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BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

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In the Matter of the Request for)
 a Variance for NED PUTNAM)

VARIANCE NO. 12-87
 FINDINGS OF FACT, CONCLUSIONS
 OF LAW AND DECISION

This matter came before Hearings Officer William M. Ganong on July 16, 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. The applicant, Ned Putnam, was present at the hearing and was represented by Attorney Forrest Cooper. The Klamath County Planning Department was represented by Carl Shuck and the Recording Secretary was Karen Burg. The Hearing was adjourned at approximately 6:30 p.m. on July 16, 1987 and was continued to 1:30 p.m. on July 28, 1987 at which an oral decision was rendered by the Hearings Officer. The Klamath County Planning Department file and all contents thereof were incorporated in the record as evidence. In addition, both the applicant and parties opposed to the application introduced numerous exhibits which were all accepted and incorporated in the record. 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 has requested a Variance from the front yard setback requirement of Klamath County Land Development Code Section 62.003 from 75 feet to 22 feet to allow the construction of an addition to an existing warehouse. The subject property is located at 2742 Homedale Road, Klamath Falls, Oregon and is more

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particularly described as Klamath County Tax Assessor Account No. 3909-243-300. The Hearings Officer viewed the subject property with Planning Staff Member Carl Shuck prior to the first hearing.

2. The applicant proposes to construct an addition to an existing building, which addition will be 80 feet wide by 200 feet long and contain approximately 16,000 square feet. It will be approximately 21 feet in height. The building will be a block structure with a metal roof and will be similar in appearance and construction to the existing warehouse located on the subject property.

3. This application was vigorously opposed by many other landowners in this area. Said landowners were represented at the Hearings conducted by the Hearings Officer by attorney Jerry Molatore. The testimony of all parties involved demonstrates that the area in which the subject property is located is generally a single family residential neighborhood. The subject property was spot zoned Heavy Industrial at the time the current Klamath County Comprehensive Plan was adopted. Testimony of South Suburban Area Citizens Involvement Committee Chairman J. Clair Browne given in 1983 during public hearings concerning Variance 22-83 indicates that this property was initially proposed for Residential Zoning when the Klamath County Land Development Code was adopted on November 25, 1981, but was subsequently rezoned Industrial at the request of the landowner. All of the adjoining and adjacent property is zoned for residential use. In addition, Ferguson

Elementary School is located approximately one block from the subject property.

4. The applicant acquired the subject property in three parcels between 1948 and 1953. Testimony of many of the adjacent landowners was that during that same period of time many of the houses which are adjacent to or adjoin the subject property were also constructed. The applicant initially used his property for the storage and repair of logging trucks, tractors and equipment. The business now located on the property was started as a hobby in 1970.

5. The subject property is leased to Sturdi-Craft, a corporation, which manufactures hardboard shelving, bookcases and desks in a precut, unassembled, form for sale to the public. The company currently employs 60 full time people plus 20 high school students who work four hours a day packaging the materials. Sturdi-Craft is the largest producer of this type of product in the United States and the business is growing at a rate of approximately 30% per year.

6. The proposed addition to the warehouse will be used as an area to stage orders for shipment to customers. The company produces a large number of different products. Various quantities of said products are included in each order. Therefore, it is necessary, prior to the arrival of the shipping truck, that the various products in the order be assembled on pallets for shipment. That process is known in the industry as "staging" and is the use that the applicant intends for the subject property.

Currently the applicant is loading some products onto company trucks and moving them several miles to other property owned by the company where they are then staged and shipped, thereby creating the need to handle the product two more times than would be necessary if the construction of the addition is allowed. Tom Putnam testified that customers may send in 15 to 20 trucks in one day. The available space on the subject property only allows the company to stage approximately three truckloads of product. The new facility will allow staging of product for 15 trucks.

7. The applicant has received approval of two prior Variances. One said Variance allowed reduction of the side lot from 80 feet to 4.5 feet on the south side of the property. The other Variance allowed a reduction of the setback on the north side of the property. The proposed addition will be located on the south side of the property and within 4.5 feet of the south boundary line of the property.

8. The business located on the property burned to the ground in 1976 and was thereafter rebuilt by the applicant. At the time it was rebuilt, the applicant installed automatic sprinkler systems throughout the processing plant and warehouses. In order to have an adequate water supply, Sturdi-Craft paid the cost of installing an eight inch watermain from South Sixth Street to the plant site. The plant is currently served by two four inch supply lines which run from the eight inch mainline.

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9. A portion of the site is currently used to store what is described as sawmill machinery by the applicant and other miscellaneous used equipment.

