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02/25/2010 09:13:11 AM

Fee: \$52.00

BEFORE THE PLANNING DIRECTOR KLAMATH COUNTY, OREGON

IN THE MATTER OF VAR 6-09 FOR)
 BOYD & CINDA DOCKENDORF)
 TO VARY FROM A 100-FT)
 SETBACK/POWER EASEMENT)
 LOCATED ON THE SIDE PROPERTY)
 LINE. PROPERTY LOCATED)
 NORTHEAST OF KOKANEE WY AND)
 APPROXIMATELY 860-FT EAST OF)
 HWY 97, NORTH OF GILCHRIST)
 WITHIN THE RURAL RESIDENTIAL)
 (R-2) ZONE; AND FURTHER)
 IDENTIFIED AS: R-2409-017BO-)
 01000-000)

TYPE II
 ADMINISTRATIVE
FINAL ORDER

1. NATURE OF THE REQUEST:

The applicant proposes to vary from the required 100ft front yard setback imposed by Roberts' River Acres subdivision plat, for a utility easement along Kokanee Ln. The applicant proposes to place the dwelling 50-ft from the front property line. The subject property is located northeast of Kokanee Ln, and approximately 860-ft east of Hwy 97, north of Gilchrist. The subject property is currently zoned Rural Residential (R-2). The Planning Director reviewed the request on January 27, 2010. The request was reviewed for conformance with Klamath County Land Development Code Article 62.

2. NAMES OF THOSE WHO PARTICIPATED:

The Planning Director, Bill Adams, reviewed this application. Planner, Kristinae Toomians, prepared the Final Order.

3. LEGAL DESCRIPTION:

The subject property for Variance File 6-09 located in the Planning Department is described as Block 4, Lot 5 of Roberts' River Acres; R-2409-017B0-01000-000.

4. RELEVANT FACTS:

The applicant requests to vary from the 100-ft setback imposed by Roberts' River Acres plat for a utility easement, approved by the Planning Commission on November 27, 1964. The applicant has provided correspondence from Mid-State Electric confirming the applicant's suspicion that the unusual setback requirement "has no logical explanation" (September 7, 1965). There are existing overhead power lines that span the front of the subject property. Mid-State Electric confirms in the letter provided by the applicant that they have a 40-ft utility easement along the length on Kokanee Ln. The applicant proposes to maintain a 50-ft front yard setback. The typical front yard setback in the R-2 zone is 25-ft.

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The subject property abuts Little Dechutes River, a Class I Stream, to the rear. Staff has previously issued a Flood Hazard Determination on April 16, 2009. The applicants' flood hazard certificate is on file.

The subject property has a Medium Wildfire Hazard rating, and therefore will be subject to all requirements of KCLDC Article 69, as set forth below. Compliance with KCLDC Article 69 should decrease fire hazards, fire suppression costs, or risk to fire suppression personnel.

5. REVIEW CRITERIA AND FINDINGS:

The following review criteria found in Article 43.030 of the Klamath County Land Development Code (KCLDC) must be addressed when considering a Variance.

KCLDC Article 43 Section 43.030(B) – Review Criteria:

B. A variance shall be reviewed against the following criteria:

- 1. The literal enforcement of this code would result in practical difficulty or unnecessary hardship to the owner. The difficulty or hardship may arise from the property's size, shape or topography, or from the location of lawfully existing buildings or improvements;**

As stated in correspondence submitted between the Planning Department Staff and Mid-State Electric, the 100-ft setback (or 200-ft setback) doesn't appear to serve any purpose. Mid-State Electric will maintain a 40-ft utility easement for the existing overhead power lines. Because of the Class I stream, Little Deschutes River, to the rear of the property, a 100-ft front yard setback would make the subject parcel unbuildable by confining the available building envelope.

- 2. The condition causing the difficulty was not created by the applicant;**

The 100-ft front yard setback shown on Roberts' River Acres Subdivision Plat (1964) seems to have been created in error, as shown in the correspondence from Mid-State Electric.

- 3. The granting of the Variance will not be detrimental to the use and enjoyment of adjacent properties, and will not authorize uses or activities not permitted by the land use zone regulations governing the property;**

The variance will allow the subject property to be buildable for a future dwelling, while maintaining the 40-ft setback required by Mid-State Electric for a public utility and maintenance easement. The applicant proposes to

maintain a 50-ft front yard setback.

4. The granting of the Variance will not be contrary to the intent of this code.

Granting a variance will not be contrary to the intent of the code because a typical front yard setback for Rural Residential (R-2) is 25-ft. The proposed 50-ft setback will exceed the minimum, but provide for the 40-ft utility easement for the overhead power lines.

6. ORDER:

Therefore, upon review of the information and exhibits listed, it is ordered the request of Boyd & Cinda Dockendorf for approval of VAR 6-09 is **APPROVED** subject to all Federal and State law, rules, or policy; Klamath County Land Development Code and County Ordinances; Oregon Fire Codes and Appendices; Oregon Building Codes and Appendices; Klamath County Public Works Standards, Policies, and Procedures; and, subject to the additional Conditions of Approval below.

CONDITIONS:

1. Prior to any site development, final clearances and any necessary permits must be obtained from Planning, On-Site Sanitation, Building, and Public Works.
2. Prior to issuance of any development permits, the applicant must record a restrictive covenant signifying compliance with Article 69 of the Klamath County Land Development code. Provide proof of covenant recordation to the Planning Department.
3. Prior to issuance of any development permits, applicant shall record final order to property deed. Provide proof of recordation to the Planning Department.

OFFICIAL SEAL
JETHAN PATTERSON
CLERK PUBLIC - OREGON
COMMISSION NO. 442019
COMMISSION EXPIRES AUGUST 18, 2013

**DATED this 27 day of JANUARY, 2010 AND WILL EXPIRE ONE YEAR
HEREAFTER UNLESS RECORDED OR AN EXTENSION OF TIME IS APPROVED.**

Mindy Gallagher for
Bill Adams, AICP, Acting Planning Director

Signed & Acknowledged before me this 17 day of February, 2010.

Elizabeth Nan Patterson

NOTARY PUBLIC FOR OREGON

My Commission Expires:

August 19, 2013

