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Vol. M82 Page 7205

BEFORE THE HEARINGS OFFICER
FOR KLAMATH COUNTY, OREGON

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

NO. 43-82

for

FINDINGS OF FACT
AND DECISION

DAN KINSMAN

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 Klamath County Library Conference Room. The applicant, DAN KINSMAN, appearing; the Klamath County Planning Department staff appearing on behalf of the Klamath County Planning Department. The following decision and findings of fact are entered pursuant to said hearing.

FINDINGS OF FACT:

1. The applicant, DAN KINSMAN, along with CYNTHIA KINSMAN, are the owners of subject property described as Lot 14, Block 3, Altamont Acres, Klamath County, Oregon. The site is generally located west of Bisbee Street, approximately 350 feet north of the intersection of Bisbee and Hilyard.

2. The applicant is requesting to partition the lot which is currently just under an acre in size into two (2) lots just under $\frac{1}{2}$ acre in size. The applicant also requests a variance for lot depth to width ratio on both lots. One lot currently has 2 mobile homes situated on it, and the other lot has a house.

FINDINGS OF FACT AND DECISION, Page One.

1 The $\frac{1}{2}$ acre size proposed for the lots conforms with the uses
2 currently in the area and is twice the allowed size for lots in
3 the area. In the general vicinity, there are 24 lots that have
4 a similar size and 20 lots with a smaller size. Without the
5 variance, both lots which would have a width of 71 feet could
6 not have a depth exceeding 177 feet. The applicant is requesting
7 a variance to allow a depth of 302 feet.

8 3. Existing uses in the area are homesites. The
9 Plan designation is urban residential, and the zone designation
10 is RS. Access to the property is furnished by Bisbee Street.
11 Adjacent properties have the following existing land use of
12 residential with some commercial along Altamont Street. The
13 existing Plan designation is urban residential and general
14 commercial and the zone designation is RS and CG.

15 4. No written correspondence for or against was
16 received.

17 5. The applicant is requesting the partitioning and
18 variance due to the way the house and mobile homes are situated
19 on the lot requiring the applicant to divide the current lot
20 into two long, narrow lots.

21 6. The area is serviced by Enterprise Irrigation
22 District, the South Suburban Sanitary District, Klamath Falls
23 City Water Company, Klamath County Fire District No. 1, South
24 Suburban Drainage District and Klamath County School District.
25 Electrical and telephone facilities also service the area.

26 7. The following Exhibits were offered and received

1 into evidence.

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2 Exhibits "A", "B", "C", "D", and "E".

3 KLAMATH COUNTY DEVELOPMENT CODE CRITERIA:

4 1. Klamath County Code Section 46.003 sets forth
5 general review criteria for consideration of a minor partition.
6 They are as follows:

7 A. The proposed tentative plan is in conformance
8 with the Klamath County Comprehensive Plan.

9 B. The proposed tentative plan is in conformance
10 with all applicable provisions of this Code, other County Codes
11 and ordinances, and Oregon Law.

12 C. For a minor partition, no creation of a street
13 or road is required.

14 D. For a major partition, the creation of a street
15 or road is required.

16 D. The proposed partitioning of land does not
17 prohibit the extension of dedicated streets or roads.

18 F. The property proposed for partitioning is
19 situated in the incorporated territory of Klamath Falls.

20 G. The proposed partitioning will not conflict with
21 legally established easements or access within or adjacent to the
22 proposed land partition.

23 H. The parcels are located and laid out to properly
24 relate to adjoining or nearby lot or parcel lines, utilities,
25 streets, or other existing or planned facilities.

26 I. The proposed property is physically suitable

1 for the type and proposed density of development and conforms to
2 existing zone standards.

3 J. No major or minor partition shall be approved in
4 any residential, commercial or industrial subdivision, planned
5 unit development or approved land partition that is approved after
6 the effective date of this Code, until provisions are made to
7 comply with the development standards contained in Section 71.009
8 and 71.010 of this Code, unless the requirement is waived or
9 modified by the reviewing authority.

10 K. When the partitioning of a retirement lot and
11 lot for a child of the owner in an Exclusive Farm Use zone, the
12 following criteria needs to be satisfied (from Goal 3 of Plan):

13 1) The lot in question shall have been in the
14 same ownership for at least five (5) years prior to the date of
15 the application. This pertains to a retirement lot and lot for
16 child of the owner.

17 2) The lot created to accomodate the existing
18 dwelling or mobile home shall not include more than five (5)
19 acres of agricultural land. This pertains to only a retirement
20 lot.

21 3) The remainder of the lot shall not be par-
22 titioned further for a similar purpose for a period of fifteen
23 (15) years. This pertains to a retirement lot and lot for child
24 of the owner.

25 4) When partitioning for a lot for a child
26 of the owner in an Exclusive Farm Use Zone, lots shall be exempt

1 from the minimum lot size of the Land Development Code. This per-
2 tains to lot for child of owner only.

