

PLANNING COMMISSION AGENDA

CITY OF BROOKINGS
Council Chambers - 898 Elk Drive
June 27, 2023 at 7:00 PM



1. CALL TO ORDER - PLEDGE OF ALLEGIANCE
2. ROLL CALL
3. PLANNING COMMISSION CHAIR PERSON ANNOUNCEMENTS
4. PUBLIC HEARINGS - The below applications are Quasi-judicial hearings and the Planning Commission will make a decision on each of these matters.

4.1 In the matter of File No. CUP-7-23, a request for approval of a Conditional Use Permit to operate a Short Term Rental facility at 1111 Easy Street, Assessor's Map & Tax Lot No. 4113-05BD-01601; zoned R-1. The owner/applicant is Christy and Robert Bartneck. Criteria used to decide this matter can be found in Brookings Municipal Code Chapter 17, Sections: 17.20.040(Q) Single Family Residential Conditional Uses; 17.124.170 – Short-Term Rentals; and 17.136 - Conditional Uses.

4.2 In the matter of File No. APP-1-23, an appeal to the Planning Commission of a Notice of Abatement issued April 14, 2023 to St. Timothy's Episcopal Church, at 401 Fir Street, Assessor's Map & Tax Lot No. 4113-05BC-07300. Criteria used to decide this matter is found in Brookings Municipal Code Chapters 17.156 (Appeal to Planning Commission), 17.01.040 (Compliance with code provisions) and [17.124.050](#) (Benevolent meal service).

5. MINUTES FOR APPROVAL
 - 5.1 Minutes of Planning Commission meeting of May 2, 2023
6. UNSCHEDULED PUBLIC APPEARANCES
7. REPORT FROM THE PLANNING STAFF
8. COMMISSION FINAL COMMENTS
9. ADJOURNMENT

Unscheduled public appearances and comments are limited to 5 minutes. All public meetings are held in accessible locations. Auxiliary aids will be provided upon request with advance notification. You can view the Planning Commission meeting LIVE on television on Charter PEG Channel 181; stream it LIVE on a computer by copying and pasting the following link inside your web browser: <mms://68.185.2.46:8080>; or to stream it LIVE on a mobile device you will need to download the VLC Media Player which is available at: <https://or-brookings2.civicplus.com/252/Watch-Meetings-Live> and follow directions and links for your device.



City of Brookings

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www.brookings.or.us

PUBLIC WORKS AND DEVELOPMENT SERVICES DEPARTMENT

Email: May 30, 2023

Publish by: June 7, 2023 – Curry Reporter

NOTICE OF PUBLIC HEARING BEFORE THE BROOKINGS PLANNING COMMISSION

NOTICE IS HEREBY GIVEN that a public hearing will be held before the Brookings Planning Commission on Tuesday, June 27, 2023 at 7:00 PM in the Council Chambers of Brookings City Hall, 898 Elk Drive, Brookings, OR 97415. The below applications are Quasi-judicial hearings and the Planning Commission will make a decision on each of these matters.

1. In the matter of File No. CUP-7-23, a request for approval of a Conditional Use Permit to operate a Short Term Rental facility at 1111 Easy Street, Assessor's Map & Tax Lot No. 4113-06BD-01601; zoned R-1. The owner/applicant is Christy and Robert Bartneck. Criteria used to decide this matter can be found in Brookings Municipal Code Chapter 17, Sections: 17.20.040(Q) Single Family Residential Conditional Uses; 17.124.170 – Short-Term Rentals; and 17.136 - Conditional Uses.
2. In the matter of File No. APP-1-23, an appeal to the Planning Commission of a Notice of Abatement issued April 14, 2023 to St. Timothy's Episcopal Church, at 401 Fir Street, Assessor's Map & Tax Lot No. 4113-05BC-07300. Criteria used to decide this matter is found in Brookings Municipal Code Chapters 17.156 (Appeal to Planning Commission), 17.01.040 (Compliance with code provisions) and [17.124.050](#) (Benevolent meal service).

The public is invited to attend and participate in the public hearing. All persons wishing to address this matter will have an opportunity to do so in person at the hearing or by submitting written evidence to the Brookings Planning Department at the address above. If you wish to speak at the hearing, you will be asked to sign in and afforded five (5) minutes to speak. Failure to raise an issue accompanied by statements or evidence sufficient to afford the Planning Commission and parties an opportunity to respond to the issues precludes appeal to the Oregon Land Use Board of Appeals (LUBA).

A copy of the application, all documents and evidence submitted on behalf of the applicant is available for public inspection at no cost at the Brookings Planning Department, 898 Elk Drive, Brookings, OR. The staff report prepared in this case will be available seven days prior to the hearing. Copies of documents may be obtained at reasonable cost.

All public meetings are held in accessible locations, auxiliary aids will be provided upon request with advance notification. Please contact 541-469-1103 to make appropriate arrangements or for additional information. TTY 800-735-1232.

CITY OF BROOKINGS PLANNING COMMISSION
STAFF AGENDA REPORT

SUBJECT: Conditional Use Permit
FILE NO: CUP-7-23
REPORT DATE: June 15, 2023

HEARING DATE: June 27, 2023
AGENDA ITEM NO: 4.1

GENERAL INFORMATION

APPLICANT/OWNER: Christy & Robert Bartneck
REQUEST: Authorize a Conditional Use Permit to allow use of an existing single-family dwelling as a short-term rental
TOTAL LAND AREA: .39 acres/16,988 square feet
LOCATION: Subject property is located on Easy Street, specifically 1111 Easy Street
ASSESSOR'S NUMBER: 4113-06BD Tax Lot 01601

ZONING / COMPREHENSIVE PLAN INFORMATION

EXISTING: R-1-6 (Single-family residential)
PROPOSED: Same
SURROUNDING: Subject property is surrounded by R-1 (Single-family residential)
COMP. PLAN: Residential

LAND USE INFORMATION

EXISTING: Subject property is developed with a single-family dwelling
PROPOSED: A short-term rental in the existing single-family dwelling
SURROUNDING: The subject property is surrounded by residentially developed parcels
PUBLIC NOTICE: Mailed to all property owners within 250 feet of subject property and published in local newspaper.
APPLICABLE CRITERIA: Land Development Code – Ordinance No. 06-O-572
a. Section 17.124.170-Short Term Rentals
b. Chapter 17.136-Conditional Use Permits
c. Section 17.20.040(Q) Single-Family Residential (R-1) Conditional Uses

BACKGROUND INFORMATION

The subject property is regular in shape, .39 acre in size and located on the south side of Easy Street. The property is accessed from Easy Street, which has a paved travel surface approximately 25 feet in width. The south side of Easy Street does have public improvements in the right of way. The property is developed with a single-family three bedroom, two bath, 2,072 square feet dwelling constructed in 1980, a two car garage and a driveway large enough to accommodate four vehicles (Attachment A & B – Vicinity Map/Property Photo).

PROPOSED CONDITIONAL USE PERMIT

The applicant is requesting to use the single-family dwelling as a short-term rental. Any existing single family dwelling in a single family residential (R-1), general commercial (C-3) , tourist commercial (C-4) zone and industrial park (I-P) zone can be used for short-term rental purposes with approval of a Conditional Use Permit. Regulations for short-term rentals are found in Brookings Municipal Code (BMC) section 17.124.170. These criteria will be required as Conditions of Approval if approved. The applicants' Findings (Attachment C) affirm their intentions to abide by these regulations.

ANALYSIS, FINDINGS, AND CONCLUSIONS

17.136.050 Conditional Use Permit

The following is staff's analysis of the proposed Conditional Use Permit (CUP) in relation to the general Conditional Use Permit criteria.

Criterion 1 - Adequate size and shape

The subject property is approximately 16,988 square feet in size and contains a 2,072 square foot single-family dwelling with three bedrooms and two bathrooms. The single-family dwelling has an existing driveway used for access large enough to accommodate four vehicle parking spaces. The garage will not be available for use. Based on similar uses, two off-street vehicle parking spaces are needed in order for the subject property to accommodate the proposed short-term rental. Staff believes Criterion 1 is met.

Criterion 2 - Relation of streets

The subject property is accessed by Easy Street, which has a paved travel surface 25 feet wide with public improvements on the south side. Easy Street provides access to multiple dwelling units. The dedication of additional right-of-way or street improvements would not be beneficial. Vehicular traffic generated by a short-term rental would only be a factor when the dwelling unit is rented and no traffic would be generated when the unit is vacant. This use involves less traffic than dwellings rented or occupied on a full time basis. Easy Street will accommodate the traffic generated by the proposed use. Staff believes Criterion 2 is met.

Criterion 3 - Neighborhood impact

The impact on the surrounding neighborhood is the primary issue concerning residents in the neighborhood where a short-term rental is being proposed. The proposed Conditions of Approval require the owners of the property to provide a local manager for the short-term rental, pursuant to the provisions of BMC 17.124.170, who has the authority to resolve issues that may arise from the operation of the dwelling as a short-term rental. The applicant has advised that a manager residing within the urban growth boundary will manage the rental. With this as a Condition of Approval, staff believes Criterion 3 is met.

Criterion 4 - Historic, scenic or cultural attributes

There are no listed historic, scenic or cultural attributes listed in the Comprehensive Plan. Staff believes Criterion 4 is met.

Criterion 5 - Comprehensive Plan

The Comprehensive Plan designation for this property is "residential". The proposal is to use the existing dwelling for residential use. Staff believes Criterion 5 is met.

BMC 17.124.170 Short Term Rentals

Any existing single family dwelling in a single family residential (R-1), general commercial (C-3) , tourist commercial (C-4) zone and industrial park (I-P) zone can be used for short-term rental purposes and pursuant to certain regulations as follows:

- A. The property owner or holder shall register the dwelling with the City as a short term rental on a separate form.
- B. A transient room tax will be applied pursuant to Chapter 3.10 BMC.
- C. The property owner shall provide the name, address and telephone number of a local representative, either a property management business or an individual residing in the Brookings Urban Growth Boundary, who has the authority to, make or have repairs made, resolve disputes and/or terminate occupancy if necessary.
- D. Representative’s name and telephone number shall be posted within the dwelling and provided to all adjacent neighboring property owners.
- E. The Applicant shall subscribe to a scheduled waste collection service and provide garbage receptacles on the property.
- F. Short term rental conditional use permits are specific to the owner of the dwelling unit and shall not run with the land. To continue with the use, within six months of the sale of the property, the new owner shall submit a minor change application pursuant to MBC 17.116.090 to address the criteria in this section. If the minor change is not approved by the planning commission or no application is submitted, the approval shall terminate.
- G. A minimum of two (2) off street parking spaces are required for a three bedroom dwelling with one additional off street parking space required for each additional bedroom. Recreational vehicles (RV’s) and travel trailers are prohibited.
- H. The dwelling will be subject to an annual inspection by the City Manager or designee on or around the anniversary date of the approved conditional use permit.

These criteria will be included in the Conditions of Approval. The Applicant has submitted Findings stating these criteria will be met (Attachment C).

RECOMMENDATION

Staff recommends APPROVAL of CUP-7-23, based on the findings and conclusions stated in the applicant’s findings, the staff report, and subject to the Conditions of Approval.

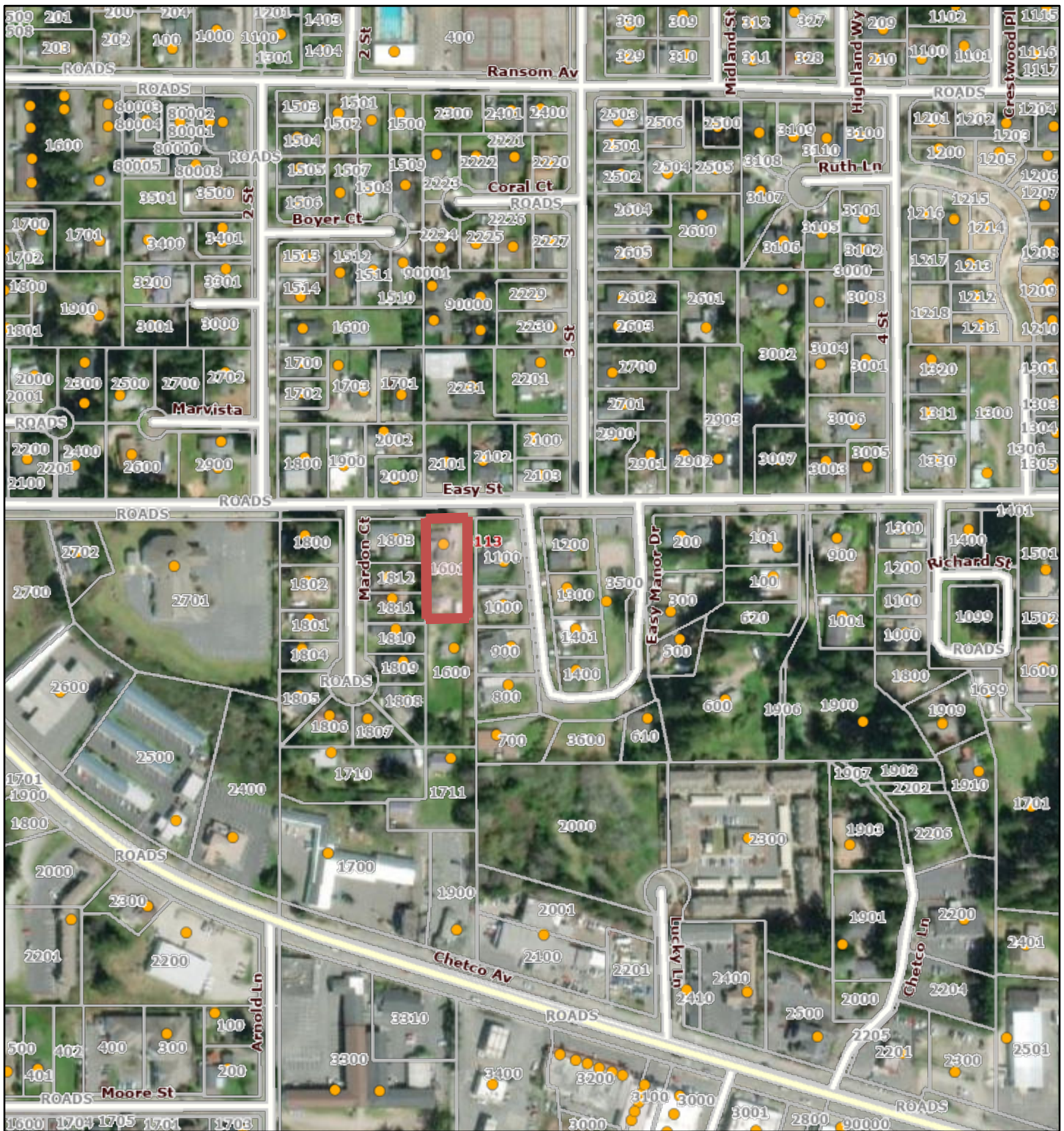
Staff has prepared a FINAL ORDER to be considered at this meeting.

