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BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the Matter of the Request) Variance No. 11-89
for a Variance for J.R.) FINDINGS OF FACT,
CASEBEER AND SARAH CASEBEER.) CONCLUSION OF LAW
_____) AND ORDER

This matter came before Richard C. Whitlock, Hearings Officer of Klamath County, Oregon on December 15, 1989 in the Klamath County Commissioners' Hearing Room. The Hearing was held pursuant to notice given in conformity with the Klamath County Land Development Code and related ordinances. Both of the Applicants were present at the hearing and Sarah Casebeer testified in favor of the application as did Janet Pierce, a real estate sales person and authorized agent of the Applicants. The Klamath County Planning Department was represented by Mr. Carl Shuck and the Recording Secretary was Leanne Mitchel. The Klamath County Planning Department file and all contents thereof were incorporated in the record as evidence, including Exhibits A (staff report), B (assessor's map), C (letter for Agent, Janet Pierce), D (variance application), E (legal description of entire property), F (proposed partition map), G & H (letters in opposition to the variance), I (assessor's map of area) and J (photographs). The Hearings Officer, after reviewing the evidence presented, makes the following Findings of Fact, Conclusions of Law and Decision:

FINDINGS OF FACT:

1. The subject property is located East of Homedale

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Road, South of the intersection with Leland Drive at 3333 Homedale Drive, Klamath Falls, Oregon, and is Klamath County Tax Account No. 3909-11AD-8000. The site is in the RS (Suburban Residential) Zone, which is defined in Land Development Code Section 51.005.

2. The Applicants have requested a Variance from the development standards contained in Section 51.025(D) of the Land Development Code in order to allow them to partition this property and create a 4,300 square foot parcel (approximately .1 acre), triangular in shape, located in the northwest corner of the parcel. Presently pending before the Planning Department is an application by Applicants for a Minor Partition. The Applicants have also requested a variance from the building setback requirements of this zone as set forth in Land Development Code Sections 62.004(A) and 62.005(A).

3. Janet Pierce, a real estate broker, testified on behalf of the Applicants. Her letter, received into evidence as Exhibit C, sets forth very succinctly the predicament of the Applicants:

"The property located at 3325 and 333 Homedale Road needs to be divided in a way that does not conform to the current code because of the way the buildings are presently located on the property. ***The oldest house and garage are located in the Northwestern corner (of the property). The newer house (built in 1956 by the Applicants) is alined (sic) with these buildings across the rest of the lot. Because the Northern (property) line follows a Southeasterly direction, the lot behind the houses drops sharply in the same direction. The older house would have little or no use for whatever space could be allotted behind the garage and very little access to it. Adding more mostly unusable space behind the garage would adversely effect (sic) the back yard of the newer house.

***The current owners, at a point in the past, did purchase a small area at the Southwest corner to allow access to the back yard of the newer house.

***The owners have neared a point where it is advisable to sell their property and retire to something that requires less strenuous labor in its upkeep. They have made a dedicated attempt (for four years) to sell the whole parcel in one piece, but this has not worked out. They now have buyers for each house if we can divide the property into two parcels. This division needs to follow logical lines, hence this request to make one of the parcels smaller than 10,000 square feet.

"We believe this request for a variance would not adversely effect the property or any of the neighbors. We are not asking to change the location or use of any buildings or any of the land. We are merely asking to divide the existing parcel along logical lines that have been in continuous use for many years.***"
(Material in parentheses added.)

Ms. Pierce also testified that the older house (located on the proposed substandard parcel) has a good foundation and a new roof and consists of two bedrooms, a living room, a bathroom, a utility room, and a kitchen. She stated that there is also a pumice block garage which goes with the older house. She also testified that the proposed buyer of this smaller parcel is a building contractor who intends to improve the residence if the variance and partition are granted.

4. One of the Applicants, Sarah Casebeer, testified that the newer brick home was built by the Applicants in 1956 and was placed in the existing location to allow some vehicular access to the rear of the property which was used for small animal pasture. She also testified that the home was built prior to any setback restrictions in the County and

that a small triangular parcel was purchased adjacent to the Southwest corner of the property to enhance that rear access. Lon Casebeer, the son of the Applicants, confirmed his Mother's testimony about the placement of the newer home to minimize access problems to the rear of the property. Mr. Casebeer also stressed that his parents are elderly and they need to move from their present home in order to obtain a home which requires less upkeep and maintenance. He also stressed the need to sell this property now to only the legitimate buyers they have had in several years of trying to sell.

