

City of Klamath Falls Planning Division  
Administrative Review

In the matter of an  
Administrative Review for:

Final Decision and Conditions: **6-V-09**

Marty Mienig  
800 Duffy Road  
Klamath Falls, OR 97601

Dale Fenske  
1027 Lakeshore Drive  
Klamath Falls, OR 97601

Date: November 9, 2009

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In accordance with the provisions of Section 10.805, 11.250 - 11.275, 12.010 and 12.380 of the Community Development Ordinance (CDO), the City of Klamath Falls Planning Department has reviewed this request for a Major Variance.

**NATURE OF THE PROPOSAL**

The applicant, Dale Fenske on behalf of Marty Mienig, has requested a Major Variance to install a pergola on the interior side yard property line (zero setback). The subject property is zoned Single Family Residential (SF). CDO Section 12.010 requires 5 foot interior side yard setbacks. The subject property is addressed as 800 Duffy Road and can be found on Klamath County Assessor's Map R-3809-028BD Tax Lot 200.

**AGENCY COMMENTS**

Planning – The site currently has a single family home, a patio, and a pool. No pergola or structure currently exists where the proposed pergola is proposed.

The proposal is to build a pergola on the side property line (zero setback). The support posts would be located 2 feet from the property line and the eave would be 0 feet from the property line. The proposed pergola would be 60 feet long, 15 feet wide, and 10 feet in height. The applicant is requesting the setback variance to block unpleasant views of a gravel service road and City owned water tower that are located to the east of the subject property.

The applicant states: “Requesting to go 0 (foot) setback in place of required 5 foot setback.”

Klamath County Building Division – “A building permit will be required for the project proposed. Fences six feet or less (in height) and accessory structures 200 sf or less may be exempt from building permits. Neither exemption pertains, therefore building code set-back requirements apply. A setback of three feet or less requires fire-rated construction. In this case, the portion of the project with less than three feet of setback is adjacent to a public way (access road to water tank) and we can therefore assume, for purposes of building code set-back, that the property line is in the center of the roadway and thus allow the construction as depicted, without fire rated construction.”

Engineering – “Since the applicant is requesting a two foot setback on the support posts and a 0 foot setback on the eaves a property line survey will be required. This is the only legal and true way of confirming the setbacks as requested; by having an Oregon licensed Professional Land Surveyor establish or re-establish the property lines in question. In establishing or re-establishing the property corners that define the property lines, if the monuments are missing or have never been set the Surveyor is required by state law to set the monuments and file a Map of Survey with the County Surveyor. He/she cannot just place witness markers at those locations for a property owner or contractor to measure from, since the Surveyor is identifying a true property corner location, unless survey monuments are found by the Surveyor as the property corners.”

USBR – “In response to the City of Klamath Falls Planning Review request for the subject applicant to build a pergola 0 feet setback from the side property line, the Bureau of Reclamation has no comments and/or concerns at this time. There are no Reclamation facilities adjacent to or in the vicinity of the proposed construction.”

The following agencies did not respond to this proposal:

- Avista Utilities
- Charter Communications
- Klamath County Fire District #1
- Pacific Power and Light
- Qwest

### **RELEVANT REVIEW CRITERIA, FACTS AND ANALYSIS**

This proposal is being reviewed according to the provisions of the Klamath Falls Community Development Ordinance (Chapters 10-14), specifically Sections 11.200-11.210, and 12.010 regarding Variances.

**A. Criterion *The variance is in conformance with the Comprehensive Plan, all other provisions of Chapters 10 to 14 and any applicable street plans.***

Staff’s Analysis: If the requested variance is approved then a new residential review addition application (\$25.00), for the pergola structure would be required. CDO sections 11.250 through 11.275, state that a major variance is necessary whenever an applicant wants to deviate from CDO requirements.

Finding: This proposal will conform to the Comprehensive Plan, Chapters 10 to 14 of the CDO, and any applicable street plan, if the variance is granted. **This criterion is met.**

**B. Criterion *There are exceptional or extraordinary circumstances or conditions applicable to the property involved which do not apply generally to other property in the same vicinity and zone.***

Applicant’s Response: The Meinig’s purchased this home in recent years and enjoy their pool area and view of the Klamath area. However, the gravel service road, bank and City water tower are an eyesore detracting from the aesthetic beauty. They desire to have a pergola built to increase aesthetics and assist lessening the view of the water tower. Due to

the placement of their home, including elevation, the water tower is a more prominent feature than from other homes. The water tower tank is approximately 75 feet from their home and the gravel service road is a mere 2 feet from their patio.

Staff's Analysis: The house at 800 Duffy Road has an extraordinary circumstance because the property is drastically sloped and because of the close proximity to the City water tower. The drastic slope of the property led to the construction of the house closer to the peak of the hill where the slope is less steep and therefore within closer proximity to the gravel service road and the water tower. The slope to the west of the house, opposite the proposed pergola is extreme. The subject property is located on the edge of the city limits, outside the urban growth boundary. Residential construction is not likely to occur to the immediate east of the subject property because it is used for a public utility.