ATTACHMENTS

- Attachment A - Vicinity Map
- Attachment B - Property Photo
- Attachment C - Applicant’s Findings

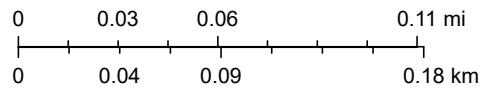
Curry County Web Map

ATTACHMENT A



6/1/2023, 8:44:51 AM

1:4,514



Bureau of Land Management, State of Oregon, State of Oregon DOT, State of Oregon GEO, Esri Canada, Esri, HERE, Garmin, USGS, EPA, USDA, Maxar

111 Easy Street Brookings OR 97415



Parking

Authentisign
CRB

Authentisign
REB

APPLICANT'S FINDINGS

Conditional Use Permit Application
Short Term Rental (ORD.17.124.170)

ATTACHMENT C

Property Address	1111 Ensay St Brookings OR 97415
Applicant/Owner	Christy R & Robert E Bartneck

1. The intent is to utilize this property as a short term vacation rental. The residence is 2072 sf, 3 bedroom, 2 bath, built in 1980 on 0.39 acres. There is a 4 car garage that will will not (circle one) be available for guest parking. There is on-site driveway space for 4 vehicles (this does not include street parking), for a total of 4 on-site parking spaces. The driveway is / is not (circle one) a hard surface.
2. Traffic will consist of passenger sized vehicles. RV and travel trailer parking will not be allowed.
3. The proposed use will not have an adverse impact on the adjoining properties. There is the required number of parking spaces within the property boundaries.
4. There are no areas designated as requiring preservation of historic, scenic or cultural attributes.
5. The proposed use of the property is in keeping with a residential Comprehensive Plan.

Additionally

- A. We will register as a Short Term Rental and pay the applicable annual fees.
- B. We will schedule an annual inspection by the City Manager's designee.
- C. We will collect and submit monthly transient occupancy taxes (TOT) on all short-term rentals of the property even if the gross monthly rents are zero.
- D. We subscribe to utilities, scheduled waste collection service and provide trash receptacles on the site.

Our local representative lives within the Brookings Urban Growth Boundary and will be available to make or have repairs made, resolve disputes and/or terminate occupancy if necessary. The representative's contact information will be posted within the dwelling and we will provide the adjacent neighboring property owners with the representative's name and phone number.

Representative's Name:	PREMIER OCEAN PROPERTIES		
Residence Address:	937 CLAYTON AVE Suite A Brookings OR 97415		
Phone:	541-469-7400	Email:	ron@therealestatedoctor.com

We understand a Conditional Use Permit for a Short Term Rental does not run with the land and is revocable by the Planning Commission if TOT's are not paid monthly, multiple complaints are received, and/or CUP criteria and Conditions of Approval do not continue to be met.

X X Owner/ Applicant	 Christy R. Bartneck	03/31/23	 Date Robert E. Bartneck	03/30/23
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**BEFORE THE PLANNING COMMISSION
CITY OF BROOKINGS, COUNTY OF CURRY
STATE OF OREGON**

In the matter of Planning Commission File No. CUP-7-23; an)
application for approval of a Conditional Use Permit to establish a) **Final ORDER**
short-term rental at 1111 Easy Street; Christy & Robert Bartneck,) **and Findings of Fact**
Owner and Applicant)

ORDER approving an application for a Conditional Use Permit to establish a short-term rental at 1111 Easy Street; Assessor’s Map 4113-06BD, Tax Lot 01601; zoned R-1-6 (Single Family Residential).

WHEREAS:

1. The Planning Commission duly accepted the application filed in accordance with the Brookings Municipal Code, pursuant to Chapter Section 17.124.170; Chapter 17.136 and Section 17.20.040(Q); and
2. Such application is required to show evidence that all of the above criteria have been met; and
3. The Brookings Planning Commission duly set this matter upon the agenda of a public meeting and considered the above described application with the public hearing a matter of record of the Planning Commission meeting of June 27, 2023; and
4. At the public meeting on said Conditional Use Permit application, evidence and testimony was presented by the Applicant and recommendations were received from and presented by staff in the form of a Staff Report, dated June 15, 2023 and oral presentation of same; and
5. At the conclusion of the public hearing, after consideration and discussion of testimony and evidence presented in the public hearing, the Planning Commission, upon a motion duly seconded, accepted the Staff Agenda Report and **APPROVED** the request for the subject Conditional Use Permit and directed staff to prepare a Final Order and Findings of Fact to that affect.

THEREFORE, LET IT BE HEREBY ORDERED that the application for the Conditional Use Permit on the subject property is **APPROVED**. This approval is supported by the applicant's findings, attached to the staff report, and by the following findings and conclusions:

CRITERIA, FINDINGS, AND CONCLUSIONS

17.136.050 Conditional Use Permit

The following is staff's analysis of the proposed Conditional Use Permit (CUP) in relation to the general Conditional Use Permit criteria.

Criterion 1 - Adequate size and shape

The subject property is approximately 16,988 square feet in size and contains a 2,072 square foot single-family dwelling with three bedrooms and two bathrooms. The single-family dwelling has an existing driveway used for access large enough to accommodate four vehicle parking spaces. The garage will not be available for use. Based on similar uses, two off-street vehicle parking spaces are needed in order for the subject property to accommodate the proposed short-term rental. Staff believes Criterion 1 is met.

Criterion 2 - Relation of streets

The subject property is accessed by Easy Street, which has a paved travel surface 25 feet wide with public improvements on the south side. Easy Street provides access to multiple dwelling units. The dedication of additional right-of-way or street improvements would not be beneficial. Vehicular traffic generated by a short-term rental would only be a factor when the dwelling unit is rented and no traffic would be generated

when the unit is vacant. This use involves less traffic than dwellings rented or occupied on a full time basis. Easy Street will accommodate the traffic generated by the proposed use. Staff believes Criterion 2 is met.

Criterion 3 - Neighborhood impact

The impact on the surrounding neighborhood is the primary issue concerning residents in the neighborhood where a short-term rental is being proposed. The proposed Conditions of Approval require the owners of the property to provide a local manager for the short-term rental, pursuant to the provisions of BMC 17.124.170, who has the authority to resolve issues that may arise from the operation of the dwelling as a short-term rental. The applicant has advised that a manager residing within the urban growth boundary will manage the rental. With this as a Condition of Approval, staff believes Criterion 3 is met.

Criterion 4 - Historic, scenic or cultural attributes

There are no listed historic, scenic or cultural attributes listed in the Comprehensive Plan. Staff believes Criterion 4 is met.

Criterion 5 - Comprehensive Plan

The Comprehensive Plan designation for this property is “residential”. The proposal is to use the existing dwelling for residential use. Staff believes Criterion 5 is met.

BMC 17.124.170 Short Term Rentals

Any existing single family dwelling in a single family residential (R-1), general commercial (C-3) , tourist commercial (C-4) zone and industrial park (I-P) zone can be used for short-term rental purposes and pursuant to certain regulations as follows:

- A. The property owner or holder shall register the dwelling with the City as a short term rental on a separate form.
- B. A transient room tax will be applied pursuant to Chapter 3.10 BMC.
- C. The property owner shall provide the name, address and telephone number of a local representative, either a property management business or an individual residing in the Brookings Urban Growth Boundary, who has the authority to, make or have repairs made, resolve disputes and/or terminate occupancy if necessary.
- D. Representative’s name and telephone number shall be posted within the dwelling and provided to all adjacent neighboring property owners.
- E. The Applicant shall subscribe to a scheduled waste collection service and provide garbage receptacles on the property.
- F. Short term rental conditional use permits are specific to the owner of the dwelling unit and shall not run with the land. To continue with the use, within six months of the sale of the property, the new owner shall submit a minor change application pursuant to MBC 17.116.090 to address the criteria in this section. If the minor change is not approved by the planning commission or no application is submitted, the approval shall terminate.
- G. A minimum of two (2) off street parking spaces are required for a three bedroom dwelling with one additional off street parking space required for each additional bedroom. Recreational vehicles (RV’s) and travel trailers are prohibited.
- H. The dwelling will be subject to an annual inspection by the City Manager or designee on or around the anniversary date of the approved conditional use permit.

These criteria will be included in the Conditions of Approval. The Applicant has submitted Findings stating these criteria will be met.

The following Conditions of Approval are hereby made a part of this Final Order

**CUP-7-23 - CONDITIONS OF APPROVAL
1111 Easy Street Short-Term Rental**

1. Approval of this Conditional Use Permit will expire two years from approval if the property owner or holder does not register the dwelling with the City of Brookings as a short term rental and pay annual registration fee. The City of Brookings may extend the permit for an additional one-year period at the request of the applicant. Annual renewal is required to keep the Conditional Use Permit active.
2. The Conditions of Approval stated herein are mandatory and must be completed. Failure to comply with any condition will result in the review and possible revocation of your permit pursuant to BMC 17.136.110, Violation of Conditions. Violations may result in the loss of your Conditional Use Permit.
3. The property owner or holder shall register the dwelling with the City as a short term rental on a separate form.
4. Transient Occupancy Taxes (TOT) will apply and be submitted monthly pursuant to BMC Chapter 3.10.
5. Property owner shall provide the name, address, and telephone number of a local representative, either a property management business or an individual living in the Brookings Urban Growth Boundary, who has the authority to make or have repairs made, resolve disputes and/or terminate occupancy if necessary.
6. Representative's name and telephone number shall be posted within the dwelling and provided to all adjacent neighboring property owners.
7. Applicant shall subscribe to a scheduled waste collection service and provide garbage receptacles on the property.
8. No less than two (2) parking spaces must be maintained on the subject property and the parking spaces provided shall be clearly delineated. Recreational vehicles (RV's) and travel trailers are prohibited.
9. Access to and around the structure must remain accessible to fire fighting vehicles. Smoke detectors must be in accordance with Oregon Revised Statutes 479.250 - 479.300.
10. The dwelling will be subject to an annual inspection by the City Manager or designee on or around the anniversary date of the approved conditional use permit.
11. The address shall be clearly visible and posted at the driveway entrance.
12. Ongoing neighborhood disturbances can result in Planning Commission review and possible revocation of the Conditional Use Permit pursuant to BMC 17.136.110.
13. Upon change of property ownership Conditional Use Permit will expire after six (6) months unless the new property owner applies for and receives approval for a Minor Change to the Conditional Use Permit.

Dated this 27th day of June, 2023

ATTEST:

Skip Watwood, Chair
Brookings Planning Commission

Anthony Baron, PWDS Director

CITY OF BROOKINGS PLANNING COMMISSION
STAFF AGENDA REPORT

SUBJECT: Appeal to Planning Commission
FILE NO: APP-1-23
REPORT DATE: June 15, 2023

HEARING DATE: June 27, 2023
AGENDA ITEM NO: 4.2

GENERAL INFORMATION

APPLICANT/OWNER: Diocese of Oregon, St. Timothy's Episcopal Church
REQUEST: Appeal to the Planning Commission of a Notice of Abatement issued April 14, 2023 to St. Timothy's Episcopal Church
TOTAL LAND AREA: @.63 acres/@27,600 square feet
LOCATION: Subject property is located at 401 Fir Street.
ASSESSOR'S NUMBER: 4113-05BC Tax Lot 07300

ZONING / COMPREHENSIVE PLAN INFORMATION

EXISTING: R-1-6 (Single-family residential)
PROPOSED: Same
SURROUNDING: Subject property is surrounded by R-1 (Single-family residential) to the north, south and west and P/OS (Public Open Space) to the east
COMP. PLAN: Residential

LAND USE INFORMATION

EXISTING: Subject property is developed a with a two level church
SURROUNDING: The subject property is surrounded by residentially developed parcels to the north, south and west and Azalea Park to the east
PUBLIC NOTICE: Mailed to all property owners within 250 feet of subject property and published in local newspaper.
APPLICABLE CRITERIA: Land Development Code –
a. Chapter 8.15.090 - General abatement procedure
b. Chapter 17.156 - Appeal to Planning Commission
c. Chapter 17. 01 Section 17.01.040 – Compliance with Code Provisions
d. Chapter 17.20.040.B. - Conditional uses. (in SINGLE-FAMILY RESIDENTIAL (R-1) DISTRICT)
e. Chapter 17.120.010 - Continuation of a nonconforming use

BACKGROUND INFORMATION

St. Timothy's Episcopal Church ("the Church"), located at 401 Fir Street, Brookings, Oregon, operates in the R-1-6 Single-Family Residential District under a "de facto" conditional use permit. The Church existed and was operating prior to 1989, when the Brookings Land Development Ordinance was adopted, and therefore was considered to be a legal non-conforming use at that time. (Attachments A & B - Vicinity Map/Property Photo).

