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Vol. 1183 Page 3920

BEFORE THE HEARINGS OFFICER  
FOR KLAMATH COUNTY, OREGON

In the Matter of a  
REQUEST FOR VARIANCE  
for  
WALTER HILYARD

CASE NO. 3-83  
FINDINGS OF FACT, DECISION  
AND ORDER

THIS MATTER came on for a hearing before the Klamath County Assistant Hearings Officer, JAMES R. UERLINGS, on March 3, 1983, at 1:30 p.m. in the Klamath County Commissioners' Hearing Room of the Klamath County Courthouse. The applicant, WALTER HILYARD, appeared in person and the Klamath County Planning Department was represented by Jonathan Chudnoff.

The Exhibits "A" through "C" were offered, received into evidence and made a part of the record.

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

FINDINGS OF FACT:

1. The applicant for this variance is WALTER HILYARD, who is the owner of the subject property described as Section 28, Township 37S, Range 11, East of the Willamette Meridian, Subdivision of Yonna Woods, Unit 2, Lot 9, Block 7, Klamath County, Oregon.

2. This parcel consists of approximately 6.4 acres. The plan designation for the land use is rural residential with a zone designation of RR.

FINDINGS OF FACT, DECISION AND ORDER, Page 1.



1 3. The property is served by a water well, and Pacific  
2 Power and Light for electricity. Telephone service is provided  
3 by United Telephone and the fire protection district is  
4 Bly Mountain.

5 4. The applicant desires a modification of the  
6 setback from 20' to 0'. The reason for this request is that when  
7 the lot was originally shown to the applicant by Hammond  
8 Realty, the applicant and the real estate broker found what  
9 they believed to be the lot stake in the wrong location along  
10 the Fisher Street roadway representing the northwest corner  
11 of the applicant's property. This stake was apparently  
12 misplaced by the subdivider or an agent of the subdivider.  
13 The actual northwest property corner lies approximately 125'  
14 to the south along Fisher Street. The applicant has thereby  
15 been exercising possession over a triangular portion of Lot 8  
16 lying to the north; said portion having the rough dimensions of  
17 504' on the north and south side and 126' on the west side.  
18 The applicant had constructed a dirt driveway across this  
19 triangular portion and an outbuilding and had constructed his  
20 wood frame house so that one corner of that house lies right  
21 on the actual property line. The applicant has agreed to remove  
22 the outbuilding and fence from the property line to the north  
23 owned by Mrs. Schulz. Mr. Hilyard indicated that he does not  
24 know how the dirt driveway can be removed.  
25 The applicant and Mrs. Schulz have not discussed  
26 the possibility of the applicant purchasing a portion of this



1 Lot 8. The applicant did not have the true boundaries of  
2 the property surveyed before purchasing or constructing the  
3 property.

4 5. There are no structures currently located on  
5 Lot 8 or 7, which are owned by Mrs. Schulz. The evidence appears to  
6 indicate that portion of Lot 8 lying immediately adjacent to  
7 the applicant's house could not be used for the construction  
8 of residences due to the topography of the land. The applicant  
9 additionally indicated that, before purchasing the property,  
10 the realtor and himself stepped off the dimensions of the  
11 property and thought that the pin could be located in the  
12 wrong place but decided to rely upon the placement of the  
13 stake, in any event.

14 6. Mrs. Schulz testified that she felt a 0' setback  
15 would have a detrimental effect upon the value of her Lot 8.  
16 The applicant testified that the house that he built has the  
17 dimensions of 24' x 26' with approximately \$10,000 invested  
18 in the house. He has listed the house and the Lot 9 for sale  
19 at \$29,500 with no sales being consummated.

20 7. Mrs. Schulz testified that she purchased the  
21 Lots 7 and 8 for \$10,000. The applicant testified that he  
22 paid \$2,500 for his Lot 9 in 1978. Neither party was sure  
23 of what the value would be for the triangular portion of  
24 land which Mr. Hilyard had been occupying.

25 KLAMATH COUNTY DEVELOPMENT CODE CRITERIA:

26 1. A variance shall be granted only upon finding  
FINDINGS OF FACT, DECISION AND ORDER, Page 3.



1 by the review authority that it satisfies the following criteria:  
2 A. That a literal enforcement of this Code would

3 result in practical difficulty or unnecessary hardship. The  
4 difficulty or hardship may arise from the property's size,  
5 shape or topography, from the location of lawfully existing  
6 buildings and improvements, or from personal circumstances  
7 which would result in greater private expense than public  
8 benefit of strict enforcement.  
9

10 B. That the condition causing the difficulty  
11 was not created by the applicant.

12 C. That the granting of the Variance will not  
13 be detrimental to the public health, safety, and welfare or  
14 to the use and enjoyment of adjacent properties and will not  
15 be contrary to the intent of this Code.

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

26 3. ORS 197.175 requires that this Land Use Action  
be in conformity with State-Wide Planning Goals.  
FINDINGS OF FACT, DECISION AND ORDER, Page 4.



KLAMATH COUNTY DEVELOPMENT CODE FINDINGS:

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

2. A literal enforcement of this Code would result in a practical difficulty or unnecessary hardship to the applicant. However, this difficulty does not arise from the property's size, shape or topography nor from the location of lawfully existing buildings and improvements. However, it does appear that difficulty or hardship does result from personal circumstances which would result in a greater private expense to the applicant and to the benefit of the public in general.

3. The condition causing the difficulty was not caused by the applicant as he reasonably relied upon the statements of the real estate broker in determining the boundaries of his property.

4. The granting of this variance will not be materially detrimental to the public health, safety and welfare nor will it be materially detrimental to the use and enjoyment of the adjacent property and will not be contrary to the intent of this Code.

