

BEFORE THE HEARINGS OFFICER
FOR KLAMATH COUNTY, OREGON

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| In the Matter of the |) | NO. 3-84 |
| |) | |
| REQUEST FOR VARIANCE |) | FINDINGS OF FACT, DECISION |
| |) | AND ORDER |
| for |) | |
| |) | |
| STEPHEN and TRUDY |) | |
| MARTISAK |) | |

84 MAY 1 AM 9 39

THIS MATTER came on for a hearing before the Klamath County Assistant Hearings Officer, JAMES R. UERLINGS, on April 19, 1984, at 1:30 p.m. in the Klamath County Commissioners' hearing Room at the Klamath County Courthouse. The applicants, Stephen and Trudy Martisak, appeared in person. The Klamath County Planning Department appeared through their staff. No persons appeared in opposition to the proposed variance.

The following exhibits were offered, received and made a part of the record: Exhibits "A" through "F".

The Assistant Hearings Officer, after reviewing the evidence, makes the following decision.

FINDINGS OF FACT:

1. The subject property is located at 305 Main Street, Midland, Oregon. The legal description is Lots 15 through 18, Block 37, First Addition to Midland, Klamath County, Oregon. The property is located on the corner of Main and Fourth Streets in Midland, Oregon.

2. The plan designation for the property is rural, the zone designation is R-1 and adjacent and surrounding zoning

FINDINGS OF FACT, DECISION AND ORDER
Page 1.

1 is R-1.

2 3. The property is 145' x 100' consisting of
3 14,500 square feet. The shape is rectangular, vegetation
4 consists of lawn and shrubs, the topography is generally
5 level but the street along the easterly side slopes up toward
6 the rear of the house. The drainage is surface runoff in a
7 southerly direction. The neighborhood physical characteristics
8 consist of residential, suburban homes. Access to the
9 property is off paved streets, Main Street and Fourth Street
10 in Midland, Oregon.

11 4. The property is served by the Klamath County
12 School District, sewer is provided by septic system, water
13 by well and fire protection is provided by County Fire
14 District No. 1.

15 5. The applicants are requesting the variance in
16 order to build an attached garage-workshop along the east
17 side of their house. The workshop would not be used for
18 commercial purposes but solely for the applicants' personal use.
19 The garage would come to the east property line, approximately
20 16' from the paved portion of Fourth Street. Because of
21 the location of the house on this lot and because of the
22 fact that the street is built up and slopes upward towards
23 the north on the easterly side of the property, it is impossible
24 for the applicants to place a garage-workshop further back
25 on their lot without creating a driveway with too steep of a
26 slope to be practicable.

1 The applicants intend to install two (2) garage doors in the
2 garage, one to be a small door for one vehicle, the other
3 a door for two vehicles to enter. The applicants will
4 install automatic garage door openers on both doors eventually
5 and intend to immediately install one on the larger of the
6 two doors.

7
8 6. Testimony indicates that there is very little
9 traffic along Fourth Street which borders the applicants'
10 property on the east and upon which the two garage doors
11 will open onto. The applicants indicated that the dimensions
12 of the cars using the garage is such that very little, if any,
13 portion of the vehicles will be on the roadway before the
14 cars are driven into the garage with the automatic garage
15 door openers. The period of time will be very short during
16 which the street would be blocked.

17 7. A letter from the Public Works Department indicated
18 two concerns: 1) the length of time in which the street would
19 be blocked by the vehicles pulling into the garage; and 2) the
20 possible buildup of snow and ice on the road. The record in-
21 dicates that Fourth Street in Midland runs in a generally
22 north-south direction. During the winter months where any
23 possible snow and ice would build up on the road, the street
24 is open to southerly exposure, and hence, the sun will hit
25 the street by the construction of this garage. The applicants
26 intend to construct this garage so that it blends in with
the roof-line of the current residence.

