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BEFORE THE HEARINGS OFFICER

Vol. 1887 Page 1782

KLAMATH COUNTY, OREGON

In the Matter of Violation 52-86)
and in the Matter of Request for)
Variance 16-86 for Mark L. Holst)

Klamath County Planning
FINDINGS OF FACT & ORDER

A hearing was called for a variance request on the 6th day of November, 1986, pursuant to notice given in conformity with Ordinance No. 45.2, Klamath County. It was determined at that time that the variance request was made, following the initiation of a homeowner complaint, and that there was presently a violation pending which had not been called on for hearing prior to, or in conjunction with this request. The applicant was present with Klamath County Planning Department being represented by Carl Shuck. The Hearings Reporter was Janet Libercajt. On motion of the hearings officer, the hearing of November 6, 1986, was continued to January 8, 1987, when it was to be consolidated with the variance request and the planning staff was directed to provide new notice to all persons. The hearings was regularly called January 8, 1987.

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

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- 1 Klamath County Exhibit C, Assessor's Map
- 2 Klamath County Exhibit D, Pictures
- 3 Klamath County Exhibit E, Letter to Mr. Holst (10-1-86)
- 4 Klamath County Exhibit F, Letter to Mr. Holst (9-16-86)
- 5 Klamath County Exhibit G, Letter to Mr. Hotchkiss (9-23-86)
- 6 Klamath County Exhibit H, Letter to Mr. Holst (8-5-86)
- 7 Klamath County Exhibit I, Initial Contact Letter (8-1-86)
- 8 Klamath County Exhibit J, Complaint Form
- 9 Klamath County Exhibit K, Letter from McKinney (9-1-86)
- 10 Klamath County Exhibit L, Letter from Hotchkiss
- 11 Klamath County Exhibit M, Photos
- 12 Klamath County Exhibit N, Mr. Holst's Sketch
- 13 Klamath County Exhibit O, Warning No. 1
- 14 Klamath County Exhibit P, Warning No. 2
- 15 Klamath County Exhibit Q, Citation

16 The hearing was then closed, and based upon the evidence
17 submitted at the hearing, the hearings officer made the following
18 Findings of Fact;

19 FINDINGS OF FACT

- 20 1. Applicant is the owner of property generally known as
21 2629 Kane Street, Klamath Falls, Oregon, situate in Section 2DC
22 Township 39 South, Range 9 East Willamette Meridian, bearing tax
23 account number 3909-2DC-2500. The property is located on the east
24 side of Kane Street, is rectangular in shape with dimensions of
25 approximately 66 feet fronting Kane Street by 154 deep, or 10,164
26 square feet.

1 2. The property is designated Residential (R) by the Klamath
2 County Comprehensive Land Use Plan and carries a zone designation
3 of suburban residential (RS). The property is located within the
4 Klamath Falls urban growth boundary. Klamath County Exhibit C,
5 generally shows Kane Street revealing that the properties fronting
6 Kane are of generally irregular shape and configuration ranging
7 from a frontage width of 50 feet to as much as 133 feet in the
8 immediate vicinity. Klamath County Exhibit D, photos, show the
9 home adjoining the properties, the property line and the offending
10 structure.

11 3. Topography of the property is generally level with run
12 off into existing drains. Vegetation on the property includes
13 existing shrubs, trees and lawn consistent with suburban
14 residential living. Access to the property is off of Kane
15 Street, a paved County road improved to County road standards.

16 4. The property is located in a generally developed suburban
17 residential area with numerous homes surrounding it. Public
18 facilities and services include: water supplied by the City of
19 Klamath Falls; sewer by South Suburban Sanitary District; and
20 electricity by Pacific Power & Light Company. The property is
21 located within the attendance area of the Klamath County School
22 District No. 1 and fire protection is provided by Klamath County
23 Fire District No. 1. No SCS soils classification nor timbersite
24 productivity ratings are available for this property.

25 5. Applicant has submitted the plot plan (Exhibit B) which
26 shows, along the northerly property line that a driveway and

1 carport have been built adjacent to the property line. The
2 violation in question and application for a variance arose out of
3 the applicant's building of a "lean-to" onto his wood shed, which
4 eaves he extended directly to the fence line and indeed used the
5 fence for support. Indeed, prior to this hearing, applicant had
6 constructed the eaves over the adjoining neighbor's property, but
7 has since sawn them off. The adjacent property is owned by Mr.
8 and Mrs. R. Hotchkiss. Prior to the filing of this violation and
9 of the application for variance, it was determined that the
10 carport adjacent to the house which extends to the property line
11 was built in 1970, before the advent of land use planning and
12 hence is grandfathered. The existing wood shed was built some
13 time later, however the roof extension was added recently. The
14 offending portion runs parallel to the Hotchkiss' garage which is
15 set back approximately 5 to 7 feet from the property line. The
16 Hotchkiss residence is further to the north of and somewhat in
17 front of the garage. Applicant is appearing and has denied
18 existence of a violation and further seeks a sideyard variance
19 from 5 feet to 0 feet under Klamath County Land Development Code.
20 6. Applicable provisions of the Klamath County Land
21 Development Code include LDC Section 51.005(D)(3) (RS Zone);
22 LDC Section 62.004(A)(2) (Sideyard Requirements-Small 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 and Goals, the hearings
26 officer finds as follows:
27

