

BEFORE THE HEARINGS OFFICER  
FOR KLAMATH COUNTY, OREGON

In the Matter of the Request )  
for a Variance for a Minor )  
Partition )  
for )  
DOUG STILES )

CASE NO. 45-82

FINDINGS OF FACT  
AND DECISION

THIS MATTER came on for a hearing before the Klamath County Assistant Hearings Officer, JAMES R. UERLINGS, on June 17, 1982, at 2:00 p.m. in the Conference Room of the Public Works Department of Klamath County. The applicant, DOUG STILES, appeared in person and through his attorney, BRUCE HUFFMAN. The Klamath County Planning Department appeared through its staff. No persons appeared in opposition to the proposed variance for minor partition. The following decision and findings of fact are entered pursuant to said hearing.

FINDINGS OF FACT:

1. The applicant is the owner of the parcel of land located in Klamath County, which is the subject of this hearing; legal description of which is a portion of Section 8, Township 39, Range 10, Klamath County, Oregon.

2. The subject property is generally located on the South side of Highway 140, approximately 3 miles East of Klamath Falls. This property abuts the Urban Growth Boundary.

3. The applicant requests this variance in order to partition the property which currently contains 22.46 acres into

FINDINGS OF FACT AND DECISION, Part One.

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two (2) parcels consisting of 4.24 acres and 18.22 acres in size. The actual granting of the minor partition will be handled by the Planning Director. In order to accomplish the partition, the applicant requests a lot depth to width ratio variance for Parcel 2.

4. Without this variance, the property could not have a depth which is more than two (2) times the width. The applicant proposes to have a depth of approximately 1600 feet by an average width of 400 feet. Without the variance, the applicant would be limited to a depth of 1125 feet.

5. Existing land use on this property is agricultural and residential. The plan designation is rural residential, and the zone designation is RR.

6. Access to the property is off of Highway 140 East.

7. The adjacent properties have the existing land uses of residential and agricultural, the plan designations of rural residential and urban residential, and zone designations of RR and RS.

8. Because of the location of the existing house on Parcel 1, and because this Parcel is fenced from the remainder of the area, the applicant requests division of the Parcels in a manner which requires a variance. The topography of the area, which is steepest along the division line between the parcels, lends itself to the partition design of the applicant. Therefore, the variance is required. These topography conditions appear to apply only to this parcel and not to other parcels in the vicinity.

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9. The following Exhibits were offered and received into evidence:

Klamath County Exhibits: "A", "B", "C", "D", "E" and "F".  
Applicant's Exhibit: #1.

KLAMATH COUNTY DEVELOPMENT CODE CRITERIA:

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

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

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

2. The Klamath County Code Section 43.001 sets forth the general purpose of Article 43. It states that the purpose of a variance is to permit justifiable departures from the requirements of this Code where their literal application would impose an undue or unnecessary hardship on the citizens of

1 Klamath County or the owners of property within the County,  
2 except that no variance shall be granted for a parcel of pro-  
3 perty which either authorizes a use or activity not permitted  
4 by the land use zone regulations governing the parcel of pro-  
5 perty.

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

8 KLAMATH COUNTY DEVELOPMENT CODE FINDINGS:

9 1. See Findings 1-9 under Findings of Fact above.

10 2. The proposed variance is in conformance with the  
11 Klamath County Comprehensive Plan and is in conformance with all  
12 applicable provisions of this Code and other County codes and  
13 ordinances and Oregon Law. The County Code requires a lot depth  
14 not be more than two and one-half ( $2\frac{1}{2}$ ) times the average width.  
15 The applicant proposes to have two lots, one of which will have  
16 a width of 400 feet with a depth of approximately 1600 feet. With-  
17 out the variance, the depth could not exceed 1125 feet. Due  
18 to the nature of the topography of the land, a hardship would  
19 be created subsequent to the partitioning if the applicant was  
20 not allowed to have a width to depth ratio. Because of the topo-  
21 graphy of the land, a different manner of partitioning would not  
22 be possible. As a result, exceptional and extraordinary circum-  
23 stances apply to the subject property which do not generally  
24 apply to properties in the same vicinity and zone that result  
25 from the topography, size and shape and other circumstances of  
26 the subject property over which the applicant has no control.

1           3. The granting of this variance will not be materially  
2 detrimental to the public health, safety or welfare nor will it  
3 impair an adequate supply of light or air to the adjacent pro-  
4 perty.

5 STATE-WIDE PLANNING GOALS AND CRITERIA:

6           See Exhibit "AA", Pages 1-7, attached hereto and in-  
7 corporated by this reference.

8 CONCLUSIONS OF LAW AND DECISION:

9           1. This request for variance satisfies all applicable  
10 Klamath County Development Code criteria and policies governing  
11 variances.

