

LAND USE  
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

AUG 20 10 43 AM '84

1  
2  
3 GROVER'S BEAVER ELECTRIC )  
4 PLUMBING & SUPPLY, INC. )

5           Petitioner, )

6           vs. )

7 CITY OF KLAMATH FALLS, )

8           Respondent. )

LUBA No. 84-042

FINAL OPINION  
AND ORDER

9           Appeal from the City of Klamath Falls.

10           Bradford J. Aspell, Klamath Falls, filed the Petition for  
11 Review and argued the cause on behalf of Petitioner. With him  
12 on the brief were Aspell, Della-Rose and Whitlock.

13           No appearance by the City of Klamath Falls.

14           BAGG, Chief Referee; DuBAY, Referee; KRESSEL, Referee;  
15 participated in this decision.

16           REMANDED

08/20/84

17           You are entitled to judicial review of this Order.  
18 Judicial review is governed by the provisions of ORS 197.850.  
19  
20  
21  
22  
23  
24  
25  
26

Opinion by Bagg.

NATURE OF THE DECISION

Petitioner appeals design review approval of the expansion of a restaurant in Klamath Falls. Petitioner asks us to reverse the decision.

FACTS

The applicant, Ross Zie, applied for design review approval for expansion of a restaurant known as the Black Kettle. The change was to increase the total square footage of the restaurant from 1710.25 square feet to 2208.25 square feet. The expansion would allow an increase in seating capacity from 42 to 56 persons. Along with the increased floor space, the applicant would provide more parking spaces by an agreement with a business across South Sixth Street, a four lane street.

The application was heard by the city's hearings officer who issued a written order approving it. His order was then appealed to the planning commission. The planning commission voted to affirm the decision of the hearings officer, and the planning commission decision was then appealed to the city council. On April 16, 1984, the city council voted to send the matter back to the planning commission for further consideration.<sup>1</sup> However, on April 18, 1984, the council reversed itself and affirmed the action of the hearings officer without benefit of further review by the planning commission.<sup>2</sup>

ASSIGNMENT OF ERROR 1

"City of Klamath Falls erred in adopting Finding and

1 Conclusion of the Hearings Officer which provided in  
applicable part:

2 "It is my opinion that with the conditions  
3 imposed, applicant will be within the 'minimum  
4 standards' for off-street parking required by the  
CDO....' Tr 34."<sup>3</sup>

5 ASSIGNMENT OF ERROR 2

6 "City of Klamath Falls erred in applying the joint use  
7 provision for parking found in Section 14.024(4) in  
the Community Development Ordinance."

8  
9 Petitioner includes in these first two assignments of error  
10 a claim that the decision should be reversed because the  
11 applicant failed to submit a site plan as required by  
12 §12.810(17) of the City of Klamath Falls Community Development  
13 Ordinance (hereinafter CDO). That subsection requires an  
14 applicant to submit 20 copies of a site plan in a particular  
15 form showing, among other things, parking lot coverage,  
16 landscaping and the number of parking stalls provided. While  
17 there are drawings in the record, they do not include the  
18 detail required under CDO §12.810(17).

19 Petitioner insists that submittal of the parking lot site  
20 plan was critical to a proper decision under the ordinance.  
21 Petitioner argues the plan would have shown the location and  
22 dimension of the parking lot, the size of spaces, and other  
23 important information necessary to accurately determine whether  
24 or not the plan met the requirements of the city's ordinance.  
25 Further, submittal of the plan was necessary in order to  
26 provide the public with sufficient information to evaluate and

1 address the matter. Without this information, it is impossible  
2 to know whether or not the applicant's proposal met city  
3 parking requirements, according to petitioner.

4 We understand petitioner's argument to be there is no  
5 substantial evidence to support the hearings officer's  
6 conclusion that there presently exist 12 parking places on  
7 site. The number of parking places on site is critical,  
8 because the ordinance limits use of off-site parking (to  
9 fulfill a parking requirement) to no more than 50% of the total  
10 number of parking places required. CDO §14.025(4)(c)(ii).

11 As noted earlier, there are drawings in the record showing  
12 the site. These drawings illustrate an area of land that  
13 appears to be the parking location. There is no detail of the  
14 parking lot in the drawings. See Record 28-30. Petitioner  
15 also cites to some photographs in the record which are  
16 difficult to interpret but seem to show an existing parking  
17 lot. Record 52. However, it is not clear exactly how many  
18 parking places are depicted. It can not be said with certainty  
19 where the lot exists, i.e., whether it exists on the  
20 applicant's restaurant site. There is, however, a staff report  
21 in the record which states that there are "presently 12 paved  
22 and striped parking spaces on site...." Record 27.