In 1999, the Church applied for and was granted by the Planning Commission a "minor change" to its building (adding 392 square feet to the church building and adding 8 new parking spaces). (Attachment C – Minor Change to CUP documents)

In late 2022, the City became aware, through a variety of sources (review of the lawsuit complaint filed by the Church, the Church website) that the Church was operating a variety of services which are not typically associated with churches in residential zones. These services include a "day program", "legal clinic", and an "advocacy team/case worker assistance."

The City has also become aware of information suggesting that the number of people served by the Church's social services activities exceeds the number of church parishioners.

Confirmation that the Church was providing these "social services" was provided by Father Bernie Lindley's deposition, which was taken on April 12, 2023 as part of discovery in the lawsuit filed by the Church against the City. During the deposition, Fr. Lindley admitted the Church operates a "day program" on Mondays, Wednesdays, and Fridays from 9:00 AM until 12:00 PM.

This "day program" provides access to showers and internet services, as well as weekly HIV/HEP-C screening. Fr. Lindley also said that the Church operates a "legal" clinic for 19-20 hours per week. The Church also conducts an "advocacy team/case worker assistance" program during the same hours as the "day program" or other hours as needed. The Church has at least 6-7 paid employees for these activities, as well as several volunteers. Finally, the Church also hosts a primary health care provider one day a month. (Attachment D – Fr. Lindley deposition excerpts)

On April 14, 2023, the Church was issued a Notice to Abate (Attachment E) for operating a variety of social services, including an outreach clinic, a day program, and an advocacy program, in violation of 17.01.040 (Compliance with code provisions in the Brookings Municipal Code (BMC)). The church was notified that, in order to avoid enforcement and potential civil penalties, it must cease the operation of these activities, which are not allowed in an R-1-6 zone.

On April 24, 2023 letter, the Church's attorney sent a letter appealing the Notice to Abate. (Attachment F)

(NOTE: The abatement of operation of a Benevolent Meal Service without a conditional use permit is being suspended temporarily due to ongoing litigation between the church and the city. This temporary suspension of abatement of the operation of a Benevolent Meal Service without a conditional use permit may be lifted in the future. If the temporary suspension is lifted, the church will be issued a new Notice of Abatement of operation of a Benevolent Meal Service without a conditional use permit.)

AUTHORITY FOR PLANNING COMMISSION REVIEW

The BMC allows churches in the Single-Family Residential District with a conditional use permit per BMC 17.20.040.B. The BMC does not allow the operation of a "day program", and an "advocacy program", and a "legal clinic" in an R-1-6 Single-Family Residential District either outright or with a conditional use permit.

BMC 17.160.020 designates any violations of the Land Development Code as public nuisances that may be abated and removed under BMC 8.15.090. Failure to correct the violation could result in civil penalties of up to \$720.00 per day that the violation exists, per BMC 1.05.010.

The BMC does not provide for an objection or appeal to the City Manager on the substance of the abatement notice – it must either be appealed to municipal court, or, (as in this case) if it is a land use matter, to the Planning Commission.

BMC 8.15.090.C states that for BMC Title 17 cases (Land Development Code), “where the potential violation is a matter of ambiguity, the code enforcement officer determination of violation may be appealed to the planning commission pursuant to Chapter 17.156 BMC.”

BMC 17.156.010 provides:

“In the event of an ambiguity in this title affecting enforcement, the planning commission shall have the power to hear and decide appeals from administrative interpretations and to declare the meaning and intent, and interpret the provisions of this code. In thus resolving ambiguities, being considered in this appeal, the planning commission shall so interpret this code as to carry out BMC 17.01.020 and the expressed purpose of the zoning district involved.”

ANALYSIS, FINDINGS, AND CONCLUSIONS

The Church requests that the Planning Commission determine that the Church’s “social services” activities at its property do not violate the BMC for one or both of the following reasons:

- 1) these activities are “typical” functions conducted by churches and are considered part of a church use, and/or
- 2) these activities are part of the Church’s non-conforming use of the property and are allowed to continue.

The analysis for each of these requests is discussed below.

Are the Day Program, Advocacy Program, and Legal Clinic typical functions conducted by churches?

In the April 24, 2023 appeal letter, the Church asserts that the Day Program, Advocacy Program, and Legal Clinic are “typical functions” conducted by churches and therefore are allowed without having to seek any permission from the City.

In support of this assertion, the letter cites news articles and web sites that discuss different types of social services offered by various churches from around the nation. It is not apparent whether any of these churches are located in residential zones or have any other similarities to the matter currently before the Planning Commission.

In addition, the attorney’s letter cites various verses of scripture to support the assertion that the types of social services offered by the Church are typically considered church functions where they occur as part of a church use.

The letter also states that typical elements of a church include providing “advice”, “referrals”, and “fellowship” to those in need, as well as providing a sanctuary for prayer and providing advice to the community.

No support is found in the attorney's letter to show that all of the uses provided by the Church's programs, such as showers, legal clinics, and health care are "typical" elements of a church.

The BMC does not define "church" or provide any details about what activities are typical and/or allowed for this use.

One dictionary definition of "church" is "a building for public and especially Christian worship." See, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/church> (last visited June 14, 2023).

Another definition is similar: "a building used for public Christian worship." See, Oxford English Dictionary, accessed via Google search on June 14, 2023.

Both of these definitions only refer to "worship," not any other religious activities.

The City is not aware of any information suggesting that when people are seeking and obtaining social services at St. Timothy's there is any worship/religious service being performed. The only worship or religious service at St. Timothy's occurs on Wednesdays from 12:00 to 12:45 PM and Sundays from 10:00 to 11:30 AM (see Attachment D).

The Church has not provided adequate evidence to show that these activities are "typical" functions conducted by churches and are considered part of a church use.

Are the Day Program, Advocacy Program, and Legal Clinic part of the Church's non-conforming use?

As mentioned above, the Church existed and was operating prior to 1989, when the Brookings Land Development Ordinance was adopted. Therefore, the Church was considered to be a legal non-conforming use at that time.

BMC 17.120.010 (Continuation of a nonconforming use) provides that a lawfully preexisting use of a structure or site, which does not conform to the regulations for the district in which it is located, shall be deemed to be a lawful, nonconforming use and may be continued, subject to regulations regarding maintaining, moving, altering, or enlarging the nonconforming structure. The BMC does not contain any provisions regarding altering or increasing the activities occurring on or within the property or the nonconforming structure.

An argument can be made that the Church considered itself to have a conditional use permit in 1999, since it applied for (and was granted) a "minor change" to its building pursuant to the BMC provisions applying to conditional uses.

Whether the Church is considered to be a legal nonconforming use or a permitted conditional use is not dispositive, since the legal analysis is very similar for both.

As mentioned above, the BMC is silent regarding altering or increasing the activities occurring on or within the property or the nonconforming structure. Other cities' codes vary, but the majority appear to allow, or at least not expressly prohibit, expansion of nonconforming uses, most commonly through a conditional-use procedure. A few do not allow any alteration that includes an expansion of the nonconforming use.

The general rule is that a reasonable increase in the intensity of a use, without physical change, is permitted. See 4 Arden H. Rathkopf & Daren A. Rathkopf, *The Law of Zoning and Planning* §51A.04[2], at

51A-49 (1991); 6 Patrick J. Rohan, *Zoning and Land Use Controls* §41.03[3][b], at 41-87 to 41-91 (1991).

Another way that some jurisdictions analyze requests for intensification of a nonconforming use or a conditional use is whether such intensification would have “no greater adverse impact” to the neighborhood than the existing use. See ORS 215.130 (regarding nonconforming uses on property within county jurisdiction).

In determining whether a nonconforming use has been established, and the extent of the nonconforming use, a factual determination is needed regarding what uses were in place at the Church in 1989 (when the Land Development Ordinance was adopted). The Church has the burden of proving both that the use existed in 1989, and what the level of use was at that time. See *Lane County v. Bessett*, 46 Or App 319, (1980); *Tylka v. Clackamas County*, 28 Or LUBA 417 (1994); *Fraley v. Deschutes County*, 32 Or LUBA 27, af’d, 145 Or App 484 (1996); *Smith v. Lane County*, 21 Or LUBA 228 (1991).

In the April 24, 2023, appeal letter, the Church asserts that it has continuously conducted “social services” since its establishment (prior to adoption of the Brookings Land Development Ordinance in 1989), but provides no evidence to support that assertion.

In his April 12, 2023 deposition, Fr. Lindley stated that the “advocacy program” began in “approximately” 2018. That provides evidence that at least the “advocacy program” began fairly recently, many years *after* the church was established. This shows that the nonconforming use and/or unpermitted conditional use was altered and/or expanded, and the Church should have requested a conditional use permit for adding these uses.

It does not appear that the Church has met its burden of proving both that its provision of “social services” existed in 1989 and/or what the level or intensity of those services was at that time. Therefore, the Church is required to abate these “social service” activities and apply for a conditional use permit to conduct such activities at the Church location.

RECOMMENDATION

Staff recommends DENIAL of APP-1-23, based on the staff report and the evidence contained in the attachments to the staff report.

Staff will prepare a FINAL ORDER to be considered at the next meeting.

ATTACHMENTS

Attachment A - Vicinity Map

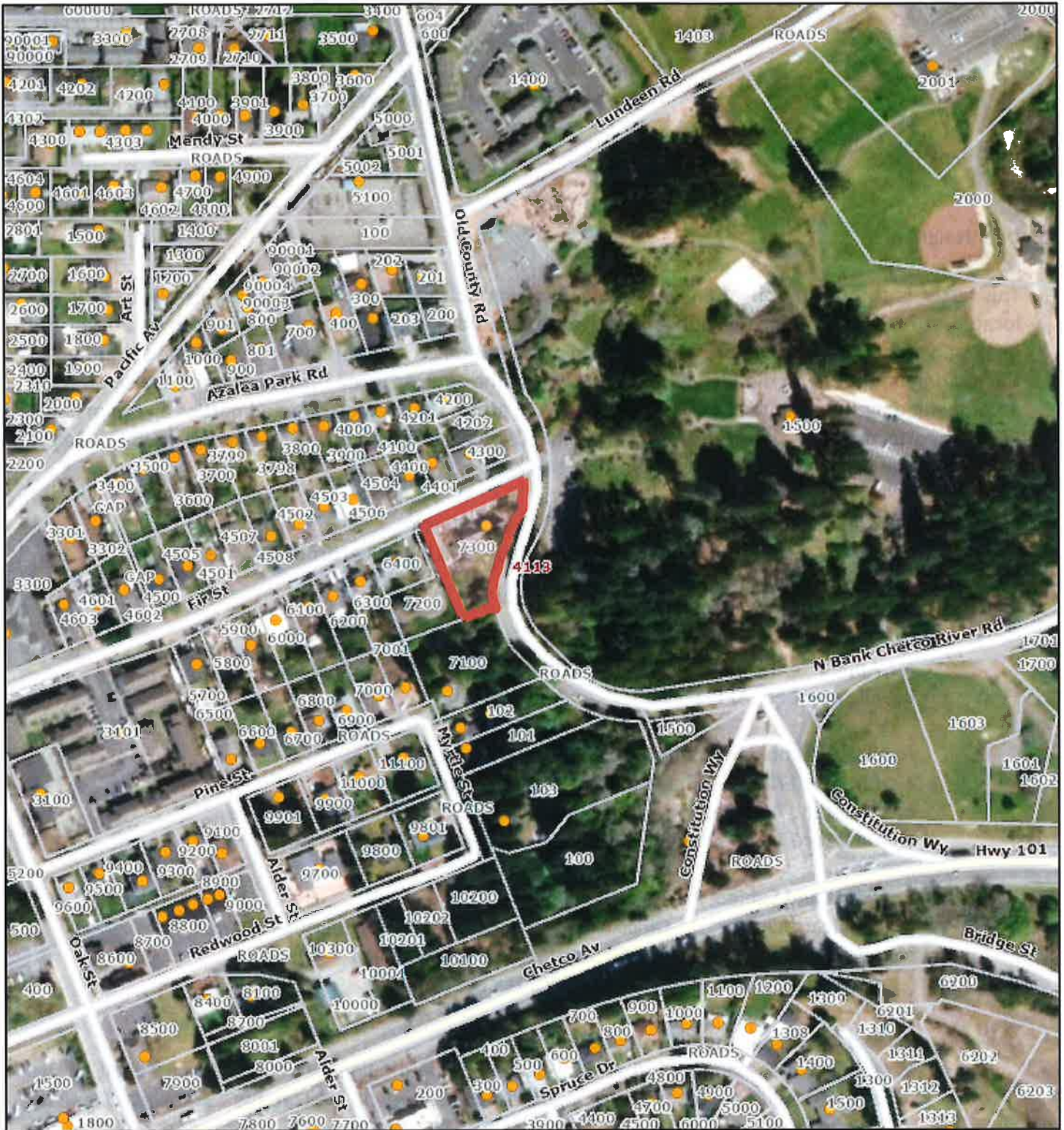
Attachment B - Property Photo

Attachment C - Minor Change to CUP documents (1999)

Attachment D - Fr. Lindley deposition excerpts (April 12, 2023)

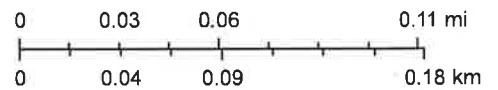
Attachment E - Notice to Abate (April 14, 2023)

Attachment F – St. Timothy’s Church Appeal letter (April 24, 2023)



6/1/2023, 11:18:21 AM

1:4,514



Bureau of Land Management, State of Oregon, State of Oregon DOT, State of Oregon GEO, Esri Canada, Esri, HERE, Garmin, USGS, EPA, USDA, Maxar



Request for Minor Change to Conditional Use Permit
St. Timothy's Episcopal Church

Proposed improvements: To accommodate our growing congregation, we are planning to extend our nave 16 feet toward Azalea Park. Because our original church building was in existence before city zoning ordinances, we will only need a minor change to our current conditional use permit.

