

BEFORE THE HEARINGS OFFICER OF KLAMATH COUNTY, OREGON  
 In the Matter of the Request ) Variance No. 1-90  
 for a Variance for ) FINDINGS OF FACT,  
 JUDITH McCULLICK. ) CONCLUSION OF LAW  
 ----- ) AND ORDER

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This matter came before Richard C. Whitlock, Hearings Officer of Klamath County, Oregon on February 9, 1990 in the Klamath County Commissioners' Hearing Room. The Hearing was held pursuant to notice given in conformity with the Klamath County Land Development Code and related ordinances. The Applicant was present at the hearing and testified in favor of the application as did Florence Born, a long time friend and associate of the Applicant. An additional witness, Rito Delgado, also testified at the hearing initially expressing objection to the proposal, but withdrawing his objection and his testimony when his confusion as to the location of the parcels was clarified. The Klamath County Planning Department was represented by Mr. Carl Shuck and the Recording Secretary was Leanne Mitchel. The Klamath County Planning Department file and all contents thereof were incorporated in the record as evidence, including Exhibits A (staff report), B (site map), C (Assessor's map), D (letter from DVA), E (letter from Applicant), and F (letter from South Suburban Sanitary). The Applicant was further requested by the Hearings Officer to provide a more detailed site plan which was received on February 12, 1990, as were numerous photographs of the premises and an additional statement from the Applicant, all

of which are received into the record. The Hearings Officer, after reviewing the evidence presented, makes the following Findings of Fact, Conclusions of Law and Decision:

FINDINGS OF FACT:

1. The subject property is located West of Homedale Road, and on the North side of Harlan Drive at 5355 Harlan Drive, Klamath Falls, Oregon, and is legally described as a portion of Section 11AC, Township 39, Range 9, Tax Lot 600. The site is in the RS (Suburban Residential) Zone, which is defined in Land Development Code Section 51.005.

2. The Applicant has requested a Variance from the lot size development standards contained in Section 51.025(D) of the Land Development Code in order to allow partition of this property to create a 4,625 square feet parcel (approximately .1 acre), rectangular in shape, located in the northwest corner of the parcel. If this request is granted, the Applicant intends to apply for a Minor Partition. The Applicant at the hearing also requested a variance from the building setback requirements of this zone as set forth in Land Development Code Sections 62.004(A) and 62.005(A), because the existing placement of the garage would touch the new proposed property line.

3. The Applicant testified that she purchased this property in 1976 and at the time of that purchase there had been a mobile home on the premises for several years. Applicant proposes to keep the smaller lot for herself, replace the older mobile home with a newer one and sell the

larger parcel with the home and garage on it to finance her son's college education. The Applicant testified that she was no longer able to afford to maintain the house and the mortgage payments on it and that when her son began attending college next Fall, the additional money availability due to reduced payments would be absolutely necessary. It is clear from Applicant's testimony that this proposed partition would, in fact, improve the Applicant's financial situation.

4. Applicant testified that the existing double-wide mobile home has been on the property since 1980 and that there was another mobile home on the lot since approximately 1962. Applicant further stated that the garage on the premises was built sometime prior to 1976 and possibly as early as 1962. Applicant further stated that the lot has been divided by the fence now in existence since sometime prior to 1975 and that the fence line in existence approximates generally where the new proposed property line would be. Applicant further testified that she would be adding a new driveway access for the mobile home since the driveway to the garage is now jointly shared by the two residences.

5. In her letter to the Hearings Officer, the Applicant asserts as follows:

"There would not be an increase in traffic or greater congestion in the area because there is already a mobile home on the lot, with a two-car family living in it. It would not look any different than it does now except that the mobile would be new and the front ditch would be filled-in."

larger parcel with the home and garage on it to finance her son's college education. The Applicant testified that she was no longer able to afford to maintain the house and the mortgage payments on it and that when her son began attending college next Fall, the additional money availability due to reduced payments would be absolutely necessary. It is clear from Applicant's testimony that this proposed partition would, in fact, improve the Applicant's financial situation.

4. Applicant testified that the existing double-wide mobile home has been on the property since 1980 and that there was another mobile home on the lot since approximately 1962. Applicant further stated that the garage on the premises was built sometime prior to 1976 and possibly as early as 1962. Applicant further stated that the lot has been divided by the fence now in existence since sometime prior to 1975 and that the fence line in existence approximates generally where the new proposed property line would be. Applicant further testified that she would be adding a new driveway access for the mobile home since the driveway to the garage is now jointly shared by the two residences.

