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CITY OF TALENT
COMMUNITY DEVELOPMENT

Findings of Fact for Variance
Township 38, R. 1W, S. 23CD, Tax Lot 4200
Applicant: Calvin Martin
P.O. Box 442
Jacksonville, Oregon, 97530

In order for a variance to be granted ALL of the following finding must be met.

- A. There are exceptional or extraordinary circumstances or conditions applying to the property or intended use that do not apply generally to other properties in the same zone or vicinity and which result from lot sizes or shape legally existing prior to the adoption of the chapter, topography, or other circumstances of which the applicant has no control;*

In addressing this finding the examiner need only look at the shape and size of the property. The size is less than 3,200 square feet. The shape is triangular with unequal legs and the widest portion of the property faces Lapree Street. It is not like adjacent properties which are generally rectilinear save one which is much larger and not adjacent to a residential zone.

The applicant purchased the property as a residential property and was surprised to find that he had a residential building that could no longer be used as such because it was in the Central Business District. The existing residential building could no longer be used as a residential structure due to being vacant for more than the amount of time required to maintain its pre-existing non-conforming use status. The building could not be converted to a commercial use due to the fact that it was projecting on a corner into the Lapree Street right-of-way. The only option left for the applicant was to demolish the building and create a design for a commercial building and follow the guidelines for the historic overlay that affects the site as well.

The applicant's intention was to remodel the residential structure within its existing footprint and allow a family member to live there. After some consideration and having no other viable alternatives to follow other than legal action against real estate company that sold him the property indicating that it was a residential use. The applicant decided to look anew at the land and see if it would financially and practically work out to follow the rules of the CBD zone and historic overlay. This action was encouraged by the planning department as this was the first of many residential properties, within the CBD, that would be making the conversion to a new commercial structure.

It would be fair to say that this neighborhood, as it currently exists, does not look commercial in any way. The zoning is commercial but in the practical and existing it is overwhelmingly residential. It is clear that the City has desired for more than two decades to convert the area to a central core but that has not happened. The short fuse on the loss of pre-existing non-conforming use is testament to the desire of the City and its

plan to eliminate the current older and somewhat depreciated buildings in the area to demolition and revival as commercial.

This property is a perfect example of the need to allow a variance to accommodate its unusual shape and juxtaposition to the residential zone to the West. The design and construction of the building will need to meet the economic needs of the applicant to support the cost with tenants. This property is not in a prime position for most commercial activities and will require tenants that will desire to live above their business and that appears to be the only design that makes sense to the applicant and his advisors. It is risky to assume that tenants will flock to this location and only by creating a very attractive building and reasonable cost can the applicant hope to have a successful outcome from this venture.

B. The variance is necessary for the preservation of a property right of the applicant which is substantially the same as is possessed by the owners of other property in the same zone or vicinity.

The applicant has no other options than to create a court action against the real estate company that sold him the property with incorrect information. The only issue that occurs with this conversion to commercial is that the building envelope for a portion of the western property line comes too close to the adjacent residential zone. In a realistic sense the building being considered here is not as close as the dilapidated residential structure that was on the site before. The design of the building has taken into account the need for privacy of the residential zone by having the stair tower to the second floor on that end of the building. The windows from the second floor only face South and the one window that is in the stair tower does not allow visual to the residential only light into the stair tower. The window also allows a softening of the view from the residential and gives a more residential look to that end of the building.

Essentially this is the only property in the CBD zone that has this problem and only for a portion of its Western boundary. The applicant would be unable to proceed without gaining enough area to support the cost and attract appropriate tenants. In addition the applicant has determined that moving or rather widening the street to provide parallel parking in front of the proposed building will assist in making the property desirable. The area is replete with this type of parking in all of the CBD. This is a parking solution that is consistent with the style chosen for the CBD in all respects.

In summary the applicant has gone a long way to mitigate a difficult situation on a difficult lot to give the City its first new structure in the area. It is difficult to find any real harm to the residential zone and neighbor for either privacy or intrusion. The building due to its orientation and location throws shade only on the street and not on a single other dwelling.

C. The variance requested is the minimum variance from the provisions and standards of this chapter, which will alleviate the hardship.

There are no other needs for variance to this property to accommodate the design that allows the applicant to move forward with confidence in his ability to make a reasonable investment in the property. This is the minimum and it is a very small amount in that the real intrusion into the setback is from the points of the corners of the building and the average setback taking the longest and the shortest would be about 14' rather than the 20' that the code requires. To repeat, the western boundary extends for only about one half or so of the property and it is actually less intrusive than the original building that was demolished.

In addition to the criteria A through D, variances from access management standards are subject to the following additional standards:

E. The granting of the variance shall be in harmony with the purpose and intent of these regulations and shall not be considered until every feasible option for meeting access standards is explored.

The need for access is not at issue here and the applicant has proposed a widening of Lapree Street to allow for parking on-street that allows for a safer and more consistent application of the design standards of the zone.

F. Applicants for a variance must include proof that:

- 1. Indirect or restricted access cannot be obtained;***
- 2. No practical engineering or construction solutions can be applied to mitigate the condition;***
- 3. No alternative access is available from a street with a lower functional classification than the primary roadway.***

There is no way that other access to the site would be allowed at this point in time. The property is completely surrounded by developed properties that are currently pre-existing non-conforming and until they change or are removed there are no other alternatives.

The only engineering and construction solution to be applied to mitigate the situation is included in the design by widening the street to the South to accommodate two to three parallel parking spaces. This change is consistent with the parking situation of all the new street plans in the area and appropriate even if the residential zone to the West was not an issue.

There are no other access alternatives to this property.