

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Application for a)	
Change of Operation by:)	
)	FINAL
Gerald F. and Barbara J. Norcia)	FINDINGS OF FACT,
RIVERSIDE INN)	CONCLUSIONS OF LAW,
45441 McKenzie Highway)	AND ORDER
Vida, OR 97488)	
- - - - -)	
Lane County)	

A hearing in the above matter was held on the 30th day of June, 1983, in Eugene, Oregon, before Hearings Examiner Allen R. Scott. The Applicants appeared in person and were represented by Gregory E. Veralrud, Attorney at Law. The Commission was not represented by legal counsel. The Commission having considered the record of the hearing, the Proposed Order of the Hearings Examiner, Exceptions to 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. Applicant has held a Dispenser Class A (DA) license at all times relevant to these Findings of Fact.
2. Applicant seeks permission from the Commission to operate the premises as follows:
 - October 15 - April 1:
Friday, Saturday and Sunday, 5:00 p.m. to 10:00 p.m.
 - April 2 - October 14:
Thursday, Friday, Saturday and Sunday, 5:00 p.m. to 10:00 p.m.

Alternatively, Applicant asks permission to operate the premises four days a week (Thursday, Friday, Saturday and Sunday) all year, 5:00 p.m. to 10:00 p.m.

3. The Commission's Staff has recommended that the request be denied based upon OAR 845-08-020 (DA licensees required to be open a minimum of five days per week).

4. The RIVERSIDE INN is located in Vida, a community of approximately 750 people located 35 miles east of Eugene on the McKenzie Highway. The nearest community to the west is Leaburg, population approximately 275, six miles to the west. The nearest community to the east is Blue River, population several hundred, approximately 20 miles to the east.

5. Applicants' business comes primarily from the Eugene-Springfield area and from those travelling the McKenzie River Highway.

6. The Eugene-Springfield area and Lane County as a whole have had severe economic problems in the last few years. Tourist traffic on the McKenzie Highway has also been reduced during this period.

7. During September, October, and November, 1982, Applicants' average expenses for fixed costs, food and labor exceeded average gross sales by approximately \$66.00 per day on Tuesdays, \$64.00 per day on Wednesdays, and \$30.00 per day on Thursdays.

8. During May, 1983, Applicants' average expenses exceeded average sales by \$9.50 on Tuesdays, \$66.00 on Wednesdays, and \$36.00 on Thursdays.

9. Applicants' sales are profitable on Friday, Saturday and Sunday. However, the profit for these days is not enough to offset the losses incurred on the other weekdays.

10. The premises has been closed since June 9, 1983.

11. During the 12 months preceeding the closure, monthly sales at the premises were as follows:

<u>MONTH</u>	<u>FOOD</u>	<u>ALCOHOLIC BEVERAGES</u>	<u>TOTAL</u>
<u>1982</u>			
July	\$2,971	\$ 752	\$3,723
August	6,021	1,400	7,421
September	4,849	1,064	5,913
October	3,926	1,071	4,997
November	3,048	821	3,869
December	2,868	1,014	3,882
<u>1983</u>			
January	2,954	1,441	4,395
February	2,603	1,837	4,440
March	2,624	1,488	4,939
April	3,451	1,488	4,939
May	5,351	1,861	7,212
June	<u>1,889</u>	<u>797</u>	<u>2,686</u>
Average	\$3,546	\$1,256	\$4,802

12. The premises has generally been open five days a week for dinner in the recent past.

13. The premises has been open for lunch only occasionally.

14. Applicant uses the time the premises is closed to take care of chores such as shopping and maintenance.

15. Applicant put in a new lounge after purchasing the premises in 1979. He has advertised on the radio and through flyers and mailings.

16. Applicant has most of his money invested in this premises, approximately \$120,000 "out of pocket."

17. Sheriff David N. Burkes of Lane County wrote a letter to the Commission stating, in pertinent part:

"Please be advised that neither the Riverside Inn nor its operators, Jerry Norcia, have created any police problems for the Lane County Department of Public Safety. On the contrary the business contributes to the local economy and it has, through Mr. Norcia, made its facilities available to local organizations for meetings.

"If the business closes because of being required to be open more than four days a week, and I am assured that it will, then that will add to the increasing unemployment on the river thus lessening improvement in this economy."

18. Applicant presented a letter from Chuck Bennett, State Representative for District 38, which states in pertinent part:

"I am writing to express my support for Mr. Gerry Norcia's request that he be allowed to restrict his hours of operation to Thursday through Sunday. The state of the economy has had severe impact upon the rural areas and I fear that if Mr. Norcia's request is not granted it will force him to close his restaurant permanently. This would represent a great loss to both the Vida community and to Oregon's economy.

"I request that you give Mr. Norcia's request full consideration in light of the economic factors beyond his control and that you grant him the temporary exemption that he requests."

19. Applicant also offered a letter from Bill Rogers, Lane County Commissioner. Mr. Rogers does not refer specifically to the request to reduce days of operation. He does

indicate general support for the premises and notes the economic benefit it provides to the community.

DISCUSSION

The Commission's original investigation report on Applicants' application for a license in 1979 states that the premises was to be open seven days a week from 10:00 a.m. to 10:00 p.m. At this hearing, however, Licensee Gerald Norcia stated that he did not recall making any firm representation to that effect at the time of his original application. Given the passage of time and the lack of any good evidence of the representation, the Commission concludes that there is no firm basis for finding that Applicant did make such a representation.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Premises licensed with a Dispenser Class A license shall be open for business serving the general public a minimum of five days per week, during the normal hours that the business is open, unless excused from this requirement by the Commission. OAR 845-08-020.

Applicant makes alternative requests: to operate the premises four days a week; or to operate it three days a week during the period October 31 through April 15, and four days a week the rest of the year. The Commission concludes Applicants have not established good cause for a temporary relaxation of the rule. It is therefore concluded that Applicants' request to remain open less than five days a week year be refused.

ULTIMATE CONCLUSIONS OF LAW

Applicants' request to remain open for four days a week during the year should not be granted because Applicants have not established good cause for being excused from the rule.

FINAL ORDER

It is hereby ordered that the request by Gerald F. and Barbara J. Norcia, for a change in days of operation in the trade name Riverside Inn, 45441 McKenzie Highway, Vida, Oregon 97488, be REFUSED.

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

Dated this 24th day of October, 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.