

BEFORE THE HEARINGS OFFICER

FOR KLAMATH COUNTY, OREGON

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

NO. 73-82

for

FINDINGS OF FACT, DECISION  
AND ORDER

KLAMATH INDIVIDUALIZED  
DEVELOPMENT (KID) CENTER.

THIS MATTER came on for a hearing before the Klamath County Assistant Hearings Officer, JAMES R. UERLINGS, on December 2, 1982, at 1:30 p.m. in the Commissioner's Hearing Room at the Klamath County Courthouse. This hearing was held pursuant to notice given in conformity with the Klamath County Development Code and related ordinances. The applicant was present at the hearing and presented evidence and testimony through its representative, JUDY CARNAHAN, and additionally, JOHN MONFORE appeared on behalf of Weyerhaeuser Timber Company, the present land owner. The Klamath County Planning Department was represented by Jonathan Chudnoff. The Hearings' reporter was Karen Alberto. One witness appeared in opposition to the proposed Request for a variance for a minor partition.

The following Exhibits were offered, received and made a part of the record:

Exhibits "A" through "E". The Hearing was then closed.

The following decision and findings of fact are entered pursuant to said Hearing.

\* \* \* \* \*

FINDINGS, DECISION AND ORDER, Page One.

FINDINGS OF FACT:

1. Weyerhaeuser Timber Company is the owner of the subject property described as being located within Section 13, Township 39S, Range 8E, described as Tax Account Number 38091341-3100, in Klamath County, Oregon. The parcel for which the request for variance for minor partition is sought consists of .51 acres. Weyerhaeuser Timber Company is contemplating the deeding of this portion of the property to the KID CENTER on the basis of a warranty deed.

2. The current Comprehensive Plan designation is Heavy Industrial/General Commercial. The land use zone is Heavy Industrial (CG)

3. The site is served by West Klamath Water District and sanitation is provided by drainfield.

4. The applicant is proposing that the site be used for direct service care for pre-school children serving employees of Weyerhaeuser Timber Company, Columbia Plywood and surrounding employers and the general residential area.

5. The Center will be administered by the KID CENTER which will be licensed by the State of Oregon through Children's Services Division.

6. The adjacent and surrounding zoning is RS to the North, IH to the South. The Weyerhaeuser mill site is to the South and a residential area to the North. There is a tavern next door to the North.

7. The property's physical characteristics

1 include a dimension of 70' by 300' consisting of approximately  
2 one-half ( $\frac{1}{2}$ ) acre with an irregular shape. Vegetation consists  
3 of trees and shrubbery and the topography is generally level.  
4 The general drainage is through surface runoff towards the  
5 South. The soil classification is 4. The timber site pro-  
6 ductivity rating is VII.

7 8. Access to the property is along Third Street  
8 within the West Klamath subdivision which is a paved road.

9 9. The site is to have recreation provided at  
10 the facility.

11 10. Sewer is to be provided by septic tank system,  
12 power is provided by Pacific Power and Light and telephone by  
13 Pacific Northwest Bell. The fire district is Stewart-Lennox.

14 11. The property has a building upon it which is  
15 formerly the Weyerhaeuser Company's credit union and garage.  
16 The applicant will be fencing the property in order to keep  
17 children out of the street and the mill area and from the  
18 adjacent property upon which there is a tavern.

19 12. The one-half ( $\frac{1}{2}$ ) acre site provides sufficient  
20 room for the two existing buildings and for any parking and  
21 outdoor play areas to be provided as demonstrated by the  
22 applicant's plat plan as Exhibit "B".

23 13. No conflicts with the surrounding uses are seen  
24 as long as necessary fencing is provided.

25 14. The site has adequate access to streets to  
26 carry the traffic flow which will be generated by this use as

1 it fronts on Third Street within the West Klamath area, a paved  
2 street.

3 15. The property is of an unusual shape as determined  
4 by the plat for the area as filed several years ago. Despite  
5 the unusual shape for the lot, all setbacks will be met.  
6 The variance is needed as maximum depth to width ratio is  
7 exceeded by 107'. The maximum depth possible, due to the lot's  
8 width, is 188'. However, the property is 295' in depth.

9 16. The property is generally located between the  
10 Klamath River and Highway 66 approximately three (3) miles  
11 west of Klamath Falls. The area is the Weyerhaeuser mill site  
12 and this portion of the mill site used to be the old Credit  
13 Union building lying South of the West Klamath subdivision  
14 and adjacent to a Weyerhaeuser security gate, and the legal  
15 description is NE $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 13, Township 39, Range 8.

