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BEFORE THE HEARINGS OFFICER

KLAMATH COUNTY, OREGON

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4 In the Matter of Request for)
Variance of) Klamath County Planning
5) Department No. 77-8
6 DAVID VANDENBERG, Applicant.) FINDINGS OF FACT AND ORDER

7 A hearing was held in this matter at Klamath Falls, Oregon,
8 on May 18, 1977, pursuant to notice given in conformity with Ord-
9 inance No. 35, Klamath County, before Klamath County Hearings
10 Officer Del Parks. The applicant was present accompanied by Lewis
11 Erbes and Joe Westvold. The Klamath County Planning Department
12 was represented by Carl Shuck and Pete Wall. The Hearings Reporter
13 was Denise Hill.

14 Evidence was presented on behalf of the Department and on
15 behalf of the applicant. There was one adjacent property owner
16 present, Richard Wentworth, who stated he had no objections to the
17 proposed variance requested by the applicant.

18 The following exhibits were offered, received and made a
19 part of the record: Klamath County Exhibit A, the staff report;
20 Klamath County Exhibit C, a Klamath County Assessor's map of the
21 subject property; Klamath County Exhibit D, a Klamath County Zoning
22 map of the subject property and Klamath County Exhibit E, the
23 Preliminary Map of Tract 1133, Erbes Park.

24 The Hearings Officer, in addition to the testimony presented
25 at the hearing, reviewed the minutes of the Klamath County Planning
26 Commission Meeting and Hearing held on February 15, 1977, which the
27 Hearings Officer marks as Exhibit No. 1 and directs that the same be
28 entered in the record with the other exhibits. In addition, the

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1 Hearings Officer viewed the general area of the proposed variance and
2 based upon the evidence presented makes the following Findings of
3 Fact:

4 FINDINGS OF FACT:

5 1. That there was substantial testimony before the Klamath
6 County Planning Commission with references to the variance requested
7 and that discussion is referred to in the minutes of the Klamath
8 Commission Meeting.

9 2. That the applicant's testimony proved by preponderance
10 of evidence that the variance would be necessary for the preserva-
11 tion and enjoyment of the property rights of the applicant to have
12 the identical setbacks that are utilized by like subdivisions in the
13 area.

14 3. Mazama Gardens, an adjacent subdivision, has setback
15 lines that are identical to those being sought by the applicant and
16 that are identical to those being sought by the applicant and that
17 other subdivisions within the area have less restrictive setback
18 lines than are being requested.

19 4. The variance requested would be the minimum variance
20 necessary if the applicant is to be allowed to use the same setback
21 lines that were used in the Mazama Gardens subdivision.

22 5. There are no exceptional or extraordinary circumstances
23 which apply particularly to the applicant's property.

24 6. The Hearings Officer is not empowered to grant a
25 variance unless all of the conditions of Article 112, Section 112.001
26 1 through 4, are met (set forth above as 2 through 5).

27 7. The Hearings Officer is not empowered pursuant to
28 Section 112.002(16) to disregard a prior variance issued pursuant

1 to a zoning ordinance and enacted prior to the effective date of the
2 ordinance establishing the position of the Hearings Officer and his
3 duties.

4 The ordinance provides in Section 112.002(18) that a
5 variance associated with the application for a zone change may at
6 the discretion of the Planning Director be directed to the Planning
7 Commission for hearing and determination.

8 8. A review of the minutes of the Planning Commission
9 Meeting of February 15, 1977, does not demonstrate whether or not the
10 Planning Commission intended to approve, disapprove, or in any way
11 deal with the requested variance.

12 Because the requested variance is of the magnitude that it
13 affects the entire subdivision, because the uncertainty as to what
14 happened at the Planning Commission Meeting is a condition created
15 by the County and because the matter ought to have been considered
16 by the Planning Commission because it was associated with an appli-
17 cation for zone change, the Hearings Officer finds that it should be
18 referred to the Planning Commission for determination.

19 9. Unless the Klamath County Planning Commission enters an
20 order within forty-five (45) days from the date of this order the
21 Hearings Officer finds that it would be proper under the ordinance
22 to construe the Planning Commission's lack of action as an affirma-
23 tive of the position that the variance sought by the applicant was
24 included within the order granting the zone change as a result of the
25 hearing held on February 15, 1977.

26 10. The applicant had also sought a variance relating to
27 setback lines in the location of a street to make the same coincide
28 with existing streets in adjoining subdivisions. Applicant proved

1 by preponderance of evidence that he is entitled to a variance in
2 that regard and that variance will be granted by a separate order.

3 BASED ON THE FOREGOING FINDINGS OF FACT, IT IS HEREBY
4 ORDERED:

5 1. That the portion of the application requesting a
6 variance on Lots 12 through 16 is granted, the Findings of Fact
7 and order will be entered separately.

8 2. That the remainder of the application requesting a
9 variance from the front building setback and the side building
10 setback on all lots other than 12 through 16 is continued for
11 forty-five (45) days.

12 3. The application is referred to the Klamath County
13 Planning Commission for the purpose of examining and to allow the
14 Planning Commission to enter an Order in conformity with this
15 opinion.

16 4. That in addition to the persons required by law to
17 receive a copy, this decision shall be mailed to the Chairman of
18 the Planning Commission.

19 Entered at Klamath Falls, Oregon, this 8th day of June,
20 1977.

21
22 KLAMATH COUNTY PLANNING DEPARTMENT
23 By Del J. Falk
24 Hearings Officer
25
26
27
28

10080

IN THE MATTER OF
Variance 77-8,
David R. Vandenberg

AFFIDAVIT OF MAILING

STATE OF OREGON
County of Klamath

The undersigned certifies that as an employee of the Klamath County Planning Department she served the foregoing on the parties on June 9, 1977 by depositing a copy of said Findings of Fact and Order in a sealed envelope in the United States mail at Klamath Falls, Oregon, with postage thereon fully prepaid and addressed to the said parties at their last known place of business or residence, as follows:

Judith Bury
Planning Commission Chairman
1984 Terrace
Klamath Falls, OR 97601

Richard Wentworth
3845 Bristol Avenue
Klamath Falls, OR 97601

Westvold & Associates
2333 Summers Lane
Klamath Falls, OR 97601

Lewis E. Erbes
4507 Cannon
Klamath Falls, OR 97601

Denise Hill
Hearings Reporter

SUBSCRIBED and sworn to before me this 9th day of June, 1977.



Peter M. Albee
NOTARY PUBLIC FOR THE STATE OF OREGON
My Commission Expires: 8-3-80

STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the 9th day of JUNE A.D., 1977 at 3:04 o'clock P.M., and duly recorded in Vol. M77 of DEEDS on Page 10076.

FEE no fee

WM. D. MILNE, County Clerk

By Harold Unruh Deputy

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