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BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the Matter of the Variance)	VARIANCE NO. 16-88
and Violation for MARK L. HOLST.)	VIOLATION NO. 52-86
)	FINDINGS OF FACT
)	AND ORDER

This matter came before William M. Ganong, the Hearings Officer of Klamath County, Oregon, on January 5, 1989 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 present and represented himself at the hearing. Klamath County Planning Department was represented by J. 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 Order:

FINDINGS OF FACT:

1. This matter came before the Hearings Officer for an interpretation and clarification of an Order issued by Hearings Officer Bradford Aspell dated February 3, 1987. The findings and conclusions of said Order are incorporated herein by this reference. Said Order found that the Applicant had constructed a woodshed, the placement of which violated the sideyard set back requirements of Klamath County Land Development Code. The Hearings Officer then granted the Applicant a variance from said sideyard set back requirement so that the Applicant would not have to move or remove the wood shed. The granting of the variance contained the following conditions:

"A. That on substantial improvement, repair, or demolition of the existing carport or woodshed, the applicant shall be required to maintain not less than a 2 foot variance except upon written waiver by the Klamath County Planning Director after site review and approval of plans, by all affected agencies and of the adjoining neighbor.

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B. Applicant shall be required to install and maintain at his own expense (if, and only if, requested by the neighbor) appropriate gutters and downspouts to carry the water off the roof to deposit the water on other than the adjoining neighbor's property."

2. The initial question concerning the foregoing conditions is:

What "roof" is the Hearings Officer referring to in the second condition quoted above?

The Applicant believes that the Hearings Officer was referring to the woodshed roof and not to the roof of the Applicant's carport which also does not conform to the set back requirement of the Code, but existed prior to the adoption of the Code and is, therefore, allowed to continue as provided by Code Article 97.

The owners of the property which adjoins the Applicant's property and are most affected by the said Code violation believe that the Hearings Officer intended that the term "roof" include the carport roof.

The Planning Department requested that the County's Legal Counsel review the Order and issue an opinion. A copy of the Opinion and interpretation of Deputy County Counsel David R. Mannix is attached hereto as Exhibit "A" and incorporated herein by this reference. Said Opinion finds that the Order required that the Applicant install gutters and downspouts on the carport roof.

3. The second question concerning the conditions quoted above was raised by the Applicant at the hearing on January 5, 1989. The Applicant testified that he would like to repair or replace the carport roof, that if he installed gutters on the carport roof they would overhang the property line and that the Order requires him to move the edge of the carport in two feet. He testified that he can not move it in two feet because to do so would put the supports (or wall) of the carport directly over an existing Klamath Irrigation District pipe. The Applicant testified that he can not put a support structure on or over said pipe.

ORDER

1. With respect to the first question, concerning the meaning of the term, "roof," the interpretation of Klamath County Deputy Counsel David R. Mannix is logical and reasonable and is adopted by this reference. Mark L. Holst is Ordered to install and maintain gutters and downspouts on all roof lines which are on the side of all buildings which face the Hotchkiss' property. Said gutters and downspouts shall be designed and maintained "to carry the water off the roof(s) to deposit the water on other than the adjoining neighbor's property."

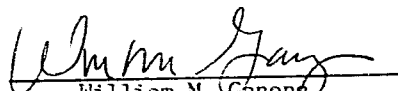
2. With respect to the second question, concerning the requirement that on improvement, repair or demolition of the existing carport or woodshed a two foot set back be provided, the subject Order provides:

"... the applicant shall be required to maintain not less than a 2 foot variance . . ."

The Applicant's argument that the Order requires a variance of two feet and that he can not create a three or four foot variance and thereby miss the KID pipe is clearly without merit. The Order requires not less than a two foot variance. If the Applicant wants to create a larger variance he may do so.

3. The Applicant is Ordered to bring his buildings into compliance with the requirements of the February 3, 1987 Order, as interpreted hereby, on or before June 30, 1989.

DATED this 19th day of January, 1989.


William M. Ganong
Hearings Officer

Klamath County Land Development Code Section 24.007 provides:

"An Order of the Hearings Officer shall be final unless appealed within ten (10) days of its mailing by a party having standing in accordance with the procedures set forth in Chapter 3, Article 33 of the Code."



Klamath County - County Counsel

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MEMORANDUM

TO: KIM LUNDAHL, SENIOR PLANNER

FROM: DAVID R. MANNIX, DEPUTY COUNTY COUNSEL

SUBJECT: VIOLATION 52-86 AND VARIANCE 16-86/HOLST

DATE: DECEMBER 1, 1988



There are ambiguities in the Order, but I analyze it as follows:

1. The Findings of Fact and Order of the Hearings Officer of February 3, 1987 state, "While arguably water run off (sic) from the roof of the Holst carport roof (sic) might cause some additional water run off (sic), the effect would di-minimus (sic) compared to the existing carport roof, and the hearings officer finds no evidence such could constitute any further problem. Nevertheless the hearings officer imposes the following conditions to the granting of this variance:..." This is obviously a typographical error (probably missed due to the page break) since you cannot say "x is greater than x"; clearly, one of the phrases "carport roof" was intended to be "woodshed roof". Since the second use of "carport roof" is preceded by the word "existing" and since the record shows that the carport was first and that the construction of the woodshed extension is what sparked the complaint, the correct reading is "runoff from the shed roof addition might cause some additional water runoff, the effect would be de minimus compared to the existing carport roof..." Mr. Holst is entitled to clarification of this in hearing, but I believe this is the more reasonable interpretation.

2. If it is the woodshed whose contribution to the runoff problem is found to be de minimus, then it is likely the carport runoff was being primarily addressed by condition 10B, which states that guttering must be installed to correct the problem if the neighbor so requests. (It is, of course, proper to resolve complaints by means of a variance conditioned on improvements to uses of the property not framed by the complaint.)

3. The neighbor so requested.

4. I therefore conclude that Mr. Holst is required by reasonable interpretation of the Order to install drainspouting and gutters on the carport.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 24th day of Jan. A.D., 19 89 at 11:24 o'clock AM., and duly recorded in Vol. M89 of Deeds on Page 1369.

Evelyn Biehn County Clerk

FEE none

By Pauline Mullendore