1 KLAMATH COUNTY DEVELOPMENT CODE CRITERIA:

2 1. Section 43.001 and Section 43.003 set forth
3 the purpose and review criteria for the granting of variances.
4 Those criteria are as follows:

5 A. The purpose of a variance is to permit justi-
6 fiable departures from the requirements of this Code where
7 their literal application would impose an undue or unnecessary
8 hardship on the citizens of Klamath County or the owners of
9 property within the County, except that no variance shall be
10 granted for a parcel of property which either authorizes a use
11 or activity not permitted by the land use zone regulations
12 governing the parcel of property.

13 B. A variance shall be granted only upon finding
14 by the review authority that it satisfies the following criteria:

15 1) That a literal enforcement of this Code
16 would result in a practical difficulty or unnecessary hardship.
17 The difficulty or hardship may arise from the property's size,
18 shape or topography, from the location of lawfully existing
19 buildings and improvements, or from personal circumstances
20 which would result in greater private expense than public
21 benefit of strict enforcement.

22 2) That the condition causing the difficulty
23 was not created by the applicant.

24 3) That the granting of the variance will not
25 be detrimental to the public health, safety, and welfare or to
26 the use and enjoyment of adjacent properties and will not be

1 contrary to the intent of this Code.

2 2. ORS 197.175 requires all zoning and related
3 ordinances adopted by the County be in conformance with State-
4 wide Planning Goals.

5 KLAMATH COUNTY DEVELOPMENT CODE FINDINGS AND CONCLUSIONS:

6 1. The literal enforcement of this Code would
7 result in a practical difficulty or unnecessary hardship
8 to the applicants. The difficulty or hardship arises from
9 the property's topography and shape and from the location of
10 lawfully existing buildings and improvements which result in
11 a greater private expense than public benefit of strict
12 enforcement.

13 2. The condition causing the difficulty was not
14 created by the applicants but was created in the construction
15 of the Fourth Street grade by the applicants' property.

16 3. The granting of the variance will not be
17 detrimental to the public health, safety and welfare or to the
18 use and enjoyment of adjacent properties and will not be
19 contrary to the intent of this Code.

20 STATE-WIDE PLANNING GOALS AND CRITERIA:

21 See Exhibit "AA" attached hereto and incorporated
22 by this reference.

23 CONCLUSIONS OF LAW AND DECISION:

24 1. This request for a variance on the subject
25 property meets the applicable Klamath County Development Code
26 criteria and policies governing such.

1
2 2. This request for a variance is consistent with,
3 and complies with, all applicable State-Wide Planning Goals
4 and review criteria.

5 The following conditions are deemed applicable to
6 protect the public health, safety and welfare and therefore
7 are attached to the granting of this variance.

8 A. That the applicant follow the plan as
9 submitted as Exhibit "B";

10 B. That the applicants install an automatic
11 garage door opener to the larger of the two garage doors
12 which they intend to place in the garage immediately upon
13 construction of the garage and that they place the other
14 automatic garage door opener in the smaller of the two doors
15 within eighteen (18) months of the construction of the garage.

16 C. That the applicants never allow the parking
17 of any vehicle in front of the doors to the garage and as
18 soon as practical, always move the vehicles within the confines
19 of the garage so that they do not impede, in any manner, traffic
20 along Fourth Street.

21 D. That the applicants construct the garage so
22 that it blends in with the roof-line of the existing house and
23 under no circumstances exceeds the height of the existing roof
24 level.

25 Therefore, it is hereby ordered that this request
26 for a variance is granted.

* * * * *

FINDINGS OF FACT, DECISION AND ORDER
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DATED this 30 day of April, 1984.


JAMES R. UERLINGS

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COMPREHENSIVE PLAN POLICIES AND STATE
LAND USE GOALS 1 - 14

7197

GOAL NO. 1 - Citizen Involvement

- Complies Does not Comply
- Complies with conditions
- Not applicable

Relevant Policies:

1. "The County shall provide for continued citizen involvement opportunities."

State Goal Issues:

A public hearing on this matter has been set for April 5, 1984. Notice has been sent to surrounding property owners, concerned public agencies and the Midland Area Committee and published in the Herald and News.

