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1 In the Matter of Request for
 2 Variance 17-85 for Glenn &
 3 Bonnie Murphy

) Klamath County Planning
)
) Findings of Fact and Order

4 A hearing was held on this matter on September 19, 1985,
 5 pursuant 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 Dan Mann. The Klamath
 8 County Planning Department was represented by Claudia Stine. The
 9 Hearings Reporter was Janet Libercajt.

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, Assessor's Map

18 Klamath County Exhibit D, Vicinity map of Midland

19 Klamath County Exhibit E, Pictures

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

23 FINDINGS OF FACT:

24 1. The applicant is the owner of a portion of Lot 14 and
 25 all of Lots 15, 16, 17 and 18, Block 36, FIRST ADDITION TO MID-
 26 LAND, located in the NE $\frac{1}{4}$, SE $\frac{1}{4}$ of Section 36, Township 39 South,
 27 Range 8 East, Klamath County, Oregon, more commonly known as
 28 405 Main Street, Midland, Oregon. The property is generally
 located on the northeast corner of Main Street and is rectangular

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1 in shape with dimensions of 130 feet by 135.5 feet, consisting
2 of .40 acre. Location of the subject property is more partic-
3 ularly shown by Exhibit "C" and "D" in the record.

4 2. The property in question is designated Rural (R) in the
5 Comprehensive Land Plan with a zone designation of R-1 (Rural,
6 one acre). The applicant's property is bounded to the north,
7 west and south across Main Street, by single family residential
8 dwellings under the same Comprehensive Plan and zone designation.
9 Property to the east is vacant unplatted land. The property in
10 question is generally level, has a single family residence
11 presently constructed on it and is landscaped for residential use.
12 A site plan, admitted at the hearing as Exhibit "B" shows the
13 location of the improvements and proposed new improvements.
14 Drainage is provided by surface run off, SCS Soil Class is 7, and
15 the timbersite productivity rating is 5. Access to the property
16 is gained off Main Street, a paved road maintained to County
17 road standards. The property in question lies within the attend-
18 ance area of Klamath County School District, water is by indi-
19 vidual wells, sewage disposal through individual septic systems,
20 utilities serving the property are: Pacific Northwest Bell
21 (telephone), and Pacific Power & Light (electricity). The
22 property is located within Klamath County Fire District No. 1.
23 Applicant proposes to construct an attached garage on the west
24 side of their existing garage to build a new, larger and taller
25 garage to house a van with mechanical lift platform, which Mr.
26 Glenn Murphy, the applicant, can enter from within the garage.
27 Mr. Murphy is disabled and confined to a wheelchair. The
28 applicant seeks a Variance of 6 inches from 5 feet down to 4 feet

1 and 6 inches in order to build the garage. When completed, the
2 garage will be approximately 3 feet from the fence line which
3 separates the subject property from the neighbor to the west.

4 3. The Hearings Officer finds from review of Exhibit "B"
5 setting forth the property width at 127 feet, and Staff Report
6 sets the width at 130 feet, that the true location of the property
7 line and hence the extent of the Variance ambiguous. In addition,
8 Mrs. Murphy testified that the true location of the property line
9 was not known except to lie outside the fence line located
10 approximately 3 feet from the proposed wall of the garage. For
11 this reason, for point of clarification the conclusions which
12 follow grant the requested Variance to 4½ feet as requested, or
13 alternatively to 3 feet from the fence.

14 4. The Hearings Officer finds that all adjacent property
15 owners including Roger Clavet, the adjoining property owner on
16 the west, together with applicable agencies and Midland Area
17 Committee were notified and no other persons other than the
18 applicant and the applicant's representative were present at the
19 hearing or submitted written comments.

