

08170

## KLAMATH COUNTY, OREGON

1 In the Matter of the Appeal)  
2 of Variance No. 22-83 for ) Findings of Fact and Order  
3 Ned and Juanita Putnam )  
4

5 INTRODUCTION:

6 Ned Putnam, on behalf of Sturdi-Craft Company, applied to  
7 Klamath County to reduce the required building setback from 75  
8 feet to one foot. Section 62.003(B) (1) (c) of the Klamath County  
9 Land Development Code requires a 75 foot front yard for a heavy  
10 industrial zone adjacent to residential or agricultural uses.  
11 The purpose of the variance was to allow for a 100 foot by 200  
12 foot addition to the Sturdi-Craft plant, a shelving and cabinet  
13 manufacturer. The addition was to be used for storage in con-  
14 junction with expansion of the manufacturing facilities elsewhere  
15 in the plant.

16 The Klamath County Assistant Hearings Officer reviewed this  
17 matter at hearings held on December 1 and December 20, 1983, and  
18 on March 1, 1984. Extensive testimony and exhibits were received  
19 on behalf of the applicant and on behalf of neighbors opposed to  
20 the variance.

21 After taking the matter under advisement, the Hearings  
22 Officer denied the variance in an order dated March 8, 1984.  
23 This decision was appealed by the applicant, and the appeal was  
24 heard by the Board of County Commissioners on April 16, 1984.  
25 Mr. Putnam and his attorney submitted eleven grounds for the  
26 appeal. Responses to the appeal were submitted by the opponents  
27 of the variance and by the Klamath County Public Works Director.  
28 In its review of the matter, the Board of Commissioners considered

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1 the appeal and responses, the transcripts of the three earlier  
2 hearings, and the exhibits previously submitted.

3 RESPONSE TO THE APPEAL:

4 1. Appellants appear to contend that the Hearings Officer  
5 accepted as fact the neighbors' belief that the proposed addition  
6 would create a fire hazard. The reference is to Finding of Fact  
7 16, on page 5 of the Hearings Officer's order. The Hearings  
8 Officer merely notes that "the opponents considered the addition  
9 as possibly increasing the fire danger in the area..." The  
10 Hearings Officer goes on to describe the fire safety measures  
11 taken by the applicant, namely installation of a sprinkler system  
12 and an enlarged water line to the property. The Hearings Officer  
13 did not conclude that a fire hazard would be created.

14 2. Appellants state that "the claim that the proposed  
15 building would cause snow to pile up in the street is supported  
16 by nothing but a guess" and go on to claim that reflected heat  
17 from the metal building would expedite the melting of the snow.

18 This point addresses Finding of Fact 13 (Order, page 4)  
19 and also a portion of Finding and Conclusion 3 (Order, page 10)  
20 where the Hearings Officer concludes that the proposed addition  
21 would cast a shadow on the street and increase the snow and ice  
22 hazard by slowing the melting of ice on Homedale Road.

23 The Hearings Officer's conclusion is based on neighbors'  
24 testimony regarding snow adjacent to the present buildings and on  
25 two letters submitted by the County Public Works Director. The  
26 Public Works Director's second letter expresses concern both with  
27 the shadow on the street and with snow melting and sliding off  
28 the roof. The letter goes on to give an example of an area on

1 Highway 140 where shade on the road caused icy conditions and  
2 numerous accidents. The Board of County Commissioners cannot  
3 dismiss the Public Works Director's opinion as "nothing but  
4 a guess."

5 There was nothing in the record to indicate that reflected  
6 heat from a metal building would speed the melting of snow. In  
7 fact, the building was always described as a block building, not  
8 a metal one.

9 3. Appellants claim that the opposition from Mr. and Mrs.  
10 Smith is the result of Mr. Putnam's refusal to pay the price  
11 they asked for their property. While the disagreement over the  
12 value of the Smith property is a matter of record, it is also  
13 a matter of record that the Smith home would be closest to the  
14 proposed addition. The Board does not feel free to go beyond the  
15 Smiths' stated objections to question their motives in opposing  
16 what they believe to be a detriment to their property.

17 4. Appellants disagree with the claim that the proposed  
18 building would obstruct the view from the Smith driveway and  
19 point out that existing vegetation on the Smith property already  
20 creates an obstruction. The Board agrees that the shrubbery on  
21 the Smith property obscures the view to the north, but this  
22 obstruction is neither as complete nor as permanent as the  
23 obstruction which would be created by a block building.

24 5. Appellants dispute the weight given by the Hearings  
25 Officer to the Smiths' claim that the proposed building would  
26 adversely affect their chimney by blocking a free flow of air to  
27 it. They point out that there is no statutory duty to provide  
28 wind flow and that prevailing winds in the Klamath Basin are

1 from the south.

2       The only discussion of the effect of the proposed building  
3 on the fireplace is found on page 25 of the December 20 transcript.  
4 Mrs. Smith describes trouble with the fireplace as "a possibility."  
5 The Hearings Officer, on page 11 of his order, uses similar  
6 language, saying it "may possibly interfere with the operation of  
7 the fireplace..." With little in the record to go by, the Board  
8 cannot assign much weight to the claims of either Mrs. Smith or  
9 Mr. Putnam.

