

55512

BEFORE THE HEARINGS OFFICER

Vol. 185 Page 18707

KLAMATH COUNTY, OREGON

In the Matter of Request for)
 Variance 18-85 for Russell and) Klamath County Planning
 Catherine Tracy.) Findings of Fact and Order

A hearing was held on this matter on October 17, 1985, pursuant to notice given in conformity with Ordinance No. 45.2, Klamath County, before the Klamath County Hearings Officer, Brad Aspell. The applicant was represented by Mary Cheyne. The Klamath County Planning Department was represented by Claudia Stine and Carl Shuck. The Hearings Reporter was Janet Libercajt. Evidence was presented on behalf of the Department and on behalf of the applicant. There were no adjacent property owners present.

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

- Klamath County Exhibit A, Staff Report
- Klamath County Exhibit B, Assessor's Map
- Klamath County Exhibit C, Partition Map
- Klamath County Exhibit D, Pictures

The hearing was then closed, and based upon the evidence submitted at the hearing, the Hearings Officer made the following

Findings of Fact:

FINDINGS OF FACT:

1. The applicant is the owner of Tax Lot 42 and a portion of Tax Lot 43, Homecrest Subdivision located in the Northwest ¼, Northeast ¼, of Section 3, Township 39 South, Range 9 E.W.M.,

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1 Klamath County, Oregon, which property is designated as Tax
2 Account Number 3909-3AB-4400. The property is irregular in shape
3 as shown in the plot plan, and is more particularly described
4 in Exhibit "C".

5 2. The property in question is designated Urban Residential
6 in the Comprehensive Land Use Plan with a zone designation of
7 Medium Family Residential (RM). The applicant's property con-
8 sists of approximately 1.3 acres and is bordered generally to
9 the north by the United States Bureau of Reclamation "A" Canal,
10 which curves Crest Street to the west and residential uses to
11 the south and southwest. Property immediately to the east is
12 located in the City of Klamath Falls. The applicant takes
13 official notice from the larger plot plan map marked as Exhibit
14 "B" that the property historically has been divided and re-
15 partitioned differently from the original plat and that property
16 surrounding and adjoining the applicant's property is of
17 generally irregular shape and configuration. It appears histor-
18 ically that few, if any, lot lines continue to match the prior
19 survey and platting of the subdivision, which was done some time
20 ago. Property in question contains two separate residential
21 structures, a single family in ground home and adjoining shop on
22 the northern most parcel with a mobile home situate on the
23 southern most parcel, parcel 2. The applicant seeks a Variance
24 to create a flag shape lot and to reduce the "pole" of the flag
25 to 16 feet in width, from 30 feet to 16 feet due to an existing
26 driveway and fence line already in place on the property. The
27 land in question is generally flat and consists of pasturage
28 and residential landscaping as shown in the photos marked as
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1 Exhibit "D".

2 3. In addition to level topography, general drainage is
3 from surface runoff to the east and no Soil Conservation Service
4 soil class has been made, nor has a timbersite productivity
5 rating been issued based upon the property lying within the Urban
6 Growth Boundary of the City of Klamath Falls. Access to the
7 property is gained off Crest Street, a paved road improved to
8 County Road Standards. The property in question is located
9 adjacent to the "A" Canal, is located within the attendance area
10 of the Klamath Union School District. Water is provided by the
11 City of Klamath Falls with sewer collection from South Suburban
12 Sanitary District. Utilities serving the subject property
13 include Pacific Power & Light (electricity), Pacific Northwest
14 Bell (telephone), and CP National (natural gas). The property
15 is within the City of Klamath Falls Urban Growth Boundary and is
16 served by Klamath County Fire District No. 1.

17 4. As stated above, applicants propose partitioning the
18 property into two separate lots which will require a Variance of
19 14 feet at the point that the driveway access to the property
20 intersects Crest Street. In this regard, it is important to note
21 that the Klamath County Road Department was given notice of the
22 application but that no report has been received by the Hearings
23 Officer relative to the feasibility of or public safety concerns
24 of granting the Variance.

25 5. Applicable portions of the Klamath County Development
26 Code include Section 51.007 (Medium Density Residential),
27 Article 43, Variances; and Article 61, Section 61.002, Flag Lots.

28 6. Section 61.002(A)(2), requires that the flag portion of

1 the lot be a minimum of 30 feet in width, therefore a Variance is
2 necessary.

