

Thank you, commissioners. My name is Roger. I've lived in Salem for the last 24 years. I've built our home on Logan Road over the last year, often having my son and daughter helping with cleanup or whatever they could.

They've been eager and are very excited to be able to use the home if I'm granted this variance. It's been a big job, and I've learned a lot.

I've been going to Roads End State Park for many years and have always taken guests there when they come and visit. To have the opportunity to be a part of that community and to find a lot that I could build on in that community has been a dream come true.

At the outset I'd like to reserve two minutes for rebuttal. And please if you any of you have any questions or concerns, please stop me and ask. I would love to be able to answer anything you might be wondering about, and I'm told I can't do that when you're deliberating.

I want to address a couple of things that I think the staff report got wrong.

Criteria 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 title, topography, OR other circumstances over which the applicant has no control;

In the staff report it states the applicant has not provided evidence to support the existence of an exceptional or extraordinary circumstance that applies to the site. [There are several exceptional or extraordinary circumstances in play here. One is the fact that the planning staff and building staff all reviewed and approved my plans, issued permits, signed off on inspections all missing the setback error. Second, I have a completed](#)

home that was approved as meeting all code requirements, but now I'm in a quagmire of not being able to live in a house I have a certificate of occupancy for.

I took in all the information I could from the city's website and staff. And certainly 1 of those items was missed. From my years of building, I've learned staff know things and understand things I don't necessarily know about a certain area or city. Such as materials that should be used or the future plan of a site which is why we are the only section of sidewalk and curb on Logan Road.

That is not something easily understood by reading the code. That is why I rely on professional city staff that have a full time job of knowing and implementing these codes. And I did not find anyone in city staff who was unfriendly or unhelpful. They all answered all my questions, and offered help in any way possible. But now I cannot get a final occupancy because of the setback error that was not my fault.

As I said in my narrative, I have a home that is completely built and although I am able to possess a Certificate of Occupancy, I cannot occupy the home without consequence. I feel that the permit sign off's by staff, subsequent site inspections and approvals by staff, improper as they were, qualifies as an extraordinary circumstance. It certainly is for me. This has been a very stressful time for me. I could hardly breathe when Ms Skinner notified me about this circumstance back in January.

The very extraordinary circumstance that exists is that we have a completed home that cannot be occupied. This does not apply to others in the vicinity. Our family's home was fully constructed before anyone became aware of this issue and it cannot be lived in. That is unique. Is

there another home in Roads End that has this circumstance? It seems exceptional.

I know that a neighbor couldn't rebuild their deck because of setbacks. I understand The Roads End Improvement Association is concerned about this becoming "commonplace with new developments". I understand that.

I'm not trying to break any rules, or trying to disregard the effort put into making the neighborhood cohesive. I'm not negatively impacting the neighborhood as a whole. I'm asking for 6.38' And I've even added to the neighborhood by adding a paved parking area for access to the beach. I've added sidewalks, and curbs. I've built a nice looking home.

Over a year ago, I spoke with James White in planning, I spoke with the building department, I spoke with the public works department, and all before I even purchased the lots, then once again I spoke with planning and building and public works while developing and having plans reviewed, and again as I was finalizing the plans. I have not built anything in Lincoln City before and was unfamiliar with local codes and anything that may be specific to where I was planning to build. I did look at the website and the codes and rules, I simply missed this one thing. I don't have an office person or someone who takes calls. I am small builder and do all of these responsibilities myself.

I was given information about high wind areas, using stainless steel and aluminum because of the salt air. My plans were under review for about 6 weeks. I was advised we needed Occupational Tax Permits to work in

Lincoln City, so we got those. And Ultimately the plans were approved as drawn and we constructed the homes.

There were many notations on my plans. As I mentioned, I was required to install curbs for the street and expand 66th, and construct a 6' sidewalk along Logan Road, so there was no confusion about where I was building.

So we went on to build according to the plans submitted and approved, had our required inspections that were approved and the house was complete in early January.

What is extraordinary is that no one noticed or made anyone aware my home was not meeting the side street setback for a whole year.

In the staff report, staff have noted that I didn't provide evidence meeting Criteria #1. However, I believe I have provided substantial evidence to show that this is an exceptional or extraordinary circumstance. I have provided my written narrative, I have testified before you, and I have submitted all of the building plans that have the multiple reviews, notes, and sign off's by the Planning and Building staff on the review and approval of my home in the current location, which all show this is both exceptional and was not in my control.

