

66938

BEFORE THE HEARINGS OFFICER

KLAMATH COUNTY, OREGON

In the Matter of Request for)
Variance 14-86 for Wayne Stone) Klamath County Planning
Findings of Fact and Order

A hearing was held on this matter on August 7, 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 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, Receipts from Health Department

Klamath County Exhibit E, Pictures

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 1. Applicant is the owner of property known as Lot 1, Tract
2 A, Harriman Park Subdivision, Klamath County, Oregon, located in
3 Section 3, Township 36 South, Range 6 East Willamette Meridian,
4 bearing tax account number 3606-3AB-3400, which property is more
5 particularly shown in Klamath County Exhibit "B" (Plot Plan) and
6 Klamath County Exhibit "C" (Assessor's Map). The property is
7 parallelogram in shape with the frontage of 200 feet on Rocky
8 Point Road to the north and with a depth of 110 feet. The
9 property comprises .50 acres.

10 2. The property is designated rural in the Klamath County
11 Comprehensive Land Use Plan and carries a zone designation of R-5
12 (Rural Residential 5 acres). The property is located within the
13 recreation residence area near Rocky Point at the intersection of
14 Rocky Point Road and Arrowhead Lane in Harriman Park. The area is
15 generally moderately developed with homesites and cabins.

16 3. Topography of the property is generally level, however
17 the property to the south is generally a marshy bog as it lies on
18 the shore of Klamath Lake. Vegetation on the subject property
19 consists of scattered large trees and vegetation consistent with
20 marshy soils. Access to the real property is gained from Rocky
21 Point Road, an improved road with asphalt surfaces. The property
22 has a SCS soils classification of Class VII and a timbersite
23 productivity rating of V, with Pelican Bay being to the south and
24 east. Water is provided on site by an existing domestic well with
25 sewer by individual subsurface septic systems. The property lies
26 within the service area of Harriman Rural Fire Protection District

and the attendance area of Henley School District. Electricity is provided by Pacific Power & Light Company, telephone service by United Telephone Northwest. Sewage disposal is by individual septic systems with an elevated sand filtration system due to high water table.

4. Applicant seeks a variance from LDC Section 62.005(a)(1) which requires a 25 rear property line setback, to allow construction of a cabin within 10 feet of the rear property line.

5. Applicant seeks this Variance so as not to have to cut down existing trees on the property and to allow for more usable area between the subsurface septic system, backup drain field and the cabin for parking and added construction at a later time. Applicant testifies that by locating the cabin within 10 feet of the rear property line will not encroach upon adjoining properties right to build on their property because of the extremely marshy nature of their land abutting Pelican Bay.

6. Applicable provisions of the Klamath County Land Development Code include LDC Section 51.003(D)(4), R-5 zone; LDC Section 62.005(a)(1), rear yard setbacks; and LDC Section 43.003, variance review criteria; and the applicable policies and procedures of the Klamath County Comprehensive Plan.

7. As to the Klamath County Comprehensive Plan goals and guidelines, 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 mail, by publication in the Herald & News, and a public hearing

1 has been called for testimony. The hearings officer specifically
2 finds that no person has appeared in opposition to this
3 application.

4 Goal 2 (Land Use Planning) has been met. This hearing is to
5 implement the Klamath County Land Development Code under the
6 Sections set forth above.

7 In processing this application for this variance the
8 following goals are found to be inapplicable:

9 Goal 3 (Agricultural Lands); Goal 4 (Forest Lands); Goal 5
10 (Open Spaces, Scenic, Historic & Natural Resources Areas); Goal 6
11 (Air, Water and Land Resource Quality); Goal 7 (Natural Disasters
12 and Hazards); Goal 8 (Recreation Needs); Goal 9 (Economy of the
13 State), Goal 10 (Housing); Goal 11 (Public Facilities and
14 Services); Goal 12 (Transportation); Goal 13 (Energy
15 Conservation); and Goal 14 (Urbanization).

16 8. A. The hearings officer finds that literal enforcement
17 of this code would result in practical difficulty and unnecessary
18 hardship to the applicant. The property to the south immediately
19 adjacent to applicant's property is generally unbuildable due to
20 high water table, occasional flooding and the close proximity to
21 Pelican Bay. The proposed location of applicant's home is not
22 located within a flood area. Location in this area would however
23 increase the area available for the required expansion of the DEQ
24 subsurface sanitation system, minimize the necessity for cutting
25 trees, would increase the secluded forest atmosphere, would not
26

adversely affect the appropriate use and enjoyment of adjacent properties. LDC Section 43.003(a) has been met.

B. The condition causing the difficulty was not created by applicant. The difficulty faced by the applicant is a combination of existing trees, high water table, DEQ requirements and the dimensions of the lot. None of these difficulties were created by the applicant. Variance Review Criteria LDC Section 43.003(b) has been met.

C. The granting of the variance will not be detrimental to the public health, safety and welfare nor to the use and enjoyment of adjacent properties, nor contrary to the intent of this code. As stated above the development in question is of a rural residential nature locating the building are fully within the trees and removed from the roadway would not have any adverse affect upon abutting use of adjacent properties. LDC Section 43.003(c) has been met.

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.

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

That the real property described as:

"Lot 1, Tract A, Harriman Park Subdivision, Klamath County, Oregon, located in Section 3, Township 36 South, Range 6 East Willamette Meridian.

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 7th day of

October, 1986.

KLAMATH COUNTY HEARINGS OFFICER

Bradford J. Aspell
BRADFORD J. ASPELL

VARIANCE 14-86/STONE
PAGE 6

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____ the 9th day
of October A.D., 19 86 at 11:54 o'clock A M., and duly recorded in Vol. M86,
of _____ Deeds on Page 18473.

Evelyn Biehn, County Clerk
By Sam Smith

FEE NONE

Return: Commissioners' Journal