3 7. As to the applicable policies and procedures of the
4 Klamath County Comprehensive Land Use Plan, the Hearings Officer
5 finds as follows:

6 A. Goal 1 (Citizen Involvement) has been met in that
7 notice has been sent to adjacent property owners, concerned
8 public agencies and notice has been published.

9 B. Goal 2 (Land Use Planning) has been met in that the
10 Hearings Officer has applied the Variance criteria set forth
11 in Chapter 43.003 as set forth below.

12 C. Goal 9 (County Economy) has been met in that short
13 term economic benefits will be provided by allowing the
14 partition and the sale of an adjacent parcel of property.

15 D. Goal 11 (Public Facilities and Services) has been
16 met in that the real property lies within the Klamath Falls
17 Urban Growth Boundaries, and is served by public facilities
18 and services of the community as a whole.

19 E. Goal 12 (Transportation) has been met in that the
20 Hearings Officer finds, from a lack of adverse testimony,
21 that a reduction in the flag pole width would not adversely
22 affect public safety on Crest Street.

23 F. Goal 14 (Urbanization) likewise has been met as the
24 property falls within the Klamath Falls Urban Growth
25 Boundary and is served by public facilities including the
26 facilities cited above, together with public transportation,
27 parks and recreation.

28 8. The Hearings Officer specifically finds that the

1 following goals are inapplicable to this application: Goal 3
2 (Agricultural Lands), Goal 4 (Forest Lands), Goal 5 (Open Space),
3 Goal 6 (Air and Land Resource Quality), Goal 7 (Natural Disaster
4 Area), Goal 8 (Recreation Needs), Goal 10 (Housing), and Goal 13
5 (Energy Conservation).

6 9. In application of the review criteria as found in
7 Section 43.003, the Hearings Officer makes the following
8 additional findings:

9 A. That a literal enforcement of this Code would result
10 in practical difficulty and unnecessary hardship. This
11 hardship is found in that the property was previously
12 partitioned into the odd shape shown in Exhibit "C" and that
13 the location of lawfully existing buildings and driveways
14 make a Variance necessary. In that the property surrounding
15 the applicant's parcel is essentially a hodge podge
16 resulting from a number of variances. Little if any public
17 benefit would be gained from strict enforcement.

18 B. The condition causing the difficulty to-wit: the
19 creation of the parcel as shown on Exhibit "C" and the
20 development of the property immediately to the west of the
21 subject property between it and Crest Street was not created
22 by the applicant.

23 C. That the granting of the Variance will not be
24 detrimental to the public health, safety and welfare or to
25 the use and enjoyment of adjacent property owners and will
26 not be contrary to the intent of the Code. First the
27 Hearings Officer finds that adjacent properties have been
28 similarly partitioned in the past and further, from a lack
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1 of public testimony or input it appears to your Hearings
2 Officer herein that there is no public opposition.

3 Based upon the foregoing, the Hearings Officer makes the
4 following Conclusions of Law:

5 CONCLUSIONS OF LAW:

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

11 2. The conditions causing the above-mentioned hardship
12 were not created by the applicants.

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

18 The Hearings Officer, based on the foregoing Findings of
19 Fact, accordingly orders as follows:

20 That real property described as

21 "Being generally located at 1807th Crest Street, north of
22 Klamath County Fairgrounds, and more particularly
23 described as Lot 42 and a portion of Lot 43, Homecrest
24 Subdivision, located in the Northwest $\frac{1}{4}$, Northeast $\frac{1}{4}$,
of Section 3, Township 39 South, Range 9 E.W.M.,
Klamath County, Oregon,"

25 is hereby granted a Variance in accordance with the terms of the
26 Klamath County Zoning Ordinance No. 45.2, and, henceforth, will

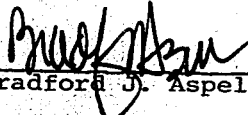
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1 be allowed to reduce the width of the "flag pole" from standard
 2 of 30 feet down to 16 feet in the RM zone.

3 Entered at Klamath Falls, Oregon, this 16th Day of
 4 November, 1985.

5 KLAMATH COUNTY HEARINGS DIVISION


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 8 Bradford J. Aspell, Hearings Officer

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STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____ the 19th day
 of November A.D., 19 85 at 9:02 o'clock A M., and duly recorded in Vol. M85,
 of _____ Deeds on Page 18707.

FEE NONE

Evelyn Biehn, County Clerk
 By 

Return: Commissioner's Journal