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Vol. 178 Page 7192

BEFORE THE HEARINGS OFFICER
FOR KLAMATH COUNTY, OREGON

In the Matter of the
REQUEST FOR A VARIANCE
FOR MINOR PARTITION

for

W. L. SMITH

NO. 36-82

FINDINGS OF FACT
AND DECISION

THIS MATTER came on for a hearing before the Klamath County Assistant Hearings Officer, JAMES R. UERLINGS, on June 3, 1982, at 1:30 p.m. in the Conference Room of the Klamath County Library. The applicant, W.L. SMITH, appearing; the Klamath County Planning Department staff appearing on behalf of the Klamath County Planning Department. The following decisions and findings of fact are entered pursuant to said hearing.

FINDINGS OF FACT:

1. The applicant is the owner of a parcel of land located in Klamath County, the legal description of which is a portion of Section 6, Township 35, Range 9; the tax account number is #3509-640-1400-1500-1600; consisting of approximately 7.66 acres and generally located south of the Sprague River about 10½ miles from Chiloquin.

2. The property's mailing address is Star Route 2, Box 568-B, Chiloquin, Oregon.

3. The applicant has requested a zone change from TZ to RR zone in order to partition the land into three (3) lots. The three (3) parcels would consist of 2.56 acres, 2.54 acres and

FINDINGS OF FACT AND DECISION, Page One.

1 2.50 acres in size. The applicant requires a lot depth to width
2 ratio variance on all lots prior to obtaining the minor partition
3 and zone change. Without the variance, the three (3) lots
4 which would be one hundred and ten (110) feet in width could
5 not exceed two hundred and seventy five (275) feet in depth.

6 4. The applicant is requesting that the lot sizes
7 be allowed to be one hundred and ten (110) feet by approximately
8 two thousand two hundred (2,200) feet to eighteen hundred (1800)
9 feet.

10 5. The existing land uses in the area are forestry,
11 agricultural and homesites. The plan designation is transitional
12 and agricultural, forestry. The zone designation is F-I, TZ and
13 AU-5.

14 6. No correspondence for or against was received.
15 One house currently exists on parcel 1, a barn is situated on
16 parcel 2, and a shed and septic system are on parcel 3.
17 Surrounding land uses are primarily forestry with Winema National
18 Forest land adjacent to the property to the South, and approxi-
19 mately three hundred (300) feet to the East. Some residential
20 uses are currently established in the immediate vicinity of
21 the proposed partition. Tract 1168 lies approximately $\frac{1}{2}$ mile
22 to the Southwest.

23 7. Lot sizes in the area vary greatly. National
24 Forest land, in large blocks, lie directly South and three hundred
25 (300) feet to the West and $\frac{1}{2}$ mile to the East. Parcel sizes
26 within the Easterly $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of Section 6, Township 35,

1 Range 9, are as follows: 6.8 acres, 5.8 acres, 4.4 acres, 2.5
2 acres, 2.3 acres, .7 acre, .6 acre, 1.5 acres, 3.0 acres, 4.2
3 acres and 11.4 acres. The proposed partition parcel sizes are
4 compatible with small parcel sizes within this eighty (80)
5 acre area.

6 8. The topography of the area is relatively level
7 near the river and back approximately three hundred (300) feet.
8 It then rises to the end of the property. In order to give
9 each parcel an area of relatively level land, the applicant
10 has split the parcels into three (3) narrow pieces. Existing
11 buildings and improvements are situated on each parcel as the
12 split is proposed. The original lot itself is long and narrow
13 and would have required a variance if it were not an illegally
14 created lot prior to the adoption of Ordinance 45.

15 9. The property is serviced by the following utilities
16 and facilities: water service from wells on the property,
17 sanitation by septic tanks, electricity by Pacific Power and
18 Light, telephone by Beaver State.