16 17. The complete record and testimony given at the  
17 Conditional Use Permit Hearing, Number 49-82, was incorporated  
18 within the record of the request for variance for a minor  
19 partition.

20 18. Due to the unusual shape of the lot as set  
21 by the old subdivision, an extraordinary circumstance exists  
22 that apply to this particular property.

23 KLAMATH COUNTY DEVELOPMENT CODE CRITERIA:

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

FINDINGS, DECISION AND ORDER, Page Four.

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

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

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

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

26       \* \* \* \* \*

FINDINGS, DECISION AND ORDER, Page Five.

KLAMATH COUNTY DEVELOPMENT CODE FINDINGS:

17881

1. See Findings 1-18 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. Klamath County Development Code requires a lot depth to be not more than two and one-half ( $2\frac{1}{2}$ ) times the average width. The applicant proposes to have one (1) of the lots of approximately 295' while under the Code the maximum would be 188'. Due to the nature of the topography of the land and the prior existing plot of the West Klamath subdivision, 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 existing structures on the land and because of the existing subdivision plot, 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

1 impair an adequate supply of light or air to the adjacent prop-  
2 erty.

3 STATE-WIDE PLANNING GOALS AND CRITERIA:

4 The granting of this variance is consistent with  
5 the goals of L.C.D.C. See Exhibit "AA".

6 CONCLUSIONS OF LAW AND DECISION:

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

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


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

14 4. This request for variance is consistent and complies  
15 with all requirements of State law.

16 There is substantial evidence in the record to support  
17 this request for variance.

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

21 DATED this 10 day of December, 1982.

22  
23  
24  
25   
26 JAMES R. UERLINGS  
Assistant Hearings Officer

COMPREHENSIVE PLAN POLICIES AND STATE

LAND USE GOALS 1 - 14

17883

GOAL NO. 1 - Citizen Involvement

- ☒ Complies ☐ Does not Comply  
☐ Complies with conditions  
☐ Not applicable

Relevant Policies:

The county shall provide for continued citizen involvement opportunities.

State Goal Issues:

Notice of the hearing was sent to property owners within 250' of the proposed partition, to appropriate agencies, and was published in the Herald and News Newspaper and posted as required by law. For the minor partition public input during hearings on the Comprehensive Plan favored the disposition of minor partitions by a ministerial act of the Planning Director.

GOAL NO. 2 - Land Use Planning

- ☒ Complies ☐ Does not comply  
☐ Complies with conditions  
☐ Not applicable

Relevant Policies:

Existing land uses shall be preserved from redevelopment and conflicting nearby land uses except as otherwise required by policies of the plan. The partition will not effect any change in use of the larger parcel for the Weyerhaeuser plant site. The old credit union building on the smaller parcel will be used for a day care center. No conflicts are anticipated. A Conditional Use Permit for the day care center must be obtained prior to the granting of the partition. Conflicts in use will be addressed at the CUP hearing.

State Goal Issues:

Applicants must also obtain a lot depth to width ratio variance for the smaller lot. No lot depth can be greater than  $2\frac{1}{2}$  times the average width. The depth to width ratio is exceeded by approximately 107'.

Variances are subject to the review criteria of section 43.003 of the Land Development Code.

Parcel #2 was originally a platted lot in the West Klamath Subdivision. This determined its present shape. The lot was later vacated; however, its long narrow shape had been predetermined by its formerly platted boundaries. This circumstance applies to this property in particular and not generally.

(cont.)



GOAL NO. 2

17884

State Goal Issues cont.:

to other properties in this area. 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.

The parcels to be partitioned conform to the general area. The .51 acre parcel was originally a lot in the West Klamath subdivision. The remaining parcel is the Weyerhaeuser Plant site. No change in use is anticipated on the parcel housing the plant site. The former credit union building will be used as a day care center if the CUP is approved. The purpose of the partition is to enable Weyerhaeuser to donate their old credit union building to the KID center.

GOAL NO. 5 - Open Space, Scenic and Historic Areas, and Natural Resources

17885

- ☒ Complies ☐ Does not Comply  
☐ Complies with conditions  
☐ Not applicable

Relevant Policies:

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.

The Department of Fish and Wildlife has been notified:

State Goal Issues:

There are no inventoried open spaces, scenic and historic areas or natural resources which would be affected by the proposed partition and variance. No additional impacts are anticipated.

