34. Variances. LUBA will affirm a governing body's code interpretation concluding that the subject property is "suitable" for a proposed conditional use, notwithstanding that due to topographic restrictions the proposed multi-family use also requires variances to height and setback limits, where the findings plausibly interpret the conditional use and variance standards to address different considerations and embody different analyses. *Kenney v. Tillamook County*, LUBA No 2020-117 (Apr 26, 2021).

34. Variances. Under a code standard allowing height and setback variances based on topographic or hazardous circumstances that are not self-created, a county does not err in granting variances for a multi-family dwelling located on a lot subject to floodplain and riparian development restrictions, and in concluding that those circumstances are not "self-created." *Kenney v. Tillamook County*, LUBA No 2020-117 (Apr 26, 2021).

34. Variances. A city council code interpretation to the effect that the city may approve an exception or variance to street design standards in approving a proposed annexation is implausible and inconsistent with the express code language, which limits exceptions or variances to "new development," and the proposed annexation did not include an application for any development. *Rogue Advocates v. City of Ashland*, LUBA No 2021-009 (May 12, 2021).

34. Variances. Where the local government's code allows the decision maker to consider "modification of site-related development standards" if the proposed modification "better meets" design guidelines than development under the standards, the decision maker improperly construes the code to compare the existing non-compliant structure with the proposed non-compliant structure, because the comparison required by the code is between compliant development and the proposed non-compliant development. *Kulongoski v. City of Portland*, LUBA No 2021-004 (July 8, 2021).

34. Variances. Where a local code provision authorizes the adoption of refinement plans for areas not less than 40 acres in size, where another local code provision authorizes an adjustment of a development standard if the purpose underlying the standard is "equally or better met" by the proposed development, where the 40-acre standard is intended to avoid piecemeal development, where an applicant proposes a 14-acre refinement plan for an area adjacent to an existing refinement plan area, and where the proposed and existing refinement plan areas will be under common ownership and have physically connected elements, a local government does not err in concluding that the 14-acre refinement plan "equally or better" meets the 40-acre standard and, therefore, may be granted an adjustment. *Mumper v. City of Salem*, 81 Or LUBA 152 (2020).

34. Variances. Findings are inadequate to explain how a proposed adjustment to the minimum lot size to allow a duplex on a corner lot will not "allow an increase in density in the [applicable] zone" under a local code provision where the findings merely conclude that the adjustment "does not result in an increase in density associated with the proposed use of the development site." *Hunt v. City of the Dalles*, 79 Or LUBA 265 (2019).

34. Variances. While a variance should not be used as a substitute for rezoning, a local government does not err in granting a variance without a showing that strict application of the zoning ordinance would cause "practical difficulties or unnecessary hardships because of exceptional or

extraordinary circumstances or conditions affecting the applicant's property" in a zone which the local code specifically exempts from that standard. *City of Albany v. Linn County*, 79 Or LUBA 528 (2019).

34. Variances. Where the only variable between multiple Urban Growth Area-Urban Growth Management (UGA-UGM) zones is lot size, and where a county code provision provides that "[t]he density of one UGA-UGM zoning district is not interchangeable with the density of another UGA-UGM zoning district without prior review and approval by the affected city and * * * County," an interpretation by the county that the provision applies to zone changes of the subject property or changes to the underlying density of the zone in which the subject property is located, but that it does not apply to lot size variances, is inconsistent with the express language of the provision. In such cases, where the local code does not define "density" and the dictionary defines "density" as the quantity or number per unit of area, LUBA will make its own determination that a lot size variance in a UGA-UGM zone may qualify as an "interchange[]" with the density of another UGA-UGM zone, thereby requiring city review and approval. *City of Albany v. Linn County*, 79 Or LUBA 528 (2019).

34. Variances. Where a local code provision provides that "[a]pproval of [a] variance is limited to the minimum necessary to permit otherwise normal development of the property for the proposed use," an interpretation by the local government that the provision means a variance may be approved if it permits development consistent with the surrounding land use pattern and the uses permitted in the underlying zone, and that it does not mean a variance may only be approved if it is necessary to permit development that is allowed in the zone, is not inconsistent with the language of the code or the purposes or policies underpinning the provision. *City of Albany v. Linn County*, 79 Or LUBA 528 (2019).