10. The objections of the neighboring landowners, all of whom reside on their land, can be summarized as follows:

A. During the hours that the manufacturing process is operating, a substantial amount of noise is generated by what the opponents described as "the blower" and the applicant described as "the bag house". Witnesses in opposition to the application produced a video tape which demonstrates accurately the noise produced by the operating plant. The noise is loud enough that neighboring landowners cannot carry on a discussion in a normal speaking voice. The video tape accurately portrays the noise. The Hearings Officer noted the noise when he toured the property prior to the public hearing in this matter, and the noise is substantial and to the point of being a nuisance. The applicants testified that, between the dates on which public hearings were held in this matter, they changed the configuration of the equipment on the bag house thereby cutting the decibel level of the noise generated in the bag house from approximately 65 to 55. The applicants testified that a decrease in the decibel level of 10 is equal to cutting the noise by a magnitude of one-half. The Hearings Officer did not visit the property after the said changes were made, however, none of the opposition challenged the statements made by the applicant.

B. The opposition produces substantial evidence showing the accumulation of sawdust on adjoining property and other property in the general vicinity. The dust is very fine and accumulates on cars, laundry and any other materials stored outside and not under cover. It creates dust in the houses and, together with the noise generated by the bag house, prevents many of the residents from leaving their windows open and thereby having adequate ventilation during the summer months. The applicant testified that the plant does not produce dust and that the applicant has been accused of causing dust when, in fact, the pollutant in the air was pollen. The Hearings Officer does not find the applicant's testimony credible when compared to the overwhelming evidence submitted by the opposition that, in fact, the plant does introduce substantial quantities of sawdust into the air.

C. Many of the opposition feel that the construction of the building will block the sunlight radiating on Homedale Road and thereby cause ice to accumulate in the winter months.

D. The opposition believes that the construction of the subject building will interfere with their view, especially the view of the people living directly across Homedale Road from the subject property. However, it appears to the Hearings Officer that the view of those people is already blocked by the existing improvements located on the property which extend along the entire westerly boundary of the property from its north boundary to its south boundary.

E. The opponents introduced exhibits and testimony indicating that the existing improvements may be located closer to the boundary lines of the subject property than approved by the prior Variances. Said testimony is countered by the engineering drawings submitted by the applicant. The Hearings Officer finds this concern to be irrelevant to the current application.

F. The opponents also testified that in the past the applicant has dumped oil into nearby irrigation and drainage structures, which said oil killed the trees and other vegetation on adjacent land. Said dumping of oil in public drainage structures is illegal and should be reported to the appropriate enforcement agency, but is relevant to the subject application only to the extent that it demonstrates the need to strictly control the actions of the applicant.

G. Opponents also are concerned about increased traffic on Homedale Road which might result because of the warehouse. No traffic count or other substantial evidence concerning the existing use of Homedale or its ability or inability to handle additional traffic was presented. It appears that in the short term at least, the addition to the warehouse will reduce the traffic as it will then not be necessary for Sturdi-Craft to haul product from the plant site down Homedale Road to its other staging facility north of the Klamath Falls airport. Thereby, those short round trips will be eliminated.

11. The applicant testified that the construction of the addition to the warehouse will not necessarily increase the number

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the boundary of the warehouse
problem is created, are already
Hearings Officer can make no finding
substantial evidence that the proposed addition will in
fact create an ice problem on Homedale Road.
13. Apart from the noise and sawdust pollution caused by the
existing plant, the greatest negative impact on this residential
neighborhood of the existing plant is the junk which is described
by the applicants as sawmill machinery and other equipment that is

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of hours the production plant is operating, but will allow the applicant to level out production hours by providing an area to store products during slack periods for use during times of great demand, thereby eliminating the need to add a second shift to the plant.

12. With respect to the concerns raised by the neighbors, there is no question but that the noise, as it existed at the time the Hearings Officer viewed the property, and the sawdust emanating from the property are a nuisance to the neighborhood. The extent of that nuisance is such that it has a devaluing effect on nearby properties, and greatly interferes with the residential use made of those properties. However, there is no substantial testimony in the record from which a conclusion can be drawn that the construction of the subject addition to the warehouse will exacerbate this condition. The Hearings Officer also finds that there are an number of trees and other buildings along Homedale Road that approach the same height as the proposed warehouse addition and are located within 20 feet of the boundary of Homedale Road which, if an ice problem is created, are already creating a problem. The Hearings Officer can make no finding based on substantial evidence that the proposed addition will in fact create an ice problem on Homedale Road.

