

City of Klamath Falls Planning Department  
Administrative Review

In the matter of an  
Administrative Review for:

Final Decision and Conditions: **9-DR-09**

Sebastian Gutierrez  
314 East Main Street  
Klamath Falls, OR 97601

Date: July 23, 2009

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In accordance with the provisions of Sections 11.050-11.094 of the Community Development Ordinance (CDO), the City of Klamath Falls Planning Department has reviewed this request for a Design Review.

### NATURE OF THE PROPOSAL

The applicant, Sebastian Gutierrez proposes to install an 84 sq ft refrigeration unit for cold storage of items for the convenience store Mi Nuevo Nayarit. The site occupies the entirety of 2 platted lots and portions of 3 other platted lots. The property with the store is addressed as 314 East Main Street and can be found on Assessor's Map R-3809-033BA, tax lot 16900 (Portions of lots 30, 29, 28, and 26, Block 14, Industrial Addition). The property with the residence and where the proposed refrigeration unit would be located is addressed as 308 East Main Street and can be found on Assessor's Map R-3809-033BA, tax lot 17000 (All of lot 31 and portions of lots 30, and 29, Block 14, Industrial Addition). Lots 31, 30, 29, and 28 are zoned Neighborhood Commercial, while lot 26 is zoned Medium Density Residential. The site is currently used as a convenience store for Mi Nuevo Nayarit and a single family residence for the owners of Mi Nuevo Nayarit.

The current ground floor of the buildings is approximately 5,270 sq ft and the proposed uncovered off street parking area would be approximately 508 sq ft. In addition, the project will include recording a deed restriction that prohibits the individual sale of lots 31, 30 and portions of lots 26, 28 and 29 independent of the remainder of the property. The site shall meet current City standards including landscaping, parking, site access, and sidewalks. The subject properties front approximately 106.74 feet of East Main Street right-of-way and 149.12 feet of Richmond Street right-of-way.

### AGENCY COMMENTS

Planning:

1. **Setback & Lot Coverage:** Neighborhood Commercial (NC) zoning allows for 75% lot coverage, 10' front yard setbacks, 5' rear yard setbacks, 0' side yard setbacks, and 15' setbacks from abutting residential zones. Medium Density Residential (MD) allows for 40% lot coverage, 20' front yard setbacks, 5' rear yard setbacks, 5' interior side yard setbacks, and 10' exterior side yard setbacks.

**314 East Main Street – Mi Nuevo Nayarit:**

The current and proposed building setbacks are approximately 0' from the west, east, north, and south property lines. The buildings have a footprint of approximately 3,171 sq ft and cover 100% of the 3,171 sq ft of subject lots. The building is non-conforming for lot coverage and setback because it currently covers 100% of the lot and does not have the required 10' front yard setback, 5' rear yard setback, or the 15' setback from the abutting residential zone as required in NC zones. A portion of the property (portion of lot 26) which is approximately 986 sq ft is zoned MD. This portion of the subject property will need to apply for a change of zone because the retail stores storage is not permitted in MD. The portion of lot 26 owned by the applicant is also non-conforming to the MD lot coverage, setbacks, and use requirements.

**308 East Main Street – Single family home:**

The current and proposed building setbacks are approximately 0' from the west (side yard), east (side yard), and south (rear) property lines and approximately 10' from the north (front) property line. The buildings have a footprint of 2,015 sq ft and cover 35.90% of the approximately 5,612 sq ft of subject lots. With the 84 sq ft refrigeration unit the total footprint would increase to 2,099 sq ft and cover 37.40% of the subject lots. The garage building is non-conforming because it does not have the required 5' rear yard setback or the 15' setback from the abutting residential zone as required in NC zones.

**The applicant shall show building setback distances from all building corners to all subject lots lines on a revised site plan.**

2. **Building Height:** The maximum allowed building height in Neighborhood Commercial zones is 45'. **The current peak building height for any buildings on the subject lots is well below 45'.** The maximum allowed building height in Medium Density Residential zones is 28'. **The current peak building height for the portion of building in this zone is and will remain below 28'. The applicant shall show the peak building heights for each building on a revised site plan.**
3. **Parking:** The Community Development Ordinance (CDO) 14.010 requires 1 off street parking space for every 250 sq ft of retail store and 1 off street parking space for every 700 square feet of storage. CDO 14.010 also requires 2 off street parking spaces for every single family home. The 5,990 sq ft of buildings, including the 84 sq ft refrigeration unit (excluding the 112 sq ft of covered porch) is divided into the following: 1,039 sq ft house, 1,292 sq ft retail store, 2,683 of storage (upstairs is approximately 720 sq ft) and 864 for parking. This site requires 2 spaces for the single family home, 5 spaces for retail, and 4 spaces for storage which totals a minimum of 11 off street parking spaces. The applicant has a two vehicle garage which satisfies the 2 required parking spaces for the single family home. The applicant also has enough room to the west of the garage to have 2 standard parking spaces and 1 compact parking space. While 5 off street parking spaces are not sufficient according to CDO off street parking standards it is most likely sufficient in this case with the following reasoning:

First, the subject properties have approximately 100 lineal feet in front of the store and house for on street parking. According to CDO parallel parking standards this area could accommodate 5 parking spaces. With these 5 on street parking spaces and the 5 off street parking spaces the site could accommodate 10 vehicles at once.

Second, most of the 2,683 sq ft of storage is empty. Even if all of the 2,683 sq ft of storage was occupied with supplies it would not increase the parking demand by 4 spaces.

Third, the subject properties and the associated business are located on East Main Street which is zoned for Neighborhood Commercial uses. It is safe to assume that a portion of the patrons shopping at Mi Nuevo Nayarit walk to the store and do not use a motorized vehicle.

Fourth, since Mi Nuevo Nayarit is a family owned business at least two of the employees live next door at the single family home. These two employees do not commute to and from work via a vehicle.

Considering all of the above factors it is most likely that 5 off street parking spaces in combination with on street parking spaces will be sufficient for Mi Nuevo Nayarit and the adjacent single family home. **The applicant shall provide 5 off street parking spaces and indicate so on a revised site plan.**

CDO 10.010 Parking Space Standards requires that all standard parking spaces shall have a minimum width of 9' and minimum length of 19'. Small vehicle parking spaces shall have a minimum width of 8'6" and minimum length of 14'6". **The applicant shall show 2 uncovered**

**parking spaces at 9' by 18' and 1 uncovered parking space at 8'6" by 14'6" to the west of the garage on lots 30 and 31 on a revised site plan.**

CDO 14.040(1) requires that all areas used for parking and maneuvering of vehicles, including driveways and truck loading areas, to have either a concrete or asphalt surface. The site plan does not show that an asphalt area will be installed. **The applicant shall show the area for the 3 uncovered parking spaces to be asphalt or concrete on a revised site plan.**

CDO 14.040(4) requires that access aisles which provide two-way traffic shall be a minimum of 24 feet in width. Due to site constraints the applicant is not proposing access aisles.

**Bicycle parking:**

CDO 14.046(1) requires a minimum of 1 bicycle space for every 12 required vehicle parking spaces and CDO 14.046(2) requires the bicycle parking facility to be located no further than 50' from a public entrance. CDO 14.047(4) requires that the bicycle rack be anchored to the ground. **This site requires that a total of 1 bicycle space be provided. The applicant shall show the location of a bicycle rack on a revised site plan.**

**The vehicle parking layout shall be striped according to a parking plan approved by the Planning Division, with four inch-wide painted lines. This area shall have asphalt or concrete.**

4. **Access and Driveways:** There is one driveway at the site that has access on to Richmond Street. The proposed driveway will be the only ingress and egress for this site and City Engineering supports a full access driveway. The applicant shall install curbs in areas of driveway construction, changes and/or elimination. Klamath County Fire District #1 requires a minimum driveway width of 20'. City of Klamath Falls Code 8.570 requires a minimum driveway width of 24'.