34. Variances. LUBA will reject a county's interpretation of its code—that a code provision which sets forth approval criteria regarding an application for a variance to the minimum lot size requirements within the county's urban growth area may not apply to the county's decision because it only applies to decisions made by the county's planning director but not to decisions made by the planning commission or board of county commissioners—that was made for the first time in its response brief, because that interpretation is not reflected in the decision and is therefore not an interpretation by the local government. *City of Albany v. Linn County*, 78 Or LUBA 1 (2018).

34. Variances. Where the county approved a proposed variance to the 20-acre minimum lot size for two one-acre parcels, pursuant to a county code provision that provides that the county planning director may approve a variance for a proposed project if the city does not object to the variance, LUBA will reverse the county's decision as "prohibited as a matter of law" pursuant to OAR 661-010-0071(c) where the county approved the variance as "consistent with the * * * city's comprehensive plan," but the city objected to the proposed variance because of the proposal's inconsistency with the city's comprehensive plan. *City of Albany v. Linn County*, 78 Or LUBA 1 (2018).

34. Variances. A hearings officer's finding that concentrating dwelling units on one area of a property is solely attributable to a density transfer provision is not entirely accurate where

modifications (variances) are needed to construct a multi-family structure that is taller and closer to the front lot line than would be permitted in the zone. *Patel v. City of Portland*, 77 Or LUBA 349 (2018).

34. Variances. Where a prior version of the zoning ordinance only allowed modifications for setback and height standards, and the zoning ordinance was amended to allow a general category of standards, that lends some support to the local government's position that the general category of standards includes setback and height standards. *Patel v. City of Portland*, 77 Or LUBA 349 (2018).

34. Variances. Where a municipal code requires that the "front lot line" of a corner lot "must" be considered the narrower street frontage "except when [city staff] determine[] topographical or access problems make such a designation impractical," the city's decision was not supported by substantial evidence in the record pursuant to ORS 197.835(9)(a)(C) when it determined that the lack of sidewalks on the narrower frontage, and the absence of a door on the side of the house facing the narrower frontage were "access problems" that made designating the narrower street frontage the front lot line "impractical." *McMonagle v. City of Ashland*, 76 Or LUBA 1 (2017).

34. Variances. Where a standard requires public street connections at intervals of no more than 660 feet but authorizes variances where certain conditions exist, a finding that sight distance and existing development might preclude the required extension may be an adequate basis for granting a variance, but those conditions are not a basis for simply overlooking the street interval standard. *Martin v. City of Tigard*, 76 Or LUBA 85 (2017).

34. Variances. That a county commissioners' interpretation of a code variance standard is arguably inconsistent with language found on the county's variance application form does not demonstrate that the commissioners' interpretation is inconsistent with the express language, purpose or policy underlying the standard, under ORS 197.829(1). *Neil v. Columbia County*, 74 Or LUBA 442 (2016).

34. Variances. LUBA will affirm a county's finding that a high-voltage line that effectively divides a property into thirds is a condition "unique to the property" justifying a variance to a minimum parcel size, where there is no argument or evidence that nearby properties are similarly divided by the high-voltage line. *Neil v. Columbia County*, 74 Or LUBA 442 (2016).

34. Variances. A county is not bound to interpret its local variance standards in the same manner as traditional variance standards, and can plausibly interpret its "extraordinary hardship" standard to include considerations beyond the physical characteristics of the subject property. *Neil v. Columbia County*, 74 Or LUBA 442 (2016).

34. Variances. A city council's interpretation that the "work" portion of live/work units will "equally or better" meet a plan purpose of achieving a compact commercial core than would a commercial use, because the work area is an office or commercial use in fact if not name, is plausible and a basis for granting an exception to a code standard that would otherwise prohibit ground floor residential development. A petitioner must do more that speculate that work portion

of a live/work unit will not be put to office or commercial use. *LO 138 LLC v. City of Lake Oswego*, 71 Or LUBA 195 (2015).