GOAL NO. 6 - Air Water and Land Resource Quality

- ☒ Complies ☐ Does not Comply  
☐ Complies with Conditions  
☐ Not applicable

Relevant Policies:

Urban and rural residential use shall be designated only when approved sewage disposal alternatives have been identified.

All established development is currently served by septic systems. Water is provided by a water district.

State Goal Issues:

Current facilities are presumed to meet the needs of the day care center and will continue to adequately serve the mill site. No impacts due to the partition and variance will affect air, water, or land resources quality.

## GOAL NO. 3 - Agricultural Lands

17886

- ☒ Complies ☐ Does not Comply  
☐ Complies with conditions  
☐ Not applicable

## Relevant Policies:

Urban and rural development shall be directed onto SCS Class V-VIII soils except when areas are small and surrounded by existing or potential development.

Both parcels are currently physically committed to nonfarm uses although crops are grown on a partition of the larger parcel. Areas are developed and surrounded by potential development.

## State Goal Issues:

Area is situated on Class III soils. Current development on both parcels, surrounding development, and the small parcel size of the .51 acre parcel preclude the use of much of the property for agriculture. A portion of the property is currently in agricultural use.

## GOAL NO. 4 - Forest Lands

- ☐ Complies ☐ Does not Comply  
☐ Complies with conditions  
☒ Not applicable

## Relevant Policies:

## State Goal Issues:

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

GOAL NO. 7 - Natural Disaster and Hazards Area

17887

☒ Complies ☐ Does Not Comply

☐ Complies with conditions

☐ Not applicable

Relevant Policies:

The county shall consider site constraints in evaluating land use in fire hazard areas.

New development shall be kept off of slopes greater than 25% unless engineering plans are approved by the Dept. of Public Works.

No new development is planned.

State Goal Issues:

A portion of the larger parcel lies in a flood hazard area per HUD flood hazard area maps. No additional development is anticipated due to the partition. There are no other natural disaster or hazard areas in the vicinity of the proposed partition.

GOAL NO. 8 - Recreation Needs

☒ Complies ☐ Does Not Comply

☐ Complies with conditions

☐ Not applicable

Relevant Policies:

State Goal Issues:

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

GOAL NO. 9 - County Economy

17888

☒ Complies ☐ Does not Comply

☐ Complies with conditions

☐ Not applicable

Relevant Policies:

State Goal Issues:

Weyerhaeuser Company is donating their old credit union building and lot to the KID day care center. The economy may be indirectly stimulated by the service provided by the day-care center.

GOAL NO. 10 - Housing

☐ Complies ☐ Does not Comply

☐ Complies with conditions

☒ Not applicable

Relevant Policies:

State Goal Issues:

The proposed partition will have no affect on housing.

GOAL NO. 11 - Public Facilities and Services

17889

- ☒ Complies ☐ Does not Comply  
☐ Complies with conditions  
☐ Not applicable

Relevant Policies:

State Goal Issues:

The area is served by a water district, a fire district, and a school district. Sanitary facilities are provided by septic tanks. Electrical and telephone facilities serve the area.

GOAL NO. 12 - Transportation

- ☒ Complies ☐ Does not Comply  
☐ Complies with conditions  
☐ Not applicable

Relevant Policies:

State Goal Issues:

Parcel 2 has access off of Weyerhaeuser Road; Parcel 1 has access off of Weyerhaeuser Road and Highway 66.

GOAL NO. 13 - Energy Conservation

17890

- ☒ Complies ☐ Does Not Comply  
☐ Complies with conditions  
☐ Not applicable

Relevant Policies:

State Goal Issues:

The facilities are located close to the Klamath Falls urban area providing a convenient location for employees and for the child care service.

GOAL NO. 14 - Urbanization

- ☒ Complies ☐ Does not Comply  
☐ Complies with conditions  
☐ Not applicable

Relevant Policies:

During partitioning of urban land, the county shall encourage parcels of adequate dimension to maximize the utility of land resources and enable the logical and efficient extension of services. The .51 acre parcel lies within the UGB.

State Goal Issues:

The larger parcel containing the plant site is located outside of the UGB for Klamath Falls.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record

this <sup>15</sup>14 day of Dec A. D. 19 82 at 3:59 o'clock PM, and  
duly recorded in Vol. M82, of Deeds on Page 17876

COMMISSIONERS JOURNAL

No Fee

EVILYN BEHN, County Clerk

By Joyce McArthur