

**Narrative in Support of Roger Griswold's Appeal
From the Decision of the Planning Commission in Case VAR 2022-01**

This narrative provides evidence and argument in support of my appeal from the decision of the Planning Commission denying my request for a variance from the street side setback requirement for the completed house located at 6604 NE Logan Road in the Roads End neighborhood. The Planning Commission concluded that my application did not meet three of the four variance criteria. As I show below, the Planning Commission was mistaken in reaching this conclusion. In fact the Planning Commission went against the Planning & Community Development Director's professional finding that in truth my application met each of the criteria for a variance as found in LCMC 17.77.140.

At the outset, I should make clear that I am not saying that the street side setback requirement does not apply. I am saying that because of special circumstances I should be allowed a variance – some relief from the standard. This is what variances are for. As the Lincoln City Municipal Code says, a variance is a decision by the review authority to lessen or otherwise modify the requirements of the zoning code. The variance provisions in the code are there in recognition of the fact that there are cases where unusual circumstances make the application of standard regulations inappropriate or unfair.

In the paragraphs below I have set out the three applicable variance criteria in bold. This is followed by the Planning Commission's conclusions in italics. Then I show how the Planning Commission erred.

Criterion 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

Planning Commission Conclusion: *The applicant did not provide any evidence showing that exceptional or extraordinary circumstances apply to the property. The applicant's contention that the staff error is the exceptional or extraordinary circumstance does not meet the criterion since it doesn't apply to the property, staff error is not an exceptional or extraordinary circumstance, and the applicant does have control over this particular circumstance. It is the responsibility of the applicant to read the code and ascertain for themselves the requirements. In this case, the applicant was responsible to read LCMC 17.17.070 and see that the minimum required street side setback is 20 feet (except that it may be one foot less for each two feet of front setback over the minimum but not to less than 10 feet), not the 10 feet that the applicant used.*

This conclusion is wrong, is based on a false understanding of my application, and completely ignores the central point of my application, which is the extraordinary circumstance is the existence of a completed house that does not meet the street side yard setback. I said it this at the very beginning of my original narrative (attached as exhibit A):

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.

I did also state that the staff errors were an extraordinary circumstance, not something that has ever occurred before causing a fully built home to be found out of compliance. But I always tried to make clear that the completed house, sited in good faith, was the fundamental extraordinary circumstance. The quote immediately above demonstrates this, as does the following quote, from my testimony at the Planning Commission hearing (attached as exhibit B):

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.

One of the principal reasons I have mentioned the staff errors during this variance process is to demonstrate that my error, building my house with an improper setback, was made in good faith. I'm not a cowboy builder who rides into town, builds whatever he wants regardless of the rules, and then asks for forgiveness for violations. This was the first home I've built outside of the greater Salem/Independence area in my whole career. I tried hard to comply with city requirements. When the house was finished and I was ready to get the Certificate of Occupancy from the Building Department, I learned of the setback problem. As you can imagine, I was shocked. I had a house that I had spent more than eight months working on, and had spent hundreds of thousands of dollars on, that under the municipal code I am not allowed to use. That seems pretty obviously exceptional and extraordinary.

The Planning Commission completely ignored my contention that the completed house that I can't use is an extraordinary circumstance. The Planning Commission failed to address at all the evidence I provided in this regard, and failed to explain why the evidence I provided in this regard does not demonstrate the existence of an extraordinary circumstance. In the original staff report, the Planning & Community Development Director, also focused on the staff error issue, but after the hearing at the Planning Commission changed her finding to say that the completed house that can't lawfully be

occupied is in fact an extraordinary circumstance. The Planning Commission's decision fails to say why they disagree with the professional staff.

Criterion 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.

Planning Commission conclusion: *The applicant did not provide any evidence that a property right is being lost if the variance is not granted. The property is in a residential zone, and the construction of detached dwellings is permitted. The applicant obtained a building permit and constructed a detached dwelling. The fact that the applicant did not place the dwelling in accordance with the minimum street side setback requirement is not loss of a property right. The applicant did not provide any evidence showing that violating the minimum required street side setback is a property right.*

Again the Planning Commission has a false understanding of my claim and completely ignores the evidence I provided. The property right I said is at issue here is the right to occupy a completed dwelling. I never suggested that violating the setback is a right. Here is what I did say in my original variance application:

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.