3 2. Klamath County Code Section 46.001 sets forth
4 the general purpose of Article 46, "Major and Minor Land Par-
5 titions" including to insure that the divisions of land into
6 parcels for subsequent use and development is conducted in an
7 orderly manner and in compliance with this Code and State law.

8 3. ORS 197.175 requires that this land use action be
9 in conformity with State-wide Planning Goals. Klamath County
10 Development Code, Section 46.04, requires that the applicant
11 submit a preliminary title report for partition guarantee current
12 within 30 days to accompany the final map submitted in accordance
13 with the development code requirements.

14 4. Additionally, it requires that the final map of
15 the applicants be recorded with the Klamath County Clerk within
16 thirty (30) days after it is signed or the partition will become
17 null and void. The final map to be submitted by the applicant
18 is to be drawn in ink and submitted on 18" x 27" mylar or
19 vellum (100% rag paper). A mylar copy can be made from a vellum
20 drawn in pencil.

21 5. Klamath County Code Section 43 sets forth the
22 general review criteria for consideration of a variance. These
23 criteria are as follows:

24 A. That a hardship peculiar to the property and
25 not created by any act of the owner exists. In this context,
26 personal, family or financial difficulties, loss of prospective

1 profits and neighboring violations are not hardships justifying
2 a variance. Further, a previous variance can never have set a
3 precedent, for each case must be considered only on its indivi-
4 dual merits.

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

11 C. That the granting of the variance will not be
12 materially detrimental to the public health, safety or welfare
13 or will not impair an adequate supply of light and air to
14 adjacent property.

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

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

26 * * * * *

KLAMATH COUNTY DEVELOPMENT CODE FINDINGS:

1. See Findings of Fact 1-7 above.
2. The proposed partition plan is in conformance with Klamath County Comprehensive Plan and is in conformance with all applicable provisions of this Code and other County Codes and ordinances and Oregon law.
3. Since this is a minor partition, no creation of any street or road is required.
4. The proposed partition of this land does not prohibit the extension of a dedicated street or road.
5. The proposed partitioning will not conflict with any legally established easement or access within or adjacent to the proposed land partition.
6. The parcels proposed are located and laid out so that they properly relate to adjoining and nearby parcel lines, utilities, streets and other existing facilities.
7. The proposed property is physically suitable for the type of proposed density of development and conforms to the existing zone standards.
8. The applicant has made provisions to comply with development standards as contained within Sections 71.009 and 71.010.
9. Section 46.003, subsections (d) and (k), are not applicable.
10. The proposed variance is in conformance with the Klamath County Comprehensive Plan and is in conformance with all

1 applicable provisions of this Code and other County codes and
2 ordinances and Oregon law.

3 11. The County Code requires that a lot depth not be
4 more than $2\frac{1}{2}$ times the average width. The applicant proposes
5 to have a lot 302' in depth and 71' feet in width. Without this
6 variance, the depth could not exceed 175'. Due to the nature
7 of the topography of the applicant's land, a hardship would be
8 created subsequent to this partitioning if the applicant was not
9 allowed to have a width to depth ratio variance. As a result of
10 the proposed partitioning, exceptional and extraordinary circum-
11 stances apply to the property which do not generally apply to
12 the properties in the same vicinity and zone that result from
13 size and shape, topography, and other circumstances over which
14 the applicant has no control.

15 12. The granting of this variance will not be materially
16 detrimental to the public health, safety or welfare nor will
17 it impair adequate supply of light and air to the adjacent pro-
18 perty.

19 STATE-WIDE PLANNING GOALS AND CRITERIA:

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

21 CONCLUSIONS OF LAW AND DECISION:

22 A. This minor partition satisfies all applicable
23 Klamath County Code criteria and policies governing minor par-
24 titions.

25 B. This minor partition is in conformity with
26 the Klamath County Comprehensive Land Use Plan.

FINDINGS OF FACT AND DECISION, Page Eight.

1 C. This minor partition is consistent and complies
2 with all applicable State-wide Planning Goals and guidelines.

3 D. The following conditions are deemed necessary
4 for the protection of the health, safety and welfare of the
5 citizens of Klamath County.

6 1) That a preliminary title report or
7 partition guarantee current within thirty (30) days must be
8 filed to accompany the final map as submitted in accordance
9 with the Land Use Development Code requirements.

10 2) The final map must be recorded with the
11 Klamath County Clerk within thirteen (13) days after it is
12 signed or the partition will become null and void.

13 3) The final map to be filed herein is to
14 drawn in ink and submitted on 18" x 27" mylar or vellum. A mylar
15 copy can be made from a vellum drawing in pencil.

16 E. The best economic use of this property can be
17 made if this minor partition is allowed.

18 F. The request for variance satisfies all applic-
19 able Klamath County Development Code criteria and policies gov-
20 erning variances. This request for variance is in conformity
21 with the Klamath County Comprehensive Land Use Plan and appli-
22 cable planning goals.

23 G. This variance is consistent and complies with
24 all requirements of State law.

25 There is substantial evidence in the record to support
26 this request for variance and the minor partition and no evidence

1 was submitted in opposition thereto.

