

BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON
 In the Matter of the Variance) VARIANCE NO. 16-86
 and Violation for MARK L. HOLST.) VIOLATION NO. 52-86
 _____) FINDINGS OF FACT AND ORDER

This matter came before the Hearings Officer Richard C. Whitlock on February 23, 1990 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 Respondent was present and testified at the hearing. Klamath County Planning Department was represented by Mr. J. Kim Lundahl 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 Exhibit S (Planning Department letter dated 1-15-90) and Exhibit T (Estimate for remodeling of carport roof). Also received was the testimony of Laverna Hotchkiss, one of the complainants. The County Hearings Officer, after reviewing the evidence presented, makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The Respondent was cited by the Klamath County Planning Department on August 15, 1989 for failure to comply with Hearings Officer Order dated February 3, 1987, (as clarified by Order dated January 19, 1989) specifically by not installing appropriate gutters and downspouts on the carport situated at 2629 Kane Street, Klamath Falls, Oregon, bearing tax account number 3909-2DC-2500.

2. This matter had come before Hearings Officer William M. Ganong for an interpretation and clarification of an Order issued by Hearings Officer Bradford Aspell dated February 3, 1987. The Order by Ganong, dated January 19, 1989, ordered the Respondent to install and maintain gutters and downspouts on all roof lines which are on the side of all buildings which face the Hotchkiss' property and the gutters and downspouts were to be designed and maintained "to carry the water off the roof(s) to deposit the water on other than the Hotchkiss' property."

3. The Order by this Hearings Officer dated October 16, 1989, found that:

"The present apparatus on the top of the carport roof is insufficient to divert water or snow away from the Hotchkiss's property. It appears the addition of gutters to the edges of the carport rafters would encroach upon the Hotchkiss property boundary."

That Order required the Respondent to:

"Bring his carport into compliance with the requirements of the February 3, 1987 Order, as interpreted by the Order dated January 19, 1989, on or before January 15, 1990. PROVIDED HOWEVER, that should Robert and Laverna Hotchkiss deny permission to allow the placement of gutter and downspout apparatus on the edge of the carport rafters (which would extend onto the Hotchkiss' property), then Respondent may provide the Hearings Officer, prior to January 15, 1990, cost estimates to comply with the Orders. Cost estimates shall include an estimate (separating labor and material costs) to replace a limited portion of the corrugated roof near the edge (possibly 6" to 12") with a flat roofing material to enable the use of the water diversion strip which is presently in place but ineffective to divert water from the corrugated roof surface."

4. On October 26, 1989, Mrs. Holst sought permission

to install the necessary runoff diversion apparatus to the carport extending over the Hotchkiss' property line, and permission was denied. Mrs. Hotchkiss also denied that permission at the hearing during her testimony.

5. Also in compliance with the Order dated October 16, 1989, the Respondents obtained an estimate for changes to the carport as required in the Order and submitted it to the Planning Department and the Hearings Officer. The cost of such modifications was \$363.00 but the Contractor cautioned:

"We do not recommend this procedure. The flashing will cause an excessive build up of ice and snow in the winter. Damage to the roof and leaks are very probable in the future. We will not provide any guarantee on this project."

I find this modification to be too impractical and expensive to be required of Respondents and I find that such modifications are beyond the spirit and intent of the prior orders of Hearings Officers Aspell and Ganong.

ORDER:

Mark L. Holst has failed to comply with the Hearings Officer Order dated February 3, 1987, as interpreted by Order dated January 19, 1989, by failing to install sufficient gutter and downspout apparatus on the carport situated on the Holst property.

The Respondent is hereby ordered to install and maintain gutters and downspouts on the carport roof lines which are on the side of the carport abutting the Hotchkiss property. Such gutters and downspouts shall be designed and maintained to

carry the runoff off the carport roof to deposit the water on other than the Hotchkiss' property and shall be installed prior to April 15, 1990. PROVIDED, HOWEVER, that unless Robert and Laverne Hotchkiss grant written permission to allow the placement of gutter and downspout apparatus on the edge of the carport rafters prior to April 1, 1990, the Respondent shall not be required to comply with the gutter and downspout requirements on said carport.

It is further ordered that any future extensive remodeling or replacement of the carport shall comply with all code requirements, including setbacks and diversion of water runoff, then in existence.

In the event Respondent fails to comply with this order by April 15, 1990, then the Klamath County Planning Director is ordered to issue a citation or citations per Klamath County Ordinance 57 which may result in the imposition of fines of up to \$500.00 per day.

DATED this 6th day 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."

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 8th day
of March A.D., 19 90 at 9:32 o'clock A M., and duly recorded in Vol. M90
of Deeds on Page 4359

FEE none

Evelyn Biehn - County Clerk

By Lauren Mullendor

Return: Commissioners Journal