I find the criteria of 1 and 2 somewhat vague. As Commissioner Smith expressed on May 18th, 2021 during a planning meeting that he had concern that there is a lack of definition in some of the requirements on criteria one and two.

Staff are mis-interpreting Criteria #1 in the response. It does not solely require that the exceptional or extraordinary circumstances apply to the property. . . and result from lot size or shape.

The “or” in this Criteria, allows Staff and you to consider “other circumstances over which the applicant has no control.” This is a catch all provision for those property owners who did not cause the situation they are now seeking relief from and don’t have unique property elements from size, shape, or topography. This last section of Criteria #1 is directly applicable to my situation and one which I qualify for and clearly meet.

Next I want to address criterion 2.

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

In my narrative I said the property right to be preserved is the right to occupy my house. The staff report interpreted this to mean occupancy under the building code. But that is not what I am referring to. I’m talking about being able to occupy, to use, my house under the municipal code. The preservation of the property right would be to occupy the fully built dwelling without incurring any fine. I’ve been granted a certificate of Occupancy by the City of Lincoln City. But under LCMC 17.04.030 – which is about compliance with zoning requirements – construction and use of a house that does not meet setbacks is a violation of the municipal code. Under LCMC 17.84.020 – Enforcement – it is a class B violation, and each day of the violation is a separate offense. Under LCMC 1.16.070 a class B violation is subject to a \$1,000 fine. So even though I have a C of O I still have a violation of the code and a potential \$1,000/day fine. That's what keeps me from being able to occupy the house.

The other property owners enjoy the right to live in their homes without continuously violating an ordinance.

Mr Apicello gave the example on May 18, 2021 in a public hearing of “needing a variance to be able to build a home on your lot when everyone else is able to build. I need a variance to have a right like they have.”

So that is what I’m seeking, a variance to be able to build, keep and live in a home that many others have done in this same zone, 4 of which do not meet their side street setback and two that don’t meet their front street setback as noted in the staff finding for criteria number 3. Further the staff found “Having one more house not meeting a required setback in amongst the 6 houses in the vicinity that also don’t meet a required setback will not be materially detrimental to the vicinity.” And I’m asking for a mere 6.38’

I was very diligent in trying to comply with the code. Before I prepared plans, before I even purchased the lot, I asked the responsible city staff specifically about the setbacks after my own research. Based on what they told me and what I knew, I prepared plans that to the best of my knowledge complied with the setback requirements. I then submitted those plans for review by the responsible city staff and they approved the plans.

Based on that approval I put in the forms for the footings, and had responsible city staff come to the site to check the setbacks in the field, and they approved the setbacks. Only then did I build the house. I’ve invested hundreds of thousands of dollars in it. I did this in good faith. I wasn’t trying to get away with anything. I was trying to comply.

But I’ve ended up with a house that doesn't meet one of the standards, and now I’m not allowed to use it.

I even have a C of O, but I still can't use the house. I don't mention the city staff's mistakes to say that the setback standard shouldn't apply but to demonstrate that I've tried my very best to be diligent. I've sought to do what's right in every way possible. I've used aluminum and stainless steel everywhere outside because I was informed that's how it's done here with the salt air. I've talked with some of the neighbors and exchanged numbers so they could let me know if anything needs attention if I wasn't on site.

I have generally gotten along with my neighbors. The neighbor to the north even let us borrow power and water on occasion. Another neighbor who owns a surf shop asked for some wood pieces that I gave him. I believe this is a part of being a builder, making sure people have access to me and then taking care of their concern. It's part of the diligence I've tried to bring to building this home.

I'm not saying the city standard doesn't apply, but that I need relief from the standard via this variance process, a process that was designed to address exactly this kind of situation.

It's not a small matter for me at all. I'm not a big builder by any means. I'm not sure how it's been measured that I'm in some top tier of developers. I'm a home builder. I do not have any employees. I've borrowed the money to build this home, and these are the only 2 homes I've built this year. Mine and the one next to it. And now a finished home sits vacant and cannot be occupied.

[I respectfully request you approve my variance application.](#)