10       6. The appellants deny that the proposed building would  
11 adversely affect livestock on the Smith property. This objection  
12 refers to the Hearings Officer's finding of fact No. 23 (page 7  
13 of the Order). This finding recites some of the objections  
14 to the variance raised by the neighbors. In his conclusions,  
15 where he lists the specific bases for his decision (pages 9-11  
16 of the Order), the Hearings Officer does not mention the possible  
17 effects on livestock. It appears that little, if any, weight  
18 was assigned to the concern about animals.

19       7. Appellants object to the conclusion that the proposed  
20 building would decrease property values. They point out that they  
21 submitted testimony, based on the County Assessor's records, of  
22 a continual rise in neighborhood property values during the past  
23 ten years while Sturdi-Craft was expanding (March 1 transcript,  
24 pages 11-12).

25       In his Findings (Order, page 7), the Hearings Officer notes  
26 that several neighbors estimated that the proposed building would  
27 reduce property values by fifteen to twenty percent. The Hearings  
28 Officer accepted this claim, citing it as one of the reasons for



1 concluding that the variance would adversely affect adjacent  
2 properties (Order, page 10). Neither side presented an expert  
3 witness, making it difficult to judge what property values would  
4 be with and without the new addition. Even if the effects on  
5 property values across the street or to the north and west of the  
6 Putnam property are discounted, the Board believes that a negative  
7 effect on the value of the Smith property (directly to the south)  
8 is unavoidable. The proposed variance would result in a solid  
9 masonry wall at least twenty feet high along nearly all of the  
10 Smiths' north boundary line. This would greatly curtail the view  
11 and openness of the Smith property, making it less attractive  
12 for continued residential use and depressing its sale price.

13 8. Appellants challenge the Hearings Officer's conclusion  
14 that the hardship necessitating the variance was self-created,  
15 contending that such a conclusion has no foundation in fact or in  
16 law. They submit that the denial of the variance creates the  
17 hardship. This challenge goes to the heart of the issue of  
18 variances in general. Having adopted zoning requirements, includ-  
19 ing building setbacks, Klamath County has also adopted the  
20 variance procedure to allow justifiable departures from the rules.  
21 Such departures are not to be made lightly, and Article 43 of the  
22 Klamath County Land Development Code provides specific limitations  
23 and review criteria for variances.

24 The first criterion for review is (Section 43.003A):

25 That a literal enforcement of this Code would  
26 result in practical difficulty or unnecessary  
27 hardship. The difficulty or hardship may arise  
28 from the property's size, shape or topography,  
from the location of lawfully existing buildings,  
and improvements, or from personal circumstances  
which would result in greater private expense  
than public benefit of strict enforcement.

1 The Hearings Officer found that Sturdi-Craft met this  
2 requirement (Order, page 9). It was also found, however, that  
3 the applicant did not meet the second criterion (Section (43.003B))  
4 which requires a finding:

5 That the condition causing the difficulty was  
6 not created by the applicant.

7 The Hearings Officer points out that Sturdi-Craft expanded  
8 its volume of business even as the neighborhood around it grew  
9 to be exclusively a residential one. Variances were needed on  
10 the north, west and south sides of the property to accommodate  
11 previous additions to the plant. These variances were granted  
12 by the County in 1975 and 1976. Restrictive building setbacks  
13 due to the surrounding residential uses and the lack of additional  
14 land for growth have been a fact of life for this business almost  
15 since its inception. The choice to expand at this location rather  
16 than seeking a larger industrial tract elsewhere carried with it  
17 the risk that full development of the land would not be possible.  
18 In this respect, applicant's hardship was self-created, and he  
19 does not meet the Code's second variance requirement.

20 9. Appellants take issue with the Hearings Officer's  
21 conclusion that the variance would be detrimental to the public  
22 health, safety and welfare and detrimental to the use and enjoy-  
23 ment of adjacent properties.

24 These points relate to the Code's third criterion (Section  
25 43.003C):

26 That the granting of the variance will not be  
27 detrimental to the public health, safety, and  
28 welfare or to the use and enjoyment of adjacent  
properties and will not be contrary to the intent  
of the Land Development Code.

1 The issue of snow and ice is covered under Number 2 above.  
2 The laying of a larger water line and the widening of Homedale Road  
3 are not relevant to the specific issue at hand, namely the appropri-  
4 ateness of a one-foot setback for an industrial building in a resi-  
5 dential neighborhood.

6 The age of the opponents, speculation regarding their opposi-  
7 tion to all change in the Klamath Basin, or the possibility that  
8 Sturdi-Craft employees would welcome the chance to purchase their  
9 homes are not part of the record on this matter and have no bear-  
10 ing on the variance.

