

12018

BEFORE THE HEARINGS OFFICER  
FOR KLAMATH COUNTY, OREGON

In the Matter of a	)	NO. 6-82
REQUEST FOR A VARIANCE	)	
	)	FINDINGS OF FACT AND
for	)	DECISION
	)	
CHARLES BARTLETT	)	

THIS MATTER came on for a hearing before the Klamath County Assistant Hearings Officer, James R. Uerlings, on May 6, 1982, at 1:30 p.m. in the Conference Room of the Klamath County Library. The County Planning Department was represented by its staff, and the applicant was represented by Charles Bartlett. Whereupon, the Assistant Hearings Officer makes the following findings of fact, conclusions of law and decision.

FINDINGS OF FACT:

1. The applicant is the owner of the subject property described as Lot 193, 3rd Addition to Sportsman Park, being Tax Lot 9100, located in the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 3, Township 36, Range 6, Klamath County, Oregon.

2. The site location is generally along Rocky Point Road.

3. Physical features of the site include moderate to dense tree cover, and land that slopes upward to the west from the highway.

4. The existing land use is residential, the Comprehensive Plan designation is rural community residential, and the zone designation is rural community residential.

FINDINGS OF FACT AND DECISION, Page One.

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1           5. Access to the property is off Rocky Point Road,  
2 a paved State highway.

3           6. The adjacent property has the existing land use  
4 of residential lots, most of which are vacant. These include a  
5 mixture of seasonal and year-round residences. The adjacent  
6 property plan designation is rural community residential, and  
7 the zone designation is rural community residential.

8           7. Exhibits offered and received into evidence are  
9 as follows:

10           Klamath County Exhibits: "A" and "B"  
11           Applicant's Exhibit: #1

12           8. The applicant is requesting a set back variance  
13 from the minimum of twenty five (25) feet to seventeen (17)  
14 feet. The purpose of this request is to add a room to his  
15 residence of approximately twenty-one feet by twenty-one feet  
16 (21' x 21'). The existing house is forty-two feet by twenty-  
17 seven feet in dimension.

18           9. The property is served by the following utilities:  
19 water service by private well, sanitation by private septic tank  
20 system, electrical by Pacific Power and Light, gas by private  
21 propane, telephone by Beaver State, and fire protection by  
22 Harriman Rural Fire Department.

23           10. The property is heavily wooded especially in the  
24 area where the addition would be made to the property.

25           11. Despite the increase in proximity of the improve-  
26 ment to be built by the applicant to the property line, the dense

1 woods would shelter the property and thereby not materially  
2 changing the view of adjacent property owners.

3 12. No one appeared nor were any comments received  
4 in opposition to this variance .

5 KLAMATH COUNTY DEVELOPMENT CODE CRITERIA:

6 1. Klamath County Code Section 43 sets forth the general  
7 review criteria for consideration of a variance. These criteria  
8 are as follows:

9 A. That a hardship peculiar to the property and  
10 not created by any act of the owner exists. In this context,  
11 personal, family or financial difficulties, loss of prospective  
12 profits and neighboring violations are not hardships justifying  
13 a variance. Further, a previous variance can never have set a  
14 precedent, for each case must be considered only on its indivi-  
15 dual merits.

16 B. That exceptional or extraordinary circumstances  
17 apply to the property which do not apply generally to other  
18 properties in the same zone or vicinity and result from size  
19 or shape, legally existing prior to the effective date of this  
20 Code, topography, or other circumstances over which the applicant  
21 has not control.

22 C. That the granting of the variance will not  
23 be materially detrimental to the public health, safety or  
24 welfare or will not impair an adequate supply of light and air  
25 to the adjacent property.

26 2. The Klamath County Code Section 43.001 sets forth

FINDINGS OF FACT AND DECISION, Page Three.

1 the general purpose of Article 43. It states that the purpose  
2 of a variance is to permit justifiable departures from the  
3 requirements of this Code where their literal application  
4 would impose an undue or unnecessary hardship on the citizens  
5 of Klamath County or the owners of property within the County,  
6 except that no variance shall be granted for a parcel of property  
7 which either authorizes a use or activity not permitted by the  
8 land use zone regulations governing the parcel of property.

9 3. ORS 197.175 requires that this Land Use Action be  
10 in conformity with State-wide Planning Goals.

11 KLAMATH COUNTY DEVELOPMENT CODE FINDINGS:

12 1. See Findings 1-12 under Findings of Fact above.

13 2. Due to the dense woods that lie in the area of  
14 the applicant's property wherein the addition to his dwelling  
15 will be made, this creates exceptional and extraordinary circum-  
16 stances which apply to the property which do not generally apply  
17 to other properties in the same vicinity and zone and result  
18 from topography of which the applicant has no control. The dense  
19 woods prevent the applicant from building this extension another  
20 direction on his property.