A. Compliance with comprehensive plan: We feel that St. Timothy's is an asset to our neighborhood and that adding onto our church conforms with the comprehensive plan.

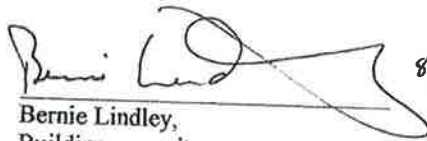
B. Adequate space: Our building is on a double lot. There is adequate room for the addition to the nave and for the extra parking. We did have a problem with the side-yard setback closest to Old County Road, but we have obtained a variance from the planning commission.


C. Traffic: The increase in traffic will be about seven cars and will typically occur on Sunday morning when the streets are not very busy. Our addition will have a negligible impact on traffic congestion.

D. Adverse impact on adjoining properties: Because we are on a corner lot, and closest property to the new addition is Azalea Park, we will have no detrimental impact on our neighbors.

E. Preservation of scenic attributes: We are proud of the architecture of our church. Our new addition will simply extend the original lines 16 feet. It is likely that the casual observer won't notice the change to the building.

This request is submitted by Bernie Lindley with the approval of the building committee at St. Timothy's and the approval of the Rev. William Smith, Vicar.

 8/4/99
Bernie Lindley,
Building committee member


Rev. William Smith
Vicar, St. Timothy's

MC-1-99 (minor change) to a "De Facto" Conditional use Permit.
"Findings of Fact" above

CITY OF BROOKINGS

898 Elk Drive
Brookings, Oregon 97415
Phone (541) 469-2163
Fax (541) 469-3650
cityhall@brookingsor.org

The Home of Winter Flowers



September 8, 1999

St. Timothy's Episcopal Church
PO Box 1237
Brookings OR 97415

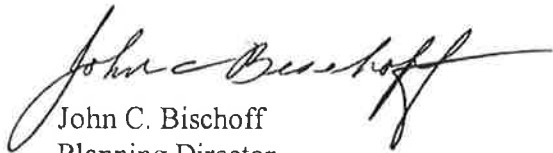
RE: Your application for a minor change to a de facto conditional use permit to allow a 16 foot extension of the chapel areas of the church building (File No. MC-1-99).

This is to inform you of the action taken at the meeting of the Brookings Planning Commission on the above referenced matter.

At the Planning Commission meeting of September 7, 1999, the Commission adopted the Final ORDER and Findings of Fact document (enclosed) in the approval of the application. Approval of this conditional use permit will expire one year from the date of approval unless your project comes under substantial construction within that period.

Please be advised that decisions of the Planning Commission may be appealed to the City Council within fifteen (15) days after the decision of the Commission, pursuant to the Land Development Code, Section 156. If there are any questions please feel free to contact the Planning Offices.

Sincerely,


John C. Bischoff
Planning Director

BEFORE THE PLANNING COMMISSION
CITY OF BROOKINGS, COUNTY OF CURRY
STATE OF OREGON

**In the matter of Planning Commission File No.) Final ORDER
MC-1-99; a request for a minor change to a) and Findings of
conditional use permit; St. Timothy's Church,) Fact
applicant)**

ORDER approving of an application for a minor change to what is considered to be a "de facto" Conditional Use Permit to expand the existing church building by extending the chapel area 16 feet to the east; Assessor's Map 41-13-5BC, Tax Lot 7300; R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size).

WHEREAS:

1. The Planning Commission duly accepted the application filed in accordance with the Brookings Land Development Code pursuant to Section 140 Conditional Use Permits; and
2. Such application is required to show evidence that all of the following criteria has been met:
 - A. The proposal is in compliance with the Comprehensive Plan.
 - B. The site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this code.
 - C. The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use.
 - D. The proposed use will have minimal adverse impact upon adjoining properties and the improvements thereon. In making this determination, the commission shall consider, but not be limited to, the proposed location of the improvements on the site, vehicular egress/ingress and internal circulation, pedestrian access, setbacks, height and bulk of buildings, walls and fences, landscaping, screening, exterior lighting and signing.
 - E. In areas designated as requiring preservation of historic, scenic or cultural attributes, proposed structures will be of a design complimentary to the surrounding area.
3. The Brookings Planning Commission duly set this matter upon the agenda of a public meeting and considered the above described application with the public hearing a matter of record of the Planning Commission meeting of September 7, 1999; and
4. At the public meeting on said conditional use permit application, evidence and testimony was presented by the applicant and recommendations were received from and presented by the Planning Director in the form of a Staff Agenda Report, dated August 26, 1999 and oral presentation of same; and

5. At the conclusion of the presentation of the applicant, Planning Director and the public, after consideration and discussion the Brookings Planning Commission, upon a motion duly seconded, approved the request for the subject conditional use permit and directed staff to prepare a Final ORDER with the findings set forth therein for the approval of said application.

THEREFORE, LET IT BE HEREBY ORDERED that the application of the conditional use permit on the subject parcel is approved. This approval is supported by the following findings and conclusions:

FINDINGS

1. The applicant is requesting a minor change to what is considered to be a “de facto” conditional use permit to expand the existing chapel area by approximately 392 sq. ft. and to add a total of 8 new parking spaces on a 0.67 acre lot.
2. The subject property is zoned R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size) and is designated as residential by the Comprehensive Plan.
3. Churches are allowed in the residential zones as a conditional use with a side and rear yard setback of 30 feet..
4. The exiting church building has been on the subject property since before the city had zoning regulations and is thus considered to have a “de facto” conditional use permit.
5. The proposed expansion will consist of extending the chapel area 16 feet to the east.
6. At its closest point the exiting building is 22 feet from the easterly property line. The proposed expansion will place the building 12 feet from the property line.
7. The applicant has requested and received a variance for the new side yard setback (File No. VAR-2-99).
8. Section 92, Off- Street Parking And Loading Regulations, of the Land Development Code, requires churches to provide one parking space for each 4 seats in the main gathering area. The church currently has 17 parking spaces.
9. The proposed building expansion will provide for a total of 80 seats which, under Section 92, would require 20 parking spaces.
10. Fir St. is a paved travel way within a right-of-way of 55 feet with no other improvements adjacent to the subject property.
11. Old County Rd. is a paved travel way with in a 60 foot right-of-way with no other improvements adjacent to the subject property.
12. Development surrounding the subject property consists of single family residential on the north, west and south. The area to the east is the Azalea City Park.

CONCLUSIONS

1. The total building footprint after the expansion will not occupy more than 12% of the total lot area. Although the original parking backs directly on to the existing street, this parking arrangement predates any city ordinance governing parking and is considered to be grand fathered. The application for a minor change to the "de facto" use permit does allow the Planning Commission to require the parking to be relocated to comply with Section 92. However, although the lot is large enough to provide for the parking, the topography does not. Requiring the existing parking to meet code would effectively negate the earlier approval of the variance and make the proposed building expansion moot. Since there have been no complaints or accidents resulting from the existing arrangement, there is no reason to move the parking. The new parking area of 9 spaces meets the requirements of Section 92.

The existing building meets the setback requirements of the R-1-6 Zone except on the east side which does not meet the 30 foot set back requirement. The proposed expansion will decrease this setback even further, however, since this is the side adjacent to Azalea Park, a variance has been issued to allow a lesser setback. With the variance which was approved earlier, the subject site is adequate in size to accommodate the proposed building expansion and additional parking.

2. The proposed expansion to the chapel area of the existing church building will add capacity for approximately 20 seats. Using the seating to parking space ration of Section 92, this would equate to 5 more cars on the street before and after services. This increase is insignificant and does not impact the ability of Fir St. to handle traffic. The conditions of approval will require the relocation of the church's sign which obscures the view of cars on Fir St. trying to enter Old County Rd.
3. The proposed expansion will have little or no impact on the surrounding neighborhood. The expanded end of the building, because of existing landscaping will hardly be noticeable to the surrounding neighbors. As stated above the amount of traffic generated by the proposed expansion will not create a negative impact on the neighborhood.
4. The existing church building could be considered to be a historical attribute since it has been on the site for so long. The addition to the building will be of the same design and follow the same architectural line as the existing building. Azalea Park, located to the east, is a scenic attribute, however, the proposed addition will not detract from the parks scenic qualities.
5. With the approved variance the proposed expansion of the existing church building meets the requirements of the criteria addressed above and is consistent with the other applicable provisions of the Land Development Code. Although the Comprehensive Plan does not specifically address churches, allowing the proposed expansion will utilize the existing land more efficiently and will not require the church to relocate to accommodate a growing congregation.

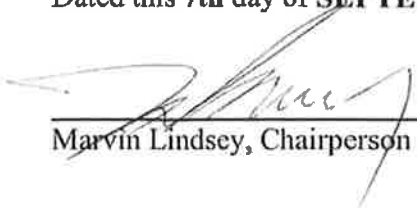
CONDITIONS OF APPROVAL

The conditions of approval are attached to this document and are made apart thereof.

LET IT FURTHER BE OF RECORD that the Planning Commission approved the requested

Conditional Use Permit.

Dated this 7th day of SEPTEMBER, 1999.



Marvin Lindsey, Chairperson

ATTEST:



John C. Bischoff, Planning Director

CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT
MC-1-99
September 7, 1999

General Conditions

1. Approval of this conditional use permit will expire one year from approval, unless the project comes under substantial construction within that period. The Planning Commission may extend the permit for an additional one year period at the request of the applicant.
2. The conditions stated herein are mandatory and must be completed. Failure to comply with any condition will result in the review and possible revocation of your permit pursuant to Section 140.110, Violation of Conditions, of the Land Development Code. The loss of your permit will result in the closure of your business.
3. The final construction plans shall be in substantial conformance with the submitted preliminary site plan as amended herein and as approved by the Planning Commission. Substantial changes to the approved preliminary plat require re-approval by the Planning commission.
4. Improvement work shall not be commenced until construction plans including grading have been approved by the City Engineer.
5. All costs of plans checks and inspections by the City Engineer shall be paid by the applicant to the city.
6. Information on the construction plans shall be pursuant to the City of Brookings Standard Specifications document dated August, 1988.
7. Prior to the issuance of an occupancy permit, all street, infrastructure and storm drain construction must be completed.
8. Prior to the issuance of an occupancy permit the new parking area shall be buffered with a sight obscuring fence or by landscaping along the westerly property line, so as to screen the parking from the adjoining residential uses.
9. All outdoor lighting shall be directed and/or shielded so as to prevent light from falling directly on adjoining properties.
10. All buildings shall meet the yard setback and separation requirements pursuant to of the Land Development Code except as allowed by the approved variance (File No. VAR-2-99).
11. All outdoor trash containers shall be screened from view with a decorative fence and gate at least 6 feet high.
12. The existing church sign shall be moved to a location that does not block the view of cars at the stop sign on Fir St. trying to enter Old County Rd.

CITY OF BROOKINGS PLANNING COMMISSION
STAFF AGENDA REPORT

SUBJECT: Conditional Use Permit
FILE NO: MC-1-99
HEARING DATE: September 7, 1999

REPORT DATE: August 24, 1999
ITEM NO: 8.2

GENERAL INFORMATION

APPLICANT: St. Timothy's Church.
REPRESENTATIVE: Bernie Lindley.
REQUEST: A minor change to a de facto conditional use permit to allow a 16 foot extension of the chapel area of the church building.
TOTAL LAND AREA: 0.67 acres.
LOCATION: In the southwest corner of Fir St. and Old County Rd. 401 Fir St.
ASSESSOR'S NUMBER: 41-13-5CB, Tax Lot 7300.

ZONING / COMPREHENSIVE PLAN INFORMATION

EXISTING: R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size).
PROPOSED: Same.
SURROUNDING: North, West and South-R-1-6; East-P/OS (Public Open Space).
COMP. PLAN: Residential.

LAND USE INFORMATION

EXISTING: Church building.
PROPOSED: Expansion of existing church building
SURROUNDING: North, West and South-Residential uses; East-Azalea Park.
PUBLIC NOTICE: Mailed to all property owners within 250 feet of subject property and published in local news paper.

BACKGROUND INFORMATION

The subject property is an irregular shaped, 0.67 acre parcel of land located in the southwest corner of Old County Rd. and Fir St. The property fronts on Old County Rd. on the east and Fir St. on the north, however, the Fir St. frontage provides the only usable access to the property. The subject property has 229.58 feet of frontage on Fir St., 273.06 feet of frontage on Old County Rd., a southerly boundary of 68.45 feet, and a westerly boundary of 198.18 feet. The property is currently the site of the St. Timothy's Episcopal Church. The parking area for the church is along the Fir St. frontage and contains 17 parking spaces.

The topography of the subject property varies, starting along the north side or Fir St. frontage is flat and then begins to drop to the south. There is a gully along the west side of Old County Rd. starting at the intersection of Fir St. and increasing rapidly in depth as the land drops toward the south. This gully essentially prevents access to the subject property from Old County Rd.