34. Variances. Where a city council concludes that a proposed development that includes live/work units and an associated library and gym would be at least as supportive of a plan purpose of creating a high-density retail commercial core as a design that complied with a code "no ground floor residential" standard, by including a parking lot instead, that interpretation is plausible and a sufficient basis for granting an exception to the code "no ground floor residential" standard. *LO 138 LLC v. City of Lake Oswego*, 71 Or LUBA 195 (2015).

34. Variances. A local government errs in denying a request for a variance for failure to comply with an "adverse impacts" standard that permits the local government to require that adverse impacts be avoided and mitigated and only allows the local government to deny the variance implication based on adverse impacts in two specified circumstances that the city council found not to be present. *Parkview Terrace Development LLC v. City of Grants Pass*, 70 Or LUBA 37 (2014).

34. Variances. LUBA will reject an argument that a hearings officer errs in approving a variance from a 22-foot street width standard to allow an 18-foot width because the narrower width does not provide the same level of access as the required width, where the variance criteria do not require the varied road width to provide the same level of access. *Carver v. Washington County*, 70 Or LUBA 278 (2014).

34. Variances. A hearings officer does not err in concluding that the applicant for a road width variance had exhausted all practical methods to construct the road to code-required width, where the evidence shows that only one of several adjoining landowners was willing to sell the right-of-way necessary for the code-required width. *Carver v. Washington County*, 70 Or LUBA 278 (2014).

34. Variances. Where an adjustment (variance) criterion requires that an adjustment must equally or better meet the purpose of the regulation to be adjusted, granting a height adjustment to allow a house to be 30 feet tall rather than limited to 23 feet in height is not justified by aligning the front façade of the proposed house with houses that are set back further from the street than other houses. The shared dwelling alignment is unrelated to whether the height adjustment equally or better serves the purpose of the height limit and that shared alignment does nothing to explain how allowing a 30-foot residence next to a 23-foot residence equally or better meets the purpose of the height limit. *L'Heureux v. City of Portland*, 68 Or LUBA 90 (2013).

34. Variances. Where an adjustment (variance) criterion requires that an adjustment must equally or better meet the purpose of the regulation to be adjusted and the purpose of the regulation to be adjusted is to promote a reasonable building scale and relationship of one residence to another, a city erroneously grants a height adjustment based on a finding that the additional height would not be perceptible to a pedestrian on the street. The focus of the purpose is on the adjoining residences, not pedestrians on the street. *L'Heureux v. City of Portland*, 68 Or LUBA 90 (2013).

34. Variances. A city errs in relying on a large front setback to satisfy a mitigation criterion for granting a height variance to allow a residence to exceed the height limit where that large front setback may make the house look shorter to a pedestrian on the street, but it is the impact of the height adjustment on adjacent residences that must be mitigated. *L'Heureux v. City of Portland*, 68 Or LUBA 90 (2013).

34. Variances. Where a variance standard requires that the applicant demonstrate that the "hardship was not created by the person requesting the variance," and an issue is raised below that no "hardship" exists in reducing the number of required bicycle parking spaces, the decision maker must adopt findings identifying the hardship to the extent necessary to apply the variance criteria. *CRAW v. City of Warrenton*, 67 Or LUBA 263 (2013).

34. Variances. A county does not err in concluding that the skewed alignment of an existing foundation is not a "physical characteristic of [an] existing improvement * * * that is not typical of the area" that requires the county to grant a variance to allow an applicant to build an addition within setbacks, where a smaller addition could be built outside of the setbacks. *Nordlund v. Clackamas County*, 65 Or LUBA 67 (2012).

34. Variances. A county does not err in concluding that a .23-acre lot in a zoning district with a 5-acre minimum lot size is not a "physical characteristic of the land * * * that [is] not typical of the area" that requires a variance to setbacks, where evidence in the record shows that lots within the same subdivision are substandard sized lots similar to the applicant's lot. *Nordlund v. Clackamas County*, 65 Or LUBA 67 (2012).

