

1 In the Matter of Request for  
2 Variance 7-86 for Lucille E. Knight)

) Findings of Fact and Order

3 Hearings were held on May 15, 1986 and June 5, 1986, pursuant  
4 to notice given in conformity with Ordinance No. 45.2, Klamath  
5 County, before the Klamath County Hearings Officer, Brad Aspell.  
6 The applicant was present. The Klamath County Planning Department  
7 was represented by Kim Lundahl. The Hearings Reporter was Janet  
8 Libercajt. There was one adjacent property owner present.

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

11 Klamath County Exhibit A, Staff Report

12 Klamath County Exhibit B, Plot Plan

13 Klamath County Exhibit C, Assessor's Map

14 Klamath County Exhibit D, Site Photographs

15 The hearing was then closed, and based upon the evidence  
16 submitted at the hearing, the Hearings Officer made the following  
17 Conclusions of Law:

18 CONCLUSIONS OF LAW:

19 1. That a literal enforcement of this Code would result  
20 in practical difficulty or unnecessary hardship. The difficulty  
21 or hardship may arise from the property's size, shape or topo-  
22 graphy, from the location of lawfully existing buildings and  
23 improvements, or from personal circumstances which would result  
24 in greater private expense than public benefit of strict enforce-  
25 ment.

26 2. That the condition causing the difficulty was not created  
27 by the applicant.

28 3. That the granting of the Variance will not be detrimental

1 to the public health, safety, and welfare or to the use and enjoy-  
2 ment of adjacent properties and will not be contrary to the intent  
3 of this Code.

4 FINDINGS OF FACT:

5 This Variance has been approved with conditions based on  
6 the following Findings of Fact:

7 1. Applicant is the owner of Lot 1, Block 3, First Addition  
8 to Tonatee Homes, Klamath County, Oregon, situate in Section 11CC,  
9 Township, 39S, Range 9EWM, Klamath County, Oregon, bearing Tax  
10 Account No. 3909-11CC-100, with a street address of 4335 Memorie  
11 Lane, Klamath Falls, Oregon. The property is rectangular in shape,  
12 with dimensions of 78.9 feet by 120 feet, and is located in the  
13 South Suburban area.

14 2. The property is designated Residential (R) in the Klamath  
15 County Comprehensive Land Use Plan and carries a zone designation  
16 of RS (Suburban Residential). The location of the property is  
17 shown on Exhibit "E", and photos of the residence together with  
18 the surrounding area are shown on Exhibit "D". The neighborhood  
19 consists of medium age modest single-family residences. The prop-  
20 erty is generally surrounded by similar homes of similar setbacks  
21 and size.

22 3. Topography of the property is generally level with drainage  
23 from north to south. Vegetation on the subject property is gener-  
24 ally consistent with the residential urban style landscapes. Access  
25 is gained by Memorie Lane, a County road constructed to County  
26 road standards.

27 4. The property in question is within the Klamath Falls  
28 Urban Growth Boundary and is located in a generally developed

1 suburban residential area. Public facilities and services include  
2 water supplied by the City of Klamath Falls, sewer by South Subur-  
3 ban Sanitary District, and electricity by Pacific Power and Light  
4 Company. The property is located within the attendance area of  
5 the Mazama School District and is in Klamath County Fire District  
6 No. 1. No SCS soils classification nor timber site productivity  
7 rating is applicable to this property.

8       5. Applicant seeks a variance from five feet to zero feet  
9 along the easterly boundary of the property to maintain a two-car  
10 carport which the applicant built in advance of applying for a  
11 Variance. On December 19, 1985, the applicant was granted a  
12 Variance in case 23-85, to the front yard setback requirements  
13 to allow a zero foot front yard setback for the carport. Previ-  
14 ously, it had encroached into the highway right of way. Staff  
15 investigation following the December approval reports that the  
16 carport now meets the Land Development Code requirements for the  
17 front yard setback with the approval of that Variance. The car-  
18 port is not in compliance as to the east, however. The Hearings  
19 Officer specifically finds to the east, however. The Hearings  
20 Officer further finds that the carport was built without appropriate  
21 inquiry into land use building codes which she would have learned  
22 had the applicant properly applied for a building permit and pre-  
23 sented the site plan.

24       6. Applicable provisions of the Klamath County Land Develop-  
25 ment Code include LDC Section 51.005(D)(3) RS zone; LDC Section  
26 62.004(A)(2), sideyard requirements; LDC Section 43.003, variance  
27 review criteria; and the applicable policies and procedures of  
28 the Klamath county Comprehensive Plan.

1 7. As to the Comprehensive Plan goals, the Hearings Officer  
2 finds as follows:

3 Goal 1 (Citizen Involvement) has been met as notice has been  
4 given to adjacent property owners, interested public agencies,  
5 and has been published in the Herald and News. The Hearings  
6 Officer specifically finds that the next door neighbor is speci-  
7 fically affected by this application and has opposed it.

8 Goal 2 (Land Use Planning) has been met. Public hearing  
9 has been held, the application is consistent with policies and  
10 procedures of the Klamath County Land Development Code described  
11 above.

