



December, 18, 2015

## 1. Interpretation of Development Code Section 2.110.05

On December 18, 2015 the Zoning Administrator (Nate Brown, Community Development Director) has made an interpretation of Keizer Development Code Section 2.110.05 regarding drive thru window facilities existing at the Schoolhouse Square shopping center located at 5001 River RD N.

## 2. Analysis/Findings:

A request for interpretation was submitted to the Keizer Community Development Director regarding this issue on December 11, 2015 by Michael C. Robinson (Exhibit '1'). Mr. Robinson represents Bloch Schoolhouse, LLC and his request for interpretation included extensive arguments and evidence to support the requested interpretation. The issue is the interpretation of the following:

### 2.110.05 Use Restrictions

**No permitted or special permitted use shall in any way involve any of the following:**

**C. The following uses are prohibited from any property fronting on River Road or Chemawa Road in the following area: the west side of River Road between 5119 River Road on the north and Janet Avenue extended on the south; the east side of River Road between Claggett Street on the north and James Avenue on the south; and either side of Chemawa Road between Elizabeth Street on the west and Bailey Road on the east; and (2) Any property contained within the Area B as described in the Keizer Station Plan. This prohibition does not apply to any business facility, legally established as of the date of the adoption of this Ordinance, which as of that date has drive-through window facilities. (12/03)**

**2. Drive-Through windows or car service associated with eating and drinking places (58). (5/98)**

After a careful and thorough review, the Zoning Administrator has reviewed the request and rendered a favorable interpretation allowing the relocation/transfer of the drive through window subject to appropriate requirements. Mr. Robinson's argument to allow for the relocation of the drive-through window is found in Section 3 of his letter. The following response is offered:

***a. The Shopping Center is a Business Facility.***

Mr. Robinson argues Schoolhouse Square Shopping Center, as a whole, should be considered a "business facility." This term, however is not specifically defined in the KDC, and the City does not find this relevant to the central issue of the prohibited use exemption, other than to limit the placement of the drive through window to the same development. Even though the City may not agree with Mr. Robinson's characterization of this issue, the City does not feel it is necessary for a favorable interpretation to be made on behalf of the property owner.

***b. The Drive-through Window Was Legally Established.***

A sworn affidavit has been submitted which clearly states Java Crew Coffee shop was an existing and independent business with a drive-through window in existence, and legally established at the time of the adoption of the Keizer Development Code, thereby creating an exemption to the restriction of the drive through function of that specific establishment.

***c. The CM Zone's Use Restriction is Not a Non-Conforming Use Provision.***

Mr. Robinson points out that Section 2.110.05 and Section 2.204 conflict with one another and creates ambiguity. Therefore, interpretation is needed to determine whether or not the KDC intended to capture the uses prohibited in Section 2.110.05 as "non-conforming" uses or if they were to be regulated separately. The Zoning Administrator does not necessarily agree with Mr. Robinson's argument that language was intentionally left out so as not to consider the use as a "non-conforming use", and asserts that this may be a possibility.

Therefore, the City believes it is important to state the purpose of the Use Restriction Overlay. The ordinance adopting the use restriction, along with the findings associated with it, is clear that the intent of the use restriction is to quantify the number of drive-through windows and automobile oriented businesses, and to prohibit additional businesses of that category from being established. The intent is to promote pedestrian friendly developments and discourage automobile oriented developments, while preserving traffic functions of existing street systems and promoting aesthetically pleasing development patterns. Therefore, the Zoning Administrator's interpretation includes provisions to ensure transportation impacts, as well as aesthetic considerations are addressed. The City also feels it is appropriate to limit the use to a coffee shop with a drive-through window use only (like for like), as opposed to some other eating and drinking establishment. With these provisions outlined in the interpretation, the Zoning Administrator agrees that Section 2.204 does not apply to this specific request.

***d. The Requested Interpretation Will Apply Only to This Site.***

The Zoning Administrator has not analyzed the entire review area with regard to the Use Restriction Overlay. Regardless, it is not necessary to address as a part of this specific request.

**The Zoning Administrator has determined the following:**

The Roth's food store in the Schoolhouse Square Shopping center contains two (2) drive-through windows that were lawfully established as of the date of the adoption of the Keizer Development Code (May 1998). One of those drive-through windows was used by an independent business, the Java Crew Coffee Shop. Since this drive-through window was legally established as of the date of the adoption of the Keizer Development Code, it can once again be utilized for a coffee shop use. Further, the Zoning Administrator has determined that the existing drive-through window located at Roth's, and which was used by the Java Crew Coffee Shop, may be relocated for a coffee shop use elsewhere within the Shopping Center on the same parcel, subject to the following requirements:

- New construction shall comply with state building and fire code requirements, as well as all setback, street and design standards outlined in the Keizer Development Code. These requirements will be regulated at the time of building permit review.
- Enhanced landscaping, plazas, outdoor eating areas, and/or other features shall be required to provide visual enhancements, and minimize the impacts of the automobile oriented functions of the business.
- A traffic analysis shall be submitted at the time of building permit review as specified in the Keizer Development Code to ensure all traffic impacts are adequately addressed.
- The drive through window formerly used by Java Crew, existing in the Roth's structure, must be physically removed and no additional eating and drinking drive through window may be established in this development.

**3. Appeal:**

The City's action is a final decision. To appeal the City's decision, you must file a Notice of Intent to Appeal with the State Land Use Board of Appeals (LUBA). Any appeals to LUBA must be in accordance with all applicable filing requirements, including time frames, governing the processing of appeals.

If you have any questions please do not hesitate to contact the Community Development Department at 503-856-3442.

Sincerely,

Nate Brown

Community Development Director  
City of Keizer