

BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the Matter of the Request for)
 a Variance for WILLIAM CADMAN)
 and LOETTA CADMAN)

VARIANCE NO. 9-87

This matter came before Hearings Officer William M. Ganong on July 30, 1987 in the Klamath County Commissioner's Hearing Room. The Hearing was held pursuant to the Notice given in conformity with the Klamath County Land Development Code and related ordinances. William Cadman was present at the hearing and represented himself. The Klamath County Planning Department was represented by Mr. Kim Lundahl and the Recording Secretary was Karen Burg. The Klamath County Planning Department file and all contents thereof 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 Decision:

FINDINGS OF FACT:

1. The Applicants have applied for a Variance from the side yard setback requirements of Klamath County Land Development Code Section 62.004 (D)(3). The subject property is located along Rocky Point Road in Klamath County, Oregon and is Klamath County Tax Assessor Account No. 3606 2BB 2800. The subject parcel is approximately 90 feet by 200 feet in size and is zoned CR-Commercial Recreation.

2. The applicant requests a Variance from the side yard standard of 25 feet down to 5 feet. The 25 feet setback

'87 AUG 4 AM 8 38

requirement is required where land zoned for commercial purposes abuts land zoned for residential purposes.

3. The applicant intends to construct a home on the subject property to replace a mobile home that was previously sited on the property. The home will be the applicant's residence.

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

KLAMATH COUNTY LAND DEVELOPMENT CODE CRITERIA

Klamath County Land Development Code Section 43.003 sets forth the review criteria for a Variance application. The Klamath County Code Section 62.004 (D) (3) contains the side yard setback requirements for the commercial zone and article 97 of the Land Development Code provides for the continuation of nonconforming uses. Article 97 is relevant because the commercial recreational zone does not allow a single family residence to be located in the zone unless it is in connection with a recreational commercial use. In this case, the proposed house is not used in connection with the commercial recreational purpose and is, therefore, a nonconforming use and subject to the provisions of Article 97.

KLAMATH COUNTY LAND USE GOALS AND POLICIES COMPLIANCE

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

KLAMATH COUNTY CODE FINDINGS OF FACT AND CONCLUSIONS

The following Findings and Conclusions are made concerning the review criteria set forth in Section 43.003 of the Land Development Code:

- A. The literal enforcement of the code section requiring a side yard setback of 25 feet would create an unnecessary hardship for the Applicant. The purpose of the 25 foot setback requirement is to buffer commercial uses from residential uses. In this case, the use proposed by the applicant is a residential use and therefore the purpose of the sideyard setback is not relevant in this matter. In this case, there would be no public benefit resulting from the strict enforcement of the code and there would be an unnecessary hardship imposed on the applicant.
- B. The condition causing the difficulty was not created by the applicant. The applicants in this case have merely applied to replace a residence, which was a double wide mobile home, with a conventionally built home and has made no changes whatsoever to the site which results in the need for the Variance.
- C. The granting of the Variance will not be detrimental to the public health, safety and welfare of adjacent properties. The site is served by appropriate rural recreational public services and will have water and septic systems on the site and will not impact the use and enjoyment of abutting properties.

ORDER

The subject application for a Variance from the side yard setback requirements of the Klamath County Land Development Code from 25 feet to 5 feet for the construction of a single family residence on the land described above is hereby granted. The Applicant shall comply with all requirements of the Klamath County Department of Health Services, Klamath County Land Development Code and Klamath County Building Ordinances.

DATED this 30th day of July, 1987.

William M. Ganong
 William M. Ganong
 Hearings Officer

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Planning Department the 4th day
 of August A.D. 19 87 at 8:38 o'clock A M., and duly recorded in Vol. N87
 of Deeds on Page 13854.

FEE NONE

Return: Commissioners' Journal

Evelyn Biehn,
 By

County Clerk

Sam Smith