

1 Opinion by Hanna.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county hearings officer's decision denying a front yard setback
4 variance.

5 **FACTS**

6 On March 3, 1997, petitioner filed an application for a variance to reduce the front
7 yard setback requirement of his property to legalize a pool house that violated the front yard
8 setback requirement.¹ Petitioner's property is approximately 1.5 acres and is zoned R-20,
9 low-density residential. Clackamas County Zoning and Development Ordinance (ZDO)
10 301.8(B) requires a front yard setback of 20 feet in the R-20 zone. ZDO 301.8 (D) allows for
11 modification of a front yard setback when the modification is consistent with the purposes set
12 forth in ZDO 301.8(A) and satisfies the variance criteria under ZDO 1205, which requires
13 that the decision maker find:

14 "compliance with the applicable requirement or standard of the ordinance
15 would create a hardship due to one or more of the following conditions:

- 16 "1. The physical characteristics of the land, improvements, or uses are not
17 typical of the area. When the requested variance is needed to correct
18 an existing violation, that violation shall not be considered as a
19 condition 'not typical of the area.'
- 20 "2. The property cannot be developed to an extent comparable with other
21 similar properties in the area if the requirement or standard is satisfied.
- 22 "3. Compliance with the requirement or standard would eliminate a
23 significant natural feature of the property.

¹Petitioner applied for a variance in the spring of 1996. That variance request was administratively denied and the denial was not appealed. That application was precipitated by allegations of various ordinance violations related to petitioner's pool house, primarily related to setback requirements. To satisfy the side yard setback requirements, petitioner purchased an adjacent lot and requested and was granted a lot line adjustment. That adjustment corrected all the violations except for the front yard setback requirement. The variance request at issue in this LUBA appeal is to correct the front yard setback violation.

1 "4. Compliance with the requirement or standard would reduce or impair
2 the use of solar potential on the subject property or adjacent
3 properties." (Emphasis added.)

4 Petitioner's residence, a pool and the subject pool house are located on the subject
5 property. Public and private road frontages encompass two-thirds of the property boundary.
6 Unlike the other properties in the surrounding subdivision, the west edge of the property,
7 where the pool house is located, is bordered by a reverse street curve. The challenged
8 decision explains that placement of the pool house was limited by the steep slopes that bound
9 the north and east property lines, the existing location of the residence and the pool, and
10 access to drainfields.

11 The planning director administratively denied petitioner's variance application.
12 Petitioner appealed the planning director's denial to a county hearings officer, who sustained
13 the planning director's denial of the variance request. In relevant part, the hearings officer
14 found:

15 "It is the physical characteristics of this land and improvements which limit
16 the siting of the proposed pool house. * * * Based on the above physical
17 conditions of the subject property, the applicant has established that the
18 proposed pool house cannot be conveniently sited to comply with the front
19 yard setback standard, and that this limitation results from these physical
20 characteristics.

21 "* * * * *

22 "If the inability to site the pool house as proposed constituted a hardship, this
23 criterion would be satisfied, as the claimed hardship does result from the
24 circumstances listed under subsection 1205.02(A)(1) of the ZDO." Record 4-
25 5.

26 The hearings officer nonetheless denied the variance, based on a threshold
27 determination that petitioner had failed to establish any hardship, stating:

28 "[t]he applicant has not established that compliance with the front yard
29 setback of 20 feet would create any hardship. The fact that compliance with
30 the setback will require removal of the already constructed pool house cannot
31 be considered as a hardship. That structure was construed without benefit a
32 building permit and in violation of the front yard setback standard." Record 4.

1 This appeal followed.

2 **FIRST ASSIGNMENT OF ERROR**

3 Petitioner contends that the challenged decision improperly construes and applies
4 ZDO 1205.02(A) by adding a threshold "hardship" requirement in addition to the specific
5 criteria set out in ZDO 1205.02(A). Petitioner argues that nothing in ZDO 1205.02(A)
6 supports the hearings officer's interpretation that petitioner must first establish a hardship
7 before the four alternative criteria are applied.

8 We agree with petitioner that the challenged decision improperly construes and
9 applies ZDO 1205.02(A). Nothing in the language of ZDO 1205.02(A) provides a basis for
10 the county to evaluate hardship beyond application of the four listed criteria. Those criteria
11 describe four conditions, anyone of which can constitute a hardship. Because the hearings
12 officer found that at least one of those criteria was satisfied, he was obligated to approve the
13 variance request.

14 The first assignment of error is sustained.

15 The county's decision is reversed.²

16

²Because we reverse the challenged decision, we need not reach petitioner's other assignments of error.