Staff originally thought I was referring to "occupancy" under the building code and said that this was not a property right. At the Planning Commission hearing I was able to correct this misunderstanding. Here is what I said at the hearing:

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.

With this explanation Planning staff changed their understanding of my application, agreed that there is a right to occupy a dwelling under the municipal code, and found that I had met this criterion.

But the Planning Commission chose to disregard the evidence I provided as well as to disregard staff's recommendation. They did not explain why they did this, did not cite any evidence in the record regarding their own conclusions, and instead decided to say that certain things were not property rights despite the fact that I never asserted that they were. I never said that not placing a dwelling in accordance with the minimum street side setback requirement is a property right. I never said that violating the minimum required street side setback is a property right. I did say that occupying a completed dwelling is a property right. But without any explanation the Planning Commission ignored that, ignored the recommendation of the Planning & Community Development director, and made a decision that had nothing to do with my application.

Criterion 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.

Planning Commission conclusion: *The variance is detrimental to the neighborhood and the unique characteristics of Roads End. The variance would have negative impacts on the neighborhood.*

In this case the Planning Commission's statement is completely conclusory. They make no mention of how my proposed variance might be detrimental to the neighborhood or what negative impacts to the neighborhood there might be. Why and how the Planning Commission reached these conclusions is a complete mystery. They mention nothing that is detrimental about my house and where it is sited. They mention no negative impacts about my house and where it is sited. They mention no evidence that they might have relied on. They mention no reason for discounting my evidence.

Some of those who testified in opposition to my variance application mentioned the work that had gone into creating the R-1-RE zone. No doubt there were substantial efforts that went into it. Regarding the street side setback requirement, this was nothing new as it was just a holdover from Lincoln County's R-1-A zone. The implication was that allowing my house to continue to exist with its non-conforming 10-foot street side setback would somehow be a blow to the application of the R-1-RE zoning requirements.

But non-conformities are a way of life in Roads End. For example, look to NE 66th Street, where my house is located. The Planning & Community Development Director entered a map into evidence in the hearing that demonstrates clearly the extent of setback non-conformities (attached as exhibit C). It shows the twelve houses on NE 66th Street (not counting mine). As shown on the map, of these twelve, six do meet the required setback from NE 66th Street (four regarding the street side setback and two regarding the front setback). The non-conformities range from several inches to several feet. In addition, measurement of the map shows that some (at least four) of the twelve are non-conforming regarding setbacks from interior lot lines.

As a further and telling example of the widespread non-conformities in Roads End, the Planning & Community Development Director entered into evidence in the hearing a list of Roads End properties showing what their street side setbacks are (this is the setback at issue in my case) (the list is attached as exhibit D). Of the 61 properties listed, 43 (70.5 percent) are non-conforming in that their street side setbacks are smaller than the required 20 feet. As a final example, the majority of lots in Roads End are non-conforming because they are smaller than the required 6,000 square foot minimum lot size.

I bring all this up to show that my proposed street side setback is not at all unusual. The resulting non-conformity cannot be detrimental to the neighborhood when non-conformities are the norm. Importantly, in the original staff report, the Planning & Community Development Director reached the same conclusion, saying, "Having one more house not meeting a required setback amongst the 6 houses in the vicinity that also don't meet a required setback will not be materially detrimental to the vicinity."

Conclusion

I have demonstrated here that the Planning Commission's decision on my variance application completely lacks factual support and fails to address the key issues in this matter. The Planning Commission did not address my contentions and evidence. Their decision does not reflect the reality of my situation, my variance application, and the evidence before them. The decision should be reversed.

Attachments

- Exhibit A – Narrative from variance application
- Exhibit B – Roger Griswold's testimony from the Planning Commission hearing
- Exhibit C – Map showing setbacks along NE 66th Street
- Exhibit D – List of street side setbacks in Roads End