2 Therefore, it is hereby ordered that this request for
3 minor partition and request for variance for the minor partition
4 are granted.

5 DATED this 8 day of June, 1982.

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JAMES R. UERLINGS

GOAL 1: CITIZEN INVOLVEMENT
Relevant Policies:

Notification of the hearing was sent to all affected agencies and all adjoining property owners within 250 feet of the proposed partition. The hearing notice was published in the Herald and News newspaper and posted as required by law.

GOAL 2: LAND USE PLANNING
Relevant Policies:

Policy 6: Zoning shall be consistent with the Land Use Allocation Chart, and the land use plan map. Proposed partition conforms to RS zone requirements and to the Urban Residential CLUP designation.

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. No new development is planned for proposed partition parcels. Both parcels currently have homesites established on them. This partition, therefore, should not create any conflicts with nearby land uses.

Goal 2: Adjacent land uses are residential in nature. These are the uses for the proposed partition parcels. Commercial uses lie to the northwest of the property along Altamont Drive. No conflicts are anticipated since the partition will not provide for additional development of the parcels.

The proposed 1/2 acre size of the parcels conform to the general parcel size in the area and is approximately twice as large as the 10,000 square foot minimum lot size for the RS zone. Within the area defined as SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, Township 39, Range 9, there are approximately 24 lots of a similar size and 20 smaller lots.

Applicant also requests lot depth to width ratio variances for both proposed lots. No lot depth can be greater than 2 $\frac{1}{2}$ times the

(Goal 2, Continued. . .)

average width according to Section 61.001E.

Due to the way the house and mobile home are situated on the lot, applicant requests to divide the lot into two long, narrow lots.

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.

GOAL 3: AGRICULTURAL LANDS
Relevant Policies:

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Policy 3: Urban and rural development shall be directed onto SCS Class V through VIII soils consistent with other policies of the plan. Development on SCS Class I-IV soils shall be avoided except:

- A. When areas are small and surrounded by other areas of existing or potential development.

This area has an SCS Soil Class of IV. By virtue of the fact that both proposed parcels have homes situated on the, that lot size in the area is generally under one acre, and that surrounding areas are also committed to residential development; this area, which lies within the metropolitan area of Klamath Falls, cannot be used for agricultural purposes.

GOAL 4: FOREST LANDS
Relevant Policies:

This area has no Timber Site Productivity Rating and no measurable potential for timber growth.

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

7218

There are no inventoried open spaces, scenic and historic areas,
or natural resources in the vicinity of the proposed partition.

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

Policy 4: Urban and rural residential use shall be designated only
when approved sewage disposal alternatives have been identified.
Both homes are served by the South Suburban Sanitary District.
Water is provided by the city.

GOAL 7: NATURAL DISASTER AND HAZARDS AREA
Relevant Policies:

Policy 1: The county shall consider site constraints in evaluating
land use in fire hazard areas. The area has a Low Wildfire Hazard
rating and is served by Klamath County Fire District No. 1.

Goal 7: There are not other known natural disaster or hazard areas
in the vicinity of the proposed partition.

GOAL 8: RECREATION NEEDS
Relevant Policies:

It is assumed that regional park needs are satisfied by nearby national forest and park lands.

GOAL 9: COUNTY ECONOMY
Relevant Policies:

Goal 9: The applicant could realize some economic gain from the sale of partition parcels.

GOAL 10: HOUSING
Relevant Policies:

The proposed partition would provide for no additional homesites.
Both proposed lots have homes situated on them.

GOAL 11: PUBLIC FACILITIES AND SERVICES
Relevant Policies:

The area is served by the Enterprise Irrigation District, the South Suburban Sanitary District, Klamath Falls City Water Company, Klamath County Fire District No. 1, the South Suburban Drainage District and by a school district. Electrical and telephone facilities also serve the area.

GOAL 12: TRANSPORTATION
Relevant Policies:

Both lots have access off of Bisbee, a county road.

The area, in general, has quick access onto Altamont and South Sixth Street.

GOAL 13: ENERGY CONSERVATION
Relevant Policies:

The area lies in the metropolitan area of Klamath Falls where the majority of goods, services and employment are available.

The Basin Transit Service also serves this area.

GOAL 14: URBANIZATION
Relevant Policies:

Policy 1: When considering the development of urban land, the county shall consider (and encourage local governments to consider) the following factors:

- A. The availability of public facilities and services.
- B. Availability of sufficient land for various uses to ensure choices in the market place.
- C. The Klamath County Comprehensive Plan Goals.
- D. Encouragement of development within urban areas before conversion of urbanizable areas.

Goal 14: This area lies within the Urban Growth Boundary for Klamath Falls. It is served by a wide range of public facilities and services (see Goal 11) and both proposed lots and the surrounding area are committed to residential uses.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record .. 11:38
this 9 day of June A.D. 1982 at o'clock A.M.
duly recorded in Vol. M 82, of Deeds on Page 7205
EVELYN BROWN, County

No Fee

Commissioners Journal