

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF KLAMATH

In the Matter of the)
REQUEST FOR VARIANCE IN CONJUNCTION)
WITH MINOR PARTITION)

CASE NO. 74-82

for)

FINDINGS OF FACT, DECISION
AND ORDER

DENNIS ACTEN AND KATHLEEN)
SCHMIDT)
_____)

THIS MATTER come 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 Commissioners' Hearing Room at the Klamath County Courthouse. The applicants, DENNIS ACTEN and KATHLEEN SCHMIDT, appeared in person. The Klamath County Planning Department appeared through their staff. No persons appeared in opposition to the proposed variance for minor partition. The following Exhibits were offered, received and made a part of the record: EXHIBITS "A" through "D". The Hearing was then closed.

The Hearings Officer, after reviewing the evidence, makes the following decision:

FINDINGS OF FACT:

1. The applicant is the owner of the subject property which has a legal description of Tax Lot 1800, located in the SE $\frac{1}{4}$ of Section 25, Township 39, Range 7, Klamath County, Oregon. It is generally located at the North end of Ben Kerns Road, Klamath River Acres, Keno, Oregon.

FINDINGS, DECISION AND ORDER, Page One.

1 2. The Comprehensive Plan designation is rural
2 residential, the zone designation is RR and the adjacent and
3 surrounding zone designation is rural residential, being the
4 Klamath River Acres subdivision on all sides. Lots are devel-
5 oped with houses and mobile homes, with typical lots being be-
6 tween one and two acres.

7 3. The property has physical characteristics as
8 follows: dimensions of 490' x 622' equalling approximately
9 seven (7) acres; shape is rectangular; vegetation consists of
10 pine trees and sparse grass. The topography is rolling. The
11 general drainage is two drainage ways draining toward the south-
12 east. The lot depth to width ration requires a variance for
13 Lots 1 and 2. The drainage for the subdivision surrounding
14 the property flows through the northwest portions of Lots 1 and 2.
15 This fact makes long, narrow lots more feasible for partition-
16 ing the property. This would allow both Lots 1 and 2 to have
17 building sites which do not interfere with the established drain-
18 age system for the subdivision. None of the surrounding prop-
19 erties experience this particular difficulty.

20 4. Access to the property is from Ben Kerns Road,
21 a graveled public road and additionally, there is an easement
22 to the lots. Access will be determined by the Planning Director
23 in his determination of the minor partition.

24 5. The applicants, in their petition, would partition
25 the property into three parcels which would be aligned with
26 existing lots as per the applicants' partition map, Exhibit "B".

1 6. In addition to matching the existing lots, the
2 proposed partition is designed to take advantage of two
3 drainage ways.

4 7. The proposed changes in the Land Development Code,
5 scheduled for adoption on December 21, 1982, would allow the
6 Planning staff to waive the 2½ to 1 ratio requirement without
7 requiring any variance hearing. The applicants have chosen
8 to apply for a variance now, however, in order to expedite
9 the partition process. The lots would be 160' wide and therefore,
10 under the existing ordinance, could not have a depth in excess
11 of 420', however they are 490'.

12 KLAMATH COUNTY DEVELOPMENT CODE CRITERIA:

13 See Exhibit "AA" attached hereto and incorporated
14 by this reference.

15 KLAMATH COUNTY DEVELOPMENT CODE FINDINGS:

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

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

22 3. The Klamath County Development Code requires
23 a lot depth to be not more than 2½ times the average width.
24 The applicant proposes to have three (3) lots in the minor
25 partition, two (2) of which will have a depth of approximately
26 490' while under the Code the maximum allowable is 420'.

FINDINGS, DECISION AND ORDER, Page Three.

1 Due to the nature of the topography of the land and the natural
2 drainage ways that run through the property, a hardship would
3 be created subsequent to the partitioning if the applicants
4 were not allowed to have a width to depth ratio variance.
5 The variance would allow the applicants to use all lots for
6 building sites without disturbing the natural drainage.
7 Additionally, the proposed amendments to the ordinance to
8 take effect in less than two weeks would allow the Planning
9 staff to waive the ratio problem.

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

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

20 STATE-WIDE PLANNING GOALS AND CRITERIA:

21 See Exhibit "BB" attached hereto and incorporated by
22 this reference.

23 CONCLUSIONS OF LAW AND DECISION:

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

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

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

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

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

Therefore, it is hereby ordered that this request for variance for a minor partition be granted upon the condition that the applicants follow their partitioning map as submitted.

DATED this 10 day of December, 1982.



JAMES R. UERLINGS
Assistant Hearings Officer

EXHIBIT "AA"

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.

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

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

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

LAND USE GOALS 1 - 14

GOAL NO. 1 - Citizen Involvement

☒ Complies ☐ Does not Comply

☐ Complies with conditions

☐ Not applicable

Relevant Policies:

1. A hearing on this matter has been set for December 2, 1982. Notice has been sent to neighboring property owners and published in the Herald and News.

State Goal Issues:

GOAL NO. 2 - Land Use Planning

☒ Complies ☐ Does not comply

☐ Complies with conditions

☐ Not applicable

Relevant Policies:

The property has a plan designation of Rural Residential and is zoned RR. The proposed parcels would be designed to match the existing lots in the area.

State Goal Issues:

17914

GOAL NO. 3 - Agricultural Lands

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

Relevant Policies:

State Goal Issues:

GOAL NO. 4 - Forest Lands

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

Relevant Policies:

State Goal Issues:

Page 17915
GOAL NO. 5 - Open Space, Scenic and Historic Areas, and Natural Resources

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

17915

Relevant Policies:

The proposed parcels would be similar to the surrounding lots and would not change the scenic character of the land. The trees on each parcel would provide screening for any future dwellings.

State Goal Issues:

GOAL NO. 6 - Air Water and Land Resource Quality

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

Relevant Policies:

DEQ septic approval has been obtained on the southerly parcel. The two drainage ways (shown on exhibit B) carry run-off from surrounding lands. The parcels are designed so that each one would have a home-site which would not disturb the drainage.

State Goal Issues:

GOAL NO. 7 - Natural Disaster and Hazards Ar

☐ Complies ☐ Does Not Comply

☐ Complies with conditions

☒ Not applicable

17916

Relevant Policies:

State Goal Issues:

There are no known natural hazards in the area.

GOAL NO. 8 - Recreation Needs

☐ Complies ☐ Does Not Comply

☐ Complies with conditions

☒ Not applicable

Relevant Policies:

State Goal Issues:

GOAL NO. 9 - County Economy

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

Relevant Policies:

State Goal Issues:

GOAL NO. 10 - Housing

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

Relevant Policies:

Allowing the variance and the related partition would permit the creation of three new homesites in Keno.

State Goal Issues:

GOAL NO. 11 - Public Facilities and Services

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

17918

Relevant Policies:

State Goal Issues:

The requested variance would not affect the need for or availability of utilities to the area.

GOAL NO. 12 - Transportation

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

Relevant Policies:

Access to the property is from a gravel public road. The variance would not impede traffic or visibility.

State Goal Issues:

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

Relevant Policies:

State Goal Issues:

GOAL NO. 14 - Urbanization

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

Relevant Policies:

The property is within the Keno rural community boundary in an area designated for residential development.

State Goal Issues:

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record .

this 15 day of Dec A. D. 1982 at 3:59 o'clock P. M., and
duly recorded in Vol. 482, of Deeds on page 17907

No Fee

EVELYN BIEHN, County Clerk

By Joyce M. [Signature]

COMMISSIONERS JOURNAL