34. Variances. A city variance "hardship" criterion requires that an applicant demonstrate that there is something about the "nature of the requested use, lot size or shape, topography, sensitive lands, or other similar circumstances related to the property" such that the applicant would suffer a "hardship" if the city required that the requested development comply with the special setback. *Zirker v. City of Bend*, 59 Or LUBA 1 (2009).

34. Variances. A variance criterion that requires the applicant to demonstrate that a hardship exists that is "peculiar to the nature of the requested use, lot size or shape, topography * * * or other similar circumstances related to the property" is not satisfied where the property to be developed is flat and has no significant development constraints. Development on nearby properties and substandard roadway improvements have no effect on the applicant's ability to develop such property in compliance with a setback requirement. *Zirker v. City of Bend*, 59 Or LUBA 1 (2009).

34. Variances. Where a variance may be granted "only if a required improvement is not feasible due to topographic constraints," a variance to city requirements that additional right-of-way be dedicated and roadway improvements be made is not warranted for a flat lot with no significant development constraints. That the existing substandard roadway is sufficient and development on adjoining properties is located close to the exiting roadway may mean such dedication and improvement will serve no useful purpose, but it does not make such dedication and improvement infeasible. *Zirker v. City of Bend*, 59 Or LUBA 1 (2009).

34. Variances. A city errs by approving a variance to subdivision standards under its general zoning variance criteria, where a separate city ordinance provides variance standards for subdivisions, and the city's decision offers no reviewable interpretation or explanation why the subdivision variance standards do not apply. *Holbrook v. City of Rockaway Beach*, 58 Or LUBA 179 (2009).

34. Variances. Where the "rough proportionality" test in *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 2d (1994), applies, it can function as a kind of variance, providing a basis under which a local government may choose not to exact property as a condition of development approval that it would otherwise be entitled to exact under its land use regulations, as an alternative to compensating the landowner for the taking. *Columbia Riverkeeper v. Clatsop County*, 58 Or LUBA 235 (2009).

34. Variances. Even if the *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 2d (1994), "rough proportionality" test does not apply to exactions not requiring the dedication of a property interest, where a county road standard includes a provision prohibiting the county from requiring road improvements that are not "roughly proportional" to the impact of the proposed development on public facilities and services, the county may apply its local rough proportionality test in determining whether to grant requested variances from county road standards. *Columbia Riverkeeper v. Clatsop County*, 58 Or LUBA 235 (2009).

34. Variances. Where an applicant seeks variances from road improvement standards, a county does not err in granting the variances based in part or whole on a county road standard that prohibits the county from requiring road improvements that are not "roughly proportional" to the impact of the proposed development on public facilities and services. *Columbia Riverkeeper v. Clatsop County*, 58 Or LUBA 235 (2009).

34. Variances. A county does not err in concluding that requiring a development applicant to improve a substandard local street to full collector street standards is not roughly proportional to the impacts of a proposed Liquified Natural Gas terminal and therefore granting variances to some collector street standards, where in operation the terminal would produce only 150 daily trips, which combined with the existing 50 daily trips would fall below the threshold traffic range for a collector street. *Columbia Riverkeeper v. Clatsop County*, 58 Or LUBA 235 (2009).

34. Variances. Where LUBA has affirmed a county's determination to waive certain road improvement standards under a local code provision prohibiting the county from requiring road improvements that are not roughly proportional to the impact of proposed development, any error the county may have made in also granting variances to those road improvement standards under general variance standards is harmless error. *Columbia Riverkeeper v. Clatsop County*, 58 Or LUBA 235 (2009).

34. Variances. Requiring the applicant to construct 28-foot-wide roads rather than granting a variance for 12-foot roads does not impose an unnecessary hardship merely because the wider roads create an additional $300,000 cost. *Sperber v. Coos County*, 58 Or LUBA 588 (2009).

34. Variances. While steep terrain can be an exceptional or extraordinary circumstance which does not apply to other properties that may justify a variance, a local government may find that such terrain is not sufficient to justify a variance when surrounding properties also have steep terrain. *Sperber v. Coos County*, 58 Or LUBA 588 (2009).