19 10. The exhibits offered and received into evidence
20 are as follows:

21 Exhibits: "A", "B", and "C".

22 KLAMATH COUNTY DEVELOPMENT CODE CRITERIA:

23 1. Klamath County Code Section 43 sets forth the
24 general review criteria for consideration of a variance. These
25 criteria are as follows:

26 A. That a hardship peculiar to the property and

1 not created by any act of the owner exists. In this context,
2 personal, family or financial difficulties, loss of prospective
3 profits and neighboring violations are not hardships justifying
4 a variance. Further, a previous variance can never have set a
5 precedent, for each case must be considered only on its individ-
6 ual merits.

7 B. That exceptional or extraordinary circumstances
8 apply to the property which do not apply generally to other
9 properties in the same zone or vicinity and result from size or
10 shape, legally existing prior to the effective date of this Code,
11 topography, or other circumstances over which the applicant has
12 no control.

13 2. The Klamath County Code Section 43.001 sets forth
14 the general purpose of Article 43. It states that the purpose
15 of a variance is to permit justifiable departures from the
16 requirements of this Code where their literal application would
17 impose an undue or unnecessary hardship on the citizens of
18 Klamath County or the owners of property within the County, ex-
19 cept that no variance shall be granted for a parcel of property
20 which either authorizes a use or activity not permitted by the
21 land use zone regulations governing the parcel of property.

22 3. ORS 197.175 requires that this Land Use Action be
23 in conformity with State-Wide Planning Goals.

24 KLAMATH COUNTY DEVELOPMENT CODE FINDINGS:

- 25 1. See Findings 1-10 under Findings of Fact above.
26 2. The proposed variance is in conformance with the

1 Klamath County Comprehensive Plan and is in conformance with
2 all applicable provisions of this Code and other County codes
3 and ordinances and Oregon Law. The County Code requires a lot
4 depth not be more than two and one-half ($2\frac{1}{2}$) times the average
5 width. The applicant proposes to have three (3) lots, each
6 one hundred and ten (110) feet in width but with depth varying
7 from twenty two hundred (2,200) feet to approximately eighteen
8 hundred (1800) feet. Without the variance, the depth could not
9 exceed two hundred and seventy five (275) feet on each lot.
10 Due to the nature of the topography of the land, a hardship
11 would be created subsequent to the partitioning if the applicant
12 was not allowed to have a width to depth ratio variance.

13 As a result of the proposed partitioning, exceptional
14 and extraordinary circumstances apply to the property which do
15 not generally apply to the properties in the same vicinity and
16 zone that result from the size or shape, topography and other
17 circumstances over which the applicant has no control.

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

21 STATE-WIDE PLANNING GOALS AND CRITERIA:

22 See Exhibit "AA", Pages 1-7.

23 CONCLUSIONS OF LAW AND DECISION:

24 A. This request for a variance satisfies all
25 applicable Klamath County Development Code criteria and policies
26 governing variances.

FINDINGS OF FACT AND DECISION, Page Five.

1 B. This request for variance is in conformity with
2 the Klamath County Comprehensive Land Use Plan.

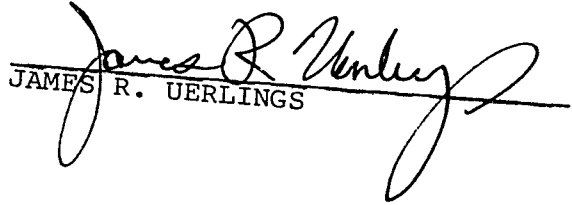
3 C. This request for variance is consistent and
4 complies with the applicable State-wide Planning Goals.

5 D. This request for variance is consistent and
6 complies with all requirements of State Law.

7 There is substantial evidence in the record to support
8 this request for variance and no evidence was submitted in
9 opposition thereto.