GOAL NO. 2 - Land Use Planning

- Complies Does not comply
- Complies with conditions
- Not applicable

Article 46
Major/Minor Partition
Section 46.003 Review Criteria

Relevant Policies:

| | Complies | Does not Comply | N.A. |
|-----|--------------------------|--------------------------|--------------------------|
| A - | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| B - | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| C - | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
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State Goal Issues:

The area is zoned and developed for residential use. The proposed garage is a permitted accessory building. Applicants must show that they meet the criteria of Section 43.003.

GOAL NO. 3 - Agricultural Lands

Complies Does not Comply

Complies with conditions

Not applicable

Relevant Policies:

State Goal Issues:

The area is developed for residential use within the rural service center of Midland. There is no agricultural land in the vicinity.

GOAL NO. 4 - Forest Lands

Complies Does not Comply

Complies with conditions

Not applicable

Relevant Policies:

State Goal Issues:

The property is in an area developed for residential use in the rural service center of Midland. Area soils do not have a timber productivity rating and there is no forest land in the vicinity.

GOAL NO. 5 - Open Space, Scenic and Historic Areas, and Natural Resources 7199

- Complies Does not Comply
- Complies with conditions
- Not applicable

Relevant Policies:

State Goal Issues:

There are no inventoried Goal 5 resources on or around the property affected by this variance.

GOAL NO. 6 - Air Water and Land Resource Quality

- Complies Does not Comply
- Complies with Conditions
- Not applicable

Relevant Policies:

State Goal Issues:

The proposed garage would not add to waste discharge from the property. No effects on air, water or land resource quality are apparent.

GOAL NO. 7 - Natural Disaster and Hazards Act

- Complies Does Not Comply
- Complies with conditions
- Not applicable

7200

Relevant Policies:

State Goal Issues:

No natural hazards are known to affect the area.

GOAL NO. 8 - Recreation Needs

- Complies Does Not Comply
- Complies with conditions
- Not applicable

Relevant Policies:

State Goal Issues:

The proposed garage would not affect the need for or availability of recreational facilities.

GOAL NO. 9 - County Economy

7201

- Complies Does not Comply
- Complies with conditions
- Not applicable

Relevant Policies:

State Goal Issues:

The variance would provide some economic benefits through the sale of building materials and payments for construction labor. No long-term effects on the local economy or employment are apparent.

GOAL NO. 10 - Housing

- Complies Does not Comply
- Complies with conditions
- Not applicable

Relevant Policies:

State Goal Issues:

The reduced setback would not affect the need for or availability of housing in Midland.

GOAL NO. 11 - Public Facilities and Services

- Complies Does not Comply
- Complies with conditions
- Not applicable

Relevant Policies:

12. "Development proposals shall not be approved unless the types and levels of public facilities and services required are available..."

State Goal Issues:

The reduced setback would not require additional public facilities and services.

GOAL NO. 12 - Transportation

- Complies Does not Comply
- Complies with conditions
- Not applicable

Relevant Policies:

State Goal Issues:

The property fronts on two paved streets. The present driveway enters Main Street. The entrance to the new garage would be from Fourth Street.

Applicant should work with the County Public Works Department to develop a safe access (see Exhibit E). An automatic garage door may be required to avoid stopping in the right of way.

GOAL NO. 13 - Energy Conservation

- Complies Does Not Comply
- Complies with conditions
- Not applicable

Relevant Policies:

7203

State Goal Issues:

The reduced setback would not affect energy use or conservation.

GOAL NO. 14 - Urbanization

- Complies Does not Comply
- Complies with conditions
- Not applicable

Relevant Policies:

State Goal Issues:

The variance would not affect urban development.

Return: Commissioners Journal

EXHIBIT "AA", Page 7.

STATE OF OREGON: COUNTY OF KLAMATH:ss
 I hereby certify that the within instrument was received and filed for
 record on the 1st day of May A.D., 19 84 at 9:39 o'clock A M.
 and duly recorded in Vol M84, of _____, of _____ on page 7190.
 Deeds

Fee: \$ None

EVELYN BIEHN, COUNTY CLERK
 by: Pam Smith, Deputy