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BEFORE THE HEARINGS OFFICER OF KLANATH COUNTY, OREGON
 In the Matter of a
 Request for Variance for the
 CITY OF KLANATH FALLS

No. 7 - ST

FINDINGS OF FACT, CONCLUSIONS
 OF LAW AND DECISION

This matter came before William H. Gansung, the Hearings Officer of Klamath County, Oregon, on May 21, 1987 in the Klamath County Commissioner's Hearing Room. The hearing was held pursuant to notice given in conformity with the Klamath County Land Development Code and related ordinances. The Applicant was represented by Doug Montgomery of the City Planning Department. The County Planning Department was represented by Carl Shuck. Recording Secretary was Janet Libertaft. The County Planning Department file and all contents thereof were incorporated in the record as evidence. The Applicant submitted a proposed Order which was marked Exhibit F and admitted as evidence.

The County Hearings Officer, after reviewing the evidence presented, makes the following Findings of Fact, Conclusions of Law and Decision.

FINDINGS OF FACT:

1. The Applicant applied for a Variance in order to vary the side yard set back from 5 feet to 3.5 feet and the front yard set back from 20 feet to 7.5 feet in order to construct a well house. At the hearing, the Applicant advised the Hearings Officer that the size of the proposed well house had been reduced and that the subject Request was amended to request a variance of the front yard set back from 20 feet to 9.5 feet only.

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2. The property location is east of Debbie Drive and Grinstead Road in the Stewart-Lemmon area. The property description is a portion of Lot 1, Block 2 of Tract 1303, Country Village Subdivision, Elmore County, Oregon, Tax Account No. 3708-111-509.

3. The Plan Designation of the property is Urban Residential and the Zone Designation is Suburban Residential.

4. The dimensions of the property are approximately 21 feet by 50 feet, and it is rectangular in shape. The topography is relatively flat.

5. General drainage consists of surface runoff in a westerly direction to existing open ditches.

6. Access to the property is off Debbie Drive, a gravelled County road.

7. The surrounding lands consist of primarily vacant lots zoned for residential use. Surrounding zoning is Suburban Residential to the east, north and south; and Light Industrial to the west.

8. Public facilities and services to the property consist of water by the City of Elmore Falls; fire service provided by Fire District #1; and electricity provided by Pacific Power and Light.

9. The well house proposed for this property measures 10 feet by 14 feet by 10 feet high, and would be constructed of concrete block set on a concrete slab foundation. The purpose of the well house is to provide protection for the water pump, valves and related equipment from the elements and vandalism.

10. Prior to the City of Elmore Falls obtaining this property, surveys of adjacent lands were conducted to determine potential domestic water sources to serve the Stewart-Lemmon and Salinas/Oriental Drive areas. Results of this survey indicated inadequate amounts of water existed in the immediate area, with the exception of the Debbie Drive property and lands further to the north.

11. The Debbie Drive property, when purchased by the City of Elmore Falls, had a 1000 gallon per minute irrigation well. To convert this irrigation well to a domestic well source the existing casing was required by State Health laws to be removed. Attempts to remove the casing proved to be impossible and a new well was drilled 10 to 20 feet east of the irrigation well. During the testing of this well the water source was insufficiently sealed, resulting in the need to abandon the well. A third well was subsequently drilled at the present site.

12. Primary purpose of the well is to provide adequate and reliable amounts of water for domestic and fire suppression use in the Stewart-Lemmon and immediate area. In recent years, water shortages in the area have resulted in the need for rationing and importing of water from other sources. As a result, fire insurance ratings have increased and the ability of the fire departments to fight fires in the area has suffered considerably.

13. Approval of a Conditional Use Permit to allow for the siting of a domestic well on the Debbie Drive property was granted to the Applicant by Elmore County on May 15, 1966. This approval

authorized the siting of a well house structure 16 feet by 14 feet in size. No objections from any agencies or immediate neighbors were received in response to the Conditional Use Permit request.

Reference Klamath County Planning Department file C.U.P. 16-361.

KLAMATH COUNTY LAND DEVELOPMENT CODE CRITERIA:

1. Section 13.003 requires the Hearings Officer to make three specific findings if the variance is to be granted:

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 legally existing buildings and improvements, or from personal circumstances which would result in greater private expense than public benefit from 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.

KLAMATH COUNTY GOALS AND POLICIES COMPLIANCE:

The Goal and Policy Findings of the Klamath County Planning Department Staff Report are hereby adopted and incorporated herein by this reference.

ILLUSTRATE CURRENT CODE FINDINGS AND CONCLUSIONS:

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1. A literal enforcement of this Code would result in unnecessary hardship to the Applicant. The hardship consists of requiring the Applicant to relocate and drill a new well on the Debbie Drive property, or to abandon this property and purchase another site suitable for domestic water production in the immediate area. It is questionable whether another well could be located on the Debbie Drive property given the requirements as set forth in the Oregon State Health laws governing domestic well construction, or that any other property in the area has the water production qualities of the Debbie Drive property. Time delays in putting this well into production would result in further retarding and decrease in fire production capabilities for the area. This creates a personal circumstance which would result in a greater private expense than public benefit from strict enforcement.

2. The condition causing the difficulty was not created by the Applicant. The Applicant attempted in two separate instances to locate the well on other portions of the Debbie Drive property. However, on both occasions, through no fault or control of the Applicant, the wells were found or rendered to be unusable for domestic water production.

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 the Code. The well and well house are located approximately 60

feet from the nearest residence; no audible noise is produced by the well; the well house would be constructed of materials and in a manner common to residential housing in the area; the well would provide much needed water for domestic and fire protection use; and the well house would provide a means of securing a public investment from vandalism and weathering. The Applicant is required by its Conditional Use Permit to landscape the subject property to Suburban Residential Standards.

CONCLUSIONS OF LAW AND ORDER:

1. This request for variance on the subject property meets all applicable Klamath County Land Development Code criteria and policies governing such use.
2. This request for a Variance is consistent with, and complies with, all applicable State-wide Planning Goals and review criteria.

THEFORE, IT IS HEREBY ORDERED that the Applicant is granted a Variance from the 20 feet front yard set back requirements of Klamath County Land Development Section 62.003(1)(3)(a) and may construct a pump house building not less than 9.8 feet from the front property line of the above described property.

DATED this 21st day of May, 1987.


 William H. Conway
 Klamath County Hearings Officer

FINDINGS OF FACT - Page 6

COURT OF OREGON, COUNTY OF KLAMATH - n

That the record is composed of Klamath County Planning Dept. on 20th day of May A.D. 1987 at 1:00 o'clock P.M. and duly recorded in Vol. 227 of Books on Page 5743

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NO FILE

Return: County Clerk's Journal

County Clerk
 By 