5. In her letter to the Hearings Officer, the Applicant asserts as follows:

"There would not be an increase in traffic or greater congestion in the area because there is already a mobile home on the lot, with a two-car family living in it. It would not look any different than it does now except that the mobile would be new and the front ditch would be filled-in."

6. Testimony at the hearing also established that there are other lots in the general area which are comparable in size to this proposed substandard lot.

7. The Applicant's proposed substandard parcel contains approximately .11 acres (4,625 square feet) which is less than one-half of the minimum lot size of 10,000 square feet required by Section 51.005(D)(1). The fence which is between the two properties (as evidenced by the photographs) has been in existence for many years and will form the new property line if the variance and partition are granted. The proposed property lines will also create substandard setback requirements on both parcels. The Findings of Fact contained in the Klamath County Planning Department's Staff Report (Exhibit A) are incorporated herein by this reference. Both properties are now accessed by a single driveway on Harlan Drive and are serviced by Klamath County Fire District No. 1, City of Klamath Falls Water and South Suburban Sanitary District.

KLAMATH COUNTY LAND DEVELOPMENT CODE CRITERIA:

1. Article 43 of the Land Development Code sets forth the criteria which must be addressed in order to grant a Variance.
2. Section 51.005(D)(1) and Section 62 of the Land Development Code set forth minimum lot size for the RS Zone (10,000 square feet) and setback requirements [62.004(1) = five (5) foot side yard; 62.005(A)(1) = twenty-five (25) foot rear yard].

KLAMATH COUNTY CODE FINDINGS AND CONCLUSIONS:

A. With respect to the request for a Variance as to minimum lot size and setback requirements, the following Findings and Conclusions are Made:

1. The literal enforcement of this code would result in practical difficulty or unnecessary hardship. The evidence indicates the proposed parcel has been used as a separate parcel for several years and has also been physically separated from the large parcel by a fence for a number of years. The smaller parcel has been treated as a separate parcel for all outward purposes for a significant period of time. The Applicant has financial difficulties making this proposed partition and sale a financial necessity. To force the Applicant to sell both the house and mobile home together would be cumbersome, unnecessarily burdensome and without any public benefit.

2. That the condition causing the difficulty was not created by the applicant. Although the Applicant did place the mobile home in its present location, she simply replaced a substandard mobile home with a much nicer double-wide mobile home.

3. 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. The Hearings Officer finds that this variance request will not reduce neighborhood property values because the present situation of a single

parcel physically divided into two households by a fence has been in existence for many years. Visually and practically speaking, the two parcels have been separate for many years and it is illogical to conclude that this ruling will have any impact on property values. There was no testimony in opposition to this application despite the notification of numerous surrounding property owners. There is no substantial testimony or evidence in the record which establishes that these variances would have any adverse effects on adjacent properties.

ORDER:

The request for a Variance from the Development Standards of the Land Development Code requiring that every parcel be not less than 10,000 square feet in size [51.005(D)(1)] is granted.

The request for a Variance from the Development Standards of the Land Development Code requiring side yard setbacks of not less than five (5) feet [62.004(A)(2)] and rear yard setbacks of not less than twenty-five (25) feet [62.005(A)(1)] is granted with respect to all buildings presently on the property. Any new structures (excepting a "replacement" mobile home) placed thereon shall comply with all Development Standards then in existence.

All further developments or changes to the property shall comply with applicable codes and ordinances and property restrictions.

DATED this 22<sup>nd</sup> of February, 1990.

*Richard C. Whitlock*

Richard C. Whitlock, Hearings Officer

Klamath County Land Development Code Section 24.007 provides:

"An Order of the Hearings Officer shall be final unless appealed within ten (10) days of its mailing by a party having standing in accordance with the procedures set forth in Chapter 3, Article 33 of this Code."

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County the 26th day of Feb. A.D., 19 90 at 4:20 o'clock P.M., and duly recorded in Vol. M90 of Deeds on Page 3651.

FEE \$none

Evelyn Biehn County Clerk  
By *Pauline Muelendorfer*

Return: Commissioners Journal