21 3. The granting of this variance will not be materially  
22 detrimental to the public health, safety, or welfare nor will it  
23 impair an adequate supply of light or air to the adjacent property.  
24 Due to the dense woods that will seclude the addition to the pro-  
25 perty from the view of the adjacent property owners, there will be  
26 no change whatsoever that will affect them.

1 4. Due to the nature of the land of the applicant,  
2 a peculiar hardship exists as to this property which was not  
3 created by the act of the owner. The dwelling on the lot closest  
4 to the proposed addition is over fifty (50) feet away in addition  
5 to being screened by the trees.

6 STATE-WIDE PLANNING GOALS AND CRITERIA:

7 See Exhibits: "AA", Pages 1-6, attached hereto and  
8 incorporated by this reference.

9 CONCLUSIONS OF LAW AND DECISION:

10 1. A hardship peculiar to the property and not created  
11 by any act of the owner exists.

12 2. Exceptional or extraordinary circumstances apply  
13 to the property which do not apply generally to other properties  
14 in the same zone or vicinity and result from the size, shape, topo-  
15 graphy and other circumstances over which the applicant has no  
16 control.

17 3. The granting of this variance will not be materially  
18 detrimental to the public health, safety or welfare nor will it  
19 impair an adequate supply of light and air to the adjacent property.

20 4. This request for variance meets all applicable  
21 Klamath County Development Code criteria and policies governing  
22 such.

23 5. The request for variance is consistent with and  
24 complies with all applicable State-Wide Planning Goals and Statutes.

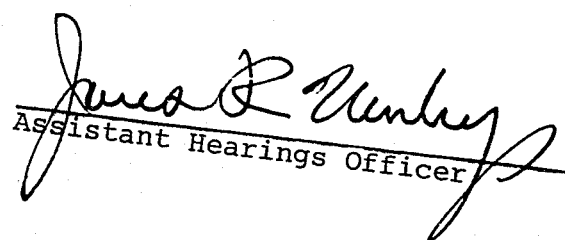
25 Therefore, it is hereby ordered that the request by the  
26 \* \* \* \* \*

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1 applicant for variance on the subject property is hereby granted  
2 provided that the applicant follows his plat plan as submitted  
3 herein.

4 Nunc pro tunc May 6, 1982.

5 DATED this 19 day of May, 1982.  
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11 Assistant Hearings Officer  
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## COMPREHENSIVE PLAN POLICIES

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### GOAL 1: CITIZEN INVOLVEMENT Relevant Policies:

Policy 1 "The County shall provide for continued citizen involvement opportunities."

A public hearing on this matter has been scheduled for May 6, 1982, before the Klamath County Hearings Officer. Notice has been sent to neighboring property owners and the Rocky Point Area Committee and published in the Herald and News.

### GOAL 2: LAND USE PLANNING Relevant Policies:

Policy 3 "The County shall work to coordinate all plans and programs with regional, state and federal plans and policies."

Notice of this matter has been sent to the public agencies on the "Agency Notification Checklist" in the Planning Department file on this item.

Policy 8 "Existing land uses shall be preserved from redevelopment and conflicting nearby land uses except as otherwise required by other policies of the plan".

The only property which could be affected by this request is the lot immediately to the west. The dwelling on that lot is over 50' away from the proposed addition and is screened by the trees on the two properties.

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GOAL 3: AGRICULTURAL LANDS  
Relevant Policies:

The area has been subdivided and developed for residential and recreational use. Typical lot size is around 10,000 square feet.  
Goal 3 is not applicable.

GOAL 4: FOREST LANDS  
Relevant Policies:

The area in general is heavily wooded and has a Timber Productivity Rating of Class V. The area has been subdivided and developed for residential and recreational use with a typical lot size of 10,000 square feet. Existing development and fragmented ownership make Goal 4 inapplicable of this matter.



GOAL 5: OPEN SPACE, SCENIC AND HISTORIC AREAS,  
AND NATURAL RESOURCES  
Relevant Policies:

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There are no inventoried open space, scenic, historic or natural resources which would be affected by this proposal to reduce the rear setback from 25 feet to 17 feet.

GOAL 6: AIR, WATER AND LAND RESOURCE QUALITY  
Relevant Policies:

The request for a reduced setback would not affect air, water, or land resource quality. The residential use of the property would not be changing.

GOAL 7: NATURAL DISASTER AND HAZARDS AREA  
Relevant Policies:

There are no known natural hazards in this area which could be affected by the reduced back yard.