The subject property is zoned R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size) as is the area to the north, west and south which is developed accordingly. The area to the east is zoned P/OS (Public Open Space) and is the site of Azalea City Park which is directly across Old County Rd. from the subject property.

Old County Rd. is a paved travel way within a 60 foot right-of-way with no other improvements. Fir St. is a paved travel way within a 55 foot right-of-way with no other improvements. The church currently has city water and sewer service.

PROPOSED CONDITIONAL USE PERMIT

Churches are allowed in the R-1-6 with an approved conditional use permit. Since the church building has been located on the subject property since the 1950s, which was before the city established a zoning code, it is considered to have a "de facto" conditional use permit. The existing building is configured with the chapel extending to the east from the main entrance. The applicant is requesting a minor change to the permit to expand the seating area of the chapel to accommodate the growth of the church congregation. This will be accomplished by extending the 24.5 foot wide chapel a total of 16 feet to the east for an addition of 392 sq. ft. (See Exhibit 2). The building footprint is currently 3,047.75 sq. ft. or approximately 10% of the total lot area. The addition will make the footprint 3,439.75 sq. ft. or 12% of the site.

The applicant states that the proposed expansion would allow a total of 80 seats in the chapel which is the largest gathering area. Section 92, Off-Street Parking And Loading Regulations, of the Land Development Code, requires that the church provide 1 parking space for each 4 seats, thus, in this case, 20 spaces. The church currently has 17 parking spaces and as a part of this application is proposing the addition of 9 parking spaces in the westerly portion of the church property and one space along the street at the east end of the existing parking. To accommodate the 9 spaces along the easterly property line, two of the exiting spaces will be eliminated, leaving a total of 25 parking spaces.

The easterly property line of the subject property (also the westerly right-of-way line of Old County Rd.) is at an angle to the east end of the church building. The southeast corner of the building is currently 22 feet from the property line at its closes point. The proposed expansion will place this building corner 12 feet from the property line at its closest point. Since the Land Development Code requires that churches within the residential zones have a side and rear yard setback of at least 30

feet, the applicant has requested and gained approval of a variance to allow the reduced setback (See file No. VAR-2-99).

ANALYSIS

In order to grant any conditional use, the planning commission must find that the application meets the requirements of the following criteria, which is listed in Section 140 Conditional Use Permits, of the LDC.

1. The proposal is in compliance with the Comprehensive Plan.
2. The site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this code.
3. The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use.
4. The proposed use will have minimal adverse impact upon adjoining properties and the improvements thereon. In making this determination, the commission shall consider, but not be limited to, the proposed location of the improvements on the site, vehicular egress/ingress and internal circulation, pedestrian access, setbacks, height and bulk of buildings, walls and fences, landscaping, screening, exterior lighting and signing.
5. In areas designated as requiring preservation of historic, scenic or cultural attributes, proposed structures will be of a design complimentary to the surrounding area.

Since the first criterion includes the requirements of all of the others it will be discussed after the last four.

Criterion 2, Adequate Size And Shape. The subject lot is large enough to accommodate the proposed building expansion and additional parking. The proposed building expansion will place the building 12 feet from the easterly property line which does not meet the setback requirement of 30 feet as required by the Land Development Code, however, the church has received an approved variance for the new setback. The new parking consists of nine 9 X 20 spaces, perpendicular to the west property line with a 24 foot wide paved maneuvering area as required by Section 92. There is also a 4 foot wide strip of land between the parking spaces and the west property line. The conditions of approval will require landscaping or fencing to provide the required buffer between the church use and adjoining residential uses. There is also a four foot wide strip for landscaping along the street in this area. The expanded building will only occupy about 12% of the total site.

Criterion 3, Relation of Streets. Access to the property is from Fir St. which has a right-of-way width of 55 feet in the area adjacent to the subject property. The church building has existed on this site for many years and staff is not aware of any complaints resulting from church traffic. The proposed expansion will provide 20 additional seats which, by the parking ratio would add 5 additional cars to the traffic flow for church services. Even if the traffic increased by 10 cars, the street width is sufficient to accommodate this increase.

The existing parking, currently 17 spaces but to be reduced to 16, backs directly out into the street which is not allowed by current parking regulations. However, since this parking has been in place since before the city had a parking code, it is considered to be a “grandfathered” use. While the request for a change in the conditional use gives the Planning Commission the authority to cause the parking to be changed to meet the code, there is no usable space on the subject property to place this parking. Requiring the existing parking to meet code would effectively negate the earlier approval of the variance and make the proposed building expansion moot. Since there have been no complaints, there appears to be no reason to change the existing parking. The additional parking will meet the requirements of Section 92.

As a condition of approval, the church will be required to move the exiting sign to another location. In its current location the sign tends to block the view of cars stopped at the stop sign on Fir St., from seen cars coming from the right on Old County Rd.

Criterion 4, Neighborhood Impact. The proposed expansion will have little or no impact on the adjoining property. The location of the expansion, the landscaping and the topography of the site will make the building extension almost invisible to the neighbors. The additional parking will be buffered by either landscaping or fencing from the adjoining neighbor on the west.

Criterion 5, Historic, Scenic Or Cultural Attributes. The church itself could be considered to be a historic attribute to the area since it has been there for so long. The applicants findings state that the proposed expansion will follow the original lines of the building. Azalea Park, which is located across Old County Rd. from the subject property is a scenic attribute, however, the proposed expansion of the church building will not impact these qualities for the same reasons stated in Criterion 4, above.

Criterion 1, Compliance With Comprehensive Plan. With the approved variance the proposed expansion of the existing church building meets the requirements of the criteria addressed above and is consistent with the other applicable provisions of the Land Development Code. Although the Comprehensive Plan does not specifically address churches, allowing the proposed expansion will utilize the existing land more efficiently and will not require the church to relocate to accommodate a growing congregation.

FINDINGS

1. The applicant is requesting a minor change to what is considered to be a “de facto” conditional use permit to expand the existing chapel area by approximately 392 sq. ft. and to add a total of 8 new parking spaces on a 0.67 acre lot.
2. The subject property is zoned R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size) and is designated as residential by the Comprehensive Plan.
3. Churches are allowed in the residential zones as a conditional use with a side and rear yard setback of 30 feet..
4. The exiting church building has been on the subject property since before the city had zoning regulations and is thus considered to have a “de facto” conditional use permit.
5. The proposed expansion will consist of extending the chapel area 16 feet to the east.

6. At its closest point the existing building is 22 feet from the easterly property line. The proposed expansion will place the building 12 feet from the property line.
7. The applicant has requested and received a variance for the new side yard setback (File No. VAR-2-99).
8. Section 92, Off- Street Parking And Loading Regulations, of the Land Development Code, requires churches to provide one parking space for each 4 seats in the main gathering area. The church currently has 17 parking spaces.
9. The proposed building expansion will provide for a total of 80 seats which, under Section 92, would require 20 parking spaces.
10. Fir St. is a paved travel way within a right-of-way of 55 feet with no other improvements adjacent to the subject property.
11. Old County Rd. is a paved travel way with in a 60 foot right-of-way with no other improvements adjacent to the subject property.
12. Development surrounding the subject property consists of single family residential on the north, west and south. The area to the east is the Azalea City Park.

CONCLUSIONS

1. The total building footprint after the expansion will not occupy more than 12% of the total lot area. Although the original parking backs directly on to the existing street, this parking arrangement predates any city ordinance governing parking and is considered to be grand fathered. The application for a minor change to the "de facto" use permit does allow the Planning Commission to require the parking to be relocated to comply with Section 92. However, although the lot is large enough to provide for the parking, the topography does not. Requiring the existing parking to meet code would effectively negate the earlier approval of the variance and make the proposed building expansion moot. Since there have been no complaints or accidents resulting from the existing arrangement, there is no reason to move the parking. The new parking area of 9 spaces meets the requirements of Section 92.

The existing building meets the setback requirements of the R-1-6 Zone except on the east side which does not meet the 30 foot set back requirement. The proposed expansion will decrease this setback even further, however, since this is the side adjacent to Azalea Park, a variance has been issued to allow a lesser setback. With the variance which was approved earlier, the subject site is adequate in size to accommodate the proposed building expansion and additional parking.

2. The proposed expansion to the chapel area of the existing church building will add capacity for approximately 20 seats. Using the seating to parking space ration of Section 92, this would equate to 5 more cars on the street before and after services. This increase is insignificant and does not impact the ability of Fir St. to handle traffic. The conditions of approval will require the relocation of the church's sign which obscures the view of cars on Fir St. trying to enter Old County Rd.

3. The proposed expansion will have little or no impact on the surrounding neighborhood. The expanded end of the building, because of existing landscaping will hardly be noticeable to the surrounding neighbors. As stated above the amount of traffic generated by the proposed expansion will not create a negative impact on the neighborhood.
4. The existing church building could be considered to be a historical attribute since it has been on the site for so long. The addition to the building will be of the same design and follow the same architectural line as the existing building. Azalea Park, located to the east, is a scenic attribute, however, the proposed addition will not detract from the parks scenic qualities.
5. With the approved variance the proposed expansion of the existing church building meets the requirements of the criteria addressed above and is consistent with the other applicable provisions of the Land Development Code. Although the Comprehensive Plan does not specifically address churches, allowing the proposed expansion will utilize the existing land more efficiently and will not require the church to relocate to accommodate a growing congregation.

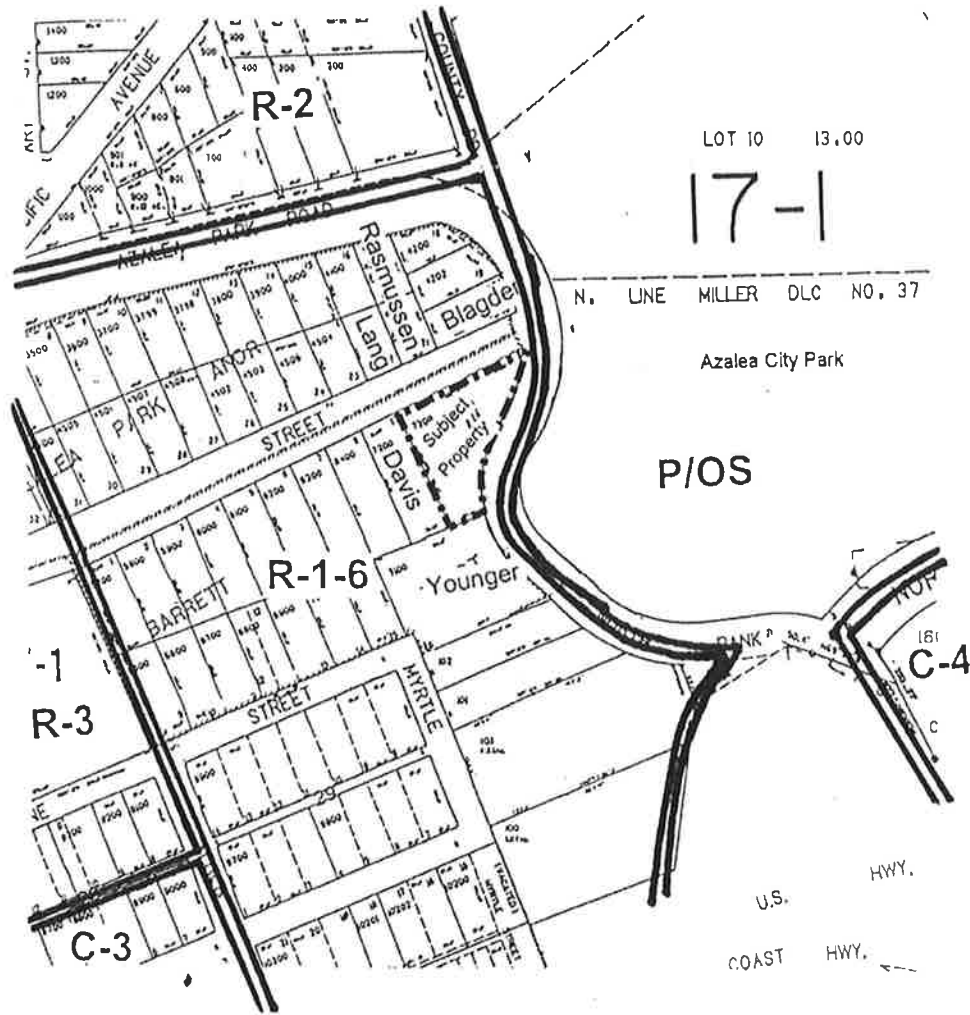
CONDITIONS OF APPROVAL

The proposed conditions of approval are attached to and made a part of this report.

RECOMMENDATION

Staff recommends **Approval** of Case File No. MC-1-99, based on the findings and conclusions stated in the staff report and subject to the conditions of approval listed above.

Staff has prepared a Final ORDER to be considered at this meeting.



