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BEFORE THE HEARINGS OFFICER

Vol. MS Page 14376

KLAMATH COUNTY, OREGON

In the Matter of Request for )  
Variance 8-86 for Carson S. ) Klamath County Planning  
Kendall ) Findings of Fact and Order

A hearing was held on this matter on June 5, 1986 and continued to July 3, 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 represented by Erwin C. McNeilly. The Klamath County Planning Department was represented by J. 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, Letter from City of Klamath Falls  
Klamath County Exhibit E, Letter from County Public Works  
Klamath County Exhibit F, Photos

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:

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2 1. Applicant is the owner of property generally known as a  
3 portion of the SW 1/4, NW 1/4 of Section 11, Township 39 South,  
4 Range 9 East Willamette Meridian, Klamath County, Oregon, bearing  
5 tax account number 3909-11BC-1600, with a street address of 3503  
6 Summers Lane, Klamath Falls, Oregon, 97603. The property is  
7 trapezoidal in shape at the corner of Summers Lane and Denver  
8 Avenue, with 107.5 frontage feet along Summers Lane and 149 feet  
9 along Denver Avenue.

10 2. The property is designated Residential (R) in the Klamath  
11 County comprehensive land use plan and carries a zone designation  
12 of suburban residential (RS). The property is located within the  
13 Klamath Falls urban growth boundary. Exhibit "F" further reveals  
14 that the property in question consists of an older single family  
15 residence constructed thereon. The hearings officer has toured  
16 the site and notes the neighborhood to consist of generally newer  
17 homes and double wide mobile homes, especially to the east on  
18 Denver Avenue. The real property abutts at the rear the USBR 1C9A  
19 drain.

20 3. Topography of the property is generally level with  
21 drainage to adjacent streets. Vegetation on the subject property  
22 is generally consistent with the residential dwellings, except  
23 that there are some large trees towards the rear of the property,  
24 the area being considered for this variance. Access is gained  
25 from both Summers Lane and Denver Avenue, with the applicant's  
26 driveway being off of Denver Avenue, a secondary residential  
street.

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3 4. The property is located in a generally developed suburban  
4 residential area. Public facilities and services include water  
5 supplied by the City of Klamath Falls, sewer by South Suburban  
6 Sewer District, and electricity by Pacific Power & Light Company.  
7 The property is located within the attendance area of the Klamath  
8 Falls School District and fire protection is provided by Klamath  
9 County Fire District No. 1. No SCS soils classification or  
10 timbersite productivity ratings are available to this property.

11 5. Applicant seeks a sideyard Variance from 15 feet to 0  
12 feet under Klamath County Land Development Code Section  
13 62.004(b)(1). Applicant seeks to build a 30 foot by 40 foot shop  
14 building as shown in Exhibit "B". The hearings officer finds that  
15 the applicant wishes to build the shop building for personal  
16 working use, not for home occupation nor commercial enterprise.  
17 Inquiry at hearing confirms that the applicant wishes the variance  
18 so as not to be required to remove 3 large trees on the subject  
19 site.

20 6. Applicable provisions of the Klamath County Land  
21 Development Code include LDC Section 51.005(D)(3) RS zone; LDC  
22 Section 62.004(B)(1), sideyard requirements on corner lots; and  
23 LDC Section 43.003, variance review criteria; and the applicable  
24 policies and procedures of the Klamath County Comprehensive Plan.  
25 7. As to the Comprehensive Plan goals the hearings officer  
26 finds as follows:

Goal 1 (Citizen Involvement) has been met as notice has been  
given to adjacent property owners, interested public agencies, by

mailing of notice and by publication in the Herald & News, and a public hearing has been called. The hearings officer specifically finds that no person has appeared in favor of or in opposition to this application, except the City of Klamath Falls and Klamath County Public Works Department.

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

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

8. The hearings officer finds that literal enforcement of this code would result in practical difficulty or unnecessary hardship. While the applicant could locate the shop building fully within the premises without the requirement of a variance, the hearings officer finds from the site visit that the side of his home and the setbacks along Denver Street to the east do not comply with the 15 foot sideyard setback and start enforcement would seem unwarranted.