23 The staff report is substantial evidence for the hearings  
24 officer's conclusion there are 12 parking places on-site. As  
25 we have stated in prior cases, a city is entitled to rely on

26

1 its staff to furnish it with factual information, and we  
2 believe the staff report is substantial evidence to support  
3 this conclusion. Meyer v. City of Portland, 7 Or LUBA 184  
4 (1983), aff'd 67 Or App 274, 678 P2d 741 (1984). We note  
5 petitioner does not advise how it is that the staff report is  
6 erroneous or fails to furnish evidence which a reasonable  
7 person would accept as sufficient to support the conclusion.  
8 Homebuilders Association of Metropolitan Portland v.  
9 Metropolitan Service District, 54 Or App 60, 633 P2d 1320  
10 (1981).<sup>4</sup>

11 Petitioner turns to CDO §14.010, requiring that restaurants  
12 provide one parking place per 100 square feet of gross floor  
13 area. Petitioner correctly notes that "computations for any  
14 use which result in fractional requirements shall be increased  
15 to the next higher full digit." CDO §14.010(10). Because the  
16 floor area is 2208.25 square feet, petitioner argues 23 parking  
17 places are required. Petitioner also claims 3 additional  
18 spaces are required for handicapped person parking under CDO  
19 §14.010(11), which provides:

20 "Parking lots which contain ten or more spaces but  
21 less than twenty shall provide one space for  
22 restricted use by the handicapped in addition to the  
23 standard requirements. Parking lots which contain  
24 twenty or more spaces shall designate spaces for  
restricted use by the handicapped in an amount equal  
to not less than ten percent of the total number of  
spaces required under Sections 14.005 to 14.045."  
(Emphasis added).

25 Petitioner is mindful that the applicant proposes to  
26

1 provide 15 additional parking places through an agreement with  
2 the owner of a lot across the street from the restaurant. With  
3 15 spaces across the street, the applicant has a total of 27  
4 spaces. However, under CDO §14.025(4)(c)(i), it is necessary  
5 to provide at least one-half of the required parking places on  
6 premises. Since, according to petitioner, the applicant must  
7 provide a total of 26 parking places, there must be 13 spaces  
8 on the restaurant site. The applicant has only 12 spaces on  
9 the restaurant property. Therefore, a joint use agreement is  
10 not available to satisfy the parking need, according to  
11 petitioner.

12 The hearings officer found that 22 off-street parking  
13 places were required. He also found that 12 spaces were on  
14 premises. Therefore, at least half of the required spaces were  
15 provided on premises as required under CDO §14.024(4)(c). The  
16 hearings officer did not address, however, handicapped  
17 parking. As noted supra, CDO §14.010(11) requires handicap  
18 parking spaces equal to 10% of the total number of spaces  
19 required. Even if we use the 22 space figure called for by the  
20 hearings officer, there still must be a total of 25 spaces  
21 provided. That is, the requirement is 22 conventional spaces  
22 plus three for the handicapped (10% of 22 = 2.2, rounded off to  
23 3). See CDO §14.010(10). The city's failure to address the  
24 handicap parking issue and whether 50% of the total space  
25 needed would be on the restaurant site leaves doubt as to  
26 whether the city properly considered the handicap space

1 requirement, the fractional add-on provision in CDO §14.010(10)  
2 and the limit on "joint use" parking in CDO §14.024(4)(c).  
3 Further, we question whether parking places for handicapped  
4 persons may be located across a four lane street. In order to  
5 give meaning to ordinance provisions requiring parking places  
6 for handicapped persons, it would seem necessary that the  
7 special parking places be located as close to the restaurant as  
8 possible. We believe the city must address this issue when  
9 considering whether or not at least half of the total required  
10 parking places are on site.<sup>5</sup>

11 This matter must therefore be remanded to the city. On  
12 remand, the city must explain how the total parking spaces  
13 provided and their location satisfy CDO §14.025(4).

14 ASSIGNMENT OF ERROR 3

15 "City of Klamath Falls has erred in approving the  
16 design review and to properly consider whether  
17 applicant was providing adequate off-street parking  
and loading-unloading facilities in a safe, efficient  
and pleasing manner."

