

City of Klamath Falls Planning Department
Administrative Review

In the matter of an
Administrative Review for:

Final Decision and Conditions: **1-V-11**

Rick and Susan Beer
1101 Hanks Street
Klamath Falls, OR 97601

Date: February 1, 2011

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 applicants, Rich and Susan Beer, request a Major Variance of Community Development Ordinance (CDO) Section 14.155 (1) which allows for a maximum height of three and one half (3 ½) feet for front yard fences. The applicants also request a variance from CDO Section 14.390 which requires a vision clearance area 10 feet back from an alley intersection. The requested variances would allow for a 6 foot wrought iron fence in the front yard that is constructed up to the property line near the intersection of Hanks Street and an adjoining alley. The applicants constructed the fence to keep deer from damaging their property. According to the applicants there is a large number of deer in the area as the property is located between an open space area and a public park. The house is situated on the lot in such a way as to make the majority of the property part of the front yard of the property. That is, the house and garage are placed near the back of the property and most of the subject property is between the front of the house and Hanks Street. The subject property is addressed as 1101 Hanks Street and can be found on Klamath County Assessor's Map R-3809-019CC Tax Lot 03700. The current use of the property as a single family dwelling is appropriate for the Single Family Residential zoning of the property.

AGENCY COMMENTS

Engineering –

FACT 1: An assumption can be made that if a property owner is constructing a property line fence and requesting a setback and height variance that they must know where the property/right of way lines and corners exist. How else would they know to place the fence on the property line? The only legal and true way of confirming the location of the property and right of way lines is by having an Oregon licensed Professional Land Surveyor establish or re-establish the property lines in question. Anything else would be a guess or an assumption by other individuals as to the location of those lines.

FACT 2: As noted in the Planning Division Review Sheet, for 1-V-11; the fence was constructed prior to making application to the City.

RECOMMENDATION:

- To ensure that the property owner/applicant has properly installed the fence on the property lines, without encroaching onto adjacent lands; a condition that the property

corners be established or re-established by a Professional Land Surveyor licensed in the State of Oregon meeting the requirements of ORS 209.250, if applicable, should be required.

- The applicant should verify that they had properly notified, per the Oregon Excavation Law, the Oregon Notification Center at 1-800-332-2344, regarding utility locates before digging.
- Based on a site visit it was determined that with current conditions and traffic usage, of the adjacent Alley, there does not appear to be an issue with sight vision. That of course is assuming the fence is truly placed on the right of way lines.

Basin Transit –

“No comments.”

USBR –

“In response to the City of Klamath Falls Planning Departments administrative review request for the subject applicant’s proposal to request a Major Variance of Community Development Ordinance Section 14.155 which allows for a maximum height of three and one half feet for front yard fences, the Bureau of Reclamation has no comments and/or concerns at this time. There are no Reclamation facilities adjacent or in the vicinity of the proposed construction site.”

Avista:	No comments were received.
Qwest:	No comments were received.
Charter:	No comments were received.
Pacific Power:	No comments were received.
City Police:	No comments were received.
Waste Management:	No comments were received.
KCFD No 1:	No comments were received.

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: CDO Section 12.010 requires a minimum setback of 10’ for exterior side yards and a minimum setback of 20’ for front yards. The existing exterior side yard setback from Bly Street (approximately 7’) and the existing front yard setback from a portion of Hanks Street (approximately 10’) do not meet these minimum setback distances. This nonconformity is preexisting and the proposed fence variance will not increase the existing nonconformity.

The property will meet all CDO requirements/standards aside from those mentioned above and those for which a variance is approved.

Finding: This proposal will not conform to the Comprehensive Plan and chapters 10 to 14 of the CDO. **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: My property sits directly between a wildlife area on the west side of Front Street and a park across from my property to the east. There is a herd of deer (13 does and fawns) that use the wildlife area year around. Those deer use my property as a migration trail to get from the wildlife area to the park and then on to Harbor Links golf course (back 9). These deer impact my property by eating my plants damaging my apple and pear trees and leaving so much poop in the yard that my grandkids don't like to play in the yard. I am afraid that some of the deer may actually hurt my grandkids should they be out at the same time.