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

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

16           4. This request for variance is consistent and complies  
17 with all requirements of State Law.

18           There is substantial evidence in the record to support  
19 this request for variance and no evidence was submitted in opposi-  
20 tion thereto.

21           Therefore, it is hereby ordered that this request for  
22 variance for a minor partition be granted upon the condition  
23 that the applicant follow his plot plan as submitted as Appli-  
24 cant's Exhibit #1.

25           DATED this 23 day of June, 1982.

26             
JAMES R. UERLINGS

FINDINGS OF FACT AND DECISION, Page Five.

( COMPREHENSIVE PLAN POLICIES )

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GOAL 1: CITIZEN INVOLVEMENT  
Relevant Policies: "For Variance"

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

"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: Zoning shall be consistent with the Land Use Allocation Chart, and the land use plan map. Proposed partition conforms to the RR zone standards and 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. Adjacent land uses are identical to those proposed by the partition. No conflicts are anticipated. Land zoned EFU-II lies approximately 400 feet to the east. Since this EFU land is surrounded by land zoned for residential use and an approved PUD (Shield Crest) lies directly across the Highway, the increased density which will result from the partition should not create additional conflicts with this property.

Goal 2: Parcel sizes in this area (T. 39, R. 10, Section 8) vary from many 1-2 acre lots in the Pine Grove Ponderosa subdivision and surrounding area (50+ lots) to a large parcel of 105.65 acres zoned for residential use. Intermediate lot sizes are from 15-20 acres in size. Proposed parcel sizes are consistent with parcel sizes in the area.

Applicant also requests a parcel depth to width ratio variance for Parcel No. 2. No parcel depth can be greater than  $2\frac{1}{2}$  times the average width. The proposed parcel exceeds the ratio by approximately 300 feet.

Because of the location of the existing house on Parcel No. 1, and

because this parcel is fenced from the remainder of the area, applicant requests to divide the parcels in a manner which requires a variance. The topography of the area which is steepest along the division line between parcels lends itself to the partition design requiring the variance. These conditions appear to apply only to this parcel and not to other parcels in the vicinity. It appears that 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 properties.

Variances are subject to review criteria established in Section 43.003 of the Land Development Code.

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 when areas are small and surrounded by other areas of existing or potential development. The SCS Soil Classes for this area are primarily Classes 3 and 4, which soils are among the best agricultural soils in Klamath County which has no Class I soils and few Class II soils. This area, however, is relatively small for intensive agricultural pursuits, and is surrounded by areas of potential and existing development. To the west lie areas zoned for Suburban Residential development with a 10,000 square foot minimum lot size. This area lies within the Urban Growth Boundary for Klamath Falls. Surrounding the area on other sides lie land zoned for Rural Residential use. Houses are situated on most surrounding lots. The Shield Crest PUD lies across the road to the north.

GOAL 4: FOREST LANDS  
Relevant Policies:

This area has a Timber Site Productivity rating of Class VII which has a potential yield of less than 20 cubic feet per year. This is not considered to be a forested area.



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

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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. Before building permits are issued, DEQ permits for septic tanks must be obtained.

This area has a slight soil limitation rating for septic tank absorption fields.

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. This area has a Low Wildfire Hazard rating and is served by a fire district.

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.  
Some employment and sales of materials could be stimulated if houses are constructed or mobile homes purchased.

GOAL 10: HOUSING

Relevant Policies:

The proposed partition would provide for on additional rural homesite on the 18 acre parcel. Shield Crest and Pine Grove Ponderosa subdivisions are located near this area. However, lots in these subdivision are from 1-3 acres in size. No data is developed regarding the availability of larger acreages in this area.

GOAL 12: TRANSPORTATION  
Relevant Policies:

The area has access off of Highway 140. Access permits must be obtained from the Oregon State Highway Division prior to final approval.

GOAL 13: ENERGY CONSERVATION  
Relevant Policies:

This area lies only approximately 3 miles from Klamath Falls where the majority of goods, services, and employment are available.

Electrical facilities serve one parcel currently.

GOAL 14: URBANIZATION  
Relevant Policies:

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This area abuts the Urban Growth Boundary for Klamath Falls. The proposed large acreage residential use in conjunction with light agricultural uses are compatible with rural residential uses outside of designated Urban Growth Boundaries.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record . . .

10:58

s 25 day of June A.D. 19 82 at      o'clock      A M

duly recorded in Vol. M 82, of      Deeds on p. 8071

No Fee

EVELYN BIEHN, Clerk

By Joyce McNamee

Commissioners Journal