

BEFORE THE LAND USE BOARD OF APPEALS

Nov 28 2 09 PM '83

OF THE STATE OF OREGON

RUSSELL V. DAVIS,  
EDNA M. DAVIS and  
NORMA J. DAVIS,

Petitioners,

vs.

MARION COUNTY,

Respondent.

LUBA No. 83-084

FINAL OPINION  
AND ORDER

Appeal from Marion County.

Petitioner Norma Jean Davis submitted the Petition for Review and argued the cause on her on behalf.

Robert C. Cannon, Salem, filed the brief and argued the cause on behalf of Respondent.

BAGG, Board Member.

Affirmed.

11/28/83

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of Oregon Laws 1983, ch 827.

1 BAGG, Board Member.

2 NATURE OF THE DECISION

3 This is an appeal from a Marion County order approving a  
4 hardship dwelling permit. The order included two conditions  
5 petitioners find objectionable. The conditions restrict  
6 occupancy to one permanent residence and one temporary mobile  
7 home.<sup>1</sup>

8 FACTS

9 In 1976 the predecessors in interest of Russell V. Davis  
10 and Edna M. Davis obtained a building permit for a mobile home  
11 on a 4.8 acre tract zoned Exclusive Farm Use (EFU). A  
12 condition of that permit required rendering the existing house  
13 unliveable upon occupancy of the mobile home. Petitioners  
14 allege Russell and Edna Davis purchased the property in 1980  
15 unaware of the 1976 permit or its conditions. At that time the  
16 house as well as the mobile home were both occupied as  
17 permanent residences. After Mr. Davis retired, he and Mrs.  
18 Davis applied to the county for a temporary mobile home permit  
19 to allow their daughter, Petitioner Norma Jean Davis, to reside  
20 on the property and assist in their care. If allowed, this act  
21 would result in three dwellings on the property. A hearings  
22 officer granted the permit but made it conditional upon use of  
23 only one permanent and one temporary residence on the  
24 property.

25 STANDING

26 Respondent challenges the standing of Norma Jean Davis, the

1 sole signatory on the petition for review. The county also  
2 says the petition should be dismissed as the only person who  
3 signed it has no standing. The petition states the petitioners  
4 are adversely affected and aggrieved as the decision will "not  
5 allow an elderly couple who are physically and visually  
6 impaired to maintain the use of their property as they  
7 purchased it in good faith." The petition includes a copy of  
8 the original application for the permit signed by Russell and  
9 Edna Davis, a request for reconsideration of the decision of  
10 the planning commission signed by Norma Jean Davis, and a  
11 letter requesting an appeal of the hearings officer decision  
12 also signed by Norma Jean Davis.

13 Respondent does not challenge the standing of Russell and  
14 Edna Davis.

15 As this is a quasi-judicial decision, the petition must  
16 state the facts that establish petitioners standing as stated  
17 in 1983 Or Laws, ch 827, §31(6) as follows:

18 "Except as provided in ORS 197.620(1), a person may  
19 petition the board for review of a quasi-judicial land  
20 use decision if the person:

- 21 "(a) Filed a notice of intent to appeal the decision  
22 as provided in subsection (1) of this section;  
23 "(b) Appeared before the local government, special  
24 district or state agency orally or in writing; and  
25 "(c) Meets one of the following criteria:

26 "(A) Was entitled as of right to notice and  
27 hearing prior to the decision to be  
28 reviewed; or

29 "(B) Is aggrieved or has interests adversely  
30 affected by the decision."

1 Norma Jean Davis signed the notice of intent to appeal,  
2 meeting the first requirement. An oral or written appearance  
3 in the local government proceeding is the second requirement.  
4 The letters from Norma Jean Davis, copies of which are attached  
5 to the petition, show she meets the appearance requirement.