34. Variances. A city is not required to interpret traditional variance language ("practical difficulty or unnecessary hardship") in accordance with the traditional strict meaning of that language, particularly when that language is not used as part of the city's variance code but instead was borrowed from the variance context to be used as a test for expanding nonconforming uses. *Azore Enterprises, LLC v. City of Hillsboro*, 56 Or LUBA 422 (2008).

34. Variances. Failure to provide views of the river and access to public spaces is not an unnecessary hardship to the city justifying a variance. While a development that would provide river views and access to the river could be considered a benefit to the city, the inability to obtain such a benefit does not constitutes suffering or privation. *Stricklin v. City of Astoria*, 56 Or LUBA 535 (2008).

34. Variances. An applicant's desire for a more creative design than that which could be built without a variance does not fall within the plain, ordinary, or natural meaning of unnecessary hardship. *Stricklin v. City of Astoria*, 56 Or LUBA 535 (2008).

34. Variances. Where the section of the zoning ordinance governing adjustments includes a purpose statement followed by adjustment approval criteria and a separate zoning section specifically states that the specified approval criteria for land use reviews establish "the bounds for the issues that must be addressed by the applicant," a city is not obligated to adopt findings to explain why a requested adjustment is consistent with the adjustment chapter purpose statement. *Pearman v. City of Portland*, 56 Or LUBA 570 (2008).

34. Variances. In applying an adjustment criterion that requires the city to find "granting the adjustment will equally or better meet the purpose of the regulation to be modified," a city does not err in finding that criterion is met where the purpose of the criterion recognizes that off-street parking may not be needed where property is in close proximity to transit and the property for which an adjustment to off-street parking requirements is requested is located in close proximity to three transit streets with frequent service and a bikeway and Flexcar locations. *Pearman v. City of Portland*, 56 Or LUBA 570 (2008).

34. Variances. A city does not err in finding that a proposed adjustment to allow development of a residence without off-street parking complies with an adjustment approval criterion that requires that "the proposal will not significantly detract from the livability or appearance of the residential area," where there was conflicting evidence about the availability of on-street parking in the area and parking congestion is only one factor in assessing livability. *Pearman v. City of Portland*, 56 Or LUBA 570 (2008).

34. Variances. In finding that a proposed adjustment to allow residential development without off-street parking satisfies an approval standard that requires that the "impacts from the adjustment are mitigated to the extent practical," a city does not err by relying on the proximity of the site to

transit streets and the elimination of possible curb cuts that would be needed to provide off-street parking and would eliminate existing on-street parking. *Pearman v. City of Portland*, 56 Or LUBA 570 (2008).

34. Variances. Absent some code requirement to the contrary, a variance application for a third story addition on an existing structure need not justify a variance for an existing external stairwell that will not be expanded or altered in any way. *McConnell v. City of Grants Pass*, 55 Or LUBA 280 (2007).

34. Variances. The existence of conflicting evidence in the record regarding whether an existing structure within a setback is 7.5 feet or one foot from the property boundary is not a basis for remand, as long as the city's choice between the conflicting evidence is one a reasonable person could make. *McConnell v. City of Grants Pass*, 55 Or LUBA 280 (2007).

34. Variances. Where county authority to grant a variance is limited to circumstances "where it can be shown that owing to special and unusual circumstances related to a specific lot, strict application of this chapter would cause an undue or unnecessary hardship," the county must find that granting the hardship is necessary to avoid a hardship, notwithstanding that a separate section of the county's code that sets out the "circumstances" in which the county can grant a variance does not mention the word "hardship." *Friends of Umatilla County v. Umatilla County*, 55 Or LUBA 330 (2007).

34. Variances. That it may be prohibitively expensive to establish a 160-acre vineyard is not a hardship that warrants a variance to a county's 160-acre minimum parcel size in its EFU zone, where the property is currently planted in winter wheat and could remain in wheat production. *Friends of Umatilla County v. Umatilla County*, 55 Or LUBA 330 (2007).