5. It is found, however, that the following conditions upon the granting of this variance should be made in order to decrease any future impact on public health, safety or welfare and decrease any detrimental effect upon the use and enjoyment of adjacent properties.

FINDINGS OF FACT, DECISION AND ORDER, Page 5.



1 A. That the applicant immediately stop any  
2 and all use of the driveway which is currently located on Lot  
3 8 owned by Mrs. Schulz.  
4

5 B. That the applicant immediately remove  
6 all structures built upon the Schulz' property of Lot 8  
7 and, to the most reasonable extent possible, repair the  
8 damage caused by the construction of the driveway across the  
9 Schulz' property.

10 C. This variance shall remain effective for  
11 a period of one (1) year. At the end of such time, the applicant  
12 shall apply for a continuation of this variance. During this  
13 time, the applicant shall meet with Mrs. Schulz in order to  
14 determine if there is a possibility of the applicant purchasing  
15 as much of Mrs. Schulz' property as is necessary in order to  
16 reduce the amount of the variance setback required or possibly  
17 eliminate the necessity of a variance setback through the purchase  
18 of the portion of Mrs. Schulz' property which he has previously  
19 adversely possessing. The Review Hearing, conducted twelve  
20 months from the date of this Order, shall be for the purpose  
21 of determining what detrimental effect, if any, continuation  
22 of this variance for setback will have upon public health,  
23 safety and welfare and in particular, what detrimental effect  
24 to the continuing use and enjoyment of Mrs. Schulz' adjacent  
25 property.

26 STATE-WIDE PLANNING GOALS AND CRITERIA:

See Exhibit "AA" attached hereto and incorporated  
FINDINGS OF FACT, DECISION AND ORDER, Page 6.



1 by this reference.

3926

2 CONCLUSIONS OF LAW AND DECISION:

3 A. This request for variance satisfies all  
4 applicable Klamath County Development Code Criteria and policies  
5 governing variances.

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

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

10 D. This request for variance is consistent and  
11 complies with all requirements of State law.

12 There is substantial and sufficient evidence in  
13 the record to support this request for variance in connection  
14 with the conditions imposed.

15 THEREFORE, it is hereby ordered that this variance  
16 be granted subject to the conditions as set forth herein.

17 DATED this 11 day of March, 1983.

18

19

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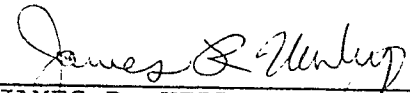
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JAMES R. UERLINGS  
Assistant Hearings Officer



COMPREHENSIVE PLAN POLICIES AND STATE

LAND USE GOALS 1 - 14

3927

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:

A hearing on this matter has been set for March 3, 1983. Notice has been sent to surrounding property owners, concerned public agencies, and published in the Herald and News.

GOAL NO. 2 - Land Use Planning

☒ Complies ☐ Does not comply

☐ Complies with conditions

☐ Not applicable

Article 46  
Major/Minor Partition  
Section 46.003 Review Criteria

Complies Does not  
Comply N.A.

Relevant Policies:

"Existing uses shall be preserved from redevelopment and conflicting nearby land uses except as otherwise required by other policies of the Plan."

State Goal Issues:

The area is planned and zoned for rural residential use. The requested variance is consistent with that use as long as the proposed conditions (see p. 4 above) are met.

A -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
C -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
E -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
F -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
G -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
K -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
L -	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



GOAL NO. 3 - Agricultural Lands

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

3928

Relevant Policies:

State Goal Issues:

The area is in SCS Soil Class VII, not considered suitable for agriculture. The area is subdivided into lots of 1½ to 26 acres and is being developed for residential use.

GOAL NO. 4 - Forest Lands

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

Relevant Policies:

State Goal Issues:

The area has sparse to dense cover of pine trees, but is not rated as productive timber land. Small parcels in separate ownerships make commercial forestry unfeasible.



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

3929

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

Relevant Policies:

State Goal Issues:

Legalizing the setback for the existing house would not affect any scenic, historic, or natural resources.

GOAL NO. 6 - Air Water and Land Resource Quality

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

Relevant Policies:

State Goal Issues:

The requested variance would not change the use of the property, resulting in no effect on air, water, or land resource quality.



GOAL NO. 7 - Natural Disaster and Hazards Area

3930

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

Relevant Policies:

State Goal Issues:

The area has a "medium" fire hazard rating. It is within the Bly Mountain Fire Protection District which has a fire station on Hwy. 140, about 5 miles away.

GOAL NO. 8 - Recreation Needs

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

Relevant Policies:

State Goal Issues:

The variance would not affect the need for or availability of recreational areas and facilities in Klamath County.



GOAL NO. 9 - County Economy

3931

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

Relevant Policies:

State Goal Issues:

Not granting this variance could result in economic hardship if the Hilyards are forced to either move their home or buy a portion of the neighbor's lot.

GOAL NO. 10 - Housing

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

Relevant Policies:

State Goal Issues:

The variance would not adversely affect development of housing on adjacent lots as long as all encroaching structures are removed.



GOAL NO. 11 - Public Facilities and Services

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

3932

Relevant Policies:

State Goal Issues:

The variance would not necessitate the provision of additional public facilities and services.

GOAL NO. 12 - Transportation

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

Relevant Policies:

State Goal Issues:

The variance would not affect the public roads in the area.



GOAL NO. 13 - Energy Conservation

3933

☐ 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:

State Goal Issues:

The property is outside of any urban or urbanizing area.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record

On the 14th day of March A.D. 1983 at 4:18 o'clock P.M., and

duly recorded in Vol. M83, of Deeds on Page 3920

EVELYN BARN, County Clerk

By Bernice A. Delach

Commissioners Journal

No Fee

EXHIBIT "AA", Page Seven and Last.