

BEFORE THE LIQUOR CONTROL COMMISSION  
OF THE STATE OF OREGON

In the Matter of the	)	
Application for a	)	
Package Store (PS)	)	
License by:	)	FINAL
	)	FINDINGS OF FACT,
Plaid Pantries, Inc.	)	CONCLUSIONS OF LAW,
PLAID PANTRY MARKET #136	)	AND ORDER
4225 S.E. 182nd	)	
Gresham, Oregon 97030	)	OLCC-84-L-004
- - - - -	)	
Multnomah County	)	

A hearing in the above matter was held on the 4th day of June, 1984, in Portland, Oregon, before Hearings Examiner Allen R. Scott. The Applicant appeared in person and was represented by Clifford Alterman, Attorney at Law, Portland. The Commission was not represented by legal counsel.

On September 24, 1983 the Commission considered the record of the hearing, the Proposed Order of the Hearings Examiner, Exceptions to the Proposed Order of the Hearings Examiner, and applicable statutes and regulations. Pursuant to this review, the Commission enters the following:

BACKGROUND

Applicant seeks a Package Store license for a typical Plaid Pantry market to be located in a development being built at the intersection of S.E. 182nd and West Powell Boulevard in Gresham.

ISSUES

The Commission's staff has recommended that this application be refused for the following reasons:

1. Written opposition from Memorial Baptist Church. OAR 845-05-025(2)(b).
2. Public opinion weighs against the granting of a license. OAR 845-05-035.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

CHURCH OPPOSITION

1. The Memorial Baptist Church is located across S.E. 182nd Avenue from the site of the proposed Plaid Pantry store. Southeast 182nd Avenue is four lanes wide at this location (not including a left turn lane) and has sidewalks on either side.

2. It is approximately 500 feet from the nearest part of the church property to the nearest part of the property upon which the Plaid Pantry will be located. It is approximately 600 feet from the church structure to the site of the actual Plaid Pantry building.

3. The pastor of the Memorial Baptist Church has written a letter on behalf of the church expressing opposition to the granting of the license. The letter states that there are four grocery stores located in the area, and that it is therefore "unnecessary and undesirable to add another store to dispense liquor in our community." The letter also notes that some schools are located in the general area, and concludes, therefore, that "the granting of this license would add to the terrible problem of teenage deaths through drunken driving."

4. The rear and one side of the Plaid Pantry may be visible from the church structure. However, the front of the store would not be visible.

5. The four grocery stores noted by Pastor Newcomb as being in the area are all between seven and 14 blocks from the proposed Plaid Pantry site.

6. The land on which the Plaid Pantry is to be located is zoned "general commercial," which permits grocery stores.

7. The application involved in this matter received a favorable endorsement from the City of Gresham.

8. No one from the Memorial Baptist Church appeared at the hearing.

I. The following criteria will be given sufficient consideration so a license will not be issued unless good cause which outweighs the criteria involved is shown by the Applicant:

. . .

(2) Written opposition to the granting of a license, stating the reasons for the opposition, by a person in control of:

. . .

(b) a church;

. . .

If such facility is located within 500 feet of the proposed outlet in an urban or suburban area. OAR 845-05-025(2)(b).

The Commission concludes that good cause exists to overcome the opposition of the church. The church involved is

located across a very wide street from the proposed Plaid Pantry. It has only limited visibility of the premises. Furthermore, the church structure is approximately 600 feet from the store site, a distance which would tend to lessen any effect on the store operation on the church. Also, there is nothing to indicate that the operation of this particular type of establishment would have any detrimental effect upon the church operation.

The letter from the church indicates the church's view that there are enough premises in the area. However, the four package store licensees mentioned in the church letter are all at least seven blocks from the proposed site of the store. The church's argument is thus not persuasive.

The church's letter also raises the issue of deaths of teenagers caused by drunken driving. There is nothing to indicate that the operation of this store would cause any particular problem in that respect. Furthermore, that argument appears to have nothing specific to do with the church as an entity.

For these reasons, the Commission concludes that this criterion should not be a basis for denying the application.

#### PUBLIC OPINION

9. The Commission has received a letter from the administrator of the Powell Vista Manor, a 71-apartment complex for lower income elderly people located approximately 200 feet from the proposed Plaid Pantry.

10. The letter states, in part, "The ready access to beer and wine by four of our residents with alcohol problems would be an unnecessary temptation." The letter also states that a nearby shopping center will have a grocery store which will dispense beer and wine. The letter also mentions that there is a retirement complex nearby and that there are two grade schools and a high school in the "environs."

11. No one from the other retirement complex mentioned in this letter or from any of the schools has expressed an objection to the granting of the license.

12. No one from Powell Vista Manor appeared at the hearing.

II. The Commission may refuse to issue or renew a license if it determines that public opinion weighs against the issuance of a license. Interested persons may express their support for or opposition to the issuance of a particular license by petition or letter timely received at the Commission offices, or by personal appearance and testimony at a Commission hearing, if any. Such public opinion will be evaluated in light of the reasons expressed and the extent to which the persons expressing it are likely to be affected by the issuance of the license. Greater weight will be given to opinion of persons residing, working or owning a business within a one-mile radius of the proposed premise. The number of persons expressing support or opposition will not, in and of itself, be controlling. OAR 845-05-035.

The Commission concludes that this criterion should not be a basis for denial of the license. The only reason stated in

the letter which relates to the Powell Vista Manor itself is that four of the residents with alcohol problems might be affected by the presence of the Plaid Pantry store. The Commission believes that this is not sufficient reason to deny the application. The other reasons stated in the letter relate to another apartment complex and to schools in the area. As no objection was received from the other apartment complex or from the schools, the Commission concludes that their location in the area is not a reason to deny the application.

ULTIMATE CONCLUSIONS OF LAW

It is concluded that the license should be granted because good cause exists for overcoming the opposition of the nearby church and because the objection stated by the nearby apartment complex is not sufficient to provide a basis for denying the application. OAR 845-05-025(2)(b), 845-05-035.

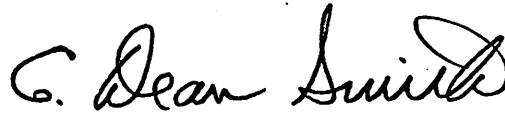
FINAL ORDER

It is hereby ordered that the application for a Package Store license by Plaid Pantries, Inc. in the trade name Plaid Pantry #136, 4225 SE 182nd, Gresham, Oregon 97030, be GRANTED upon payment of appropriate license fees to the Commission, with the issuance of the license subject to the following conditions:

1. That the premises be constructed as proposed and be ready for operation within ninety (90) days of issuance of the final order in this matter or that the commitment of the license be withdrawn.

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

Dated this 28th day of September, 1984.



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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.