11 10. Appellants challenge the Hearings Officer's conclusion  
12 that granting the variance would "cause other tracts of real  
13 property in that neighborhood to be converted to industrial use  
14 as well." (Appeal, page 5).

15 The Hearings Officer found that the proposed variance "would  
16 tend to create a more industrial type of atmosphere to the neigh-  
17 borhood which has over the past 30 years been increasing in  
18 residential character and decreasing in industrial, commercial  
19 character." (Order, page 11). The Hearings Officer's conclusion  
20 as to the overall effect of a 100 foot by 200 foot industrial  
21 building is based on consideration of the record in aggregate.  
22 The effects on residential property values, on the view from the  
23 Smith and other properties, and the development trends of the past  
24 30 years all support this conclusion.

25 11. Appellants object to the way the Hearings Officer applied  
26 the Statewide Planning Goals to the variance request. The Oregon  
27 Planning Goals apply to all land use decisions including this  
28 variance. The Hearings Officer used them as a framework for  
29 relating specific issues to the general concerns expressed in the



1 Goals (pages 11-15 of the Order). The Hearings Officer found that  
2 Goals 1, 9, 11, 13, and 14 were met, that Goals 3, 4, 5, 7, and 8  
3 did not apply, and that Goals 2, 6, 10, and 12 were not met.

4 Appellant is correct to point out that the Goals do not  
5 mention such things as light, distance between buildings, or  
6 machinery noise. It is erroneous to conclude, however, that these  
7 things are not related to Goal requirements in specific situations.

8 The Klamath County Land Development Code was adopted pursuant  
9 to Goal 2's requirement that the County "establish a land use  
10 planning process and policy framework as a basis for all decisions  
11 and actions related to use of land and to assure an adequate  
12 factual basis for such decisions and actions." Goal 2 further  
13 requires that the "plans shall be the basis for specific imple-  
14 mentation measures. These measures shall be consistent with and  
15 adequate to carry out the Plans."

16 In finding that the variance did not meet the requirements  
17 of the Code, the Hearings Officer was right to conclude that  
18 Goal 2 was not met.

19 Additional storm-water runoff, blockage of air flow, and  
20 higher noise levels are concerns under Goal 6. Nothing in the  
21 record suggests that the variance would result in conditions which  
22 would "threaten to violate, or violate applicable state or federal  
23 environmental quality statutes, rules and standards" (Goal 6).  
24 Approving the variance would not exempt the applicant from County,  
25 State and Federal environmental rules.

26 Other issues aside, compliance with Goal 6 could be achieved  
27 by the imposition of appropriate conditions on the variance.

28 Goal 10 requires the County to "provide for the housing



1 needs of citizens..."

2 Appellants are correct in pointing out that the Homedale  
3 Road area is all built up and that an increase in population is  
4 unlikely. The variance would not affect the need for or availa-  
5 bility of housing in the area. Responsibility under Goal 10  
6 must surely extend beyond merely designating areas needed and  
7 suitable for housing to preserving an appropriate residential  
8 atmosphere in areas already developed for such use. There is  
9 ample testimony in the record regarding adverse effects on  
10 property value and neighborhood amenity. The Board agrees that  
11 Goal 10 would be violated by this variance.

12 Lastly, Goal 12 seeks to "provide and encourage a safe,  
13 convenient and economic transportation system." The possible  
14 traffic safety hazards of the proposed building have already  
15 been covered under points 2 and 4, above. The Board finds that  
16 the variance would violate Goal 12.

17 CONCLUSIONS OF LAW AND DECISION:

18 Having reviewed the record on this matter, the Klamath County  
19 Board of Commissioners concludes as follows:

20 1. This request for a variance does not meet the applicable  
21 Klamath County Land Development Code criteria and policies.

22 2. This request for a variance does not comply with all of  
23 the applicable State-wide Planning Goals.

24 \* \* \* \* \*

25 \* \* \* \* \*

26 \* \* \* \* \*

27 \* \* \* \* \*

28 \* \* \* \* \*

1 THEREFORE, the decision of the Hearings Officer is hereby  
 2 upheld, and the requested variance is denied.

3 DONE AND DATED THIS 26th DAY OF June, 1984.  
 4

5 BOARD OF COUNTY COMMISSIONERS  
 6

7 Roger Hamilton  
 8 Roger Hamilton, Chairman

9 Carroll Zon Gerbert  
 10 Nell Kuonen, Commissioner

11 Carroll Zon Gerbert  
 12 Carroll Zon Gerbert, Commissioner

13  
 14  
 15 APPROVED AS TO FORM:  
 16 BOIVIN & BOIVIN

17 BY [Signature]

18  
 19  
 20 Return: Commissioners Journal  
 21  
 22

STATE OF OREGON: COUNTY OF KLAMATH:ss  
 I hereby certify that the within instrument was received and filed for  
 record on the 27th day of June A.D., 1984 at 11:45 o'clock A M,  
 and duly recorded in Vol M84, of Deeds on page 10745.

Fee: \$ None

EVELYN BIEHN, COUNTY CLERK

by: [Signature], Deputy