

53734

## BEFORE THE HEARINGS OFFICER

KLAMATH COUNTY, OREGON

Vol. M85 Page 15581

1 In the Matter of Request for )  
2 Variance 12-85 for )  
3 Thomas M. Sublet, Applicant )

Klamath County Planning  
Findings of Fact and Order

4 A hearing was held on this matter on August 1, 1985, pur-  
5 suant to notice given in conformity with Ordinance No. 45.2,  
6 Klamath County, before the Klamath County Hearings Officer, Brad  
7 Aspell. The applicant was represented by Karry Osbon. The  
8 Klamath County Planning Department was represented by Jonathan  
9 Chudnoff. The Hearings Reporter was Karen Burg.

10 Evidence was presented on behalf of the Department and on  
11 behalf of the applicant. There were no adjacent property owners  
12 present.

13 The following exhibits were offered, received, and made a  
14 part of the record:

15 Klamath County Exhibit A, Staff Report  
16 Klamath County Exhibit B, Plot Plan  
17 Klamath County Exhibit C, Side View of Property  
18 Klamath County Exhibit D, Assessor's Map  
19 Klamath County Exhibit E, Photos  
20 Klamath County Exhibit F, City Planner's Comments

21 The hearing was then closed, and based upon the evidence  
22 submitted at the hearing, the Hearings Officer made the following  
23 Findings of Fact:

24 FINDINGS OF FACT:

25 1. The applicant is the owner of Tax Lot 900, located in  
26 the NE $\frac{1}{4}$ , NW $\frac{1}{4}$  of Section 5, Township 39 S, Range 9 E.W.M., Klamath  
27 County, Oregon, which property comprises a 100 foot by 100 foot  
28 parallelogram located at the SW corner of Riverside Street and

85 SEP 25 AM 11 31

1 Hood Street, as more particularly described in Exhibit D.

2 2. The property in question is designated Urban in the  
3 Comprehensive Land Use Plan with a zone designation of R-L  
4 (Residential Low Density) and CH (Highway Commercial). Appli-  
5 cant's property is a .23 acre parcel bordered on the north by  
6 Hood Street, on the west by Riverside Street and on the east and  
7 south by the property owned by the City of Klamath Falls on which  
8 the City maintains a well and pump station on a 1.9 acre parcel.

9 3. The property in question is covered with native grasses  
10 and some trees and has a steep slope upward to the west and south.  
11 Drainage is by surface runoff. No soil conservation survey of  
12 soil class is available. The property is neither agricultural  
13 land nor rated for forest timbersite productivity. Access to the  
14 property is gained off Riverside Street, a paved County Road.  
15 Hood Street to the North of the property is an undeveloped dirt  
16 road. Adjacent to the road with the normal setbacks are two  
17 older carports.

18 4. The property in question is within the attendance area  
19 of School District #1. Water is provided by the City of Klamath  
20 Falls, and sewer collection is through individual septic systems.  
21 Utilities serving the property include Pacific Power & Light  
22 (electricity) and Pacific Northwest Bell (telephone). The pro-  
23 perty is located within the Stewart-Lennox Fire District and  
24 within the Klamath Falls Urban Growth Boundaries.

25 5. Applicant's propose constructing a single family resi-  
26 dence on the property as generally shown by Exhibit B. Applicant  
27 seeks a variance of the required rear yare setback along the  
28 westerly property line from 25 feet to 5 feet and the required  
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1 side street setback from 15 feet to 5 feet. Applicant through  
2 Karry Osbon submits that the only feasible spot for building this  
3 home is in the level area along the westerly property line in  
4 support thereof sites Exhibit C. Inquiry at hearing of staff  
5 confirms that there is no other feasible location on the subject  
6 property for construction of the house without massive earth  
7 moving and at substantial additional hardship and expense, an  
8 expense not contemplated in the views of the Hearings Officer by  
9 the terms of the Klamath County Land Use Plan. The size of the  
10 proposed dwelling is reasonably related to the needs of the  
11 applicant. The areas of potential conflict along the westerly  
12 property line are minimized due to the steep slope extending up-  
13 hill to the west, making the land and immediate area adjacent  
14 generally unsuitable for construction on the adjacent lot. Along  
15 the northerly boundary, the normal setbacks from Hood Street  
16 would not conflict with the use of Hood Street since the proposed  
17 house would be located 18 feet above street level causing no  
18 visual or physical obstruction to traffic off the street, which  
19 appears to be little more than an alley.