GOAL 8: RECREATION NEEDS  
Relevant Policies:

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The proposed variance would not alter the use of the property, therefore no effects on recreation are apparent.

GOAL 9: COUNTY ECONOMY  
Relevant Policies:

The proposed reduction in rear setback would not affect the economy of the Rocky Point area or of Klamath County as a whole.

GOAL 10: HOUSING  
Relevant Policies:

The requested variance would not change the availability of or need for housing in the Rocky Point area.

GOAL 11: PUBLIC FACILITIES AND SERVICES  
Relevant Policies:

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Electrical and telephone service are available and the site is within the Harriman Rural Fire Protection District. No additional need for public facilities or services is expected as a result of this variance.

GOAL 12: TRANSPORTATION  
Relevant Policies:

The site fronts on a paved state highway. The proposed variance would not effect access or traffic flow.

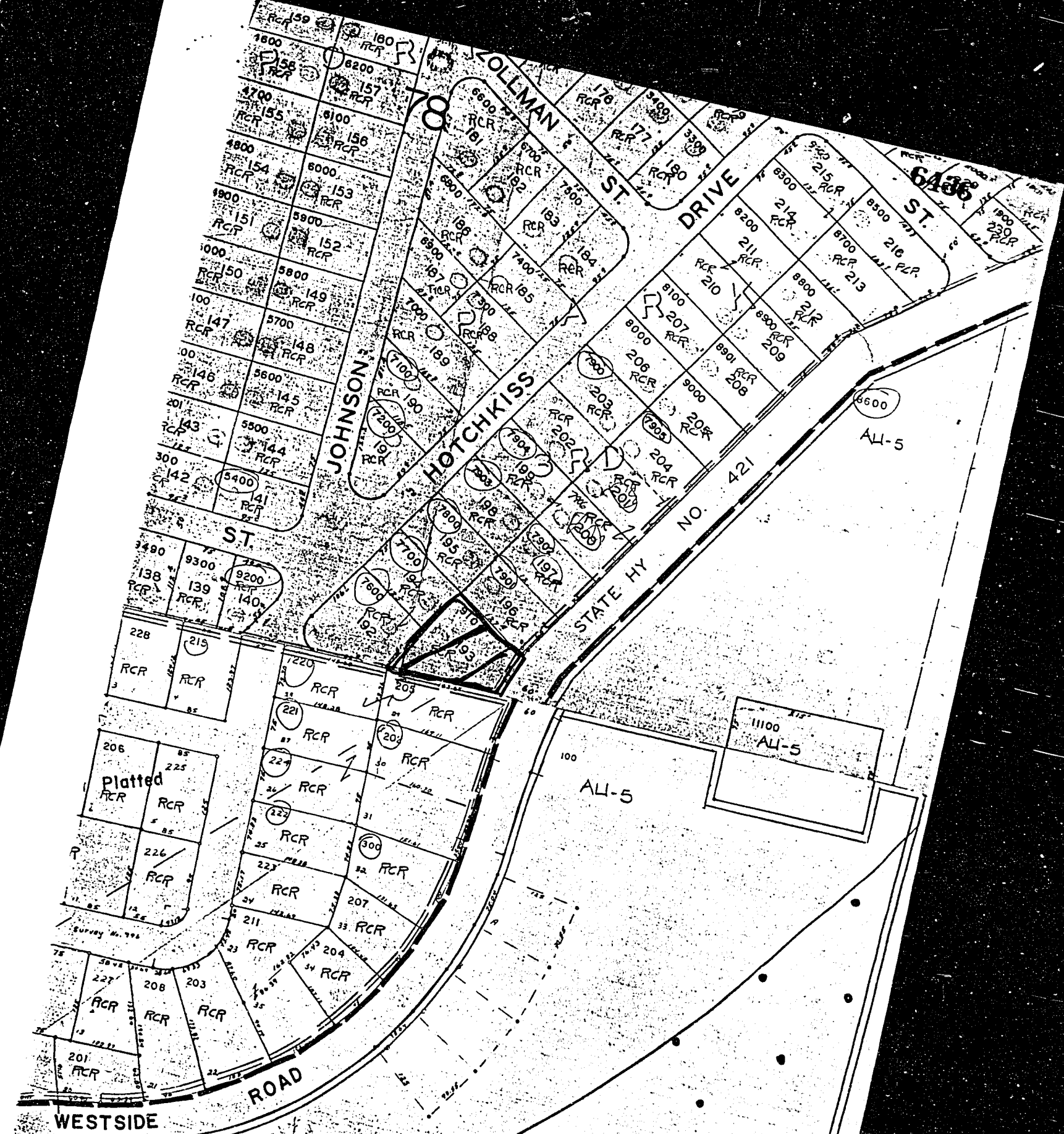
GOAL 13: ENERGY CONSERVATION  
Relevant Policies:

The variance would not affect energy conservation.