20 5. The Hearings Officer finds Klamath County Land Devel-
21 opment Code Section 43.003 - Review Criteria (Variances) and
22 Section 62.004 Side Yards (Setbacks) applicable. In this regard
23 the Hearings Officer specifically finds as follows:

24 A. That literal enforcement of the Code would result
25 in practical difficulty and unnecessary hardship to the
26 applicant, due to the existing placement of lawfully
27 existing buildings and improvements; and that the personal
28 circumstances of the applicant require the construction of

1 a new garage. Strict enforcement of the Code would require
2 substantial demolition of the existing structure or re-
3 location of existing portions of the living space, great
4 private expense, and little or no public benefit.

5 B. The condition causing the difficulty was not created
6 by the applicant as the applicant did not build the residence
7 or plat the existing lots.

8 C. The granting of the Variance will not be detrimental
9 to the public health, safety and welfare, nor to the use and
10 enjoyment of adjacent properties based in part on the
11 builder's testimony of the design characteristics, the
12 proposed plan, the fact that the improvement is funded by a
13 Federal Veterans Administration Grant, and from the lack of
14 adverse public input, such that the Hearings Officer can
15 conclude there will be no adverse effect upon surrounding
16 properties.

17 6. As to the applicable policies and procedures of the
18 Comprehensive Land Use Plan, the Hearings Officer finds as
19 follows.

20 A. The following Goals are inapplicable:

21 Goal 3 (Agriculture Lands), Goal 4 (Forest Lands),
22 Goal 5 (Open Space), Goal 6 (Resource Quality), Goal 7
23 (Hazard Area), Goal 8 (Recreation Needs), Goal 10
24 (Housing), Goal 11 (Public Facilities), Goal 13 (Energy
25 Conservation), Goal 14 (Urbanization).

26 B. The following applicable Goals have been met:

27 The Hearings Officer finds that Goal 1 (Citizen In-
28 volvement and Goal 2 (Land Use Planning) have been met

1 by this application in that notice was published in
2 the Herald & News, and mailed to adjacent property
3 owners and concerned agencies, including the Midland
4 Area Committee. Opportunities were provided for citizen
5 input and was received. Goal 2 (Land Use Planning) has
6 been met in that the applicant meets the standards for
7 approval of a Variance pursuant to LCD Section 43.003.
8 Goal 9 (County Economy) will be met in economic benefits
9 of the sale of building materials and construction labor
10 would result.

11 Goal 12 (Transportation) has been met. Access to the
12 property is by paved County road, and access to the driveway will
13 be across an existing driveway.

14 Based upon the foregoing the Hearings Officer makes the
15 following:

16 CONCLUSIONS OF LAW:

- 17 1. A literal enforcement of the Klamath County Land
18 Development Code would result in practical difficulty and unnec-
19 essary hardship to the applicant due to the location of lawful
20 existing buildings and improvements, and due to personal circum-
21 stances of the applicant which would result in great private
22 expense and little, if any, public benefit for strict enforcement.
23 2. Conditions causing the above mentioned hardship, the
24 platting of the subdivision, the construction of the dwelling and
25 the service related disability were not created by the applicant.
26 3. The granting of the Variance will not be detrimental to
27 public health, safety or welfare or the use or enjoyment of
28 adjacent properties.

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Based on the foregoing, the Hearings Officer accordingly orders as follows:

That real property described as "being generally located on the east end of Main Street, Midland, Oregon, and more particularly described as being a portion of Lot 14 and Lots 15 - 18, Block 36, 1st addition to Midland, in the NE $\frac{1}{4}$, SE $\frac{1}{4}$ of Section 36, Township 39 South, Range 8 East, Klamath County, Oregon," is hereby granted a Variance to reduce the required side yard setback from 5 feet to 4 $\frac{1}{2}$ feet or as measured 3 feet from the existing fence line along the westerly boundary.

Entered at Klamath Falls, Oregon, this 15 Day of October, 1985.

KLAMATH COUNTY HEARINGS DIVISION

Brad Aspell
Brad Aspell, Hearings Officer

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Planning Office the 29th day of October A.D. 19 85 at 9:51 o'clock A.M. and duly recorded in Vol. M85 on Page 17564

FEE NONE

By Evelyn Biehn County Clerk
Evelyn Biehn

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