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BEFORE THE HEARINGS OFFICER  
FOR KLAMATH COUNTY, OREGON

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

NO. 33-82

FINDINGS OF FACT, DECISION  
AND ORDER

for

BRUCE CARPENTER

THIS MATTER came on for a hearing before the Klamath County Assistant Hearings Officer, JAMES R. UERLINGS, on September 2, 1982, at 1:30 p.m. in the Commissioners' Hearing Room at the Klamath County Courthouse. The applicant, BRUCE CARPENTER, appeared through his Real Estate Agent, Mr. LeQuieu. The Klamath County Planning Department appeared through their 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 within Klamath County which is the subject of this hearing; the legal description of which is a portion of the NW $\frac{1}{2}$ NW $\frac{1}{2}$  of Section 11, Township 41, Range 12, Klamath County, Oregon. The site is generally located approximately 1 3/4 miles north-east of Malin, Oregon, on the north side of the Malin Loop Road.

2. The existing land use on the property is idle, the plan designation is Agricultural, and the zone designation

\* \* \* \* \*

FINDINGS OF FACT, DECISION AND ORDER, Page One.

1 is AU-5. Access to the property is off of Malin Loop Road.

2 3. On the adjacent property, the existing land use  
3 is Agricultural and related residential uses, the plan designation  
4 is Agricultural, and the zone designation is AU-5.

5 4. No written correspondence for or against this  
6 proposed variance was received.

7 5. The applicant desires this variance in order to  
8 partition one piece of property into two (2) parcels of land.

9 Currently, the land consists of 39 acres. The applicant desires  
10 to partition this into two (2) parcels of approximately 20  
11 acres and 19 acres in size. The Klamath County Planning Director  
12 will handle the partition portion of this request.

13 6. Without this variance, the lots could not exceed 1065  
14 feet in depth. The applicant is requesting that the depth  
15 be allowed to be 2000 feet.

16 7. Due to the shape of the lot, extraordinary circum-  
17 stances apply due to its positioning near the Canal. It would  
18 be labor-intensive to farm this land without breaking it into  
19 parcels as requested. No other type of design will accomplish  
20 the partitioning without the proposed depth exceeding  $2\frac{1}{2}$  times  
21 the width. Due to the nature of the soil and the topography of  
22 the land, the farming of this land in smaller parcels would be  
23 easier.

24 KLAMATH COUNTY DEVELOPMENT CODE CRITERIA:

25 1. Klamath County Code Section 43 sets forth the  
26 general review criteria for consideration of a variance. These

1 criteria are as follows:

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

9 B. That exceptional or extraordinary circumstances  
10 apply to the property which do not apply generally to other prop-  
11 erties in the same zone or vicinity and result from size or shape,  
12 legally existing prior to the effective date of this Code, topo-  
13 graphy, or other circumstances over which the applicant has no  
14 control.

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

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

26 \* \* \* \* \*

FINDINGS OF FACT, DECISION AND ORDER, Page Three.

## KLAMATH COUNTY DEVELOPMENT CODE FINDINGS:

1. See Findings 1-7 under Findings of Fact set forth above.

2. The proposed variance is in conformance with the Klamath County Comprehensive Plan and is in conformance with all applicable provisions of this Code and other Klamath County codes and ordinances and Oregon law.

3. The Klamath County Development Code requires a lot depth to be not more than  $2\frac{1}{2}$  times the average width. The applicant proposes to have two (2) lots, at least one of which will have a depth of approximately 1600 feet while under the Code the maximum would be 1065 feet. Due to the nature of the topography of the land, and its adjacency to the Canal, a hardship would be created subsequent to the partitioning if the applicant was not allowed to have a width to depth ratio variance. Because of the topography of the land, a different manner of partitioning would not be possible.

4. As a result of these findings, exceptional and extraordinary circumstances apply to the subject property which do not generally apply to properties in the same vicinity and zone that result from the topography, size and shape and other circumstances of the subject property over which the applicant has no control.

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

## 1 STATE-WIDE PLANNING GOALS AND CRITERIA:

2 See Exhibit "AA" attached hereto and incorporated by  
3 this reference.

## 4 CONCLUSIONS OF LAW AND DECISION:

5 1. This request for variance satisfies all applicable  
6 Klamath County Development Code criteria and policies governing  
7 variances.

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

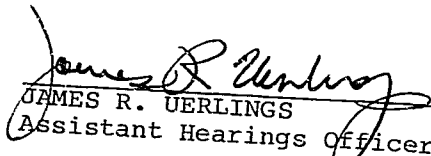
10 3. This request for variance is consistent and complies  
11 with the applicable State-wide Planning Goals.

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

14 There is substantial evidence in the record to support  
15 this request for variance and no evidence was submitted in opposi-  
16 tion thereto.

17 Therefore, it is hereby ordered that this request for  
18 variance for a minor partition be granted upon the condition that  
19 the applicant follow his plot plan as submitted.

20 DATED this 10 day of September, 1982.

21  
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23   
24 JAMES R. UERLINGS  
25 Assistant Hearings Officer  
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## FINDINGS OF FACT, DECISION AND ORDER, Page Five.

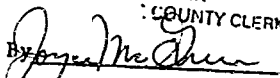
STATE OF OREGON; COUNTY OF KLAMATH; ss.

I hereby certify that the within instrument was received and filed for record on the  
14 day of Sept A.D., 1982 at 10:41 o'clock A M., and duly recorded in  
Vol M82, of Deeds on page 12164.

Fee \$ no fee commissioners journal

EVELYN DIEHN

COUNTY CLERK

By  deputy