the property causing a hardship that justifies locating the store in violation of the required 1,000-foot separation from the ballfield.

(2). Whether reasonable use can be made of the property without the variance;

FINDINGS: The City finds that reasonable use can be made of the property without a variance to the General Commercial C-2 zone standards.

(3). Whether the hardship was created by the person requesting the variance;

FINDINGS: The applicant was aware a variance approval was required to locate a marijuana retail store at the subject site. It has not been shown that the subject site is the only location in the city where a retail marijuana sales store is allowed.

2. The proposed development that will result from the granting of the variance will not be injurious to the adjacent area in which the property is located: and

FINDINGS: The City finds the store site is within walking distance of residences in the vicinity and the Norway ballfield and easily accessible to unaccompanied youth.

- a. Relevant factors to be considered in determining whether the proposed development will be injurious to the adjacent area include:

The physical impacts such development will have such as:

- (1) Views from adjacent property;

FINDINGS: The existing land use and zoning is a mix of commercial, public and residential uses in the immediate area but is predominantly residential in the immediate and larger surrounding area. The City finds adjacent property will have a view of the existing pole sign that will be used to identify the marijuana business.

- (2) Privacy available to adjacent property;

FINDINGS: There is no evidence that the privacy of adjacent properties will be affected by the proposed retail store.

- (3) Ability to provide and maintain public improvements such as streets, utilities and drainage;

FINDINGS: The City finds approval or denial of the subject variance request will have no bearing on the availability or maintenance of street access, utilities or drainage because the site is fully developed with adequate public improvements.

- (4) Potential for geologic hazard; and

FINDINGS: The City finds approval or denial of the subject variance request will have no bearing on the potential for geologic hazards on the site or in the area.

- (5) Noise Generated.

FINDINGS: The City finds there is no evidence that a marijuana retail store will generate significant noise.

3. The request is necessary to enable reasonable use of the property; and

FINDINGS: The City finds there is no evidence that the proposed variance is necessary to enable reasonable use of the property.

4. The request is not in conflict with the Comprehensive Plan.

FINDINGS: The City finds there are not specific policies in the Comprehensive Plan regarding retail marijuana sales, but there are several commercial development policies that require commercial development to be compatible with the residential character of Gearhart.

- *“The City will limit commercial activity 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;” and*
- *“The City will establish Zoning Ordinance standards to protect residential areas from commercial development.”*

The City finds the marijuana sales standards were established to be compatible with Gearhart’s residential character whereby Gearhart youth are protected from easy access and exposure to sales of products that are prohibited to minors. The intent of the marijuana standards is to assure an adequate distance separates a marijuana retail store from schools, student training facilities and public recreation facilities attended by minors. The subject site is 731 feet from the ballfield and does not meet the 1,000 foot separation established by the city.

H. GZO Article 13 Application, Notice and Hearing Procedures

The variance application was filed, the notice was mailed and published and a public hearing by the Planning Commission was held on January 12, 2017.

II SUMMARY CONCLUSION

The City finds there is a lack of evidence that all of the four required Variance Approval Criteria have been met.

III. DECISION

Based on the above findings and the public testimony on January 12, 2017 the Planning Commission decided to DENY City File #17-002 V.

Signed: Virginia Dideum
Virginia Dideum, Planning Commission President

Date: 1/19/17

DATE MAILED: 01 20 17

APPEAL

In accordance with the Gearhart Zoning Code Section 13.060, the decision of the Planning Commission may be appealed to the City Council within 15 days of the date the final order is signed. The notice of appeal filed with the City shall contain the information described in Section 13.060.