10 Therefore, it is hereby ordered that this request for
11 variance for a minor partition be granted.

12 DATED this 6 day of June, 1982.

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JAMES R. UERLINGS

GOAL 1: CITIZEN INVOLVEMENT
Relevant Policies: "FOR VARIANCE"

Policy 1: Notification of hearing was sent to all effected agencies and all adjoining property owners within 250 feet of the proposed change. Hearing notice was published as well as posted as required by Ordinance. No area committee for particular area.

L. C. D. C. Goal No. 1 - Planning Department sent notification out to all agencies and property owners.

"FOR MINOR PARTITION"

GOAL 1: Public input during hearings on the Comprehensive Plan favored the disposition of minor partitions by a ministerial act of the Planning Director.

GOAL 2: LAND USE PLANNING
Relevant Policies:

Policy 6: State zoning shall be consistent with the Land Use Allocation Chart and Land Use Plan Map. Proposed partition conforms to current zone standards.

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.

One house currently exists on Parcel No. 1, a barn is situated on Parcel No. 2, and a shed and septic system are on Parcel No. 3. Surrounding land uses are primarily forestry with Winema National Forest lands lying adjacent to the property to the south, and approximately 300 feet to the east. Some residential uses are currently established in the immediate vicinity of the proposed partition. Tract 1168 lies approximately 1/2 mile to the south-west. The Winema National Forest has been notified of the variance and partition. If potential conflicts with forestry exist, they should respond to the request for agency input.

Goal 2: Lot sizes in the area vary greatly. National forest land in large blocks lie directly south and 300 feet to the west and 1/4 mile to the east. Parcel sizes within the E $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 6, Township 35, Range 9 are: 6.80 acres, 5.80 acres, 4.40 acres, 2.50 acres, 2.30 acres, .70 acres, .60 acres, 1.50 acres, 3 acres, 4.2 acres, 11.40 acres and 16 acres. Proposed partition parcel sizes are compatible with small parcel sizes within this 80 acre area.

Applicant also requests parcel depth to width ratio variances for

all three parcels. No lot depth shall be greater than $2\frac{1}{2}$ times the average lot width. The topography of the area is relatively level near the river and back approximately 300 feet. It then rises to the end of the property. In order to give each parcel an area of relatively level land, the applicant has split the parcel into 3 narrow pieces. Existing buildings and improvements are also situated on each parcel as the split is proposed. The original lot itself is long and narrow and would have required the variance if it were not a legally created lot prior to the adoption of Ordinance 45.

The granting of the variance will not be materially detrimental to the public health, safety, or welfare and will not impair an adequate supply of light and air to adjacent property.

Variances are subject to Review Criteria established in Section 43.003 of the Land Development Code.

GOAL 3: AGRICULTURAL LANDS
Relevant Policies:

72C0

Policy 3: States Urban and Rural Development shall be directed onto SCS Class V-VIII soils consistent with the other policies. Site has predominantly Class VI soils, which appears to meet this policy.

L. C. D. C. Goal 3 - Site is zoned TZ (Transitional Zone) with soils being Class VI. This property was zoned Transitional by Hearings Officer through the legislative process.

Applicant is requesting a zone change to the RR zone and the Rural Residential CLUP designation.

The small parcel size in the immediate vicinity of the proposed partition, the short growing season, and the soil class VI which soils have severe limitations that make them generally unsuited for cultivation limit the use of this area for intensive agricultural pursuits. Applicants propose light agricultural pursuits and home-sites on the parcels.

GOAL 4: FOREST LANDS
Relevant Policies:

Site has a Class VI productivity class which means the potential yield is 20-50 cubic feet per acre per year. The committed nature of the parcel size of the present parcel and proposed partition parcels, and the Class VI productivity rating limit the use of this property for forestry.

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

7201

Policy 4: The county will encourage the protection and management of fish and wildlife areas and habitats in mutual cooperation with the Oregon Wildlife Commission's fish and wildlife management plans.

This area lies in a medium density deer winter range. The Department of Fish and Wildlife has been notified and input requested. Any anticipated conflicts should be addressed by the Department of Fish and Wildlife.