6 The letter requesting appeal signed by Norma Jean Davis is  
7 also sufficient to meet the third requirement of standing, that  
8 a petitioner be entitled as of right to notice or be adversely  
9 affected or aggrieved. This is so since one who appeals a land  
10 use decision to the governing body from a decision of a  
11 hearings officer or planning commission is a "person entitled  
12 as of right to notice and hearing prior to the decision being  
13 reviewed." Lemmon v Clemens, 57 Or App 583, 586-587, 646 P2d  
14 633 (1982).

15 Norma Jean Davis, therefore, has standing. Since she does  
16 have standing, Respondent's motion to dismiss the petition  
17 because it was not signed by any petitioner with standing is  
18 denied.

19 ON THE MERITS

20 Petitioners contend the two conditions are unjust as  
21 petitioners were unaware of the conditions when the property  
22 was purchased, and the county did nothing to enforce the  
23 conditions for seven years. Petitioners allege they bought the  
24 property in reliance upon their ability to rent out one of the  
25 two residences, and petitioner's existing physical condition  
26 now requires an additional temporary residence. Petitioners

1 explain they are unable to comply with the county's conditions  
2 because to do so would deprive them of the rental income from  
3 one of the dwellings. Petitioners rely on this income.

4 The county does not contest petitioners' lack of knowledge  
5 of the restrictions at the time they purchased the property,  
6 nor does the county contest the existence of a hardship  
7 warranting the grant of a temporary use permit. The county  
8 does assert the two permanent residences on the property are  
9 illegal. Allowance of a third temporary mobile home is not  
10 permitted under the county ordinances, according to Marion  
11 County.

12 The county zoning ordinance allows one single-family  
13 residence as a farm dwelling in the EFU zone as a permitted  
14 use.<sup>2</sup> The ordinance also allows temporary residence for  
15 hardship purposes "per Section 120.040" as a conditional  
16 use.<sup>3</sup> Section 120.040 of the Marion County Zoning Ordinance  
17 (MCZO) states the standards for determining hardship, the terms  
18 of the hardship permit and also states:

19 "It is not the intent of this section to subvert the  
20 intent of the single-family zones or of any other  
21 zones by permitting more than one permanent residence  
22 on each property. The Commission or Hearings Officer  
23 may, in the granting of the request for the temporary  
24 use of a mobile home permit, impose conditions that,  
25 in its best judgment, will preclude the possibility of  
26 such temporary use becoming permanent." MCZO §120.040

On land zoned EFU, the above ordinance sections, when read  
together, allow one permanent residence and one temporary  
residence in cases of hardship. Here the conditions of the

1 permit limit the number of residences to one permanent and one  
2 temporary because of the hardship. The two conditions thus  
3 carry out the letter of MCZO §136.020(a) and the intent of the  
4 ordinance not to "subvert the intent of the single-family zones  
5 or any other zones by permitting more than one permanent  
6 residence" on the property.

7 The Board can appreciate petitioners' need for the  
8 additional dwelling, but the county acted within its authority  
9 when it denied the request for the third dwelling.

10 The decision is affirmed.

FOOTNOTES

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"2. There shall be only one permanently sited residence on the subject property. If applications choose to utilize the two existing residences as the primary residence and temporary hardship mobile home, the removal agreement shall stipulate that one of those residences shall be removed after the hardship ceases to exist.

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"3. If applicants choose to site a new mobile home for the temporary hardship use, the wooden house shall be immediately rendered unliveable or removed from the subject parcel." Findings of Fact, Conditions 2 and 3.

10

11  
12  
"USES. Within an EFU zone no building, structure or premise shall be used, arranged or designed to be used, erected, sturcturally [sic] altered or enlarged except for one or more of the following uses:

13  
\* \* \*

14  
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16  
"(c) A single-family dwelling or mobile home and other structures customarily provided in conjunction with farm use subject to Section 136.040(a)." MCZO, §136.020(c)."

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18  
"CONDITIONAL USES. The following uses may be permitted in an EFU zone subject to obtaining a conditional use permit and satisfying the applicable criteria in Section 136.040.

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"(c) Temporary residence for hardship purposes per Section 120.040, meeting the criteria in 136.040(c) and (d)." MCZO, §136.030(c).