APPLICANT: St. timothy's Episcopal Church

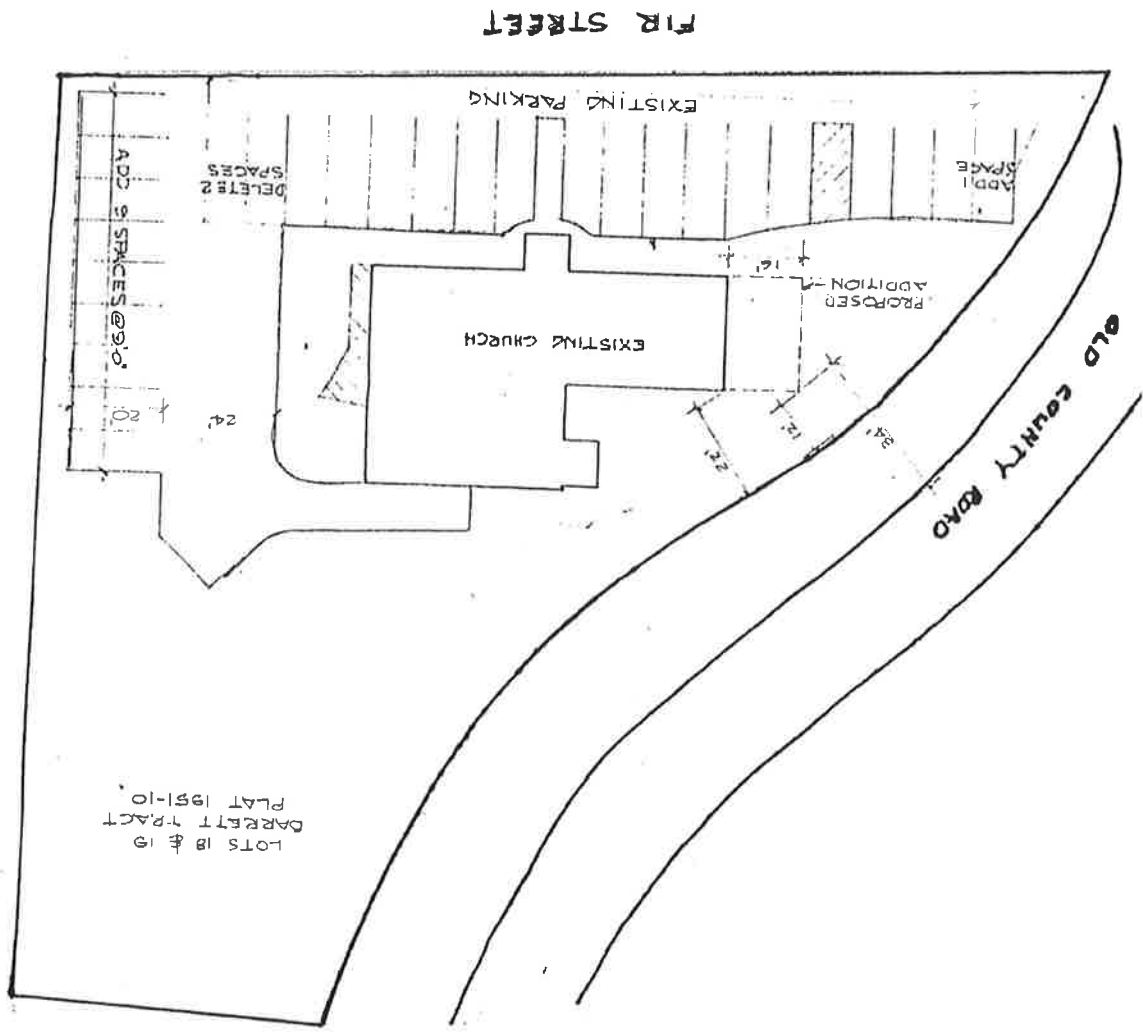
ASSESSOR'S NO: 41-13-5BC Tax Lot 7300

LOCATION: south side of Fir Street at its intersection with Old County Road

SIZE: 0.67 acre

ZONE: R-1-6 (Single-family Residential, 6,000 sq. ft. minimum lot size)





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LOCATION: south side of Fir Street at its intersection with Old County Road

SIZE: 0.67 acre

ZONE: R-1-6 (Single-family Residential, 6,000 sq. ft. minimum lot size)



Request for Minor Change to Conditional Use Permit
St. Timothy's Episcopal Church

Proposed improvements: To accommodate our growing congregation, we are planning to extend our nave 16 feet toward Azalea Park. Because our original church building was in existence before city zoning ordinances, we will only need a minor change to our current conditional use permit.

A. Compliance with comprehensive plan: We feel that St. Timothy's is an asset to our neighborhood and that adding onto our church conforms with the comprehensive plan.

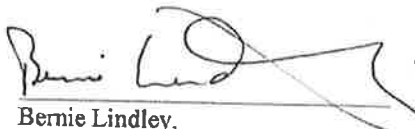
B. Adequate space: Our building is on a double lot. There is adequate room for the addition to the nave and for the extra parking. We did have a problem with the side-yard setback closest to Old County Road, but we have obtained a variance from the planning commission.

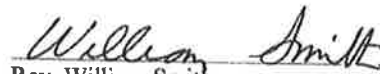
C. Traffic: The increase in traffic will be about seven cars and will typically occur on Sunday morning when the streets are not very busy. Our addition will have a negligible impact on traffic congestion.

D. Adverse impact on adjoining properties: Because we are on a corner lot, and closest property to the new addition is Azalea Park, we will have no detrimental impact on our neighbors.

E. Preservation of scenic attributes: We are proud of the architecture of our church. Our new addition will simply extend the original lines 16 feet. It is likely that the casual observer won't notice the change to the building.

This request is submitted by Bernie Lindley with the approval of the building committee at St. Timothy's and the approval of the Rev. William Smith, Vicar.

 8/4/99
Bernie Lindley,
Building committee member


Rev. William Smith
Vicar, St. Timothy's



Land-Use Permit Application City of Brookings

898 Elk Drive Brookings OR 97415
(541) 469-2163 Ext. 237 Fax (541) 469-3650

Applicants must complete the following form to the best of their knowledge. Incomplete information may cause a delay in the review and the final decision on your request. If requested information is not known to the applicant, city staff will provide such information where appropriate.

APPLICATION FOR:

- | | | |
|--|---|--|
| <input type="checkbox"/> Minor Partition | <input type="checkbox"/> Planned Unit Development | <input type="checkbox"/> Lot Line Adjustment |
| <input type="checkbox"/> Major Partition | <input type="checkbox"/> Subdivision | <input type="checkbox"/> Annexation |
| <input type="checkbox"/> Plan Amendment | <input type="checkbox"/> Variance | <input checked="" type="checkbox"/> Minor Change |
| <input checked="" type="checkbox"/> Conditional Use Permit | <input type="checkbox"/> Vacation | <input type="checkbox"/> Sign Permit |
| <input type="checkbox"/> Appeal: Planning Com. | <input type="checkbox"/> Appeal: City Council | |

APPLICANT/OWNER INFORMATION:

Applicant St. Timothy's Episcopal Church
 Mailing Address P.O. Box 1237
 City Brookings State OR Zip 97415
 Telephone No. 469-3314 Fax No. _____
 Representative Bernie Lindley
 Mailing Address 16225 Chapman Ln
 City Brookings State OR Zip 97415
 Telephone No. 469-0972 Fax No. _____
 Owner (If not applicant) _____
 Mailing Address _____
 City _____ State _____ Zip _____
 Telephone No. _____ Fax No. _____

PROPERTY INFORMATION:

Location 401 Fir Street (SW corner of Old County Rd & Fir St.)
 Assessor's Map No. 41-13-5BC Tax Lot No. 7300
 Parcel Size .67 acre Existing Zoning R-1-b
 Comprehensive Plan Designation residential
 Existing Use Church
 Proposed Use expansion of church building
 Is water service available to the site? Yes
 If no, how far to nearest city water line? _____
 Is sewer service available to the site? Yes
 If no, how far to nearest city line? _____

REQUEST:

We need a minor change to our conditional use permit so that we can expand our existing church because it is located on a lot that is zoned R-1-b.

I hereby certify that the information provided on this application is correct to the best of my knowledge and understand that any false information may result in the rejection of the application and forfeiture of all fees submitted.

Bernie Lindley Date 8/4/99
 Applicant's Signature

If applicant is not the owner of the property subject to this request please have the owner sign below or attach a letter signed by the owner authorizing to act on his/her behalf. The signature of only one owner is required, however a list of all owner's names and addresses must be submitted with application.

William A. Smith Date 8/4/99
 Property Owner's Signature

File No. MC-1-99 Date Received 8/4/99 Receipt No. 11625 Received by [Signature]

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
MEDFORD DIVISION

ST. TIMOTHY'S EPISCOPAL)
CHURCH, by and through)
THE DIOCESE OF OREGON,)
dba THE EPISCOPAL DIOCESE)
OF OREGON, an Oregon)
nonprofit corporation,)
and REVEREND JAMES)
BERNARD LINDLEY, vicar of)
St. Timothy's Episcopal)
Church,)

Plaintiffs,)

v.)

Case Number 1:22-cv-00156-CL

CITY OF BROOKINGS, an)
Oregon municipal)
government,)

Defendant.)

VIDEOTAPED DEPOSITION OF REVEREND JAMES BERNARD LINDLEY
testifying in his personal capacity

and as 30(b)(6) witness

Taken in behalf of the Defendant

April 12, 2023

TAKEN VIA VIDEOCONFERENCE

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EXAMINATION INDEX

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Examination by Heather Van Meter	6
Examination by Samantha Sondag	176

* * *

EXHIBIT INDEX

Number	Description	Page
NONE	MARKED	

Requested information:	
Documents reviewed in preparation of deposition	11

Instruction by counsel: 90, 139

* * *

1 Q. Okay. Does the -- has -- does it continue its
2 activities now?

3 **A. Yes.**

4 Q. Okay. And the -- who are the people on the advocacy
5 team?

6 **A. Sister Cora Rose and Machell Carroll. Those are the**
7 **paid members and then there's a volunteer, her name**
8 **is Veronica, Veronica Spalding. And then another**
9 **unpaid member would be Pastor Jim Abbott, and then**
10 **also Deacon Linda works sometimes on the advocacy**
11 **team, Deacon Linda Lee as an unpaid member of the**
12 **team.**

13 Q. And are those the same people who have been on the
14 advocacy team since it started?

15 **A. No.**

16 Q. When did the advocacy team start?

17 **A. I wish I could remember the exact year and date, you**
18 **know, the month and date -- month and year, but it**
19 **was approximately 2018.**

20 Q. And since it began in approximately 2018, have there
21 always been some paid members of the advocacy team?

22 **A. Yes.**

23 Q. And has that been Cora Rose and Machell Carroll the
24 whole time?

25 **A. It has not.**

1 for a conditional-use permit from the City?

2 **A. We had already been feeding since 2009. That**
3 **ordinance -- when that ordinance went into effect,**
4 **we'd already been feeding for how-many-ever years**
5 **that was, 12 years. I -- I -- I felt that that --**
6 **that ordinance was an unnecessary -- I want to**
7 **choose a good word here -- violation of our right to**
8 **freely practice our faith without government**
9 **interference.**

10 Q. What other activities do you carry out at
11 St. Timothy's? I understand there's a legal clinic
12 and a health clinic?

13 **MS. SONDAG: Objection. Vague.**

14 **BY MS. VAN METER:**

15 Q. Go ahead and answer.

16 **A. I don't know who -- what do you mean by "legal**
17 **clinic"?**

18 Q. Well, you referenced a legal clinic in your sermons,
19 so I'm asking what the legal clinic is that you have
20 at St. Timothy's.

21 **A. Okay. Did I use the phrase "legal clinic," though?**

22 Q. Yes.

23 **A. Okay. That's surprising to me, because I don't**
24 **think -- we have a lawyer on staff that gives legal**
25 **advice, like a legal aid --**

1 Q. Uh-huh.

2 **A. -- to our -- to our community members who would not**
3 **be able to obtain legal -- legal services otherwise.**

4 Q. Okay. So tell me about that. Who is that? How
5 often do they work? Is it out of St. Timothy's?
6 All of the same questions as we had with the other
7 programs that you have.

8 **A. Okay. So it's Sister Cora, she is a member of the**
9 **Oregon State Bar, and she works with people who need**
10 **legal help, and those -- those people get referred**
11 **to the church by various different means, and -- and**
12 **she works with them to the best of her ability.**

13 Q. And is she paid for that activity? Is it volunteer?

14 **A. No, she's paid.**

15 Q. And how many hours -- how many hours a week does she
16 get paid for this legal-service activity?

17 **A. 19 or 20 hours a week.**

18 Q. Is this in addition to her work for the advocacy
19 team, or is this part of -- in your mind, is this
20 part of the advocacy team work?

21 **A. That is -- her role on the advocacy team is to**
22 **provide legal aid.**

23 Q. Okay. And the legal aid she provides is 19 to 20
24 hours a week?

25 **A. That's what she's paid for, yes.**

1 Q. Okay. And she does this work out of St. Timothy's
2 Church building?

3 **A. Yes.**

4 Q. And what kinds of legal services is she providing?
5 Is it just referrals to other lawyers, or is she
6 also actually providing legal representation?

7 **MS. SONDAG: Objection. Calls for a legal**
8 **conclusion.**

9 **BY MS. VAN METER:**

10 Q. Go ahead and answer.

11 **A. So I -- so she does things like expungements, she**
12 **does things like help people navigate the Social**
13 **Security Administration, she helps people with --**
14 **perhaps answers questions for, like, tenant-**
15 **landlord-type issues, and then she refers -- if it's**
16 **something that she can't -- if she doesn't know the**
17 **answer, she refers them to a different organization.**

18 Q. And she's licensed with the state bar?

19 **A. She is.**

20 Q. Do you know if her license is active or like an
21 inactive pro bono status?

22 **A. It is active.**

23 Q. Does she separately -- does she work anywhere other
24 than St. Timothy's?

25 **A. Not that I'm aware of.**

1 **A. Yes.**

2 Q. And how often is that?

3 **A. Once a month.**

4 Q. And when you say "primary care provider," is it a
5 doctor or a nurse practitioner?

6 **A. Nurse practitioner.**

7 Q. And that's one full day per month?

8 **A. I -- I wouldn't say full day, no.**

9 Q. Okay. What -- what day -- is there a set schedule
10 for it?

11 **A. I think -- I think it's about 8:30 to 2:00.**

12 Q. Okay. And is there a set day per month, like first
13 Monday or anything like that?

14 **A. No.**

15 Q. Okay. Is it just based on a nurse's availability?

16 **A. The nurse practitioner's availability, yes.**

17 Q. And what is the nurse's name?

18 **A. Her name is Karla.**

19 Q. And what's the last name?

20 **A. Reinholt [sic].**

21 Q. Can you spell that for our court reporter, if you
22 know?

23 **A. Well, Karla is with a K, I can tell you that, and**
24 **Reinhart.**

25 Q. Maybe R-E-I-N-H-A-R-T?

1 **A. I'm not sure.**

2 Q. Okay.

3 **A. I call her Karla.**

4 Q. Sure. Do you also operate a day program at
5 St. Timothy's?

6 **A. I think what you're referring to is our Monday,**
7 **Wednesday, Friday office hours in the mornings from**
8 **in 9:00 to 12:00. Is that what you're referring to?**

9 Q. I don't know. There's a reference in the complaint
10 that was filed that started the lawsuit here. It
11 says, "St. Timothy's has long operated a day program
12 on Mondays, Wednesdays, and Fridays during which it
13 offers community members use of shower facilities
14 and assistance with applications for social
15 services." So what is that day program?