13. Apart from the noise and sawdust pollution caused by the existing plant, the greatest negative impact on this residential neighborhood of the existing plant is the junk which is described by the applicants as sawmill machinery and other equipment that is

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stored on the property. The applicant resides in a house in the northeastern corner of the subject property. Said house is well maintained and beautifully landscaped. Said house sticks out like a sore thumb because of the garbage and junk found scattered across the remainder of the subject property. If the junk is cleared off the subject property and if the subject property is screened and landscaped as hereafter required, the construction of this proposed addition to the existing warehouse will not be detrimental to the use and enjoyment of adjacent properties. If the warehouse is constructed without cleaning up the subject property and without landscaping comparable with that located in front of the applicant's house, then there is no question but that the proposed addition of the warehouse will substantially and significantly detrimentally impact the use and enjoyment of adjacent properties. Without said trade-off, the approval of a Variance cannot be justified by the standards in the Klamath County Land Development Code.

KLAMATH COUNTY LAND DEVELOPMENT CODE CRITERIA

Klamath County Land Development Code Section 43.003 sets forth the criteria which must be addressed in reviewing an application for a Vairance. Section 43.005 requires that a plot plan be submitted in accordance with Article 41, Section 41.005 of the Code. Section 65.005 sets forth the minimum landscaping requirements. Section 64.002 sets forth the minimum required fencing. Section 62.003 sets forth the minimum front yard setback

from which the subject Variance is requested. Finally, Section 68.005 sets forth the required parking facilities.

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 75 feet front yard setback for this Heavy Industrial use results in unnecessary hardship in this case. The subject property is spot zoned Industrial. All of the surrounding property is zoned residential. The applicant cannot expand his business by acquiring adjoining property unless the adjoining property is rezoned to allow this industrial use. It is highly unlikely that such a rezoning would be approved as this is the only industrial use in what is otherwise an exclusively residential neighborhood. The plot plan submitted by the applicant demonstrates that there is no other location on the subject property where the proposed warehouse could be constructed without obtaining a Variance from one or another Land Development Code requirement. At the present time, the lack of adequate warehouse space is forcing the applicant to load product onto trucks, move it several miles to other property owned by the applicant, unload it and then reload it for shipment. Said process is unnecessarily causing the applicant expense and is increasing the flow of traffic along Homedale Road. There is no demonstration of public benefit that

would result from the strict enforcement of the setback requirements of the code in this case.

B. The condition causing the difficulty was not created by the applicant. The applicant has done nothing to decrease the amount of property he owns at this particular site or to make unavailable parts of the subject property for this particular use, or done anything else to cause the difficulty. The difficulty was created when the zoning ordinances were adopted by Klamath County. This is a difficulty that is shared by other parcels that are spot zoned. If the subject property were in an area generally zoned for industrial uses, the required setback would be between 10 feet and 25 feet. However, because this Heavy Industrial Zone property is located in a residential area, the code requires a 75 foot front yard setback. In industrial areas, the required front yard must be used for landscaping and limited parking. In this case, there will not be sufficient room between the proposed warehouse addition and the street right of way to provide any parking in that area. Therefore, as more particularly required hereafter, the entire area between the proposed addition and the fence line which is adjacent to the sidewalk along Homedale Road shall be attractively landscaped and the landscaping shall be maintained by the applicant.

Jerry Molatore, attorney for the opponents, cited the Oregon Court of Appeals Case of Moore et. al. vs. The Board of Commissioners of Clackamas County, 35 Or App 39, 580 P2d, 583 (1978) for the proposition that a shortage of land is not the type

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of hardship which will allow a variance. However, the review criteria under the Clackamas County ordinance is substantially different than the review criteria under the Klamath County Land Development Code. Clackamas County's ordinance required a finding that:

"The plight of the owner is due to unique circumstances such as lot size or shape, topography, and size or shapes of building which are not typical of the general condition of the surrounding area."

The Court of Appeals found that the evidence showed only a shortage of land owned by the applicant and nothing further. The evidence did not show that the applicant's problem was unique to him as required by Clackamas County's ordinance. In the case of Klamath County's ordinance, our code requires only:

"that a literal enforcement of this code would result in practical difficulty or unnecessary hardship;"

and that the condition causing the difficulty was not created by the applicant. Klamath County's code does not require that the applicant's problem be unique to the applicant, rather it only requires that the condition causing the difficulty was not created by the applicant and that literal enforcement of the code would result in a practical difficulty or unnecessary hardship.

C. The final criteria which must be addressed in granting a Variance is:

"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."