Staff's Analysis: The subject property has a unique shape with four of the five sides of the property fronting along public rights-of-way. The frontage includes approximately 47' along Bly Street, approximately 201' along Hanks Street (two sides) and approximately 184' along an alley. The only common property line is approximately 140' long. The existing 2 storey house and shop are setback approximately 7' from the Bly Street right-of-way (east), approximately 8' from the shared property line (north), approximately 37' from the alley (west), approximately 10' from the abutting portion of the Hanks Street right-of-way nearest to the structures (southeast), and approximately 149' from the abutting portion of the Hanks Street right-of-way farthest from the structures (southwest). The subject property has a Hanks Street address and all of the property between the front of the house and the Hanks Street right-of-way is considered the front yard. Because of the shape of the lot and the location of the existing structures on the property a large majority of the property not covered by structures or used as driveway area is located in the front yard.

The shape of the property and the location of the existing structures on the property are exceptional conditions on this subject property that do not generally apply to other properties in the same vicinity and zone.

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: In order to keep the deer herd out of my property and protect my plants, trees and grandkids, I need a fence that is a minimum of 6 feet high. It was recommended that I go with a 7 or 8 foot fence. The 4' fence that is replaced was totally inadequate. The deer hopped over the 4' wire fence like it didn't exist. It is my understanding that we cannot harass the wildlife and I have no desire to do so. I do however need to protect my property from further damage from the deer. I have been trying to grow a shielding hedge around my patio with a target height of 6 feet for 5 years. The hedge plants

were 3' tall when planted. They are still 3' high because the deer eat the new growth every year.

Staff's Analysis: The subject property has a unique shape with four of the five sides of the property fronting along public rights-of-way. The frontage includes approximately 47' along Bly Street, approximately 201' along Hanks Street (two sides) and approximately 184' along an alley. The only common property line is approximately 140' long. The existing 2 storey house and shop are setback approximately 7' from the Bly Street right-of-way (east), approximately 8' from the shared property line (north), approximately 37' from the alley (west), approximately 10' from the abutting portion of the Hanks Street right-of-way nearest to the structures (southeast), and approximately 149' from the abutting portion of the Hanks Street right-of-way farthest from the structures (southwest). The subject property has a Hanks Street address and all of the property between the front of the house and the Hanks Street right-of-way is considered the front yard. Because of the shape of the lot and the location of the existing structures on the property a large majority of the property not covered by structures or used as driveway area is located in the front yard.

Given the shape of the property and the location of the existing structures on the property the requested variance is necessary for the applicants to have the ability to protect their property from wildlife intrusion. Without the variance the applicants will not have the ability to protect most of the yard space on their property from deer.

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 fence that was removed was old livestock wire. It was ratty looking and looked as if it belonged on a farm. It was 4' high and did nothing to deter the deer from coming into my yard on their way to the park on the other side of my property. The fence that replaced the wire fence is wrought iron, 6' high, is more positive visually to the neighborhood, and will keep deer from damaging my property.

Staff's Analysis: Notice of the requested variance and a request for comments was sent to the following agencies: Klamath County Building Division, City Engineering Division, City Police, Waste Management, US Bureau of Reclamation, Qwest, PP&L, Avista Gas, Basin Transit Service, Charter Communications, and Klamath County Fire District No. 1. All response received are listed under "Agency Comments". The agencies who responded did not present any concerns with the requested variance.

One letter of support was received from a neighboring property owner and those comments are on file with the Planning Division.

The fence as proposed/constructed does not interfere with visibility or create a safety concern as the bottom of the fence is below the surface of the Hanks Street road surface and drivers and pedestrians can easily see through the fence. This variance is for the height and location

of the proposed fence only and does not give the property owner the ability to construct any other fence that does not meet the standards of the CDO.

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 with the conditions listed below. **This criterion is met with conditions.**

DECISION

After consideration of all staff, agency and citizen comments, and reviewing various data, the application is **approved** as presented with the following **conditions**:

CONDITIONS

1. This variance is approved for 6 foot wrought iron fence as shown on the approved site plan only. No other fence shall be constructed without approval of the Planning Division.
2. A fence permit shall be submitted, reviewed, and approved prior to installation of any fence/gate.

APPLICANTS ARE ADVISED THAT THIS DECISION BECOMES FINAL TWELVE DAYS FROM THE DATE OF MAILING THIS DECISION, UNLESS WRITTEN APPEAL AND A \$200 APPEAL FEE IS FILED WITH THE CITY PLANNING DEPARTMENT.

DATED THIS 1ST DAY OF FEBRUARY 2011.

Joe Slaughter
Associate Planner

c: Tom Del Santo, Development Coordinator
Rick Bowman, Code Enforcement Officer
Karen Burg, Planning Assistant