34. Variances. Variances are extraordinary remedies and are not a substitute for amending a zoning ordinance to achieve desired legislative ends. A zoning ordinance amendment, rather than case-by-case variances, is the appropriate way to allow EFU-zoned lands to be divided into smaller parcels than allowed under a county's existing EFU zoning. *Friends of Umatilla County v. Umatilla County*, 55 Or LUBA 330 (2007).

34. Variances. LUBA will affirm a city council interpretation of code variance and off-street parking standards, to the effect that a potential off-street parking site that would otherwise satisfy the code off-street parking standard need not be considered, because it would require patrons of a proposed restaurant to cross a four-lane highway with no crosswalks or pedestrian facilities. *Grant v. City of Depoe Bay*, 53 Or LUBA 214 (2007).

34. Variances. Findings concluding that a total variance from a code requirement to provide 10 off-street parking spaces is the "minimum necessary to alleviate the hardship" are inadequate, where the findings fail to address whether an adjacent site could provide at least some of the required 10 parking spaces. *Grant v. City of Depoe Bay*, 53 Or LUBA 214 (2007).

34. Variances. A reasonable person could rely on evidence that there are 25 on-street parking spaces in the area that are only partially occupied during peak hours, to conclude that parking in

the area is adequate, and thus that a variance to off-street parking requirements will not be "materially detrimental" to the purpose of the off-street parking requirement. *Grant v. City of Depoe Bay*, 53 Or LUBA 214 (2007).

34. Variances. A code variance criterion requiring a finding that the "hardship is not self-imposed" does not require the variance applicant to demonstrate that there are no other properties that could be acquired that would allow the proposed development without a variance. *Grant v. City of Depoe Bay*, 53 Or LUBA 214 (2007).

34. Variances. A comprehensive plan goal that the city should "promote, on an equitable basis, the highest level of services the citizens will support" is too general and nonmandatory to function as an approval criterion for a permit application seeking a variance to off-street parking requirements. *Grant v. City of Depoe Bay*, 53 Or LUBA 214 (2007).

34. Variances. A comprehensive plan policy requiring the city to designate areas for *public* off-street parking facilities is not an applicable approval criterion with respect to an application for a variance to *private* off-street parking facilities. *Grant v. City of Depoe Bay*, 53 Or LUBA 214 (2007).

34. Variances. LUBA will affirm a city council interpretation that a "self-created hardship" exists for purpose of obtaining a variance to a street access standard, where the applicant has taken actions in the past that are inconsistent with the expectation of obtaining future access, by consolidating the subject property with an adjoining lot that already has access. *Krishchenko v. City of Canby*, 53 Or LUBA 232 (2007).

34. Variances. Even if a city were partly responsible for reducing access options to a parcel for which a variance is sought, by selling adjoining property that might have provided alternate access, that partial responsibility does not compel the city to grant the variance, where the applicant initially created the hardship by consolidating the subject parcel with property that already has access. *Krishchenko v. City of Canby*, 53 Or LUBA 232 (2007).

34. Variances. Where a city adjustment committee lacks authority to consider a legal issue, the adjustment committee does not err by failing to address that legal issue in its findings, even though petitioners raised the legal issue below. *O'Brien v. City of Portland*, 52 Or LUBA 113 (2006).

34. Variances. A local government interpretation that an applicant who sought a zone change that resulted in increased setback requirements did not create a "self-imposed" hardship when the zone change was imposed as a condition of approval of an earlier lot line adjustment decision is not inconsistent with the express language, purpose, or policy of the local ordinance. *Sommer v. Josephine County*, 52 Or LUBA 209 (2006).

34. Variances. When an approval criterion requires that the property for which a variance is sought must have circumstances that do not apply to "other properties in the same vicinity or land use district," the findings must address whether the circumstances which allegedly support a variance exist on other properties in the same vicinity or land use district. *Butte Conservancy v. City of Gresham*, 51 Or LUBA 194 (2006).

