

BEFORE THE HEARINGS OFFICER

KLAMATH COUNTY, OREGON

In the Matter of Request for )  
Variance 13--86 for Alice Galloway ) Klamath County Planning  
Findings of Fact and Order

A hearing was held on this matter on July 17, 1986, pursuant to notice given in conformity with Ordinance No. 45.2, Klamath County, before the Klamath County Hearings Officer, Brad 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

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

Findings of Fact:

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1. Applicant is the owner of property generally known as a portion of Lot 18 and all of Lot 19, Block 4, Riverview, Klamath County, Oregon, bearing tax account number 3909-5CD-3500, with a street address of 2203 Grape Street, Klamath Falls, Oregon, 97601. The property is rectangular in shape with frontage of 75 feet on Grape Street and a depth of 120 feet, as shown on Klamath County Exhibit "C". The property is designated urban residential (RU) in the Klamath County Comprehensive Land Use plan and carries a zone designation of low density residential (RL). The property is located within the Klamath Falls Urban Growth boundary. The property is improved with a mobile home, porch, storage building and metal storage garage. The property is generally level with drainage to the east. Landscaping consists of lawn and other shrubbery consistent with residential use. Access to the property is gained from Grape Street, a gravelled county road, which intersects with Dover Avenue to the east and terminates at U.S. Highway 97 generally to the northwest. The property surrounding applicant's home includes an inground home to the east, mobile home to the west, with property directly across the street generally vacant. Public facilities and services include water supplied by the City of Klamath Falls and sewer by individual subsurface septic systems. The property is located within the attendance area of Klamath County School Districts and is served with fire protection by Klamath County Fire District No. 1. No SCS soils classification nor timbersite productivity ratings are available.

2. Applicant seeks a variance from the requirements of Land Development Code Section 64.002(B), to permit her to maintain a four foot front yard fence, or a variance of one foot from the required 3 foot height.

3. Applicable provisions of the Klamath County Land Development Code include LDC Section 51.006, fence height requirements; and LDC Section 43.003, variance review criteria; and the applicable policies and procedures of the Klamath County Comprehensive plan. As to the Comprehensive plan goals, the hearings officer 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 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 the application although the adjoining property owner voiced objection by telephone with the staff of the Klamath County Planning Department, but although given notice failed to appear.

Goal 2 (Land Use Planning), has been met, public hearing has been held and application is consistent with the 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 and Natural Resource Areas); Goal 6, (Air, Water and Land Resource Quality); Goal 7 (Natural Disaster and Hazard Area); Goal 8 (Recreation Needs); 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.

4. The hearings officer finds that a literal enforcement of this code would result in practical difficulty and unnecessary hardship. The property is located in a marginally developed residential area, which little vehicle nor pedestrian traffic results. A barrow pit is located in the front of the property such that the fence in question begins at a point which is below the grade of both the lot and the street, hence elevation above main grade is less than four feet. Additionally the hearings officer finds from conversations with staff that the setback from the fence and given the width and visibility on Grape Street does not result in danger to adjacent property owners and driving from or backing from their driveway onto Grape Street, nor does the erection of a four foot high fence unduly block visibility to pedestrians. Finally, while it is clear that the applicant erected the fence in ignorance of a law, and that is no excuse, the requirement that applicant's remove a foot from the fence seems an unwarranted greater private expense than public benefit of strict enforcement. LDC Section 43.003(A) has been met.

5. The condition causing difficulty was not created by the applicant. It is hard to determine what condition caused the difficulty. To the extent that the property dips into a barrow pit and the grade of the road is somewhat high, this condition was

not caused by the applicant, the erection of the fence certainly  
1 was. Nevertheless the hearings officer finds Review Criteria  
2 Section 43.003(B) has been met.

3 6. The hearings officer finds that granting the variance  
4 will not be detrimental to the public health, safety or welfare  
5 nor to the use or enjoyment of adjacent properties. First the  
6 property in the area is in large part undeveloped, the hearings  
7 officer finds that the fence as erected is not an eyesore nor does  
8 it substantially minimize reasonable expectation as to visibility.  
9 As set forth above the hearings officer finds, from the testimony  
10 of Kim Lundahl that visibility in ingress or egress from the  
11 adjoining neighbor's driveway is not substantially impaired by the  
12 height of the fence and that pedestrians would not be placed in  
13 peril because of the height of the fence. While adjacent property  
14 owner complained orally to the Planning Department, no official  
15 record thereof exists and hence the hearings officer concludes  
16 that Review Criteria Section 43.003(C) has been met. However, the  
17 hearings officer further finds that as the property is developed  
18 and as time goes by that the fence may fall out of compliance.  
19 For this reason the hearings officer specifically finds that the  
20 application herein is granted for a period of time and that upon  
21 destruction or the need for major repair of the fence or upon the  
22 applicant or subsequent purchaser therefrom moving the existing  
23 mobile home from the subject property that the fence height shall  
24 be reduced to the height set forth in the ordinance.  
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Based upon the foregoing findings of fact the hearings officer makes the following Conclusions of Law.

CONCLUSIONS OF LAW

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

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

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

A. That as the property is developed and as time goes by that the fence may fall out of compliance. For this reason the hearings officer specifically finds that the application herein is granted for a period of time and that upon destruction or the need for major repair of the fence or upon the applicant or subsequent purchaser therefrom moving the existing mobile home from the subject property that the fence height shall be reduced to the height set forth in the ordinance.

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

14909

That the real property described as:

"Lot 18 and all of Lot 19, Block 4, Riverview, Klamath County, Oregon."

as designated residential by the Klamath County Comprehensive 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.

Entered Klamath Falls, Oregon this 19 day of August, 1986.

KLAMATH COUNTY HEARINGS OFFICER

Bradford J. Aspell  
BRADFORD J. ASPELL

VARIANCE 13-86/GALLOWAY  
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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of \_\_\_\_\_  
of \_\_\_\_\_ August \_\_\_\_\_ A.D., 19 86 at 9:10 o'clock A M., and duly recorded in Vol. \_\_\_\_\_ M86  
on Page 14903  
Return: Commissioners' Journal  
By Evelyn Biehn, County Clerk

FEE

NONE