1 Goal 1 (Citizen Involvement) has been met as notice has been
2 given to adjacent property owners, interested public agencies, by
3 mailing of notice and publication in the Herald & News, and a
4 public hearing has been called. The hearings officer specifically
5 finds that no person has appeared in favor of this application and
6 the only response in opposition thereto is from Mr. and Mrs.
7 Hotchkiss, the adjoining property owners. However, despite being
8 granted ample opportunity for comment, the hearings officer is
9 unable to conclude what if any, property right of the adjoining
10 neighbor is being adversely affected or encroached upon from
11 review of both Klamath County Exhibit G, letter to Mr. Hotchkiss
12 and Klamath County Exhibit L, letter from Mrs. Hotchkiss, except
13 perhaps water run off.
14

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

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

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2 8. The hearings officer finds that a literal enforcement of
3 this code would result in practical difficulty or unnecessary
4 hardship. Prior to the effective date of the Klamath County Land
5 Development Code and adoption of sideyard setbacks, the subject
6 lot was created and the home built thereon. This evidence is
7 amply demonstrated in the letters from Ken McKinney, Exhibit K,
8 and V. Hotchkiss, Exhibit L. Because of the location of lawfully
9 existing buildings and improvements, the extension of the wood
10 shed along the same eaves line should be permitted. The removal
11 thereof would cause the applicant practical difficulty and
12 unnecessary hardship without corresponding public benefit of
13 strict enforcement. Variance Review Criteria 43.003(A) has been
14 met.

15 9. The condition causing the difficulty was not created by
16 the applicant. Applicant did not build the home or carport
17 again as demonstrated by Klamath County, Exhibit K and Exhibit L.
18 Variance Review Criteria Section 43.003(B) has been met.

19 10. The granting of the variance will not be detrimental to
20 the public health, safety, welfare or to the use and enjoyment of
21 adjacent properties and not be contrary to the intent of this
22 code. The hearings officer has received no testimony, input or
23 suggestions as to why the extension of the wood shed roof would be
24 detrimental to the use of adjacent properties. As noted above,
25 the carport, roof and wood shed are generally adjacent to the
26 Hotchkiss garage which has set back. While arguably water run off
27 from the roof of the Holst carport roof might cause some
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2 additional water run off, the effect would di-minimus compared to
3 the existing carport roof, and the hearings officer finds no
4 evidence such could constitute any further problem. Nevertheless
5 the hearings officer imposes the following conditions to the
6 granting of this variance:

7 A. That on substantial improvement, repair, or demolition of
8 the existing carport or wood shed, the applicant shall be required
9 to maintain not less than a 2 foot variance except upon written
10 waiver by the Klamath County Planning Director after site review
11 and approval of plans, by all affected agencies and of the
12 adjoining neighbor.

13 B. Applicant shall be required to install and maintain at
14 his own expense (if, and only if, requested by the neighbor)
15 appropriate gutters and downspouts to carry the water off the roof
16 to deposit the water on other than the adjoining neighbor's
17 property.

18 11. Based upon the clear and convincing testimony and
19 evidence at hand, the hearings officer specifically finds that the
20 respondent/applicant is in violation of Section 62.004(B)(2). The
21 hearings officer further finds however, that subject to compliance
22 with the terms of this Order within 30 days thereof, contact of
23 and notification of adjacent property owners of the terms hereof,
24 that the hearings officer will make no further findings in respect
25 thereto or impose any conditions of abatement and or penalties.

26 Based upon the foregoing findings of fact, the hearings
27 officer makes the following conclusions of law.

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CONCLUSION OF LAW

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1 1. That respondent is in violation of Section 62.004(B)(2)
2 of the Land Development Code, and orders compliance with the terms
3 of this Order.

4 2. That a literal enforcement of this code would result in
5 practical difficulty or unnecessary hardship. The difficulty or
6 hardship may arise from the property's size, shape or topography,
7 from the location of lawfully existing buildings and improvements,
8 or from personal circumstances which would result in greater
9 private expense than public benefit of strict enforcement.

10 3. That the condition causing the difficulty was not created
11 by the applicant.

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

17 A. That on substantial improvement, repair, or demolition of
18 the existing carport or wood shed, the applicant shall be required
19 to maintain not less than a 2 foot variance except upon written
20 waiver by the Klamath County Planning Director after site review
21 and approval of plans, by all affected agencies and of the
22 adjoining neighbor.

23 B. Applicant shall be required to install and maintain at
24 his own expense (if, and only if, requested by the neighbor)
25
26

appropriate gutters and downspouts to carry the water off the roof
to deposit the water on other than the adjoining neighbor's
property.

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:

"being located at 2629 Kane Street, Klamath Falls, Oregon,
situate in Section 2DC Township 39 South, Range 9 East
Willamette Meridian, Klamath County, Oregon."

The property is designated Residential (R) by the Klamath County
Comprehensive Land Use Plan and carries a zone designation of
suburban residential (RS) is hereby granted a variance described
above, subject to the terms and conditions contained therein.

Entered Klamath Falls, Oregon this 3rd day of February, 1987.

KLAMATH COUNTY HEARINGS OFFICER

BY: Bradford J. Aspell
BRADFORD J. ASPELL

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____ the _____ 4th day
of February A.D., 19 87 at 10:18 o'clock A M., and duly recorded in Vol. M87
of _____ Deeds on Page 1782
By Evelyn Biehn, County Clerk PHM Smith

FEE

NO FEE

Return: Commissioners' Journal