The variance is necessary because the house is built 6'6" from the interior side yard. The intent of the pergola is to block the view of the water tower and the gravel service road, while still preserving the patio area for the pool and sauna. Placing the pergola support posts 2' from the interior side yard (3' into the setback) is necessary because the applicant does not want to place support posts on top of the patio which is located immediately on the west side of the proposed support posts. Drilling into the concrete patio could cause damage to the integrity of the patio area and/or the pool. The 2' eaves should not cause any problems for the service road on the adjacent City lot. The eaves were not a concern to the City Public Works Department or the City Water Division who operates the water tower.

Finding: There are **exceptional or extraordinary** circumstances or conditions applicable to the property involved which do not apply generally to other property in the same vicinity and zone. **This criterion is met.**

C. ***Criterion A variance is necessary for the applicant to preserve and enjoy a substantial property right equal to that right possessed by other property owners under like conditions in the same vicinity and zone.***

Applicant's Response: As previously stated in answer to question 1, this home is closer in proximity to the service road and water tower than other homes, which detracts from their view.

Staff's Analysis: After making a site visit on September 15, 2009 staff has concluded the house at 800 Duffy Road is closer to a gravel road than most houses in the area. The house is also extremely close to the City water tower (see Attachment A). Houses to the west and south of 800 Duffy Road (a County road) enjoy paved streets as opposed to a gravel service road. These nearby houses also enjoy improved lots with landscaped yards, instead of a water tower.

The applicant does not have the same ability as properties within close proximity to block the view of the water tower or the gravel service road because of the narrow distance between the patio and the property line.

Finding: The variance is necessary for the applicant to preserve and enjoy a substantial property right equal to that of other property owners in the same vicinity. **This criterion is met.**

- D. ***Criterion*** *The granting of the requested variance will not be materially detrimental to the public health, safety, convenience and welfare or injurious to the property improvements in the same vicinity and zone in which the property affected is located and will not be contrary to the intent of Chapters 10 to 14.*

Applicant's Response: The proposed pergola will have no impact on other area property improvements as there are no homes next to theirs on this side of the proposed pergola. The adjacent property is City owned.

Staff's Analysis: Notice of the requested variance was sent to all property owners within 250' of the subject property. No property owners presented opposition to the proposal and no written comment were received. Paul Cooler, a resident at 908 Loma Linda Drive called on 10/16/09: He stated that he had no problems with the proposal because it would not impact him or his property.

A request for comments was sent to the following agencies: Klamath County Building Division, Qwest, Pacific Power & Light, Avista Utilities, Charter Communications, USBR, Klamath County Fire District #1, and City of Klamath Falls Engineering Division. Responses received from agencies are listed under "Agency Comments". The agencies who responded did not present any concerns with the requested variance.

Finding: The granting of this variance will not be materially detrimental to the public health, safety, convenience and welfare or injurious to the property improvements in the same vicinity and zone. **This criterion is met.**

## DECISION

After consideration of all staff, agency and citizen comments, and reviewing various data, the application is **accepted** as presented based on the findings.

## CONDITIONS

### 1) **General Conditions:**

- a) An Oregon licensed Professional Land Surveyor shall establish or re-establish the property lines in question. The surveyor cannot just place witness markers at locations for a property owner or contractor to measure from because the Surveyor is identifying a true property corner location, unless survey monuments are found by the Surveyor as the property corners. The property owner shall notify City Planning when the property corners are established/re-established, which shall be before construction of the pergola begins.
- b) All contractors working on this job shall maintain a valid city business license.
- c) The applicant shall obtain a building permit for the pergola.
- d) The applicant shall submit for review and approval a new residential review addition application (\$25.00), for the pergola structure.

## ATTACHMENT

Attachment A: View of the water tower and gravel service road from 800 Duffy Road patio.

This **Variance Application** does meet the condition and scope of the City of Klamath Falls Comprehensive Plan, acknowledged by the Oregon State Land and Conservation Development Commission on May 31, 1984. In doing so, this **Variance Application** does address the appropriate policies encompassed in the Comprehensive Plan.

**APPLICANTS ARE ADVISED THAT THIS DECISION IS FINAL AS OF THE DATE OF MAILING THIS DECISION (NOVEMBER 9, 2009), UNLESS WRITTEN APPEAL AND A \$200 APPEAL FEE IS FILED WITH THE CITY PLANNING DEPARTMENT WITHIN 12 DAYS OF THE DATE OF MAILING.**

DATED THIS 9TH DAY OF NOVEMBER 2009.

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Kelly O'Neill  
Planner

c: Tom Del Santo, Development Coordinator  
Rick Bowman, Code Enforcement Officer

### ATTACHMENT A:

