

226

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Remodeling Request for)	
a Dispenser Class A (DA))	
Licensed Premises by:)	FINAL
)	FINDINGS OF FACT,
The Abbey, Inc.)	CONCLUSIONS OF LAW,
THE ABBEY)	AND ORDER
704 Bay Boulevard)	
Newport, Oregon 97365)	
-----)	
Lincoln County)	

A hearing in the above matter was held on the 30th day of November, 1982, in Newport, Oregon, before Hearings Examiner Douglas Crumme'. The Licensee appeared in person and was not represented by legal counsel. The Commission was not represented by legal counsel. The Commission having considered the record of the hearing, the Proposed Order of the Hearings Examiner, and the entirety of the Criteria for the Issuance and Maintenance of Licenses and applicable statutes and regulations, enters the following:

FINDINGS OF FACT

1. The Abbey, Inc. holds a Dispenser Class A (DA) license at THE ABBEY, 704 Bay Boulevard, Newport, Oregon. The Licensee has held a DA license at The Abbey since approximately 1966.

2. The Licensee has requested Commission permission for remodeling that involves devoting a portion of the space in the banquet and overflow dining room to a gift shop.

3. The Commission's Licensing Staff has recommended that the Applicant's remodeling request be denied, citing the following:

- a. OAR 845-05-040(2)(a) (preference in licensing may be given where applicant's premises will provide greater services, facilities and economic benefit to the area or to the general public, as indicated by actual or reasonably projected number of patrons served, seating capacity, banquet facilities, hours of operation, number of employees, extent of investment in facilities, amenities, or other such characteristics).
- b. OAR 845-05-040(3)(f) (unfavorable consideration may be given to a dispenser applicant if applicant's premises will provide lesser services, facilities and economic benefit to the area or to the general public).
- c. ORS 472.160(1) (not demanded by public interest or convenience).

(Commission's Exhibit H.)

4. The Abbey consists of a dining room, a banquet room that is used for overflow dining, and a separate lounge.

5. The Abbey's dining room has seating for 30. The banquet room and overflow dining room has seating for 36 persons for regular dining, but, can accommodate 50 persons for a banquet.

6. The Applicant devoted a portion of its banquet and overflow dining room to a gift shop in April, 1982. The gift shop displaced approximately 30 seats.

7. The Applicant continues to be able to use the banquet area for banquets. The only impact of the gift shop is that less space is available for banquet use. However, the Applicant has still been able to accommodate approximately 40 to 50 persons once a month for the regular meeting of the local chapter of Alcoholics Anonymous.

8. The profusion of new food restaurants in Newport and the poor economy have had a negative impact on the Licensee's business and the Licensee's food business in particular. The Licensee has, since April, 1982, never had enough food patrons that the existence of the gift shop caused food patrons to be unable to get a seat.

9. The Licensee allowed the gift shop to be set up in The Abbey in the attempt to draw additional patrons into the restaurant. However, the gift shop has not stimulated food sales at the business.

10. The Licensee would remove the gift shop from The Abbey if the Commission so requires.

11. The gift shop in The Abbey is not in conflict with Lincoln County Health Department food service regulations. (Applicant's Exhibit No. 3.)

12. The most customers that the gift shop has at a busy time is from 10 to 12 persons.

13. The Abbey is open from 7:00 a.m. until 8:00 p.m. for breakfast, lunch and dinner.

14. The Applicant has had the same menu for approximately the last three years.

15. The Licensee's menu includes approximately 20 sandwiches as well as the following dinners: ground round steak (\$4.95); ham steak (\$4.95); chicken fried steak (\$4.95); shrimp (\$6.95); oysters (\$6.95); roast beef (\$5.95); steak sandwich (\$5.95); fried chicken (\$4.95); fish fillets (\$5.25); captain's plate (\$7.95); and diet plate (\$3.90).

16. The Applicant's recent sales at The Abbey have been as follows:

<u>MONTH</u>	<u>FOOD SALES</u>	<u>ALCOHOLIC BEVERAGE SALES</u>
January	\$2,650	\$13,454
February	3,267	13,239
March	4,346	14,302
April	3,778	15,428
May	4,925	17,775
June	5,430	16,678
July	6,893	21,753
August	6,458	19,564
September	4,339	17,801
October	4,151	17,989

17. Oregon State Representative Max Rijken, District 38, supports the Licensee's remodeling request. Mr. Rijken believes the present economic climate in Lincoln County necessitates flexibility in the interpretation of the Commission's regulations. Mr. Rijken noted that the Licensee is trying to attract more food patrons with the gift shop and believes that there is still enough space for banquets at The Abbey despite the gift shop.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Preference or unfavorable consideration in licensing may be given to dispenser applicants where applicant's premises will provide respectively greater or lesser services, facilities and economic benefit to the area or to the general public, as indicated by actual or reasonably projected number of patrons served, seating capacity, banquet facilities, hours of operation, number of employees, extent of investment in facilities, amenities, or other such characteristics. Gross sales figures may be used as a basis for determining the number of patrons served. OAR 845-05-040(2)(a) and OAR 845-05-040(3)(f).

The criteria cited by the Staff in its recommendation against the Licensee's remodeling request does not provide a reasonable basis to deny the request. The Licensee's facilities are sufficient to handle the present food, banquet and lounge business despite the gift shop. Forcing the Licensee to remove the gift shop would not be likely to increase the number of patrons served at The Abbey. The Abbey has never had so many regular dining customers that the presence of the gift shop necessitated dining patrons to wait for a seat. The Licensee is still able to accommodate banquet groups in the banquet room. A regular banquet for up to 50 persons is held each month.

The Licensee is presently suffering from the heightened competition from other food restaurants in Newport. The Licensee is also suffering from the depressed local economy in Lincoln County. When and if the Licensee's dining room and banquet business picks up to the point where the space used as the gift shop could be more profitably devoted to dining space, the Licensee would have a business interest in removing the gift shop. The Licensee's business interest in this regard provides adequate assurance that the Licensee will remove the gift shop if the gift shop begins to interfere with restaurant sales.

ULTIMATE CONCLUSIONS OF LAW

The Licensee's remodeling request to maintain a gift shop in a portion of its banquet room and overflow dining room is demanded by the public interest and convenience because the

gift shop does not presently interfere with or conflict with food service at the business. ORS 472.160(1).

FINAL ORDER

It is hereby ordered that the request by The Abbey, Inc. for permission to remodel at the DA-licensed premises at The Abbey, 704 Bay Boulevard, Newport, Oregon, by devoting a portion of the licensed premises in the banquet room to a gift shop as depicted in Commission's Exhibit E, be GRANTED.

It is further ordered that due notice of such action, stating the reasons therefor, be given as provided by law.

Dated this 25th day of April, 1983.



C. Dean Smith
Administrator
OREGON LIQUOR CONTROL COMMISSION

NOTICE: You are entitled to Judicial Review of this Order. Judicial Review may be obtained by filing a Petition for Review within 60 days from the service of this Order. Judicial Review is pursuant to the Provisions of ORS Chapter 183.