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REPORT THE BOARD OF CLATSOP COUNTY, OREGON

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In the Matter of the Application
for a Variance for CHRIS DEBELL

Variance No. 4 - 57
FINDINGS OF FACT, CONCLUSIONS
OF LAW AND RECOMMENDATION

This matter came before William H. Gearing, the Hearings Officer of Clatsop County, Oregon, on May 7, 1987 in the Clatsop County Commissioners' Hearing Room. The hearing was held pursuant to notice given in conformity with the Clatsop County Land Development Code and related ordinances. The Applicant represented himself. The County Planning Department was represented by Carl Shuck. Recording Secretary was Janet Lillbrant. The County Planning Department file and all evidence thereon were incorporated in the record as evidence. The County Hearings Officer after reviewing the evidence presented makes the following Findings of Fact, Conclusions of Law and Recommendation:

FINDINGS OF FACT:

1. The Applicant has requested a Variance from the five foot set back requirement of the Plat of Tract 1025, Country Corner, Clatsop County, Oregon. A review of the Clatsop County Planning Department file concerning the approval of the Plat for Tract 1025 shows that at the time the preliminary plat was approved by the Clatsop County Planning Commission, the Planning Commission required that on the plat provide that all structures be set back from all property lines a minimum of five feet. During the fall of 1986 and spring of 1987, the applicant constructed a storage building on his property. Said storage building was constructed two feet from the applicant's property line. The applicant testified that the plat of Tract 1025 shows a "walking easement" to the south of the applicant's property. The applicant testified that he thought his property included the area of the easement. And, therefore, so

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long as he did not encroach on the easement, which is 12 feet wide, he had no problem.

2. The storage building constructed by the applicant is 12 feet by 12 feet in size. The applicant testified that he was told by a member of the Elmore County Building Department that no building permit was required for the building and that he, therefore, did not realize that he was in violation of the Land Development Code until the building was completed and a neighbor complained about the building. Both the applicant and the Planner, Carl Shack, testified that there are other encroachments located in the subject subdivision which also violate the five foot setback requirement. Exhibit E contains several pictures of various buildings which in fact violate the setback requirement.

3. Kent Graham testified that he is the neighbor of the applicant and that he is a member of the five member homeowner's association for the Country Cove Subdivision. Mr. Graham testified that the architectural review committee for the association was inactive at the time the applicant built the storage shed. Mr. Graham testified that he had no objection to the applicant's building and that the Board of Directors of the Homeowner's Association took no action with respect to the applicant's encroachment.

4. Paul Hardy testified that he is also a neighbor of the applicant, that there are other violations of the setback requirement within the subdivision and that he also has no objection to the applicant's building.

5. The applicant testified that at the time he purchased the property, the setback line located on the property was already in place and that there was no other place on the lot where he could construct the subject storage building and comply with all the setback requirements. It does appear, however, from

It is noted that the building could have been constructed several feet closer to the south side of the applicant's mobile home and that this problem would not have arisen.

4. The subject building is built on a concrete pad. It appears to be well built of materials similar to the mobile home and is painted a color similar to the mobile home. The building itself is attractive and does not detract from the surrounding properties.

7. A roadway 12 feet in width is located immediately south of the applicant's property and the subject outbuilding. Located south of the roadway is a large graveled recreational storage area which is also owned by the Subdivision Homeowner's Association. The closest building in proximity to the subject outbuilding is the applicant's mobile home. There is adequate access for fire vehicles and other emergency vehicles to the rear of applicant's home and surrounding properties via the said roadway.

8. The Findings of Fact contained in the Elsworth County Planning Department Staff Report are hereby adopted and incorporated herein by this reference.

ELSWORTH COUNTY LEO DEVELOPMENT CODE CRITERIA:

The subject property is zoned Plan Unit Development. Plan Unit Development overlay zone contains no specific development criteria for setbacks from lot lines. At the time the subject subdivision was platted, the zoning of the subdivision was changed to SP-16 Plan Unit Development. Said zone is as entered prior to the adoption of the current comprehensive plan also contained no specific setback requirements. However, the Elsworth County Planning Commission did require that the developer provide a minimum five foot setback from all property lines at the time the preliminary plat was approved. Section

5087

4.023 contains the criteria and findings that must meet of the variances to be placed.

