

Vol. M82 Page 12917

NO. 21-82

## FINDINGS OF FACT, DECISION AND ORDER

FINDINGS OF FACT:

2) The applicant is currently building a 10' x 24' addition to his garage for use as a shop. The addition, started without a building permit, is nearly complete. Klamath County

FINDINGS OF FACT, DECISION AND ORDER, Page One.

192 SEP 20 11 10 32

1 Building Department has halted work until this variance request  
2 is decided.

3 3) The applicant is requesting to reduce his side  
4 yard setback from 10' to 2'4" for the addition.

5 4) Physical features of the property are a level area  
6 with some landscaping.

7 5) The existing land use is residence, the plan design-  
8 nation is urban residential, and the zone designation is RM.

9 6) Access to the property is off Sumac Court, a paved  
10 County street.

11 7) Adjacent properties have the existing land use of  
12 residential, a plan designation of urban residential and a  
13 zone designation of RM.

14 8) No agency input was received. Written correspond-  
15 ence for or against was received in the form of a letter from  
16 Mr. Mike Willer in opposition to the variance. This is Opposition  
17 Exhibit #1.

18 9) The general area surrounding the applicant's prop-  
19 erty is residential consisting of houses built on lots which  
20 surround a culdesac (circular dead-end street).

21 10) Klamath County Exhibit "B" indicates that the lots  
22 that surround this culdesac are of odd dimensions. The applicant  
23 has previously constructed a family room extension on the west-  
24 northwest portion of his property precluding the use of that  
25 section for the shop building. There remains room on the appli-  
26 cant's northwest side of his house to extend an addition in that

1 area.

2 11) Mr. and Mrs. Stone purchased their property after  
3 reviewing several other prospective residences in the area.  
4 The main purpose for purchasing this house was that it had  
5 large set backs from adjoining residences. The building of  
6 the addition within 2'4" of the property line would increase  
7 the fire hazard to Mr. and Mrs. Stone's adjoining property.

8 12) The applicant submitted sixteen (16) letters from  
9 property owners in the general area not objecting to the proposed  
10 variance. The opposition submitted a petition consisting of  
11 twenty eight (28) signatures from fourteen (14) property owners  
12 in the general vicinity objecting to the variance.

13 13) The applicant desires to build a shop so he can  
14 continue his woodworking hobby at his residence, as he is pres-  
15 ently unable to use his garage both for the woodworking and for  
16 the parking of vehicles. The opposition testified that the  
17 variance caused the general area to become unsightly due to poor  
18 spacing of houses. It would decrease their home value and cut  
19 off air and light.

20 14) The applicant testified that there would remain 28"  
21 between the new construction and his fence for a walkway.

22 14) The opposition further indicated that this  
23 structure, built within 28" of their property line, would decrease  
24 their privacy.

25 15) The applicant testified that he has invested approxi-  
26 mately \$1,200.00 into the project so far.

FINDINGS OF FACT, DECISION AND ORDER, Page Three.

1 KLAMATH COUNTY DEVELOPMENT CODE CRITERIA:

2 See Exhibit "AA" attached hereto.

3 KLAMATH COUNTY DEVELOPMENT CODE FINDINGS:

4 1) See Findings 1-15 under Findings of Fact above.

5 2) The applicant has failed to meet his burden of  
6 proof required to demonstrate that a hardship peculiar to this  
7 property exists and is not created by an act of the owner.

8 3) No exceptional or extraordinary circumstances  
9 exist which apply to this property which do not apply generally  
10 to other properties in the same vicinity or zone which result  
11 from the size, shape and particularly from the topography of  
12 the property. Section 43 does not permit a consideration of  
13 financial difficulties or loss of prospective profits or neigh-  
14 boring violations as a hardship justifying a variance. The  
15 applicant has further failed to demonstrate that the granting  
16 of this variance will not be materially detrimental to the public  
17 health, safety or welfare nor impair an adequate supply of light  
18 and air to the adjacent property. To the contrary, the opposition  
19 testified that they felt that the construction would create an  
20 additional fire hazard to their dwelling and would decrease their  
21 privacy and supply of light and air.

22 STATE-WIDE PLANNING GOALS AND CRITERIA:

23 See Exhibit "BB", Page 1-6 attached hereto and incor-  
24 porated by this reference.

25 CONCLUSIONS OF LAW AND DECISION:

26 A. The applicant has failed to meet his burden of  
FINDINGS OF FACT, DECISION AND ORDER, Page Four.

1 proof demonstrating that this variance satisfies all applicable  
2 Klamath County Development Code criteria and policies governing  
3 variances.

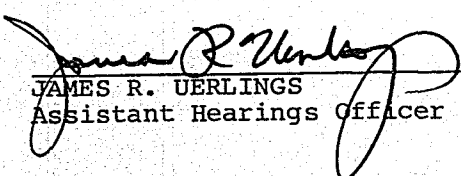
4 B. This request for variance is not in conformity  
5 with the Klamath County Comprehensive Land Use Plan.

