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BEFORE THE HEARINGS OFFICER
FOR KLAMATH COUNTY, OREGON

In the matter of a) Case No. 4-85
REQUEST FOR VARIANCE)
for) FINDINGS OF FACT, CONCLUSIONS
RICHARD BURCH) OF LAW AND DECISION

THIS MATTER came on for a hearing before the Klamath County Assistant Hearings Officer, JAMES R. UERLINGS, on March 7, 1985, at 1:30 p.m. in the Klamath County Commissioners Hearing Room. The applicant, RICHARD BURCH, was present at the hearing and the Klamath County Planning Department was represented by Jonathan Chudnoff.

The following exhibits were offered and made a part of the record: Exhibits "A" through "E".

The hearing was then closed. The Assistant Hearings Officer, after reviewing the evidence, makes the following Findings of Fact, Conclusions of Law and Decision.

FINDINGS OF FACT:

1. The applicant, RICHARD BURCH, is requesting a reduction in the required side yard from 25 feet to 10 feet in an agricultural zone. The applicant owns a 39 acre parcel on Silver Lake Highway at the eastern fringe of the Klamath Marsh. About two-thirds (2/3) of this property is a low lying area with Skellock Draw Creek flowing through it in a northwesterly direction. About half of this area is a thicket

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1 of small lodgepoles and the remainder is a meadow. This area is
2 subject to seasonal flooding and has a high water table.
3 The eastern one-third (1/3) of the property is a rocky hill,
4 sloping steeply up to the east. A dirt road forms the boundary
5 between the two land types. An old mobile home is located on
6 the lower portion of the property. The applicant proposes
7 to replace it with a house on the upland. The steepness
8 and rockiness of the terrain limit the choice of homesites
9 and, even at the proposed location, excavation is required to
10 create a level area. The smaller the amount of set back
11 that the applicant is required to use, the less expensive
12 his excavation costs will be to locate a homesite.

13 2. The applicant desires the homesite in this loca-
14 tion in order to avoid problems with the creek, thick brush
15 and the low water table on the lower area where a mobile
16 home is presently located. The applicant intends to replace
17 this mobile home with a house located on the higher ground.

18 3. The property is generally located along Silver
19 Lake Highway, 10 miles east of Highway 97. The legal descrip-
20 tion of the property is "SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 10, Township 31,
21 Range 9, Klamath County, Oregon."

22 4. The plan designation is Agricultural,
23 the zone designation is EFU-G and the adjacent and/or
24 surrounding zoning is EFU-G and F.

25 5. The property's physical characteristics are
26 as follows: dimensions-1353' x 1315', consisting of 39 acres;

1 shape-nearly square; vegetation-lodgepole thicket and meadow
2 below dirt road, with scattered pines above road; and
3 topography-nearly level below the road rising steeply to
4 the east above the road. General drainage is in a north-
5 westerly direction to Klamath Marsh. The SCS Soil Classification
6 is VI above the road, and V below the road. The Timber
7 Site Productivity Rating is VI above the road, and none
8 below the road.

9 6. The unique physical characteristics of
10 surrounding lands consists of Klamath Marsh to the west.

11 7. Access to the property is provided by
12 Silver Lake Highway, a paved County road.

13 8. The sewer system to this site is furnished by
14 septic system and water by well. No utility districts
15 serve the property, nor do any fire districts.

16 KLAMATH COUNTY DEVELOPMENT CODE CRITERIA:

17 1. Section 43.001 and Section 43.003 set forth
18 the purpose and review criteria for the granting of variances.
19 Those criteria are as follows:

20 A. The purpose of a variance is to permit
21 justifiable departures from the requirements of this Code
22 where their literal application would impose an undue or un-
23 necessary hardship on the citizens of Klamath County or
24 the owners of the property within the County, except that no
25 variance shall be granted for a parcel of property which
26 either authorizes a use or activity not permitted by the land

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

1 use zone regulations governing the parcel of property.

2 B. A variance shall be granted only upon finding
3 by the review authority that it satisfies the following
4 criteria:

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

12 That the condition causing the difficulty
13 was not created by the applicant.

14 That the granting of the variance will not be
15 detrimental to the public health, safety and welfare or to
16 the use and enjoyment of adjacent properties and will not
17 be contrary to the intent of this Code.

18 2. ORS 197.175 requires all zoning and related
19 ordinances adopted by the County be in conformance with State-
20 wide Planning Goals.

21 KLAMATH COUNTY DEVELOPMENT CODE FINDINGS AND CONCLUSIONS:

22 1. The literal enforcement of this Code would result
23 in a practical difficulty or unnecessary hardship to the appli-
24 cant. The difficulty or hardship arises from the property's
25 topography and shape and from the location of lawfully exist-
26 ing buildings and improvements which result in a greater private

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1 expense than public benefit of strict enforcement.

2 3. The granting of this variance will not be detri-
3 mental to the public health, safety and welfare or to the
4 use and enjoyment of adjacent properties and will not be
5 contrary to the intent of this Code.

6 STATE-WIDE PLANNING GOALS AND CRITERIA:

7 See Exhibit "AA" attached hereto and incorporated
8 by this reference.

9 CONCLUSIONS OF LAW AND DECISION:

10 1. This request for a variance on the subject prop-
11 erty meets the applicable Klamath County Development Code
12 Criteria and policies governing such.

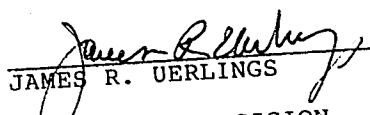
13 2. This request for a variance is consistent
14 with, and complies with, all applicable State-wide
15 Planning Goals and review criteria.

16 3. The following conditions are deemed applicable
17 to protect the public health, safety and welfare of the
18 citizens of Klamath County:

19 A. That the applicant file a plot plan as
20 filed herein labeled Exhibit "E".

21 NOW AND THEREFORE, IT IS HEREBY ORDERED that this
22 request for a variance is granted, subject to the above
23 condition.

24 DATED this 14 day of March, 1985.

25 
26 JAMES R. UERLINGS

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

KLAMATH COUNTY DEVELOPMENT CODE CRITERIA

SECTION 43.003 - REVIEW CRITERIA

A Variance shall be granted only upon finding by the review authority that it satisfies the following criteria:

A. That a literal enforcement of this Code would result in practical difficulty or unnecessary hardship. The difficulty or hardship may arise from the property's size, shape or topography, from the location of lawfully existing buildings and improvements or from personal circumstances that would result in greater private expense than public benefit of strict enforcement.

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

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

Return: Commissioners Journal

STATE OF OREGON,
County of Klamath)
Filed for record at request of

on this 21st day of March A.D. 19 85
at 10:02 o'clock A M, and duly
recorded in Vol. M85 of Deeds
Page 4156
EVELYN BIEHN, County Clerk
By Pam Smith Deputy
Fee