

City of Klamath Falls Planning Division
Administrative Review

In the matter of an
Administrative Review for:

Final Decision and Conditions: **5-V-09**

James Kelly
9329 Greenbriar Drive
Klamath Falls, OR 97603

RHC Associates
PO BOX 182571
Columbus, OH 43218-2571

Date: October 7, 2009

In accordance with the provisions of Section 10.805, 11.250 - 11.275, 12.010 and 12.380 of the Community Development Ordinance (CDO), the City of Klamath Falls Planning Department has reviewed this request for a Major Variance.

NATURE OF THE PROPOSAL

The applicant, James Kelly, has requested a Minor Variance to raise the existing McDonald's freestanding sign by 5 feet. The proposed height increase would raise the sign from 25 feet to 30 feet. The subject property is zoned General Commercial. CDO section 14.348, Table 2 allows freestanding signs 25 feet or less in height when setback at least 25 feet from the property line. The maximum allowed height of a freestanding sign is 25 feet. The subject property is addressed as 1874 Avalon Street and can be found on Klamath County Assessor's Map R-3909-003BB Tax Lot 900.

AGENCY COMMENTS

Planning – The site currently has one freestanding sign and five wall mounted signs. The existing freestanding sign is 25' tall and has a 78.42 sq ft sign face. The sign is 25' from the front property line, adjacent to Avalon Street.

The proposal is to increase the sign height by 5 feet, which would raise the sign from 25 feet to 30 feet.

The applicant states: "We are requesting an increase in the height of our pole sign by an additional 5 ft, thus making it 30 ft high. This increase will allow our sign to once again be viewed over the adjacent King Wah building from the main traffic pattern streets of 6th Street and Washburn. During the \$2 Million-plus rebuild of our Avalon Street McDonald's restaurant, the city required us to remove the forty-year old sign which was over 65 ft high. We have seen a major impact to our business caused by the lack of visibility. Both out-of-town and new customers have told us they're having difficulty locating our business; prior to the rebuild, we didn't have these issues."

Klamath County Fire District #1 – "KCFD1 has no objection to the applicant's request."

Klamath County Building Division – “Project will require a building permit and design sealed by a design professional licensed in the State of Oregon.”

Engineering – “No exceptions taken.”

The following agencies did not respond to this proposal:

- Avista Utilities
- Charter Communications
- Pacific Power and Light
- Qwest

RELEVANT REVIEW CRITERIA, FACTS AND ANALYSIS

This proposal is being reviewed according to the provisions of the Klamath Falls Community Development Ordinance (Chapters 10-14), specifically Sections 11.200-11.210, and 12.010 regarding Variances.

A. ***Criterion The variance is in conformance with the Comprehensive Plan, all other provisions of Chapters 10 to 14 and any applicable street plans.***

Staff’s Analysis: If the requested variance is approved then a new sign permit, for a freestanding sign would be required. CDO section 14.308, subsection (3) says that no sign permit of any kind shall be issued for an existing or proposed sign unless such sign is consistent with the requirements of the uniform sign act in **every respect**.

Finding: This proposal will conform to the Comprehensive Plan, chapters 10 to 14 of the CDO, and any applicable street plan, if the variance is granted. **This criterion is met.**

B. ***Criterion There are exceptional or extraordinary circumstances or conditions applicable to the property involved which do not apply generally to other property in the same vicinity and zone.***

Applicant’s Response: Nearly forty years ago, our McDonald’s was built in the middle of the Avalon Street block, off of the main traffic streets of 6th Street and Washburn Way. The 65 ft high sign gave it the needed visibility to position a store at this location. This sign height was not required by other businesses in the same vicinity as most of them are on arterial 6th Street and Washburn locations.

Staff’s Analysis: Having a business on a primary arterial, such as S. 6th Street or Washburn Way is rewarding for landowners who choose to invest in real estate adjacent to high traffic volumes. Locating a business on a street with lower traffic volumes inevitably leads to less vehicular traffic traveling adjacent to the business. The McDonald’s location does not get traffic volumes similar to restaurants such as Burger King, Arby’s, or Subway which are located on S. 6th Street. Similar to McDonald’s, restaurants such as King Wah’s and Abby’s Pizza get lower traffic volumes. In addition, when McDonald’s was initially built it was located across the street from the now defunct Klamath Mall which received high traffic volumes. This analysis suggests there are no exceptional or extraordinary circumstances or conditions applicable to the property that does not apply to properties within the same vicinity on like street classifications.

Finding: There are **no exceptional or extraordinary** circumstances or conditions applicable to the property involved which do not apply generally to other property in the same vicinity and zone. **This criterion is not met.**

C. ***Criterion A variance is necessary for the applicant to preserve and enjoy a substantial property right equal to that right possessed by other property owners under like conditions in the same vicinity and zone.***

Applicant's Response: We have been conscientious business owners in the community and have complied with all the requests from the building department, including the revision of the entries to our lot, the building of a bus stop for the community, landscaping well beyond city requirements and by providing new curbing and walks across our property as well as the bus stop. The adjacent King Wah business happened to burn down while we were under construction, but were allowed to keep their high sign. Additionally, they were not required to modify their curbs, entries nor provide a pedestrian walk to connect from Arby's to our location.