16 **A. Yeah, so that's 9:00 to 12:00.**

17 Q. Three days a week?

18 **A. Yes.**

19 Q. And what do you do at this day program?

20 **A. We make the showers available, we provide coffee,**
21 **access to the Internet, oftentimes our community**
22 **members charge their phones, and -- and then -- and**
23 **that's when they interact with our advocacy team.**

24 Q. Are those the set times that your advocacy team is
25 there also, or are they there additional times?

1 **A. Those are set times, and occasionally they might be**
2 **here on additional times as well, but that's not --**
3 **that's not advertised or -- that would be on a --**
4 **what would you want to call that? That would be on**
5 **an individual basis --**

6 Q. Okay.

7 **A. -- occasion.**

8 Q. Okay. The Internet access, is that just part of the
9 day program where you give -- people who come into
10 the day program have access to the Internet if they
11 have devices for it?

12 **A. So let me -- let me -- people access the Internet**
13 **when they're here, yes.**

14 Q. Okay.

15 **A. If they have a device for it, yes.**

16 Q. Okay. So do -- so you don't provide devices. Is
17 that accurate?

18 **A. If there was a reason why we needed to have someone**
19 **have access to a laptop, we would do our best to**
20 **provide that access.**

21 Q. Okay. So in the complaint, the document that
22 started the lawsuit, there's a reference to Internet
23 access. Is that -- the Internet access, is that
24 just during those days and hours of the day program,
25 or are there other times when Internet access is

1 maybe -- or maybe there would be an occasion where
2 someone would linger for 15 minutes afterwards. And
3 I'm talking about community members now. I'm not
4 talking -- I'm talking about when the doors lock.

5 Q. Sure.

6 A. And -- and then it would be Sunday from 3:00 to
7 4:00, but of course on Sunday -- the Episcopal
8 Church has a slogan that says "All are welcome," so
9 certainly if someone came to a worship service, I
10 would have no way of knowing if they were accessing
11 the Internet during the worship service.

12 Q. That was my next question, is in addition to the day
13 program hours and the mealtime hours and the meal,
14 I'm assuming there are regular services at
15 St. Timothy's?

16 A. Yeah. So Wednesday 12:00 to about 12:45, like we
17 did today, people could come in to worship with us.
18 And then Sundays from 10:00 to 11:30, people could
19 come in and worship with us. And if they -- and
20 then on Monday, you know, people -- we would be open
21 to the public for the feeding ministry on Mondays
22 from 12:00 to 1:00, and then also on Tuesdays from
23 12:00 to 1:00.

24 Q. Okay.

25 A. That -- so those are the times when the community at



City of Brookings

PUBLIC WORKS/DEVELOPMENT SERVICES DEPARTMENT

898 Elk Drive, Brookings, OR 97415

(541) 469-1159, Fax (541) 469-3650, TTY (800) 735-1232

abaron@brookings.or.us

April 14, 2023

St. Timothy's Episcopal Church
C/O Bernie Lindley
401 Fir Street
Brookings OR 97415

Re: Operating a Benevolent Meal Service without a Conditional Use Permit

Dear Mr. Lindley,

The City of Brookings is providing this letter to inform you that St. Timothy's Church, located at 401 Fir Street, Brookings, OR 97415, is operating a Benevolent Meal Service without a conditional use permit in addition to a variety of other social services, including an outreach clinic, a day program and an advocacy program in violation of 17.01.040 Compliance with code provisions in the Brookings Municipal Code (BMC). To avoid enforcement and potential civil penalties, St. Timothy's Church must cease the operation of social services that are not allowed in an R-1-6 zone, and the operation of a Benevolent Meal Service without a conditional use permit.

St. Timothy's Church operates in the R-1-6 Single-Family Residential District under a de facto conditional use permit. The BMC allows religious institutions in the Single-Family Residential District to operate a Benevolent Meal Service with a conditional use permit per BMC 17.124.050. The BMC does not allow the operation of social services in an R-1-6 Single-Family Residential District either outright or with a conditional use permit.

BMC 17.160.020 designates any violations of the Land Development Code as public nuisances that may be abated and removed under BMC 8.15.090. Failure to correct the violation could result in civil penalties of up to \$720.00 per day that the violation exists, per BMC 1.05.010.

If St. Timothy's Church does not correct the violations described above within 10 days, the City may initiate enforcement proceedings under BMC 17.160.020 and 8.15.090. To correct the violation, St. Timothy's Church must cease the operation of social services that are not allowed in an R-1-6 zone, and apply for a conditional use permit to operate a Benevolent Meal Service per BMC 17.124.050.

Please feel free to reach out if you'd like to discuss St. Timothy's options for achieving compliance with the BMC.

Sincerely,

Anthony Baron
Public Works & Development Services Director

CC: Janell Howard – City Manager, City of Brookings

NOTICE TO ABATE

Date: 4/14/2023

TO: St. Timothy's Episcopal Church c/o Bernie Lindley
401 Fir Street
Brookings, OR 97415

Pursuant to Ordinance No. 06-O-572 of the Brookings Municipal Code, a violation exists at the following location(s) which are indicated to be in your ownership or control or you are the person causing the violation:

Street Address: 401 Fir Street	Map Number and Tax Lot: 41-13-05BC Tax Lot 7300
--	---

The nature of the violation is as follows:

BROOKINGS MUNICIPAL CODE (BMC)

17.01.040 Compliance with code provisions.

No buildings or other structures shall be constructed, improved, or altered, enlarged or moved, nor shall any use or occupancy of premises within the city be commenced or changed, nor shall any condition of or upon real property be caused or maintained, after the effective date of this code except in conformity with conditions prescribed for each of the several zones established hereunder. It shall be unlawful for any person, firm or corporation to erect, construct, establish, move into, alter, enlarge or use, or cause to be used, any building, structure, improvement or use of premises located in any zone described in this code contrary to the provisions of this code. Where this code imposes greater restrictions than those imposed or required by other rules or regulations or ordinances, the provisions of this code shall control. This code shall apply to all actions which have not reached the following steps:

- A. Site review: final approval by city staff or the planning commission;*
- B. Partitioning and subdivision: approval of preliminary (tentative) plat;*
- C. Planned unit developments: final approval by the planning commission;*
- D. Signs: final permit approval;*
- E. Variances and conditional use permits: approval by the planning commission;*
- F. Zone change: ordinance enactment. [Ord. 89-O-446 § 1.]*

St. Timothy's Church, located at 401 Fir Street, Brookings, OR 97415, is operating a Benevolent Meal Service without a conditional use permit in addition to a variety of other social services, including an outreach clinic, a day program and an advocacy program in violation of 17.01.040 Compliance with code provisions in the Brookings Municipal Code (BMC).

17.160.020 Violations.

Any building or structure set up, erected, constructed, altered, enlarged, converted, moved, or maintained contrary to the provisions of this code and any use of any land, building or premises established, conducted, operated or maintained contrary to provisions of this code shall be and the same is hereby declared a violation and a public nuisance. These public nuisances may be abated and removed pursuant to BMC 8.15.090, General abatement procedure. It is provided, however, nothing in this section requires the city to exhaust these administrative remedies prior to seeking equitable relief or damages in circuit court. [Ord. 07-O-584 § 2; Ord. 89-O-446 § 1.]

1.05.010 General penalty.

A. Violations. Every offense is a violation which may be punished by a fine up to \$720.00; provided, that where Oregon statutes impose a lesser penalty for the same offense, then the lesser penalty shall apply. Each day or part of a day for which a violation is committed or persists is a separate offense.

B. Administrative Enforcement. Where a chapter of this code provides that enforcement shall be through an administrative process, the provisions for administrative procedures shall apply rather than this section.

C. Equitable and Other Remedies Preserved. Nothing in this section prohibits the city seeking equitable relief or damages in addition to judicial or administrative enforcement of its ordinances. [Ord. 09-O-644 § 2; Ord. 07-O-592 § 2; Ord. 06-O-572 § 2.]

You are hereby directed to abate this violation by applying for a Conditional Use Permit within ten (10) days from the date of receipt of this notice. Failure to abate the violation may warrant issuance of a citation and imposition of a civil penalty of up to \$720.00. Each day's violation constitutes a separate offense. In addition, the City may abate the violation and the cost of the abatement will be charged to you.

You may dispute the existence of a violation and request a hearing by giving a written statement to the City Manager at 898 Elk Drive, Brookings, OR 97415 within ten (10) days from the date of receipt of this notice.

An error in the name or address of the person responsible shall not make this notice void, and in such case the posted notice shall be considered to be sufficient notice.

If you have any questions, please call 541-469-1159.



**Anthony Baron,
Public Work & Development Services Director**

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If you have any questions, please call 541-469-1159.



**Anthony Baron,
Public Work & Development Services Director**

April 24, 2023

VIA EMAIL AT LZIEMER@BROOKINGS.OR.US
WITH A COPY TO JANELL HOWARD,
JHOWARD@BROOKINGS.OR.US

Planning Commission
Attn: Lauri Ziemer
City of Brookings
898 Elk Drive,
Brookings, OR 97415

**Re: Request for Appeal of Notice to Abate issued to St. Timothy's Episcopal Church
April 14, 2023.**

Dear Planning Commission Members:

This office represents St. Timothy's Episcopal Church ("St. Tim's") in the above referenced matter. St Tim's operates a church use ("Church") at the subject property at 401 Fir Street ("Property"). St. Tim's received a Notice to Abate issued by the City of Brookings (the "City") on April 14, 2023, directing the Church to file a conditional use permit application to abate the Benevolent Meal Service violation and stop providing "a variety of other social services" (the "Notice"). **On behalf of St. Tim's, we seek a public hearing to obtain an interpretation of the Brookings Municipal Code ("BMC" or "Code") regarding the alleged violation from the Planning Commission.¹**

Relief Requested

St. Tim's requests the following relief from the Planning Commission:

Determine that St. Tim's activities at the Property described as "social services" in the Notice do not violate BMC for one or both of the following reasons:

- (1) The activities described as "social services" in the Notice are typical functions conducted by Churches and Schools and are considered part of a Church or School use where they occur. As applied here, the "social services" uses at St. Tim's Church are properly classified as part of its Church use rather than a separate, stand-alone use.

¹ The City has agreed to extend the deadline for submitting objections to the Notice of Abatement as it relates to St. Tim's provision of meal services. St. Tim's reserve its rights to submit such objections at the appropriate time, if needed.

(2) The activities described as “social services” in the Notice are part of St. Tim’s legal non-conforming use of the Property and are allowed to continue.

Authority for Planning Commission Review

Pursuant to BMC 8.15.090.D.3, when a responsible party receives a notice of abatement “where the potential violation is a matter of ambiguity,” related to BMC Title 17, “the code enforcement officer determination of violation may be appealed to the planning commission pursuant to Chapter 17.156 BMC.”² The BMC does not require the recipient of a notice of abatement to first pursue review by the City Manager in BMC Title 17 cases before seeking Planning Commission Review. The Notice is a code enforcement officer determination and raises a matter of ambiguity because the Code does not define the terms social services, outreach clinic, day program, or advocacy program, and does not classify these activities as within a particular use category. These uses are typically conducted as facets of other listed uses (such as churches and schools) and should be classified as a part of those uses when they occur. Furthermore, “social services” have been an integral part of the Church use since it began operating in the 1940’s. The Notice does not account for the legal nonconforming use status of the Church.

The Planning Commission has the power to hear and decide appeals from administrative interpretations. BMC 17.156.010. When declaring the meaning and intent of the BMC, the Planning Commission interprets provisions to carry out efficient designation and classification of property, buildings, and land development. *Id.* In addition, it interprets provisions to carry out “the expressed purpose of the zoning district involved.” *Id.*

Legal Argument

A. **“Social Services,” including outreach programs, day programs, and advocacy programs, are typical functions conducted by Churches and Schools and are properly considered part of a Church or School use where they occur.**

BMC 17.01.040 requires that all uses and activities comply with the relevant aspects of the BMC (but, as noted below, exempts legal nonconforming uses from land use regulations). The Notice states that St. Tim’s is providing a variety of other “social services, including an outreach clinic, a day program and an advocacy program in violation of 17.01.040 BMC.” The BMC does not define “social services,” outreach clinic, day programs or advocacy programs or define these activities as uses allowed or disallowed within any zoning district. In addition, there is no defined term in the BMC that “social services” could fit into.³

² To ensure the Church preserves its rights to object to the Notice, the Church is simultaneously filing an Objection under BMC 8.15.090.D.3 with the City Manager.