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3 9. Nevertheless the hearings officer finds that some setback  
4 must be required and finds the letter of Earl E. Kessler, Klamath  
5 County Director of Public Works convincing (Ex "E"). The hearings  
6 officer therefore concludes that it is appropriate to maintain the  
7 existing sideyard variances, although they may not be to the full  
8 15 yard setback. In this regard the hearings officer grants  
9 applicant a 10 foot setback or such additional setback as  
10 currently exists between the dinette area of the house and the  
11 property line adjoining Denver Avenue but in no event less than 5  
12 feet, provided however that applicant shall as a condition hereto  
13 verify the property line along Denver Avenue, establish the  
14 existing setback therefrom, and provide to the Planning Director  
15 within 30 days of the date of this Order such distance which shall  
16 be confirmed by the Planning Director.

17 10. In the event no such written confirmation occurs within  
18 such period of time, the variance granted herein shall be a  
19 variance from 15 foot to 10 foot and no more. Based upon the  
20 foregoing the location selected by applicant is consistent within  
21 the layout of the subject property, and properly adjoins the house  
22 and would not create a hazard to traffic on Denver Avenue or on  
23 Summers Lane and will be properly related to the location of  
24 lawful existing buildings and improvements on the subject  
25 property. Review Criteria Section 43.003(A) has been met.

26 11. It is apparent from the appearance from the house and  
its location at the corner of Summers Lane and Denver Avenue, that  
the home was built substantially before the effective date of the

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1 Klamath County Land Development Code in 1971 and that other  
2 existing buildings on Denver Avenue assume to be lawfully located  
3 encroach within the required 15 foot sideyard set back.  
4 Therefore, the condition causing the difficulty being the existing  
5 setback of lawful existing dwellings was not created by the  
6 applicant. Section 43.003(B) Review Criteria has been met.

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9 12. Based upon a lack of public input all other persons save  
10 and except the City of Klamath Falls, as to concerns over  
11 encroachment of U.S. Bureau of Reclamation 1C9A drain and the  
12 input from Mr. Earl Kessler, Klamath County Director of Public  
13 Works, the hearings officer concludes that the granting of the  
14 variance will not be detrimental to the public health, safety and  
15 welfare, nor to the use or enjoyment of adjacent properties.  
16 Provided however that the conditions stated herein are met.  
17 Section 43.003(c) Review Criteria has been met.

18 Based upon the foregoing findings of fact the hearings  
19 officer makes the following Conclusions of Law.  
20 CONCLUSIONS OF LAW

21 1. That a literal enforcement of this code would result in  
22 practical difficulty or unnecessary hardship in that the location  
23 of lawfully buildings and improvements and personal circumstances  
24 would result in greater private expense and public benefit from  
25 strict enforcement.

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

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3 3. The granting of the variance will not be detrimental to  
4 the public health, safety, and welfare or to the use and enjoyment  
5 of adjacent properties and will not be contrary to the intent of  
6 this Code subject to the following conditions attached by the  
7 hearings officer pursuant to LDC Section 43.004(f).

8 A. That the variance shall be the lesser of 10 feet or the  
9 distance between the lawful existing dwelling and Denver Avenue as  
10 presently exists, but not less than 5 feet.

11 B. That for applicant to qualify for the lesser variance  
12 that applicant shall within 30 days from the date of this order  
13 provide to the Klamath County Planning Director in proper form, as  
14 determined by him proof of the setback from the existing dwelling  
15 from Denver Avenue, upon written confirmation as appended to this  
16 order as to the existing setback, which setback in no ways shall  
17 be less than 5 feet.

18 Therefore the hearings officer based upon the foregoing  
19 findings of fact and conclusions of law accordingly orders as  
20 follows:

21 That the real property described as:  
22 "being a portion of the SW 1/4, NW 1/4 of Section 11,  
23 Township 39 South, Range 9 East Willamette Meridian, Klamath  
24 County, Oregon.

25 as designated residential by the Klamath County Comprehensive  
26 plan and suburban residential by the Klamath County Zoning  
Ordinance is hereby granted an variance described above subject to  
the terms and conditions contained therein.

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Entered Klamath Falls, Oregon this 14th day of August, 1986.

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KLAMATH COUNTY HEARINGS OFFICER  
Bradford J. Aspell  
BRADFORD J. ASPELL

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STATE OF OREGON: COUNTY OF KLAMATH: ss.  
Filed for record at request of \_\_\_\_\_  
of \_\_\_\_\_ August \_\_\_\_\_ A.D., 19 86 at 4:26 o'clock P M., and duly recorded in Vol. M86 day  
of \_\_\_\_\_ Deeds \_\_\_\_\_ on Page 14376  
FEE NONE  
Return: Commissioners' Journal  
By Evelyn Biehn, County Clerk  
[Signature]