There is no question but that the existing use of the subject property is detrimental to the health, safety and welfare of the

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public and to the use and enjoyment of adjacent properties. The tremendous noise from the bag room, the substantial amount of sawdust that carries onto adjoining land, the junk stored on the property all are detrimental to the health, safety and welfare of the public and are detrimental to the residential use of the adjacent property. Prior to the first public hearing conducted in this matter, the applicant has done nothing to mitigate the situation but rather it appears that many things the applicant does are intended to irritate the neighboring property owners. However, the relevant question before the Hearings Officer is: Will the proposed addition to the existing warehouse be detrimental to the health, safety and welfare of the public and to the use and enjoyment of adjacent properties? The answer would be yes, if it was going to result in an increase in the production operating time. However, according to the testimony of the applicants, that is not the case. Rather, it will allow them to level out their production schedule so that they can produce product during slack times to fill the needs during the times of heavy demand, rather than adding additional production staff. In addition, if the property were in a neat and well kept condition at the current time, the addition of the warehouse would impose some additional visual impact on the adjacent neighborhood. However, the plant is such a mess that the granting of this variance conditioned upon appropriate landscaping, parking and screening will, in the judgment of the Hearings Officer, mitigate the existing adverse impact on the neighborhood. Therefore, based

on the conditions set forth hereinafter, the review criteria in the Klamath County Code are satisfied.

ORDER

The application by Ned Putnam for a Variance from the front yard setback of the Klamath County Land Development Code from 75 feet to 22 feet is granted subject to the following conditions:

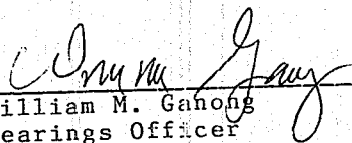
The applicant shall submit a plot plan in compliance with Article 41 of the Land Development Code. That plot plan shall provide a visually attractive fence or screen in lieu of the existing chain link fence along the front border of the property. It shall provide complete landscaping of the front yard between the proposed warehouse addition and the fence and it shall provide landscaping along the south side yard of the existing warehouse and addition. The plot plan shall also provide parking required by the Klamath County Land Development Code, which parking shall be based on the number of employees employed in the largest shift, which the applicant testified is 80, or based on the square footage of all of the buildings located on the subject property, whichever is greater. The applicant shall remove from the subject property all of the stored equipment, including all equipment that is not currently a necessary and intrical part of the manufacturing and storage of hardboard products. The applicant shall also provide landscaping of an area along the entire frontage of the subject property, except at the entrances and exits, which landscaping shall be consistent with the landscaping currently located in front of the applicant's residence on the

subject property and that required in the front yard between the proposed addition and the lot line. The applicant shall also pave those areas of the subject property which may be used by motor vehicles but not including the areas which must be landscaped which said paving shall incorporate drainage structures sufficient to insure that no drainage from the subject property will flow onto adjacent land or into irrigation ditches or structures. The Hearings officer notes that the plot plan submitted by the applicant does not comply with the requirements of Article 41, however, the applicant agreed under oath to provide whatever landscaping, screening, paving and other improvements that the Hearings Officer may require. The plot plan providing the landscaping, parking and other improvements required hereby shall be submitted to the Hearings Officer for review and approval and approved prior to the issuance of a Building Permit for the construction of the subject addition. The required improvements shall be completed on or before July 31, 1988, or this Variance shall be null and void. The conditions imposed hereby are an intricate part of the finding that this Variance will not detrimentally impact the public health, safety and welfare or the use and enjoyment of adjacent properties. If the applicant fails to comply fully with the conditions required hereby and fails in the future to maintain the required screening, landscaping and clean-uncluttered condition of the property, this Variance will not comply with the criteria set forth in the Land Development Code and this Order shall be subsequently reviewed and revoked by

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the Hearings Officer or other appropriate reviewing authority of Klamath County, Oregon. In addition to the conditions specifically set forth hereinabove, the applicant shall comply at all times with all requirements of the Klamath County Land Development Code, Klamath County Department of Health Services and Klamath County Building Department.

DATED this 12th day of August, 1987.


William M. Ganong
Hearings Officer

STATE OF OREGON: COUNTY OF KLAMATH:ss

I hereby certify that the within instrument was received and filed for record on the 13th day of August A.D., 1987 at 4:18 o'clock P.M. and duly recorded in Vol M87, of Deeds on page 14590

EVELYN BLENN, COUNTY CLERK

Fee: \$ NONE

by:  Deputy

Return: Commissioners' Journal