5. Two (2) letters were received in opposition to this application. A letter (Exhibit G) from Andrew and Sarah Jones, nearby neighbors, expressed concern that the smaller, older house (located on the proposed substandard parcel) is deteriorating and they believe that the small proposed lot among other much larger lots in the neighborhood will adversely affect property values. The other letter (Exhibit H) from Jack and Diane Walker, also nearby neighbors, expressed concern that the proposed lot is too small in comparison to other lots in the area, that the other homes in the area are nicer than the older house, that the older house has had some bad renters and that there would be no "control" over who is in that residence and what will happen there if the variance is granted. The Walkers also expressed specific concern over how this proposal would adversely affect their property values.

6. Testimony at the hearing also established that

there are other lots in the general area which are comparable in size to this proposed substandard lot. Specifically, the Assessor's map verified nearby lots of .17 acres and .19 acres and testimony of Ms. Pierce was that a lot just north of the lots indicated on the Assessor's map was similar in size to the proposed lot (i.e. .10 acres). Ms. Pierce also testified that there are some multi-family housing units with very limited side-yard and rear-yard sizes within 400 feet of this parcel.

7. The Applicant's proposed substandard parcel contains approximately .10 acres (4,300 square feet) which is less than one-half of the minimum lot size of 10,000 square feet required by Section 51.005(D)(1). The fence which is between the two properties (as evidenced by the photographs) has been in existence for many years and will form the new property line if the variance and partition are granted. The proposed property lines will also create substandard setback requirements on the smaller parcel. The Findings of Fact contained in the Klamath County Planning Department's Staff Report (Exhibit A) are incorporated herein by this reference. Both properties are accessed by individual driveways on Homedale Road and are serviced by Klamath County Fire District No. 1, City of Klamath Falls Water and South Suburban Sanitary District.

KLAMATH COUNTY LAND DEVELOPMENT CODE CRITERIA:

1. Article 43 of the Land Development Code sets forth the criteria which must be addressed in order to grant a

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Variance.

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2. Section 51.005(D)(1) and Section 62 of the Land Development Code set forth minimum lot size for the RS Zone (10,000 square feet) and setback requirements [62.004(1) = five (5) foot side yard; 62.005(A)(1) = twenty-five (25) foot rear yard].

KLAMATH COUNTY CODE FINDINGS AND CONCLUSIONS:

A. With respect to the request for a Variance as to minimum lot size and setback requirements, the following Findings and Conclusions are Made:

1. The literal enforcement of this code would result in practical difficulty or unnecessary hardship. The evidence indicates the proposed parcel has been used as a separate parcel for several years and has also been physically separated from the large parcel by a fence for a number of years. The smaller parcel has been treated as a separate parcel for all outward purposes for a significant period of time. The Applicants have been unable to sell the parcels together despite four years of effort to do so and they now have two buyers. To force the Applicants to sell both houses together would be cumbersome, unnecessarily burdensome and without any public benefit.

2. That the condition causing the difficulty was not created by the applicant. Although Applicants did place the newer house in its present location, their need for access to the rear and the lack of setback restrictions in 1956 justify the conclusion that Applicants had no other reasonable course

of action. Applicants' further efforts to enhance the access to the rear by purchase of the small triangular parcel in the Southwest corner is further evidence that Applicants did everything possible to avoid these "technical" setback difficulties.

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. The Hearings Officer is not convinced that this variance request will reduce neighborhood property values because the present situation of a single parcel physically divided into two households by a fence which has been in existence for many years. Visually and practically speaking, the two parcels have been separate for many years and it is illogical to conclude that this ruling will have any impact on property values. There is no substantial testimony or evidence in the record which establishes that these variances would have any adverse effects on adjacent properties.

ORDER:

The request for a Variance from the Development Standards of the Land Development Code requiring that every parcel be not less than 10,000 square feet in size [51.005(D)(1)] is granted.

The request for a Variance from the Development Standards of the Land Development Code requiring side yard setbacks of not less than five (5) feet [62.004(A)(2)] and

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rear yard setbacks of not less than twenty-five (25) feet [62.005(A)(1)] is granted with respect to all buildings presently on the property. Any new structures placed thereon shall comply with all Development Standards then in existence.

DATED this 20th of December, 1989.

Richard C. Whitlock
Richard C. Whitlock, 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 this Code."

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 27th day
of December A.D., 19 89 at 10:16 o'clock AM., and duly recorded in Vol. M89,
of Deeds on Page 24904.

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County Clerk

By Bernetha A. Latoch

COMMISSIONERS JOURNAL