

## BEFORE THE HEARINGS OFFICER

## KLAMATH COUNTY, OREGON

In the Matter of Request for )  
 Variance 5-86 for Orvill and ) Klamath County Planning  
 Hilda Chapman ) Findings of Fact and Order  
 \_\_\_\_\_ )

A hearing was held on this matter on May 1, 1986, pursuant to notice given in conformity with Ordinance No. 45.2, Klamath County, before the Klamath County Hearings Officer, Bradford J. Aspell. The applicant was present. The Klamath County Planning Department was represented by Kim Lundahl. The Hearings Reporter was Janet Libercajt.

Evidence was presented on behalf of the Department and on behalf of the applicant. There were no adjacent property owners present.

The following exhibits were offered, received, and made a part of the record:

Klamath County Exhibit A, Staff Report

Klamath County Exhibit B, Plot Plan

Klamath County Exhibit C, Assessor's Map

Klamath County Exhibit D, Pictures

Klamath County Exhibit E, Letter from City of Klamath Falls

The hearing was then closed, and based upon the evidence submitted at the hearing, the Hearings Officer made the following Findings of Fact:

FINDINGS OF FACT:

1. Applicant is the owner of real property generally known as a Portion of Lot 1, Keilsmeier Acre Tract, NW $\frac{1}{4}$ , SE $\frac{1}{4}$ , Section 2,

1 Township 39 South, Range 9 East, Klamath County, Oregon. The  
2 street address of the property is 2415 Wiard Street, Klamath  
3 Falls, Oregon 97603. The property in question consists of a  
4 rectangular lot with dimensions of 72.5 feet by 162 feet, or  
5 .26 acres. It is generally located on the east side of Wiard  
6 Street, south of South 6th Street, as shown on Exhibit "C".

7 2. The real property is designated Residential in the  
8 Klamath County Comprehensive Land Use Plan and is zoned  
9 RS (Suburban Residential). The property has an older single  
10 family dwelling situate on it, with a present setback of 20½ feet,  
11 although the required setback in the RS zone pursuant to Land  
12 Development Code Section 51.005 and 62.003(A)(1) is 25 feet.  
13 Applicant seeks a Variance to construct an enclosed front porch  
14 eight feet deep to encroach in the required front yard setback,  
15 for a Variance of 13 feet, or for the front of the residence to  
16 encroach to within 12 feet of the front property line.  
17 Applicants are older persons and seek the Variance to build an  
18 enclosed front porch with a wheelchair ramp so that Orville  
19 Chapman, who is confined to a wheelchair, will be granted  
20 easier access to the dwelling and room for storage of physical  
21 therapy equipment.

22 3. The property in question is located in an area which  
23 is generally developed with residential single family dwellings,  
24 some of which do encroach within the required front yard setback.  
25 In addition to the property being rectangular, topography is  
26 generally level with no observed general drainage pattern. The  
27 vegetation is consistent with the residential development. In  
28 addition to the residential suburban zoning and uses to the east,

1 west, and south; the property to the north is generally  
2 designated as Commercial in the Klamath County Comprehensive Land  
3 Use Plan, and General Commercial in the Klamath County zoning  
4 Ordinance. No SCS soils data or timbersite productivity ratings  
5 are available. The property is located within the Klamath Falls  
6 Urban Growth Boundary.

7  
8 4. Public facilities and services include water supplied  
9 by the City of Klamath Falls, sewer by South Suburban Sanitary  
10 District, and electricity from Pacific Power & Light Company.  
11 The property is located within the attendance area of the Klamath  
12 Falls School District and fire protection is provided by Klamath  
13 County Fire District No. 1.

14 5. Applicable provisions of the Klamath County Land  
15 Development Code include Klamath County Comprehensive goals and  
16 guidelines; Land Development Code Section 51.005(D)(3), RS zone;  
17 Land Development Code Section 62.004(A)(2), side yard re-  
18 quirements; and Land Development Code Section 43.003, Variance  
19 Review Criteria.

20 6. The Hearings Officer finds of the relevant goals and  
21 guidelines of the Klamath County Comprehensive Plan as follows:  
22 Goal 1 (Citizen Involvement) has been met as notice has  
23 been given to adjacent property owners, affected public agencies,  
24 and published in the Herald and News. In addition, a hearing  
25 has been held before the Klamath County Hearings Officer and  
26 opportunity for public input and comment has been received.  
27 Goal 2 (Land Use Planning) has been met. As stated above,  
28 the application was consistent with the Klamath County Land  
Development Code described above.