Staff's Analysis: After making a site visit on September 11, 2009 staff reviewed 14 free-standing signs in close proximity to McDonald's. Of the 14 signs, 6 of the signs were in City of Klamath Falls jurisdiction, while the other 8 signs were in Klamath County jurisdiction. The 6 signs within the City limits are on property zoned General Commercial.

Vicinity signs in City of Klamath Falls:

Arby's = R-3909-003BB-01200 or 2759 S. 6th Street

The Arby's sign is slightly higher than 25' and closer than 25' to the front property line.

Dollar Tree = R-3909-003BD-02800 or 3045 S. 6th Street.

The Dollar Tree sign is 25' in height according to file 1-V-04.

King Wah's = R-3909-03BB-00800 or 2765 Pershing Way

The King Wah sign is much higher than 25'; however, the sign was not required to come into compliance during the recent building remodel because the remodel was caused by a fire which did not force conformity per CDO 12.860 through 12.885. Per the City Code the sign must come into compliance by May, 2012.

Safeway/Ross = R-3909-03BC-00900 or 2740 S. 6th Street

The Safeway/Ross sign is 24'10" in height according to file 47-S-09.

Sherm's Thunderbird = R-3909-00300-00100 or 1877 Avalon Street

The Sherm's Thunderbird sign is higher than 25'. The sign has historical significance and is higher than 20' according to the 1999 City of Klamath Falls Historic Sign Survey.

Skipper's = R-3909-00300-00100 or 1737 Avalon Street

The Skipper's sign appears to be about 25' in height. No sign permit records were found.

Vicinity signs in Klamath County:

Burger King = R-3909-003BB-01700 or 2710 S. 6th Street

Chase Bank = R-3909-003BC-00700 or 2885 S. 6th Street

Denny's = R-3909-03BC-00200 or 2947 S. 6th Street

Elmer's = R-3909-03BB-003BD-03000 or 3030 S. 6th Street

My Mechanic = R-3909-003BC-00100 or 3000 Pershing Way

Sterling Bank = R-3909-003BC-00300 or 2943 S. 6th Street

Subway = R-3909-03BC-00800 or 2883 S. 6th Street

Wells Fargo = R-3909-003BB-01100 or 2809 S. 6th Street

According to Klamath County employees in the Building Division and the Planning Division there are no records for the above signs. City staff could not review the signs for a height comparison.

The applicant's business is located on a street with less traffic volume than other businesses in the immediate vicinity. The Golden Arches are synonymous with McDonald's. Having even a portion of the arches visible is a good indication that a McDonald's restaurant location is close by. While driving on Washburn Way and S. 6th Street at least half of the Golden Arches are visible and at least half of the wall sign on the south wall of the building that says "McDonald's" is visible as well. Driving east on S. 6th Street the wall sign on the south wall of the building is completely visible.

The applicant has the same opportunity to advertise the business with a 25' tall sign set back 25' from the property line as other property owners in the same vicinity and zone. There are additional signs in the same vicinity and zone which are less than 25' in height. The applicant has the ability to place a monument sign 8' in height or less, 5' from the property line.

Finding: The variance is **not** necessary for the applicant to preserve and enjoy a substantial property right equal to that of other property owners in the same vicinity. **This criterion is not met.**

- D. Criterion The granting of the requested variance will not be materially detrimental to the public health, safety, convenience and welfare or injurious to the property improvements in the same vicinity and zone in which the property affected is located and will not be contrary to the intent of Chapters 10 to 14.*

Applicant's Response: The raising of our sign this additional 5 ft would have no negative impact on adjacent properties. Additionally, it may attract additional business to the general area with shoppers stopping at K-Mart or the shopping center across the street.

Staff's Analysis: Notice of the requested variance and a request for comments was sent to the following agencies: Klamath County Building Division, Qwest, Pacific Power & Light, Avista Utilities, Charter Communications, Klamath County Fire District #1, and City of Klamath Falls Engineering Division. Responses received from agencies are listed under "Agency Comments". The agencies who responded did not present any concerns with the requested variance.

Finding: The granting of this variance will not be materially detrimental to the public health, safety, convenience and welfare or injurious to the property improvements in the same vicinity and zone. **This criterion is met.**

DECISION

After consideration of all staff, agency and citizen comments, and reviewing various data, the application is **denied** as presented based on the findings.

This **Variance Application** does meet the condition and scope of the City of Klamath Falls Comprehensive Plan, acknowledged by the Oregon State Land and Conservation Development

Commission on May 31, 1984. In doing so, this **Variance Application** does address the appropriate policies encompassed in the Comprehensive Plan.

APPLICANTS ARE ADVISED THAT THIS DECISION IS FINAL AS OF THE DATE OF MAILING THIS DECISION (OCTOBER 7, 2009), UNLESS WRITTEN APPEAL AND A \$200 APPEAL FEE IS FILED WITH THE CITY PLANNING DEPARTMENT WITHIN 12 DAYS OF THE DATE OF MAILING.

DATED THIS 7TH DAY OF OCTOBER 2009.

Kelly O'Neill
Planner

c: Tom Del Santo, Development Coordinator
Rick Bowman, Code Enforcement Officer