18 In this assignment of error, petitioner points to a city code  
19 requirement calling for findings that off-street parking is  
20 provided in a "safe, efficient and pleasant manner." CDO  
21 §12.830(2)(h).<sup>6</sup> Petitioner cites testimony in the record in  
22 which the safety of crossing South Sixth Street, a four lane  
23 street, is questioned. Petitioner assigns as error the  
24 hearings officer and the city's failure to respond to the  
25 objections.

26

1 The hearings officer addressed the standards in CDO  
2 12.830(2) by discussing the relationship of the lot with the  
3 existing neighborhood, access to the parking facilities and,  
4 the safety of pedestrian traffic across South Sixth Street.  
5 His findings are as follows:

6 \* \* \*

7 "It is my opinion that with the conditions imposed,  
8 applicant will be within the 'minimum standards' for  
9 off-street parking required by the CDO 17, and that  
10 applicant will make a good faith effort to consolidate  
11 his off-street parking into one on-site lot. Adequacy  
12 of the joint-use agreement will be subject to City  
13 Attorney approval. The Wes-Wood lot is within 300' of  
14 the subject site and traffic lights are present to  
15 allow safe pedestrian passage across South Sixth  
16 Street. The twelve on-site spaces are deemed adequate  
17 in light of applicant's use of valet parking on  
18 request. With submission of a second joint use  
19 agreement for employee parking, this Officer is  
20 confident that the additional ten required off-street  
21 spaces will be available through the combined two  
22 off-site lots."

23 These findings do not address testimony given to the  
24 hearings officer, planning commission and city council  
25 including concerns about inadequate pedestrian crosswalks and  
26 lighting and lack of time to safely make the journey across  
Sixth Street. The finding summarily dismisses these and other  
concerns with the simple conclusion the passage is safe. The  
conclusion, standing alone, is inadequate. Where matters  
relevant to compliance with applicable criteria are well  
articulated below, the decisionmaker has an obligation to  
respond. LaChance v. Josephine County, 7 Or LUBA 55 (1982).

1 ASSIGNMENT OF ERROR 4

2 "The City of Klamath Falls erred in approving  
3 applicant's site plan where they [sic] failed to meet  
4 the minimum requirements of the Code; which  
5 requirements could be met only upon proper  
6 application, hearing and issuance of Findings for  
7 approval of a major variance."

8 We understand petitioner to argue that because the  
9 applicant was unable to prove compliance with the parking  
10 requirements set out in §14 of the ordinance, a variance was  
11 necessary.

12 The city did not make findings supporting a variance from  
13 the parking requirements in its ordinance. Therefore, we are  
14 unable to review this decision for compliance with the variance  
15 criteria. This case is being remanded for other reasons.  
16 Whether or not a variance is in fact required must await  
17 further city review. Only if the city concludes the proposal  
18 can not meet the requirements of §14 will a variance be  
19 necessary.

20 This matter is remanded for further proceedings. At a  
21 minimum, the city is required to consider (1) whether the  
22 applicant has provided enough parking spaces considering  
23 handicapped parking needs, (2) whether 50% or more of the  
24 required spaces are on the restaurant site, and (3) whether the  
25 location of off-site spaces meets CDO §12.830(2)(h), given the  
26 objections raised by petitioner.

FOOTNOTES

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

---

1  
The city did not issue a written order. The petitioner understands the city to simply have made the December 5, 1983 order of the hearings officer the order of the city council. Petitioner does not assign as error the city's failure to issue an order.

---

2  
Petitioner does not assign as error the city's summary reversal of its earlier determination.

---

3  
The hearings officer's order is entitled "Decision and Findings."

---

4  
Petitioner also claims that failure to supply the site plan is in itself reversible error. We do not believe that this omission, as a matter of law, requires reversal. However, because this case is being remanded for further action by the city, the applicant will have the opportunity to submit a proper site plan. Indeed, a site plan including the information required under CDO §12.810(17) appears crucial to a complete analysis of whether the requirements of §14 of the city code can be met.

---

5  
The city may have relied in part on applicant's use of valet parking in partial fulfillment of the requirement for safe parking for restaurant customers. However, the city does not explain how valet parking meets ordinance requirements. Further, we note the hearings officer refers to valet parking as an "on request" service. Record 35. On remand, if the city continues to rely in part on customer requested valet parking, we believe it necessary to explain how the service insures that parking is provided in a "safe, efficient and pleasant manner." CDO §12.830(2) (h); see Assignment of Error 3, infra.

---

6  
"That there are adequate off-street parking and loading-unloading facilities provided in a safe, efficient, and pleasant manner. Consideration shall

1 include the layout of the parking and  
2 loading-unloading facilities and their surfacing,  
lighting and landscaping."

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26