6 C. This request for variance appears to be consistent  
7 and complies with the applicable State-wide Planning Goals.

8 D. There is insufficient evidence in the record to  
9 support this request for variance, and in addition, evidence  
10 was submitted in opposition thereto.

11 Therefore, it is hereby ordered that this variance  
12 be denied for the reasons set forth above.

13 DATED this 21 day of September, 1982.

14  
15  
16   
17 JAMES R. UERLINGS  
18 Assistant Hearings Officer  
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26

1. Klamath County Code Section 43 sets forth the general review criteria for consideration of a variance. These criteria are as follows:

A. That a hardship peculiar to the property and not created by any act of the owner exists. In this context, personal, family or financial difficulties, loss of prospective profits and neighboring violations are not hardships justifying a variance. Further, a previous variance can never have set a precedent, for each case must be considered only on its individual merits.

B. That exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from size or shape, legally existing prior to the effective date of this Code, topography or other circumstances over which the applicant has no control.

C. That the granting of the variance will not be materially detrimental to the public health, safety or welfare nor will it impair an adequate supply of light and air to the adjacent property.

2. The Klamath County Code Section 43.001 sets forth the general purpose of Article 43. It states that the purpose of a variance is to permit justifiable departures from the requirements of this Code where their literal application would impose an undue or unnecessary hardship on the citizens of Klamath County or the owners of property within the County, except that no variance shall be granted for a parcel of property which either authorizes a use or activity not permitted by the land use zone regulations governing the parcel of property.

3. ORS 197.175 requires that this Land Use action be in conformity with State-wide Planning Goals.



GOAL 1: CITIZEN INVOLVEMENT  
Relevant Policies:

12923

A hearing on this matter has been set for September 15, 1982. Notice has been sent to neighboring property owners, concerned agencies and to the Herald and News.

GOAL 2: LAND USE PLANNING  
Relevant Policies:

The area has a plan designation of Urban Residential with a zone of RM (Medium Density Residential). The neighborhood is developed with single-family dwellings on lots generally 7,000 to 8,000 square feet in size. The requested variance would allow for completion of a 10' by 24' shop being added to the east side of the house. The addition was begun without a building permit and, due to the lack of a proper foundation and other deficiencies, will require connections to meet the building code. The addition is about 28 inches from the property line and 15 to 20 feet from the neighbors house.

GOAL 3: AGRICULTURAL LANDS  
Relevant Policies:

12924

The property is in a developed, residential neighborhood within the Klamath Falls Urban Growth Boundary. Goal 3 does not apply.

GOAL 4: FOREST LANDS  
Relevant Policies:

The property is within a developed, residential area within the Klamath Falls Urban Growth Boundary. Goal 4 does not apply.



**GOAL 5: OPEN SPACE, SCENIC AND HISTORIC AREAS,  
AND NATURAL RESOURCES**  
Relevant Policies:

**12925**

There are no inventoried scenic, historic or natural resources in the area which would be affected by the requested variance.

**GOAL 6: AIR, WATER AND LAND RESOURCE QUALITY**  
Relevant Policies:

Reducing the side yard as proposed would not affect air, water or land resource quality.

**GOAL 7: NATURAL DISASTER AND HAZARDS AREA**  
Relevant Policies:

The area is not subject to any natural hazards.

GOAL 8: RECREATION NEEDS  
Relevant Policies:

12926

The reduced setback would not affect the need for or availability of recreational facilities in the area.

GOAL 9: COUNTY ECONOMY  
Relevant Policies:

The variance would provide a minor economic benefit to the County through the sale of building permits.

GOAL 10: HOUSING  
Relevant Policies:

The variance would allow for an accessory structure to the present residential use of the property. The variance would not affect the need for or availability of housing in the Klamath Falls Urban area.

GOAL 11: PUBLIC FACILITIES AND SERVICES  
Relevant Policies:

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The site is served by water, sewer, electric, telephone and gas utilities, It is within county Fire District No. 1. No additional need for utilities and services is evident as a result of this variance.

GOAL 12: TRANSPORTATION  
Relevant Policies:

The property fronts on Sumac Court, a paved Cal-de-sac. The proposed addition will not block the view or impede the flow of traffic on this street.

GOAL 13: ENERGY CONSERVATION  
Relevant Policies:

The variance would not affect energy conservation.

GOAL 14: URBANIZATION  
Relevant Policies:

12928

The site is within the Klamath Falls urbanized area, in a neighborhood developed for residential use.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record

this 29 day of Sept A.D. 19 82 at 10:02 o'clock A.M. and  
duly recorded in Vol. M82, of Deeds on page 12917

No Fee

EVELYN BIEHN, County Clerk

By Joyce Mc Graw

Commissioners Journal