CLARK COUNTY CODES AND POLICY COMPLIANCE:

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

CLARK COUNTY CODE FINDINGS AND CONCLUSIONS:

1. The Hearings Officer finds that the strict enforcement of the Clark County Land Development Code will result in unnecessary hardship to the applicant. The Code itself contains no setback requirement for the use to which this property is presently located. The setback requirements contained on the subdivision plat was adopted in 1973 as a requirement of the Clark County Planning Commission. The evidence demonstrates that the setback requirement has been violated in a number of instances in the subject subdivision. A review of the plat of the subject subdivision, Exhibit C, in fact indicates that the walkway located to the south of the subject property and the subject building is an easement. Therefore, the plat should be misleading. If in fact the applicant owned the land on which the walkway easement is located he would not be in violation of the five foot setback requirement and no variance would be required. The applicant testified under oath as to the inquiry he made prior to constructing the subject building and it is apparent that he did not intentionally violate the setback requirement. The storage building which the applicant did construct is well built of good quality materials on a fired concrete pad. It would cause great hardship on the applicant to require that he move the subject building so that it would be located not less than five feet from his northerly lot line. The Hearings Officer finds that requiring the applicant to move the subject building would

results in substantial private expense to the applicant with very little, if any, benefit to the public.

The Hearings Officer cannot make a finding that the confusion causing the difficulty was not created by the applicant. However, the applicant did make a reasonable inquiry concerning the criteria and provisions that were required for the building and was told that none were required and what he planned to do or contemplated doing was acceptable. If the question presented was one of whether or not a private deed restriction had been waived due to repeated violations of that deed restriction, a court of competent jurisdiction would undoubtedly find that the setback requirement had been waived and was of no further value to the landowner in the subdivision.

The purpose of setback is to provide for public safety. The setback from the front lot line generally allows greater visibility for traffic on the street which the property fronts. Setbacks from side and rear lot lines are generally provided to allow appropriate fire and emergency access to the property and to provide for utility access to the property. In this case, the alleyway, which is owned by the Homeowner's Association and which runs easterly of the subject property, provides adequate emergency egress access to the subject property and adjoining properties. In addition, the use of the property lying easterly of the alleyway as a recreational vehicle storage area is in no way impacted by granting the subject variance. There is no evidence that the granting of the variance would in any way be detrimental to the public health, safety or welfare, or the use and enjoyment of the adjoining properties. Nor is it contrary to the intent of the code.

COMMISSIONERS OF LAND AND WATER:

The subject application for a variance from the five foot setback requirement of the Plat of Tract 1025, Country Creek, Elsworth County, Oregon, from five feet to two feet for the above described property is granted.

DATED this 27th day of May, 1957.


 WILLIAM R. GENTRY
 Elsworth County Boarding Officer

Conference with Relevant Klamath County Policies:

Citizen Involvement:

The County shall provide occasional 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.

1. 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 similar enforcement.
2. That the condition causing the difficulty was not created by the applicant.
3. 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 1 - 14 do not apply or do not affect this application as this is a variance request for a rear yard setback from 5 feet to 2 feet 2 inches to allow for a shop building.

9231

Planning Department Considerations and Recommendations:

Variance 4-17 is the application of Chris Beagle to vary requirements of rear yard setback from 5 feet to 2 feet 2 inches. The request, if granted, would allow the applicant his shop building.

PLANNING REVIEW COMMENTS

- It appears that the rear of the property is the only area possible to build on because of the location of the existing mobile home and landscaping.
- It would be difficult for the applicant to utilize the front yard of the lot because the building would block the front view, and there could be no landscaping. The area in front is not big enough, and the applicant would have to vary the front yard setbacks.
- It appears that if a variance were granted it would not be detrimental to the public health or welfare or to adjacent properties as the shop is an allowed use. Any runoff from the proposed addition would run onto the applicant's property.

Due to the size of the lot, it appears the difficulty was not caused by the applicant.

The distance from the shop building to the south side of the subject easement is approximately 14 feet 2 inches.

Based on the above, staff recommends approval.

STATE OF OREGON, COUNTY OF CLATSOP

That we caused a report of _____ Planning Department to be _____
 at _____ AD. 9 17 at 1:14 PM on the _____ day of _____
 at _____

721 10 121

Planning Department's Journal

By _____ County Clerk