**Any proposed driveways shall conform to the City of Klamath Falls Code 8.570 for width and number of driveways, and to section 8-5.3.8 of the CKFPWES current edition for location and design criteria.**

5. **Sidewalks:** The City of Klamath Falls Public Works Engineering Standards (CKFPWES) requires that sidewalks or curb ramps are installed in any areas within the City right-of-way adjacent to this site that are missing sidewalks or public sidewalk curb ramps (ADA ramps). There is no sidewalk contiguous to this site on Richmond Street. According to City Engineering the two critical areas of concern would be immediately adjacent to a power pole guy wire and the actual power pole. In those areas only a 3-foot wide clear space for passage would be available. Since ADA standards require at least a 4-foot wide path the City Community Development Department does not support requiring a sidewalk along Richmond Street.

Water from the site flowing across the sidewalk will not be permitted. **Barrier/curbing material shall be installed where determined appropriate by City Engineering to prevent landscaping material from washing into the street and/or on to the sidewalk.**

6. **Landscaping:** CDO 14.405(6) requires mulch consisting of wood chips, bark, or similar organic materials, to be installed and maintained no less than three inches in depth within the drip-line of required trees. CDO 14.405(3) requires that a minimum of one tree be planted for every 50 feet of frontage along each street. **The 106.74 feet of property along East Main Street right-of-way requires the planting of at least 3 street trees and the 149.12 feet of property along Richmond Street right-of-way requires the planting of at least 3 street trees. The trees along East Main Street are approved street trees and are sufficient.** CDO 14.405 requires that for each 1,000 square feet of landscaped open space or fraction thereof, a minimum of 1 tree and 2 shrubs shall be planted.

The City does not support placing rock in the right-of-way. Also, rock placed around lawn areas can create problems with properly maintaining and grooming those lawns.

Landscaping needs to be added to all sides of the parking area in order to satisfy the requirements of CDO 14.410(1). CDO 14.410(4)(b) requires that parking lots shall have landscaped islands at the ends of parking rows to facilitate movement of traffic and to break large areas of parking surface.

CDO 14.410 (4)(c) requires a minimum of 3% of the space provided for vehicular circulation such as driveways, driveway easements or open parking areas shall be landscaped which shall be evenly distributed throughout when the parking area contains five or more spaces. **The applicant shall provide a landscape area at the north terminus of the parking area and landscaping along East Main Street and Richmond Street.**

CDO 14.410(1) requires all areas set aside for landscaping to have a minimum vegetative cover of at least 50%. The applicant shall ensure that this requirement is met.

The site plan does not show an irrigation method. There is no landscaping data provided on the site plan.

**The applicant shall submit a detailed landscaping plan on 11" x 17" paper, for review and approval, showing the following:**

- **Name of plant material, the number of each species of plant that will be used, and the location of the different plant material**
- **A minimum of 1 tree and 2 shrubs for every 1,000 square feet of landscaping or fraction thereof**
- **Landscaping at the north end of the parking row**
- **All landscaped areas not covered with trees or other vegetation shall be covered with a 3 inch layer of bark mulch**
- **A minimum of 50% of the landscaping area shall be covered by vegetation**
- **All required trees shall be a minimum of 2" caliper in size**
- **An irrigation plan**
- **All shrubs shall be planted from a 5 gallon container**
- **Trees planted at a minimum of every 50 feet along East Main Street and Richmond Street. A minimum of 3 street trees along each street. The trees along East Main Street are approved street trees and are sufficient.**

**The applicant shall install and maintain the required landscaping as part of this Design Review. This requires that any existing lawn areas shall be brought into compliance or replaced.**

7. **Fences and Trash Enclosures:** All trash containers greater than 50 gallons in capacity shall be screened to a height of six feet by a sight-obscuring fence per CDO 14.150(1). **The applicant shall show the trash container(s) in a screened trash area or inside the garage (not being used for vehicular parking) on lot 26 on a revised site plan.**

**If a common solid waste receptacle is provided an equal area shall be provided for recycling adjacent to or within the trash enclosure.** The trash and recycle containers shall be placed in an approved area and indicated on a revised site plan.

