

BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON

In the matter of the violation)
 by E. R. SEUTTER AND ESTER MANES)

VIOLATION
NO. 75-91

This matter came before Neil D. Smith, Hearings officer for Klamath County, Oregon on 10 January 1992 in the County Commissioners' Hearing Room in Klamath Falls Oregon. The Klamath County Planning Department was represented by Mr. Kim Lundahl the recording secretary was Ms. Karen Burg. The Klamath County Planning Department file and all the exhibits and other contents therein is incorporated by this reference into this matter.

This matter involves a structure consisting of a roof extension to the end of a residence. The roof appears to be of aluminum and is supported by three 4 x 4 posts. It has rain gutter on the outer edge adjacent to the complainant's property line. It further appears that it is less than one foot from her fence. The issue here is one of fact and law.

1. Was the structure in the same location as previous structure?

2. Does the present version of the Code apply?

This matter coming before the Hearings Officer for the purpose of determining whether or not the above alleged violator is presently in violation of the Code and if the Code must be applied to this dispute. The matter was called and the defendant appeared as ordered and testified that the supporting posts and roof line was not moved from the location in which a previous structure erected in 1978 is identical in size and shape to the original. Mr. Seutter contends that the replacement structure presently on the property is not closer to the property line than the previous structure. The "new" structure was built in 1989. There is a dispute as to whether or not the outer perimeter of the structure is closer to the adjacent property fence than the previous structure. Mr. Seutter and his witnesses contend that it is not. Mrs. Jaunita Evans and her witnesses contend that it is. There is no photographic evidence of a quality which will resolve the dispute.

The Code at Section 12.010(B) states as follows:

"Existing Uses. The provisions of this code are not retroactive in their effect on the use of land lawfully established on the date of adoption of this code, unless review of an application for the alteration, intensification,

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expansion, or modification on an existing use requires a discretionary decision to determine if the proposal is consistent with this Code."

There was also submitted and accepted into evidence numerous letters sent by persons who live in the immediate vicinity of the Seutter property. Those letters are marked A through C in support of Mr. & Mrs. Seutter's contention.

There is also a letter from Mr. Thurston and Ms. Wenger holding that the previous cover was narrower.

There was testimony at the hearing from Mrs. Jauita Evans and Mr. Thurston contending that the structure is wider and closer to the property line than previously.

Hearings officer finds from the testimony, photographs and letters that there was a historical use of the land substantially the same as the structure built in 1978 and that there is no need for review of this alleged violation. There is no question that the previous and the present structure are in violation of the present edition of the Code, however there is no authority for review under section 12.010(B) quoted above.

Article 12.010 (B) clearly states that the code is not retro-active therefore, the issue as to whether or not the setback requirement is met or is irrelevant. It should be noted that when Mrs. Evans was asked to describe the harm this structure was causing she speculated that it may "lower the value of her home should she decide to sell". That is speculation and since there will be no encroachment of water upon her property from the roof which is guttered, the speculation is less valuable in the determination of this dispute.


This is a most difficult case because the only evidence upon which the Hearings Officer has to rely is the memory of those who are long time residences, the dispute seems to involve a matter of two feet at the maximum and memories of distances are most unreliable. The testimony that the supports were placed in the same line as the previous supports seems more reliable. It should be noted that the Hearings Officer does not disbelieve any of the witnesses but, it is a matter of memory of those witnesses which is difficult to access.

NOW THEREFORE I FIND THAT THE ALLEGED VIOLATOR IS NOT NOW IN VIOLATION OF THE LAND USE CODE AND THAT THE CITATION SHOULD BE DISMISSED.

SO ORDERED THIS 20TH DAY OF JANUARY 1992

DATED this 20th day of January 1992

CONTINUATION OF VC 75-91


Neil D. Smith, Hearings Officer

KLAMATH COUNTY LAND DEVELOPMENT CODE SECTION 24.007 PROVIDES:

" An Order of the Hearings Officer shall be final unless appealed within seven (7) 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 25th day
of March A.D., 19 92 at 10:00 o'clock A. M., and duly recorded in Vol. M92,
of Deeds on Page 6222.
Evelyn Biehn County Clerk
By Claire Mulender

FEE none

Return: Commissioners Journal