Goal 5: There are no other inventoried Goal 5 issued in the vicinity of the proposed partition.

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

Policy 4 states rural residential use shall be designated only when approved sewage disposal alternatives have been identified. At this point in time, Planning Department has not seen a plot plan on any approval from DEQ.

This Department has sent information to DEQ. Septic use will be by septic tank.

GOAL 7: NATURAL DISASTER AND HAZARDS AREA
Relevant Policies:

Site for change appears to have a portion of the lots in the flood plain. The portion that appears to be in the flood plain is above the road as indicated on Assessor's Sheet. This information came off Flood Hazard Map 31A.

Policy 1 states County shall consider site constraints in evaluating land use in fire hazard area. This site is not in a fire district and has a High Wildfire Hazard rating.
L. C. D. C. Goal No. 7 - Site appears not to be in an area of natural disaster and hazards except for that portion of land that has been mentioned in the flood area.

GOAL 8: RECREATION NEEDS
Relevant Policies:

7202

In reviewing the policies of Goal 8, find that the policies appear not to be relevant to this proposed change.

L. C. D. C. Goal 8 - Site for change in land use, however, does abutt Sprague River.

GOAL 9: COUNTY ECONOMY
Relevant Policies:

In reviewing the policies of Goal 9, find that the policies appear not to be relevant to this proposed change.

L. C. D. C. Goal 9 - Proposed change would possibly improve the economy if land use change is granted. Change would allow sale of parcels, through partitions.

GOAL 10: HOUSING
Relevant Policies:

Policy 4 of Goal 10 stated the County shall permit development of rural land for rural residential use on suitable lot sizes.

If recommended for approval by Planning Commission, site would have an RR (Rural Residential) designation on lot sizes that average about 2.5 acres.

L. C. D. C. Goal 10 - Proposed change if granted would allow housing through the permitted uses of the RR (Rural Residential) zone.

Three subdivisions lie within a 3 mile radius of the proposed partition. Wolf Ranch, Tract 1168, with vacant lots, Tract 1118 with 6 occupied lots out of 18, with 10 outstanding building permits, and Sunburst Estates with 13 vacant lots and 2 outstanding building permits per 1978 land use data.

GOAL 11: PUBLIC FACILITIES AND SERVICES
Relevant Policies:

7203

Site for change would have electricity from Pacific Power and Light. Site also is in the Chiloquin School District. Site would also be provided telephone facilities by Pacific Northwest Bell.

L. C. D. C. Goal 11 - Site will need to meet DEQ regulations for septic use as site is not in a sewage district. Water would be by individual well.

GOAL 12: TRANSPORTATION
Relevant Policies:

Site appears to have access off of the Chiloquin Sprague River Road, which is a County Road and paved. County Road appears to be able to carry the kind of traffic that would be generated from proposed change.

In reviewing the policies of Goal 12, most of the policies appeared not to be relevant to this proposal.

L. C. D. C. Goal No. 12 - Site for change appears to have access which connects to the Chiloquin/Sprague River Road.

Applicant must provide verification of legal access to the parcels from Chiloquin - Sprague River Road.

GOAL 13: ENERGY CONSERVATION
Relevant Policies:

In reviewing the policies of Goal 13 it appears the policies are not relevant to this site.

L. C. D. C. Goal 13 - Site is close to known source of energy such as electricity, and gas.

GOAL 14: URBANIZATION
Relevant Policies:

7204

In reviewing policies of Goal 14, the policies appear not to be relevant to this proposal. The site is outside the areas established for Urban Growth Boundary and Rural Community Boundary.

L. C. D. C. Goal 14 - Site for change is located in a rural area and is approximately 10½ miles from the nearest urban boundary.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record 11:38
this 9 day of June A.D. 19 82 at 6 o'clock A M- d
duly recorded in Vol. M 82, of Deeds on a 7192

No Fee

By Evelyn Behm County Clerk
Jasper McArthur

Commissioners Journal