

## **Narrative in Support of Roger Griswold's Request for a Variance from the Street Side setback Requirement**

This narrative provides evidence and argument in support of a variance from the street side setback requirement for the completed house located at 6604 NE Logan Road in the Roads End neighborhood. Each of the criteria for a variance as found in LCMC 17.77.140 are set out in **bold** below, followed by a discussion of each.

**1. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape legally existing prior to the date of the ordinance codified in this chapter, topography, or other circumstances over which the property owner has no control.**

The extraordinary circumstance here is the fact that with a street side setback of 10 feet, the newly-constructed house on the property does not meet the street side setback requirement. LCMC 17.17.070.F. says:

The minimum street side yard shall be 20 feet, except that it may be one foot less for each two feet of front yard setback over the minimum, but not to less than 10 feet.

The situation came about as a result of a cascade of mistakes on the part of the city. Before purchasing the property, on November 17th, I called and talked to James White in the planning department in a 13 minute phone call. Among the matters I spoke with him about, we specifically talked about setbacks. At that time he told me that the street side setback was 10 feet. I spoke with him again when I was developing the house plans for this lot and the adjacent one on Dec 1st during a 4 minute and 50 second call, and at that time he reaffirmed the 10-foot setback. I had a third conversation with him as I was finalizing the plans. In these calls I asked specifically about setbacks, lot coverage, deck heights, and if there was anything I needed to know in regard to building in Lincoln City and by the ocean and on these lots. I have not built anything here before and was unfamiliar with local codes and anything that may be specific to where I'm planning to build. I was given information about high wind areas, using stainless steel and aluminum because of the salt air. Except for the misinformation about the street side setback he was very helpful and informative. I had no reason to believe he was not providing accurate information.

When I completed the building plans I applied for a building permit. Among the reviews that the city performed on the building plans was a review by the planning department. As a part of the planning department review the reviewer, David Mattison, checked the setbacks, including the street side setback. The plans showed clearly that the proposed setback was 10 feet. The reviewer approved the plans as I submitted them with the 10-foot setback.

After all the reviews were completed, the city issued a building permit and I began construction. One of the first steps in building a house is to put in the forms into which the

concrete for the foundations and footings will be poured. When the forms were in place, as required I called the city for an inspection. One of the primary purposes of this inspection is to ensure that the house is being placed properly on the lot in accordance with the approved plans and that the required setbacks are met. The planning department's inspector, David Mattison, approved everything and the forms passed inspection. I then went ahead and poured the footings and built the house. At the point where there was only touch up painting and the like left to complete I was ready for a final inspection. At this point, Anne Marie Skinner called me and told me I had a problem because the house was built too close to the street side property line. This was a shock to me as I had asked specifically about setbacks, had passed the building plans review (including setbacks), and had passed the field inspection (also including setbacks). As a consequence I have a completed house that is not allowed to be occupied, and I am asking for a variance.



**The completed house, view looking northeast from Logan Road. NE 66<sup>th</sup> Street to the right.**

At this point it is important to understand how much of variance I am seeking. As shown above, LCMC 17.17.070.F. allows the street side yard to be reduced by as much as 10 feet if the actual front setback is greater than what is required. Another code provision makes the required front setback for properties fronting on Logan Road equal to the average setback of buildings on all lots within 100 feet of the lot on which the proposed building is to be located and that abut Logan Road. According to the Planning & Community Development Director, this average is 12.77 feet. So the required front setback is 12.77 feet.

The front face of my house is set back 34 feet from the front property line. But the front deck sets back at about 25 feet, and the stairs to the front door entrance are set back 20 feet. Using the stairs' setback of 20 feet, the house is set back 7.23 feet more than is required. Because LCMC 17.17.070.F. allows the street side setback to be reduced by one foot for each two feet of front yard setback over the minimum, the actual required street side setback is 16.38 feet ( $20 - [7.23/2]$ ). So the actual variance I am seeking is 6.38 feet.

As a side note, it is important to understand that this is not a case of claiming that because of the city's repeated mistakes, the city is estopped from applying the ordinance's setback requirement. Instead, this is a case where, yes, the setback requirement applies, but because of the extraordinary circumstance resulting from the city's mistakes – the completed house that does not fully meet the setback requirements – the ordinance's variance provisions allow me the necessary relief.

**2. The variance is necessary for the preservation of a property right of the property owner which is substantially the same as owners of other property in the same zone or vicinity possess.**

The property right involved here is the right to build and occupy a detached dwelling on the property. The property is zoned R-1-RE and in this zone a detached dwelling is an outright permitted use. This right to build and occupy a house is shared in common with all other properties in the R-1-RE zone. In this case, the house has been built but cannot be occupied because the final inspection revealed that it does not meet the setback requirement. The variance is needed so that the house may be occupied.

**3. The variance should not be materially detrimental to the purposes of this title, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any city planning policy.**

LCMC 17.04.020 sets out the purposes of Title 17. In relevant part, the purposes include promoting sound development, protecting and enhancing real property values, avoiding development that is detrimental to the stability and livability of the city, and safeguarding and enhancing the appearance of the city through effective land use, architectural design, and site planning. This variance is not detrimental to any of these purposes. The house, as built and as shown in the photo, is attractively designed and is a positive addition to the appearance of the city.

Reducing the street side setback by 6.38 feet, to 10 feet, does not materially affect any of the property in the zone or vicinity. In terms of views, it still leaves, next to NE 66<sup>th</sup> Street's 50-foot right-of-way, a 10-foot setback for views to the west from houses up hill to the east. This setback of 10 feet is greater than what is required in any other zone in Lincoln City. In every other single-family residential zone in Lincoln City the required street side setback is five feet for a one-story dwelling and 7.5 feet for more than one story. This includes the R-1-5 zone, R-1-7.5 zone, the R-1-10 zone, the RR zone, the VR zone, the NCR zone, and, for single-unit dwellings, the NBMU zone. In the RM zone, to the extent

single-unit residences are allowed, the required street side setback is the same: five feet and 7.5 feet. In the OPD zone, there is no street side setback requirement, except for oceanfront dwellings, where the required setback is 10 feet – exactly what is sought here. In the TVC zone, there is no setback requirement at all, except that there is a 10-foot maximum setback.

The 20-foot street side setback requirement in the R-1-RE zone did not originate in Lincoln City. It is a hold-over from the old Lincoln County R-1A zone that was in effect in Roads End at the time of its annexation into the city. There is nothing unique about the street side situation in Roads End, other than this legacy standard, compared to the rest of the city, and the rest of the city has seen fit to apply the 5/7.5-foot standard without ill effect. And even in Roads End, the street side setback, under certain circumstances as described above, is allowed to be reduced to 10 feet, which is exactly what is being sought here.

#### **4. The variance requested is the minimum variance which would alleviate the hardship.**

The hardship in this case is the inability to provide the required 16.38-foot -minimum setback from the side (south) property line to the side of the existing house. The house was built with a ten-foot setback in accordance with the approved plans and inspections. The alternative is to remove over six feet of the completed house, which would be extremely costly and which would destroy the habitability of the remaining structure. The minimum necessary to alleviate this hardship is varying the street-side setback from 16.38 feet to 10 feet. The house has been built and completed and is ready for an occupancy permit. The variance requested is exactly what is required – no more and no less – to allow the house to be occupied in accordance with the approved plans.