GOAL 14: URBANIZATION  
Relevant Policies:

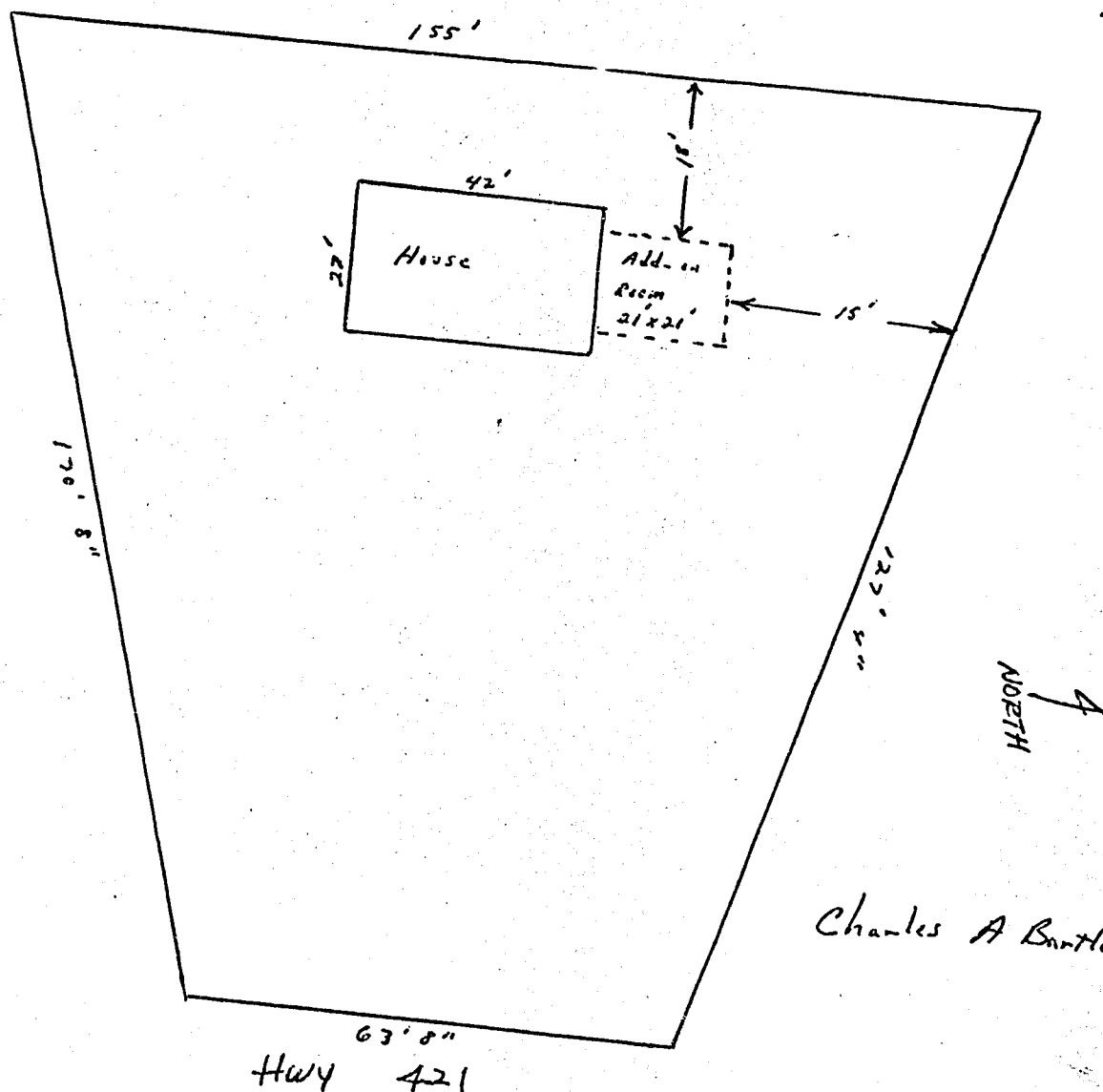
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The property is within the Rocky Point rural community, an area extensively subdivided for residential and recreational use.



Klamath County Exhibit B

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APP. EX. "J"  
VAR. 6.82

Hwy 421

State of OREGON: COUNTY OF KLAMATH: ss.  
 I hereby certify that the within instrument was received and filed for record on the  
21 day of May A.D., 1982 at 4:01 o'clock P M., and duly recorded in  
 Vol M 82f Deedson page 6424  
 Fee \$ No Fee  
 EVELYN BIEHN  
 COUNTY CLERK  
 By Joyce M. [Signature] deputy