34. Variances. A variance to a local code provision that limits the size of accessory structures to 1,000 square feet to allow a 2,100-square-foot accessory structure is not "reasonably necessary" to permit development for an otherwise lawful use where an accessory structure that complies with a 1,000-square-foot size limitation could have been constructed on the subject property. *Spooner v. City of Salem*, 51 Or LUBA 237 (2006).

34. Variances. Where an accessory structure that complies with a 1,000-square-foot size limitation could be built on the subject property, the "special conditions" cited by the city to justify a variance to that requirement, *i.e.*, the unusually large size of the property and excessive slopes, do not create the unreasonable hardship or practical difficulty that "can be most effectively relieved by the variance," as required by the local variance criteria. *Spooner v. City of Salem*, 51 Or LUBA 237 (2006).

34. Variances. Where a variance criterion allows a variance if topography makes strict compliance with the lot depth requirement an unreasonable hardship and the city's findings granting the variance for four lots do not explain why a proposed roadway could not be relocated slightly to make four lots comply with the lot depth requirement, remand is required. *Lockwood v. City of Salem*, 51 Or LUBA 334 (2006).

34. Variances. Where a city's findings explain that the roadway required by a city's transportation system plan to satisfy connectivity objectives must traverse very steep slopes and the applicant's geologic experts' recommendation that cuts and fills be minimized leads to roads that exceed the city's 12 percent maximum grade, those findings are sufficient to demonstrate compliance with a "special conditions inherent in the property" variance standard. *Lockwood v. City of Salem*, 51 Or LUBA 334 (2006).

34. Variances. A county is within its interpretive discretion under ORS 197.829(1) when it interprets a zoning ordinance prohibition on variances to relieve "willful or accidental violation" of the zoning ordinance not to apply where planning staff were responsible for the violation. *Doyle v. Coos County*, 51 Or LUBA 402 (2006).

34. Variances. A county is within its interpretive discretion under ORS 197.829(1) when it interprets a zoning ordinance provision that allows variances to relieve "practical difficulty and unnecessary hardship" that would otherwise result from "the location of existing structures" on the property to apply where the practical difficulty and unnecessary hardship would be the cost and effort that would be required to remove or move structures that were sited based on erroneous advice from planning staff. *Doyle v. Coos County*, 51 Or LUBA 402 (2006).

34. Variances. A county is within its interpretive discretion under ORS 197.829(1) where it interprets a variance criterion that there must be "exceptional or extraordinary circumstances or conditions * * * which do not apply to other properties" to be met where (1) structures were sited in violation of zoning setbacks based on erroneous advice from planning staff and (2) such erroneous advice is exceedingly rare. *Doyle v. Coos County*, 51 Or LUBA 402 (2006).

34. Variances. LUBA will reject a petitioner's challenge to a city decision granting variances to a cul-de-sac length limit and limit on the number of houses that may be served by a cul-de-sac, where the city's findings explain (1) the competing benefits and drawbacks in limiting the length of cul-de-sacs and why the city concluded that the cul-de-sac could safely exceed 200 feet given the existing street system and surrounding traffic facilities and (2) why allowing the cul-de-sac to serve three more houses than otherwise allowed under the code would not cause a detriment to public health, safety and welfare. *Frewing v. City of Tigard*, 50 Or LUBA 226 (2005).

34. Variances. Where an interpretation of an ambiguous code standard that bars variances in some circumstances is needed to explain why the local government believes that standard did not bar an approved variance, and the appealed decision does not include either an express or implied interpretation of the code standard, remand is required. *Doyle v. Coos County*, 49 Or LUBA 574 (2005).

34. Variances. If a local government wishes to interpret and apply traditional variance standards differently than those standards have traditionally been interpreted and applied, it must articulate an interpretation of those standards that is sufficient for review. *Doyle v. Coos County*, 49 Or LUBA 574 (2005).

34. Variances. A local government adequately explains why allowing a variance to permit dwelling that encroaches into a roadway easement setback is not "detrimental to the public health, safety or welfare," where the local government finds: (1) a gate on the easement already limits the width of vehicles that can travel on the easement, (2) large vehicles can cross the easement notwithstanding the encroachment, (3) the structures are 15 feet outside the edge of the easement, and (4) there is room within the easement to widen the existing roadway to accommodate wider vehicles. *Doyle v. Coos County*, 49 Or LUBA 574 (2005).