1 The Hearings Officer finds that the following goals are not  
2 applicable to this application: Goal 3 (Agricultural Lands),  
3 Goal 4 (Forest Lands), Goal 5 (Open Spaces, Scenic, Historic &  
4 Natural Resources Areas), Goal 6 (Air, Water, and Land Resource  
5 Quality), Goal 7 (Natural Disasters and Hazards), Goal 8  
6 (Recreation Needs), and Goal 9 (Economy of the State), Goal 10  
7 (Housing), Goal 11 (Public Facilities and Services), Goal 12  
8 (Transportation), Goal 13 (Energy Conservation), and Goal 14  
9 (Urbanization).

10 8. The Hearings Officer finds that literal enforcement of  
11 this Code would result in practical difficulty or unnecessary  
12 hardship in that a strict enforcement of the setback requirements  
13 would result in greater private expense than public benefit of  
14 strict enforcement. The Hearings Officer finds that the  
15 applicant is confined to a wheelchair and requires physical  
16 therapy and that it is physically difficult for him to gain  
17 access and egress to his residence, especially during the winter  
18 months. The applicant intends to build an enclosed porch  
19 adjacent to the front of the house for storage of his physical  
20 therapy equipment, for access and egress and for a place to sit  
21 and relax.

22 9. The condition causing the difficulty was not created  
23 by the applicant. By this I find that the condition, the  
24 construction of the house, was not caused by the applicant.  
25 The house as it presently exists does not currently meet the  
26 property development standards of the zone in which it is located  
27 and that it encroaches approximately 4½ feet into the required  
28 front yard setback. The house, however, was constructed prior  
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1 to the effective date of this Ordinance. The additional  
2 Variance, while it would further encroach into the front yard,  
3 is necessitated due to the applicant's physical condition. The  
4 Hearings Officer finds that the Variance request would not have  
5 been made except for the applicant's physically infirm condition.

6 10. The Hearings Officer finds that the granting of the  
7 Variance will not be detrimental to the public health, safety,  
8 and welfare, nor to the use or enjoyment of adjacent properties.  
9 The Hearings Officer specifically notes from the testimony that  
10 adjacent property owners, Eda Holly and May Udovich, were  
11 contacted. These two neighbors would potentially have been the  
12 most seriously affected by this application. The Hearings  
13 Officer further finds that adjacent properties on the street do  
14 encroach into the required setback and hence the request is not  
15 out of character with the neighborhood. Finally, the Hearings  
16 Officer notes that while public notice was given and persons  
17 granted an opportunity to be heard, no adverse public input or  
18 comments were received.

19 Based upon the foregoing Findings of Fact, the Hearings  
20 Officer makes the following Conclusions of Law:

- 21 1. That a literal enforcement of this Code would result  
22 in practical difficulty or unnecessary hardship.
- 23 2. That the condition causing the difficulty was not  
24 created by the applicant.
- 25 3. That the granting of the Variance will not be  
26 detrimental to the public health, safety, and welfare or to  
27 the use and enjoyment of the adjacent properties and will not  
28 be contrary to the intent of the Land-Development Code.

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The Hearings Officer, based on the foregoing Findings of Fact and Conclusions of Law, accordingly orders as follows. That real property described as

"Being generally located at 2415 Wiard Street, and more particularly described as a Portion of Lot 1, Keilsmeier Acre Tracts, Klamath County, Oregon," is hereby granted a Variance in accordance with the terms of the Klamath County Zoning Ordinance No. 45.2, and, henceforth, will be allowed a 12 foot front yard setback in the RS (Suburban Residential) zone.

Entered at Klamath Falls, Oregon, this 12<sup>th</sup> Day of June, 1986.

KLAMATH COUNTY HEARINGS DIVISION

*Bradford J. Aspell*  
Bradford J. Aspell  
Hearings Officer

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of \_\_\_\_\_  
of \_\_\_\_\_ June \_\_\_\_\_ A.D., 19 86 at 4:23 o'clock P M., and duly recorded in Vol. M86  
of \_\_\_\_\_ Deeds on Page 10396

FEE NONE

Return: Commissioner's Journal

Evelyn Biehn, County Clerk  
By *[Signature]*

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