The property currently contains one vertical wood slat fence that screens a portion of the rear yard for the single family dwelling at 308 East Main Street. The vertical wood slat fence becomes shorter in height in front of the single family dwelling and at the corner of East Main Street and Richmond Street. The site also contains one chain link fence that is approximately 8' in length. There are no records indicating that any fences on the subject property were ever approved by a

fence permit. The proposed site plan does not indicate the installation of any new fence. **To determine if all existing fences are compliant with CDO standards the applicant shall submit a fence permit.**

Approval of this Design Review does not constitute approval of future fence placement. **A fence permit (no fee) must be submitted, reviewed, and approved prior to installation of any fence, including the fence screening the trash and recycle area.**

8. **Signs:** During a recent site visit 10 signs with commercial messages were noted on the subject property. One of these signs was approved on September 9<sup>th</sup>, 2002 through a sign permit. The approved sign is a 3' by 8' illuminated wall sign that says: "Mi Nuevo Nayarit Y Su Pollo Loco." The other 9 signs which have messages such as; El Cid, Sigue, Electra, and Eroika shall meet the requirements of the uniform sign code found in CDO sections 14.300-14.368. These 9 unapproved signs shall be removed immediately and only after approval of a sign permit shall any signs be installed or reinstalled. The submitted site plan does not indicate any new proposed signs. At least a 5 foot setback is required for any proposed freestanding signs. Any proposed signs shall not be located within the street right-of-way of East Main Street, Richmond Street, nor within the required sign setbacks.

**A sign permit must be submitted, reviewed, and approved prior to the installation or change of any signs. All existing signs shall be made to conform to the uniform sign code found in CDO Sections 14.300-14.368.**

9. **Change of Zone:** Lots 31, 30, 29, and 28 are zoned Neighborhood Commercial, while lot 26 is zoned Medium Density Residential. The portion of lot 26 owned by the applicant has a garage/storage area used in association with Mi Nuevo Nayarit. Retail uses and their associated storage are not permitted in Medium Density Residential zones.

**The applicant shall apply for a Change of Zone to change a portion of Lot 26, Block 14, Industrial Addition from Medium Density (MD) to Neighborhood Commercial (NC). This application should coincide with a Change of Zone for the remainder of Lot 26 and all of Lot 25, Block 14, Industrial Addition. There will be no fee for the application.**

10. **Deed Restriction:** Since Mi Nuevo Nayarit is located on portions of lots 30, 29, 28, and 26, but the proposed refrigeration unit would be located on lot 31 the applicant will need to record a deed restriction.

**The applicant shall record a deed restriction that prohibits the individual sale of lots 31, 30 and portions of lots 26, 28 and 29 independent of the remainder of the property.**

Engineering:

1. A Site Construction Permit (SCP) is required for this development, which can be issued by the Engineering Division, following the approval of the design review and City signature on the engineering design/construction plans. The developer/contractor will need to complete the SCP application.
2. From the information provided on the conceptual plan; large site grading/erosion and storm drainage plans reports will not be required.
3. The driveway on Richmond Street is not in compliance with City Engineering Standards. The driveway shall be reconstructed per City Engineering Standard Drawings 8-100, 8-210 and modified 8-245 with a 24-inch pavement cut along the area of new curb. Maximum allowable driveway width is 24 feet wide.

4. There is no sidewalk contiguous to this site on Richmond Street. I would recommend and support that the City Community Development Department require a sidewalk be constructed on Richmond Street for the entire length of property ownership (\$75 engineering review/inspection fee). Although the area is narrow a 5-foot sidewalk could be constructed that would service most pedestrian traffic. The sidewalk would need to be built to City Engineering Standard Drawing 8-209 contiguous with the back of the existing curb line. The two critical areas of concern would be immediately adjacent to a power pole guy wire and the actual power pole. In those areas only a 3-foot wide clear space for passage would be available. Overall it would provide for a safe pedestrian access aisle. The existing public sidewalk curb ramp, which is located at the corner of East Main and Richmond, would need to be removed and replaced with a single ramp directing pedestrians across Richmond Street only. The ramp would need to be constructed to City Engineering Standard Drawing 8-140 a & b.

Building Dept.:

“Applicant will need mechanical and electrical permits from the County Building Division prior to installation of the freezer.”

KCFD#1:

“Klamath County Fire District #1 has no concerns with this project as long as building codes are met.”

Basin Transit:

“No comments.”