20 6. As to the applicable policies and procedures of the  
21 Comprehensive Land Use Plan, the Hearings Officer finds that  
22 Goal 1, Citizen Involvement, has been met through the process of  
23 publication, the mailing of notice to adjacent property owners  
24 and concerned agencies, and of the input from Joseph T. Riker III,  
25 City of Klamath Falls, as reflected by Exhibit F.  
26 7. Goal 2, Land Use Planning, sets forth variance criteria  
27 //  
28 //

1 in Section 43.003 of the Land Development Code. The Hearings  
2 Officer finds:

3 A. Literal enforcement of the Code will result in  
4 practical difficulty and unnecessary hardship to the  
5 shape, topography and location which would result in  
6 greater practical expense to the applicant and little  
7 if any public benefit from strict enforcement.

8 B. The conditions causing the difficulty involve  
9 the establishment of Hood Street, Riverside Street  
10 and the topography of the land itself, no condition  
11 of which is caused by the applicant.

12 C. The granting of the variance will not be  
13 detrimental to public health, safety and welfare nor  
14 to the use and enjoyment of adjacent properties.

15 8. The Hearings Officer specifically finds Goal 3, Agricul-  
16 tural Lands; Goal 4, Forest Lands; Goal 5, Open Space; Goal 6,  
17 Resource Quality; Goal 7, Natural Disaster; Goal 8, Recreation  
18 Needs are inapplicable.

19 9. The Hearings Officer specifically finds Goal 9, County  
20 Economy met. Construction of the residence will increase jobs as  
21 will Goal 10 be met in that additional new single family detached  
22 housing will be provided consistent with considerations of Goal  
23 11, Goal 12, Goal 13 and Goal 14. That being that the proposed  
24 development is served by available public facilities and services  
25 (Goal 11) is well laid out in reference to existing transportation  
26 (Goal 12) will result in concentration in populations towards  
27 urban centers, therefore meeting the objectives of energy con-  
28 servation (Goal 13) and that the property is located within the

1 Urban Growth Boundary of the City of Klamath Falls.

2 Based upon the foregoing, the Hearings Officer makes the  
3 following:

4 CONCLUSIONS OF LAW:

5 1. On a literal enforcement of the Klamath County Land  
6 Development Code would result in an unnecessary hardship for the  
7 applicant by either unreasonable restricting the size of the res-  
8 idence or driving up the costs of construction to a prohibitive  
9 level, neither of which are indicated by the application.

10 2. The condition causing the above-mentioned hardship were  
11 not created by the applicant.

12 3. By granting this variance it would not be detrimental to  
13 the public health, safety or welfare or the use and enjoyment of  
14 adjacent properties and will not be contrary to the intent of  
15 this Code, and that granting of this variance is consistent with  
16 the goals of the Land Conservation and Development Commission.

17 Based upon the foregoing, the Hearings Officer accordingly  
18 orders as follows:

19 That real property described as

20 "being generally located on the corner of Riverside and  
21 Greensprings, and more particularly described as being  
22 Tax Lot 900, located in the NE $\frac{1}{4}$ , NW $\frac{1}{4}$  of Section 5, Town-  
ship 39, Range 9, Klamath County, Oregon,"

23 is hereby granted a variance in accordance with the terms of the  
24 Klamath County Zoning Ordinance No. 45.2, and, henceforth, will

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1 be allowed to reduce the rear yard setback from 25 feet to 5 feet  
2 and side yard setback from 15 feet to 5 feet to allow for a house.

3 Entered at Klamath Falls, Oregon, this 23 Day of  
4 September, 1985.

KLAMATH COUNTY HEARINGS DIVISION

Brad Aspell  
Brad Aspell, Hearings Officer

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of \_\_\_\_\_  
of September A.D., 19 85 at 11:31 o'clock A M., and duly recorded in Vol. M85  
of Deeds on Page 15581

FEE

NONE

Ret: Commissioner's Journal

Evelyn Biehn,  
By \_\_\_\_\_

County Clerk

R. Smith