³ For example, the Code defines “club” as “an association of persons (whether or not incorporated), religious or otherwise, for a common purpose, but not groups organized primarily to render a service carried as a business for profit.” BMC 17.08.030. While churches may be considered a club under this definition, the BMC

The Notice also concludes that there is no option for St. Tim’s to apply for a conditional use permit to allow these “social services” at the Property. The City seems to reach this result by concluding that, if a use is not specifically listed within the allowed or conditional uses under a certain zoning district, that the use is prohibited and could not be included as part of a listed use. Since “social services,” “outreach clinic,” “day program” and “advocacy program” are not uses specifically listed as allowed or conditional within *any* zoning district in the City, the City appears to conclude that these activities are prohibited City-wide even when they are provided as an integral part of an allowed or conditional use.

From the Notice, we glean that the City’s conception of “social services” includes any service provided to the needy, including provision of food, advice or referrals, and inviting those in need to an establishment for advice or to have fellowship with others.

The BMC does not define “church” or provide any information regarding the characteristics of this use, but does list “churches” as a use allowed conditionally within the R-1-6 zone. A dictionary definition of “church” is “a building for Christian religious activities.” It is reasonable to rely on this dictionary definition since “church” is not defined in the BMC.

“Social services,” including outreach programs, day programs, and advocacy programs, are Christian religious activities and typically considered church functions where they occur as part of a church use.⁴ In fact, the “social services” the City seems to be concerned about have long been typical parts of church use. Alms—the giving of money and food to the hungry—dates to biblical times. *See* Deuteronomy 15:8 (“but you shall freely open your hand to him and shall generously lend him sufficient for his need in whatever he lacks”); Proverbs 19:17 (“one who is

does not further clarify the types of activities that would constitute “social services.” The Code defines “clinic” as a medical service use, which we do not believe the City intended to refer to by listing “outreach clinic.”

⁴ *See*, Jackie Rehwald, *New Church in North Springfield Partners with Gathering Friends to Serve Poor, Homeless* (July 21, 2019), <https://www.news-leader.com/story/news/local/ozarks/2019/07/21/new-church-north-springfield-focuses-those-poverty-homeless/1760513001/> (Church in Springfield working to serve the “practical needs” of the poor and homeless including lowering barriers to food and clothing, “offering a safe place for foster kids and their biological parents to visit with each other, serving dinner and fellowship to those living in the neighborhood and creating a welcoming place for homeless folks who might need a drink of water or to rest on a couch for a little while”); Nancy West-Brake, *Local Church Seeks Donations for Coat Drive* (Dec. 3, 2012); Neighborhood Christian Legal Clinic, *Home*, <https://www.nclegalclinic.org/> (last visited Apr. 23, 2023) (providing legal services from the Trinity Outreach Center); Catholic Charities, *Catholic Charity assistance near you.*, https://www.needhelppayingbills.com/html/catholic_charities_financial_a.html (last visited Apr. 23, 2023) (list of nationwide network of churches that provide emergency housing, financial assistance, clothing, rental assistance, medical needs, free holiday assistance, counselling, immigration programs, and employment services); Fame Church LA, *FAME Legal Clinic*, <https://www.famechurchla.org/free-legal-clinic/> (last visited Apr. 23, 2023); *Madison Avenue Christian Church Continues Its Community Ministry During Crisis, Including Meals*, Northern Kentucky Tribune (Apr. 7, 2020), <https://www.nkytribune.com/2020/04/madison-avenue-christian-church-continues-its-community-ministry-during-crisis-including-meals/>.

gracious to a poor man lends to the lord and he will repay him for his good deed”). Many churches in Brookings participate in these same activities as part of their church use.⁵

Other conditional uses in residential zones, such as schools, often provide social services, including outreach programs, day programs, and advocacy programs and these activities are considered part of the school use when they occur.⁶ For example, the Brookings-Harbor School district opened the Coast Community Health Center in November 2022, which seeks to provide health care to all students who need it free of cost, including well child checks, immunizations, follow-up visits and more.⁷

Typical elements of a use should be treated as part of that use for purposes of BMC regulations even when each detail of the use is not specified by the BMC to avoid unreasonable results. This is especially true when the BMC does not provide a definition of a use or any guidance on the characteristics of that use. Typical elements of a church include providing service to the needy, including providing advice or referrals, and inviting those in need to an establishment for advice or to have fellowship with others. We urge the Planning Commission to determine that the “social service” related activities occurring at St. Tim’s listed in the Notice are part of its church use, which is authorized at the Property.

B. St. Tim’s Operation of the Church at the Property is a Legal Nonconforming Use Which Includes “Social Services.”

1. The Church is a legal nonconforming use because it predates the 1989 Land Development Code.

The Notice alleges that St. Tim’s is violating BMC 17.01.040, because the Church conducts “a variety of other social services, including Outreach Clinic, Day Program, and Advocacy Program.” From the wording of the Notice, it appears the City intended this to be a non-exclusive list and is alleging that any “social service” use, which is not defined by the Code is prohibited at the Property.

BMC 17.01.040 only applies to buildings, structures, use and occupancy *established after the effective date of the Code*. If a building’s use was in place before the Code was enacted, then those provisions do not apply because it is a nonconforming use. BMC 17.01.030. BMC 17.120 governs nonconforming uses and allows nonconforming uses to continue, subject to that section’s regulations.

⁵ Brookings Nazarene, *Community Care*, <https://www.brookingsnaz.org/community-care> (last visited Apr. 21, 2023); Trinity Lutheran Church, *Outreach*, <https://tlcbrookings.org/outreach> (last visited Apr. 21, 2023)

⁶ See also, Beaverton School District, *Clothes for Kids*, <https://www.beaverton.k12.or.us/departments/communications-community-involvement/volunteer/clothes-for-kids> (last visited Apr. 23, 2023); Mills Street Elementary, *Counseling*, <https://www.lisd.net/Page/16818> (Apr. 23, 2023);

⁷ *School Based Health Center – Coast Community Health*, Brookings-Harbor School District, <https://www.brookings.k12.or.us/apps/pages/sbhc> (last visited Apr. 21, 2023); Reynolds High School, *College and Career Center*, <https://www.reynolds.k12.or.us/rhs/college-and-career-center-0> (last visited Apr. 23, 2023).

As the Notice seems to admit (stating that St. Tim’s “operates under a de facto conditional use permit”), St. Tim’s has existed at 401 Fir Street for more than 30 years before the Land Development Code was adopted in 1989, and is a legal nonconforming use governed under BMC 17.120.

The BMC defines “use” as the “purpose for which land and/or a structure is designed, arranged, or intended, or for which it is occupied or maintained.” BMC 17.08.210. The “use” of the Church at the Property therefore includes the entirety of the operations occurring at the Property. Even if some elements of the Church use would not be allowed under the current BMC, which St. Tim’s disputes, the nonconforming use protections apply to all of the Church operations that predate the Code, including any “social services” conducted as part of the Church operations, so long as those uses have been maintained over time. St. Tim’s has continuously conducted “social services,” as the City appears to envision that term, since its establishment and has the right to continue these uses under BMC 17.120.

2. The Church’s legal nonconforming use includes “social services,” including an outreach program, day program and advocacy program.

As we discuss above, the Code does not define “social services,” “outreach clinic,” “day program,” or “advocacy program.” The Notice also seems to require St. Tim’s to cease its conduct of “a variety of other social services” which are not specified. From the Notice, we glean that the City’s conception of “social services” includes any service provided to the needy, including provision of food, advice or referrals, and inviting those in need to an establishment for advice or to have fellowship with others.

Since its establishment at the Property, St. Tim’s has offered services or alms to the needy in furtherance of Christian beliefs to feed the hungry, respect the dignity of every human being, and build community. St. Tim’s use of the Property as a Church within the Episcopalian faith *necessarily* includes elements of service to the poor. These elements include opening the Church as a sanctuary for prayer, providing advice on a variety of topics, providing opportunities for fellowship with others, and providing information to the community. These core religious functions, in some form, have continuously been part of the Church use at the Property since its inception and have not ceased for any two-year period. Therefore, the Church maintains the legal right to continue these uses as part of its Church operations. BMC 17.120.

Thank you for your review of these important issues.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Allison J. Reynolds". The signature is fluid and cursive, with the first name being the most prominent.

Allison J. Reynolds

BROOKINGS PLANNING COMMISSION MINUTES

May 2, 2023

CALL TO ORDER

The regular meeting of the Brookings Planning Commission was called to order by Chair Watwood at 7:00 pm in the Council Chambers at Brookings City Hall followed by the Pledge of Allegiance.

ROLL CALL

Commissioners Present: Anthony Bond, Cody Coons, Skip Hunter, Clayton Malmberg, Gerry Wulkowicz, Chair Skip Watwood

Staff Present: PWDS Director Tony Baron, Deputy PWDS Director Lauri Ziemer

Others Present: 4 audience members

PLANNING COMMISSION CHAIR PERSON ANNOUNCEMENTS - None

PUBLIC HEARINGS

4.1 In the matter of File No. CUP-5-23, a request for approval of a Conditional Use Permit to operate a Short Term Rental facility at 312 Railroad Street; Assessors Map & Tax Lot No. 4113-05CA-02300

There was no ex parte contact, bias, personal interest, or conflicts of interest declared and no objection to the jurisdiction of the Planning Commission to hear the matter. The public hearing was opened at 7:06 pm. PWDS Director Tony Baron reviewed the staff report.

Applicant's representative, Ron Reel, Premier Ocean Properties, was present to answer any questions. No members of the public spoke in opposition and no participant requested additional time to submit materials. Public hearing was closed at 7:10 pm.

The Commission deliberated on the matter. **Motion made by Commissioner Wulkowicz to approve File CUP-5-23 a request for a Conditional Use Permit to operate a short term rental at 312 Railroad Street based on the findings and conclusions stated in the staff report and subject to the Conditions of Approval; motion seconded and with no further discussion by a 6-0 vote the motion carried.**

Motion made by Commissioner Malmberg to approve the Final Order regarding file CUP-5-23, based on the findings and conclusions stated in the staff report and subject to the Conditions of Approval; motion seconded and with no further discussion by a 6-0 vote the motion carried.

4.2 In the matter of File No. CUP-6-23, a request for approval of a Conditional Use Permit to operate a Short Term Rental facility at 1326 Crissey Circle; Assessors Map & Tax Lot No. 4113-0BC-01001

There was no ex parte contact, bias, personal interest, or conflicts of interest declared and no objection to the jurisdiction of the Planning Commission to hear the matter. The public hearing was opened at 7:12 pm. PWDS Director Tony Baron reviewed the staff report.

Applicant's representative, Ron Reel, Premier Ocean Properties, was present to answer any questions. No members of the public spoke in opposition and no participant requested additional time to submit materials. Public hearing was closed at 7:16 pm.

The Commission deliberated on the matter. **Motion made by Commissioner Bond to approve File CUP-6-23 a request for a Conditional Use Permit to operate a short term rental at 1326 Crissey Circle based on the findings and conclusions stated in the staff report and subject to the Conditions of Approval; motion seconded and with no further discussion by a 6-0 vote the motion carried.**

Motion made by Commissioner Wulkowicz to approve the Final Order regarding file CUP-6-23, based on the findings and conclusions stated in the staff report and subject to the Conditions of Approval; motion seconded and with no further discussion by a 6-0 vote the motion carried.

4.3 In the matter of File No. M3-1-23, a request for a partition to divide a .59 acre parcel into two (2) parcels, located at 610 Hassett Street; Assessor's Map & Tax Lot No. 4013-31DD-04000;

There was no ex parte contact, bias, personal interest, or conflicts of interest declared and no objection to the jurisdiction of the Planning Commission to hear the matter. The public hearing was opened at 7:18 pm. PWDS Director Tony Baron reviewed the staff report.

The applicant, Scott Sanders, was present to answer any questions.

John Marrington, 612 Hassett St, Brookings, spoke as an interested party and advised his property adjoins the parcel and is concerned the natural drainage between the properties is deteriorating his driveway. PWDS Director Baron advised that as the property is developed the property owners should work together to address the issue and potentially connect to the existing City storm drain on Hassett.

No members of the public spoke in opposition and no participant requested additional time to submit materials. Public hearing was closed at 7:45 pm.

The Commission deliberated on the matter. Commission Malmberg felt the rezone was not in the best interest of the City citing the shortage of affordable multi-housing units and the developing of more single family housing does not equate to long term housing when single family residences can be turned into short term rentals which does not solve the existing housing shortage. The Commission deliberated on the matter.

Motion made by Commissioner Malmberg to approve File M3-1-23 a request for a partition to divide a .59 acre parcel into two (2) parcels, located at 610 Hassett Street based on the findings and conclusions stated in the staff report and subject to the Conditions of Approval; motion seconded and with no further discussion by a 6-0 vote the motion carried.

Motion made by Chair Watwood to approve the Final Order regarding file M3-1-23, based on the findings and conclusions stated in the staff report and subject to the Conditions of Approval; motion seconded and with no further discussion by a 6-0 vote the motion carried.

MINUTES FOR APPROVAL

5.1 Minutes of regular Planning Commission meeting of March 7, 2023

Motion made by Commissioner Bond to approve the Planning Commission minutes of March 7, 2023; motion seconded and with no further discussion by a 6-0 vote the motion carried.

UNSCHEDULED PUBLIC APPEARANCES - None

REPORT FROM THE PLANNING STAFF - None

COMMISSION FINAL COMMENTS – None

ADJOURNMENT

Chair Watwood adjourned the meeting at 8:05 pm.

Respectfully submitted,

Skip Watwood, Brookings Planning Commission Chair
Approved at the June 27, 2023 meeting