12 Goal 3 (Agricultural Lands); Goal 4 (Forest Lands); Goal 5  
13 (Open Spaces, Scenic, Historic & Natural Resources Areas); Goal 6  
14 (Air, Water, and Land Resources Quality); Goal 7 (Natural Disasters  
15 and Hazards); Goal 8 (Recreation Needs); and Goal 9 (Economy of  
16 the State), Goal 10 (Housing); Goal 11 (Public Facilities and  
17 Services); Goal 12 (Transportation); Goal 13 (Energy Conservation);  
18 and Goal 14 (Urbanization) do not directly apply nor affect this  
19 application.

20 8. Review Criteria Section 43.003(A) requires that a finding  
21 that a literal enforcement of this Code would result in practical  
22 difficulty or unnecessary hardship, through one of the following  
23 conditions. The property size, shape, topography, the location  
24 of lawful existing buildings or improvements or from personal  
25 circumstances which would result in greater private expense and  
26 public benefit of strict enforcement. The Hearings Officer speci-  
27 fically finds that the properties as platted and developed on  
28 Memorie Lane, most predating the effective date of this Code

1 establish limited front yards and side yards and the placement  
2 of the homes grant little room for expansion and no location to  
3 build a carport or two-car garage other than in front of existing  
4 residence. Review Criteria Section 43.003(A) has been met.

5 9. Section 43.003(B) requires the finding that the condition  
6 causing the difficulty was not created by the applicant. The  
7 Hearings Officer finds that the platting of the house and construc-  
8 tion of the residence was not performed by the resident, although  
9 construction of the carport was done by the resident. All things  
10 considered, however, the condition causing the difficulty, it  
11 being the alignment of the residence and the size and setbacks  
12 chosen by the developer were not caused by the applicant.  
13 Section 43.003(B) Review Criteria has been met.

14 10. The Code further requires the finding that the granting  
15 of the Variance will not be detrimental to the public health,  
16 safety and welfare, or to the use or enjoyment of adjacent prop-  
17 erties. The Hearings Officer cannot make this finding without  
18 the attachment of conditions. The Hearings Officer specifically  
19 finds that the applicant's property and that property to the east  
20 share, if not a common driveway, driveways which are paved to  
21 the property line. The adjacent property owner objects to the  
22 carport, the visual screening created, and its location in that  
23 their privilege to park their automobile immediately up to the  
24 property line is restricted due to the posts and fencing. Such  
25 use does adversely affect the adjoining property. On the other  
26 hand, the applicant correctly points out that she has a right  
27 to fence her property at the property line pursuant to provisions  
28 of the Land Development Code Article 64. If applicant builds

1 a "spite" fence, the adjacent property owner will, because of  
2 the limited setback between their residence and the property line,  
3 be unable to move their pickup truck into the back of their prop-  
4 erty so as to load and unload materials. In short, a literal  
5 enforcement of the ordinance would adversely affect the applicant,  
6 and denial would adversely affect the adjacent property owners.  
7 Therefore, it is deemed appropriate to grant the request for  
8 Variance with the following conditions:

9 CONDITIONS:

- 10 A. Applicant's request for Variance is conditionally  
11 approved from five feet to two and one half feet. Appli-  
12 cant's request to a zero-foot variance is denied.
- 13 B. No abatement shall be ordered, nor shall applicant  
14 be required to remove those encroaching portions of the  
15 carport so long as the following occurs: 1) applicant  
16 shall not have fenced or established physical barriers  
17 along the side yard nor taken steps to restrict adjacent  
18 property owners reasonable access thereto through placement  
19 of physical, legal or other barriers; and 2) during the  
20 net effective use life of the carport.
- 21 C. That upon violation of the conditions above, applicant  
22 or applicant's predecessor shall thereafter be required  
23 to abate the encroachment and reconstruct the carport.
- 24 11. Subject to the above conditions, granting of the Variance  
25 will not be detrimental to the public health, safety and welfare  
26 or to the use and enjoyment of adjacent properties. The Hearings  
27 Officer specifically finds that a two and one half foot variance  
28 appears to be more closely aligned with historical use and trends

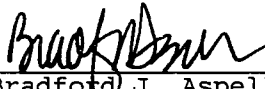
10637

1 in the area and consistent with the uses of the adjacent property  
2 and, therefore, will not be contrary to the intent of this Code.  
3 Section 43.003 Review Criteria has been met.

4 The Hearings Officer, based on the foregoing Findings of  
5 Fact, accordingly orders that the property described herein is  
6 hereby conditionally granted a Variance in accordance with the  
7 terms of the Klamath County Zoning Ordinance No. 45.2, and, hence-  
8 forth, will be allowed a reduction in front-yard setback from  
9 25 feet to two and one half feet in the RS (Suburban Residential)  
10 zone.

11 Entered at Klamath Falls, Oregon, this 18<sup>th</sup> day of June,  
12 1986.

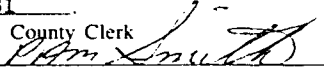
14 KLAMATH COUNTY HEARINGS DIVISION

15   
16 Bradford J. Aspell, Hearings Officer

STATE OF OREGON: COUNTY OF KLAMATH ss.

Filed for record at request of \_\_\_\_\_ the 19<sup>th</sup> day  
of June A.D. 19 86 at 11:14 o'clock A M., and duly recorded in Vol. M86  
of \_\_\_\_\_ Deeds \_\_\_\_\_ on Page 10631

FEE NONE

Evelyn Biehn, \_\_\_\_\_ County Clerk  
By 

Return: Commissioners' Journal

28

Variance 23-85  
Page 7