Avista:	No comments were received.
PP & L:	No comments were received.
Charter:	No comments were received.
Qwest:	No comments were received.
SPOKES:	No comments were received.
Proponents:	No comments were received.
Opponents:	No comments were received.

## **DECISION**

After consideration of all staff, agency and citizen comments, and reviewing various data, the application is **approved** as presented subject to the following conditions:

## **CONDITIONS**

### **1) Prior to the issuance of the Development Permit:**

- a) The applicant shall submit a Site Construction Permit (SCP). The SCP can be issued by the Engineering Division, following the approval of the design review and City signature on the engineering design/construction plans. The developer/contractor will need to complete the SCP application.
- b) The driveway on Richmond Street is not in compliance with City Engineering Standards. The driveway shall be reconstructed per City Engineering Standard Drawings 8-100, 8-210 and modified 8-245 with a 24-inch pavement cut along the area of new curb.

- c) The applicant shall submit a revised site plan to City Planning for review and approval showing the following:
- To scale site plan with lot lines
  - Building setback distances from all building corners to all subject lots lines
  - Peak height of the building
  - 5 off street parking spaces
  - 2 uncovered parking spaces at 9' by 18' and 1 uncovered parking space at 8'6" by 14'6" to the west of the garage on lots 30 and 31
  - 3 uncovered parking spaces to be asphalt or concrete
  - Location of a bicycle rack
  - Landscape area at the north end of the parking row
  - Trash/recycle container(s) in a screened trash area or inside the garage (not being used for vehicular parking) on lot 26
- d) The applicant shall submit a detailed landscaping plan, to City Planning for review and approval, showing the following details:
- Name of plant material, the number of each species of plant that will be used, and the location of the different plant material
  - A minimum of 1 tree and 2 shrubs for every 1,000 square feet of landscaping or fraction thereof
  - Landscaping at the north end of the parking row
  - All landscaped areas not covered with trees or other vegetation shall be covered with a 3 inch layer of bark mulch
  - A minimum of 50% of the landscaping area shall be covered by vegetation
  - All required trees shall be a minimum of 2" caliper in size
  - An irrigation plan
  - All shrubs shall be planted from a 5 gallon container
  - Trees planted at a minimum of every 50 feet along East Main Street and Richmond Street. A minimum of 3 street trees along each street. The trees along East Main Street are approved street trees and are sufficient.

**2) General Conditions:**

- a) All contractors working on this job shall maintain a valid city business license.
- b) The applicant shall obtain a building permit and a new certificate of occupancy prior to the new use moving in to the new building.
- c) The applicant shall acquire mechanical and electrical permits from the County Building Division prior to installation of the freezer.
- d) The applicant shall apply for a Change of Zone to change a portion of Lot 26, Block 14, Industrial Addition from Medium Density (MD) to Neighborhood Commercial (NC). This application should coincide with a Change of Zone for the remainder of Lot 26 and all of Lot 25, Block 14, Industrial Addition. The applicant shall apply for the Change of Zone prior to November 1st, 2009. There will be no fee for the application.
- e) The applicant shall record a deed restriction that prohibits the individual sale of lots 31, 30 and portions of lots 26, 28 and 29 independent of the rest of the property prior to November 1st, 2009.
- f) The applicant shall install curbs in areas of driveway construction, changes and/or elimination.

- g) The applicant shall stripe the required parking lot according to a parking plan approved by the Planning Division, with four inch-wide painted lines. This area shall have asphalt or concrete. All required parking lot improvements shall be completed prior to November 1st, 2009 or issuance of Certificate of Occupancy.
- h) The applicant shall install all required landscaping prior to November 1st, 2009.
- i) The applicant shall submit a fence permit (no fee) for all existing fences to determine if they are compliant with CDO standards prior to November 1<sup>st</sup>, 2009.
- j) The applicant shall submit for review and approval a fence permit (no fee) prior to installation of any fence or any stand alone trash enclosure.
- k) The applicant shall remove all non permitted signs and submit for review and approval, a sign permit prior to the installation of any signs. All existing signs shall be made to conform to the uniform sign code found in CDO Sections 14.300-14.368.

This **Design Review** has met 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 **Design Review** 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 (JULY 23, 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 23RD OF JULY 2009.

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Kelly O'Neill  
Planner

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