

BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the Matter of the Request) Variance No. 12-89
 for a Variance for) FINDINGS OF FACT,
 IDA LEACH.) CONCLUSION OF LAW
 -----) AND ORDER

This matter came before Richard C. Whitlock, Hearings Officer of Klamath County, Oregon on February 23, 1990 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. The Applicant appeared at the hearing and testified in favor of the application. 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 (plot plan), and D (panoramic composite photograph). 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 at 5033 South Etna Klamath Falls, Oregon, on the east side of Etna Street, approximately 160 feet south of the intersection with Anderson Avenue and is Klamath County Tax Account No. 3909-14-2000. The site is in the RM (Medium Density Residential) Zone, which is defined in Land Development Code Section 51.007.

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2. The Applicant has requested a Variance from the development standards contained in Sections 51.007(D)(4) and 62.003(A)(2) pertaining to front-yard building setback requirements of the Land Development Code in order to allow her to leave a remodeled carport in its present location. On November 2, 1989, the applicant applied for and received a building permit to re-roof and repair a carport already on the property. However, the permit was issued in error due to a misunderstanding as to the location of the property line (due to an unfenced, vacant, pie-shaped parcel next to the property) and the Applicant seeks a Variance for front yard setback from the required twenty (20') feet down to zero (0') feet.

3. The Applicant testified that an existing carport had previously been on the property at the exact location of the new one and, due to roof deterioration, the Applicant applied for and received a building permit to re-roof and repair the carport. Applicant testified it had been located there since prior to 1981 and she also testified the present location is the only practical location due to the location of the residence and other obstructions.

4. There was no testimony in opposition to this application and there is no evidence in the record to suggest that the granting of this variance will be detrimental to the public health, safety and welfare or to the use and enjoyment of adjacent properties. The photograph and testimony also established that the carport does not create a visual

obstruction to traffic on Etna Street. From Exhibit B and the statements of staff, it appears that there are five (5) other residences nearby which also have zero-setback carports.

5. The Findings of Fact contained in the Klamath County Planning Department's Staff Report (Exhibit A) are incorporated herein by this reference. The property is serviced by Klamath County Fire District No. 1, City of Klamath Falls water, South Suburban Sanitary District, and PP&L.

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 Variance.

2. Section 51.007(D)(4) and Section 62.003(A)(2) of the Land Development Code set forth minimum setback requirements for the RM Zone at twenty (20) feet for the front yard.

KLAMATH COUNTY CODE FINDINGS AND CONCLUSIONS:

A. With respect to the request for a Variance as to the front yard setback requirement, 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 Applicant has simply re-roofed and repaired an existing carport and fully complied with the requirement to obtain a building permit. Applicant was unable to place the carport in any other location due to the location

of the residence. To force the Applicant to move or remove the existing carport would be cumbersome, unnecessarily burdensome and without any public benefit.

2. That the condition causing the difficulty was not created by the applicant. Although Applicant did place the structure in its present location, the location chosen appears to be the only feasible spot given the location of the residence and the structure is simply a re-roof and repair of a carport which was in existence prior to adoption of the present Land Development Code.

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. There was no testimony in opposition to this application and there is no substantial testimony or evidence in the record which establishes that this variance would have any adverse effects on adjacent properties or to the public, generally. As to vehicle traffic, there is no apparent visual obstruction created by the carport and there are numerous other residences nearby which have "zero-setback" carports.

ORDER:

The request for a Variance from the Development Standards of the Land Development Code requiring a front yard setback of not less than twenty (20) feet [62.003(A)(2)] is hereby granted with respect to the carport presently on the subject property. Any new structures placed on the property

shall comply with all Development Standards then in existence.

DATED this 6th of March, 1990.

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 3th day
of March A.D., 19 90 at 9:32 o'clock A.M., and duly recorded in Vol. M90
of Deeds on Page 4354.

FEE none

Evelyn Biehn, County Clerk

By Pauline M. Mendenhall

Return: Commissioners Journal