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BEFORE THE HEARINGS OFFICER

FOR KLAMATH COUNTY, OREGON

In the Matter of a

REQUEST FOR VARIANCE

for

DUANE BARSTAD

) No. 18-86

) FINDINGS OF FACT, CONCLUSIONS
) OF LAW AND DECISION

THIS MATTER came before the Assistant Hearings Officer, JAMES R. UERLINGS, on January 28, 1986, and for continued hearing on February 5, 1987, in the Klamath County Commissioners' Hearing Room. The hearing was held pursuant to notice given in

conformity with the Klamath County Development Code and related ordinances. The applicant appeared in person and the Klamath County Planning Department was represented by Kim Lundahl.

The following exhibits were marked, entered, and received into evidence and made a part of the record: Exhibits "A" through "R".

The Assistant Hearings Officer, after reviewing the evidence presented, makes the following findings of fact, conclusions of law and decision.

FINDINGS OF FACT:

1. The subject property is located on the North end of Main Street, Crescent, Oregon. The legal description is as follows: Lots 1 and 2, Block 13, Crescent, Oregon, Tax Account Number 2409-30AC-3600.

2. The Plan Designation on the property is Rural and the Zone Designation is R-1, requiring a one-acre minimum.

3. The dimensions of the property are 120' x 100', consisting of a piece of property rectangular in shape. The

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LAW AND DECISION

BOIVIN & UERLINGS, P.C.
ATTORNEYS AT LAW
110 NORTH SIXTH STREET, SUITE 209
KLAMATH FALLS, OREGON 97601
(503) 884-8101

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1 topography is level with general drainage consisting of surface
2 sheet flow to the West.

3 4. Vegetation of the property is forest-residential.

4 5. Access to the property is off Main Street within
5 Crescent, Oregon.

6 6. The soil classification and timber site
7 productivity ratings do not apply to this request.

8 7. The property is located within the rural
9 residential community of Crescent, Oregon. Adjacent and
10 surrounding zoning consists of R-1.

11 8. Public facilities and services to the property
12 consist of water by the Crescent Water District, sewer by
13 individual sub-surface systems, fire protection by the Crescent
14 Fire District, electricity by Pacific Power & Light and schools
15 by the Klamath County School District.

16 9. The applicant is requesting this variance in order
17 to legalize the establishment of a wood shed which currently sits
18 adjacent to the property line. The applicant has requested a
19 zero setback to allow the wood shed to remain as constructed.
20 The applicant indicated through testimony, upon inquiry from the
21 Hearings Officer, that the roof of the wood shed could be cut off
22 twenty six inches (26") which would allow a 26" setback from the
23 property line. This setback would not allow for any roof
24 overhang; therefore, the setback would be 26" from all
25 structures, including the roof overhang.

26 10. A letter in opposition was received from Mr. and
27 Mrs. Carl Ericksen which basically complained about the fact that
28 snow slid down the roof of the wood shed onto their property as

1 the roof line was at the property line. No evidence was
2 introduced that this snow, which appeared to be slight in amount,
3 damaged in any manner the Ericksen's property as the Ericksen
4 residence was a considerable distance from the subject property.
5 In any event, the removal of 26" from the roof line should
6 alleviate any snow problems.

7 KLAMATH COUNTY DEVELOPMENT CODE CRITERIA:

8 1. Section 43.003 requires the Hearings Officer to
9 make three specific findings if the variance is to be granted:

10 A. That a literal enforcement of this Code would
11 result in practical difficulty or unnecessary hardship. The
12 difficulty or hardship may arise from the property's size, shape
13 or topography, from the location of lawfully existing buildings
14 and improvements, or from personal circumstances which would
15 result in greater private expense than public benefit of strict
16 enforcement.

17 B. That the condition causing the difficulty was
18 not created by the applicant.

19 C. That the granting of the Variance will not be
20 detrimental to the public health, safety and welfare or to the
21 use and enjoyment of adjacent properties and will not be contrary
22 to the intent of this Code.

23 2. ORS 197.175 requires all zoning and related
24 ordinances adopted by the County be in conformance with State-
25 wide Planning Goals.

26 KLAMATH COUNTY GOALS AND POLICIES COMPLIANCE:

27 1. GOAL 1 - Citizen Involvement: See Exhibit "A"
28 attached hereto and incorporated by this reference.

2. GOAL 2 - Land Use Planning: See Exhibit "A".

3. GOALS 3-14 do not pertain or are not affected by this application.

KLAMATH COUNTY DEVELOPMENT CODE FINDINGS AND CONCLUSIONS:

1. The literal enforcement of this Code would result in a practical difficulty or unnecessary hardship to the applicant. The difficulty or hardship arises from circumstances which would result in a greater private expense than a public benefit of strict enforcement. The applicant was under the mistaken impression, based upon information supplied to him in the purchase of the property, that the lot lines were located in a different area than they actually are. The applicant appears to have used due diligence in determining the location of the property lines prior to the actual survey of the property by other parties, subsequent to his purchase and construction of the wood shed building.

2. The condition causing the difficulty was not created by the applicant and, as set forth above, the applicant used due diligence in determining the location of the boundary lines of the property; it appears to be a mistake caused by others in their representations to the applicant at the time of his purchase.

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, subject to the conditions set forth herein and will not be contrary to the intent of the Code.

///

1 CONCLUSIONS OF LAW AND DECISION:

2 1. This request for Variance on the subject property
3 meets all applicable Klamath County Development Code Criteria and
4 policies governing such.

5 2. This request for a Variance is consistent with,
6 and complies with, all applicable State-wide Planning Goals and
7 review criteria.

8 3. The following conditions are deemed applicable to
9 protect the public health, safety and welfare of the citizens of
10 Klamath County:

11 A. The applicant shall remove twenty six inches
12 (26") from the roof line of the property so that a setback from
13 the property line is established at 26" from all structures,
14 including the edge of the roof line itself.

15 NOW AND THEREFORE, IT IS HEREBY ORDERED that this
16 request for variance is granted, subject to the above condition.

17 DATED this 17 day of February, 1987.

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20 
21 JAMES R. UERLINGS
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Conformance with Relevant Klamath County Policies:

Citizen Involvement:

The County shall provide continued citizen involvement. Notice of this hearing was published in the Herald & News, posted in public places, and mailed to adjacent property owners and concerned public agencies.

Land Use Planning:

The variance review criteria set out in Section 43.004 of the Land Development Code require the following findings for approval:

- A. That a literal enforcement of this Code would result in practical difficulty or unnecessary hardship. The difficulty or hardship may arise from the property's size, shape or topography, from the location of lawfully existing buildings and improvements, or from personal circumstances which would result in greater private expense than public benefit of strict enforcement.
- B. That the condition causing the difficulty was not created by the applicant.
- C. That 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.

Goals 3-14 do not apply or do not affect this application as this is a variance request for a side yard setback from 5 feet to 0 feet in order to continue use of wood shed.

Exhibit "A"

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____ the 20th day
of February A.D., 19 87 at 8:49 o'clock A M., and duly recorded in Vol. M87
of _____ Deeds on Page 2688.

FEE

NO FEE

Return; Commissioners' Journal

Evelyn Biehn, County Clerk
By [Signature]