34. Variances. Where notice of the hearing on an application for a variance from required setback lists as an approval criterion the code provision from which applicants seek the variance, the code provision does not thereby become an applicable approval criterion, and the county's failure to adopt findings addressing it is not a basis for reversal or remand. *Papadopoulos v. Benton County*, 48 Or LUBA 600 (2005).

34. Variances. In granting a variance from a code prohibition against developing in wetlands to approve roads across the wetlands, where a variance standard requires the city to find that the public need that the roads would serve outweighs the potential adverse impacts of developing the wetlands, the city errs in failing to adopt findings that respond to arguments raised by opponents that there are alternative roadway alignments that would serve the identified public need without crossing wetlands. *Linstromberg v. City of Veneta*, 47 Or LUBA 99 (2004).

34. Variances. A city's findings that a city "hardship" variance criterion is satisfied where denying the variance would force a subdivision applicant to develop far more of the property with roads, resulting in a loss of approvable lots, is adequate to support its decision to grant variances to city cul-de-sac requirements. *Frewing v. City of Tigard*, 47 Or LUBA 331 (2004).

34. Variances. A city's findings that a variance to allow a curb-tight sidewalk is justified to minimize fill and wetland impacts are inadequate, where the city's findings do not explain why denial of the requested variance would result in a "hardship" for the applicant. *Frewing v. City of Tigard*, 47 Or LUBA 331 (2004).

34. Variances. City approval of an adjustment to a maximum lot size requirement in advance of a lot line relocation that would create an oversized lot, rather than contemporaneously with that lot line relocation, provides no basis for remand, where nothing in the city's code requires that the adjustment and lot line relocation be approved contemporaneously. *South v. City of Portland*, 46 Or LUBA 558 (2004).

34. Variances. Where approval of an adjustment to create an oversize tract of land must not significantly detract from the livability or appearance of the residential area, a city commits no error in limiting its analysis to the oversize tract and declining to consider the possible impacts of developing another proposed tract that does not require a maximum lot size adjustment. *South v. City of Portland*, 46 Or LUBA 558 (2004).

34. Variances. A local government could permissibly interpret local code to allow variance to minimum lot size standard where general variance standards were met. *Walker v. Josephine County*, 46 Or LUBA 777 (2004).

34. Variances. A parcel that does not meet minimum lot size standards for partition due to prior property line adjustment does not create a hardship that arises out of the land, but rather a hardship that arises because of the minimum lot size standard. *Walker v. Josephine County*, 46 Or LUBA 777 (2004).

34. Variances. A property owner's decision to agree to a property line adjustment that reduced the size of the property below the 10 acres needed to partition the property cannot be viewed as anything other than self-imposed. *Walker v. Josephine County*, 46 Or LUBA 777 (2004).

34. Variances. A city commits no error in denying a request for a fence height variance based on the application as submitted, without taking into account changes to the fence that the applicant stated he was willing to make, where the applicant was invited to submit an amended application and declined to do so. *Finkle v. City of Portland*, 44 Or LUBA 484 (2003).

34. Variances. A city governing body's interpretation of a variance criterion, which requires variances to "conform to the comprehensive plan," to be satisfied where a requested lot depth variance does not violate any identified comprehensive plan policy will be sustained on appeal, where no identified comprehensive plan policies expressly discourage or encourage lot depth variances. *Lord v. City of Oregon City*, 43 Or LUBA 361 (2002).

34. Variances. Where a local variance provision imposes on the applicant the burden of establishing the nonexistence of alternatives to the variance, the local government errs in interpreting its code to impose on opponents the burden of establishing the existence, costs and consequences of alternatives. *Stahl v. Tillamook County*, 43 Or LUBA 518 (2003).

34. Variances. A code interpretation to the effect that the county need not consider lesser height variances if the proposed additional height poses no conflicts with views is inconsistent with code language that (1) requires consideration of lesser or no variances, and (2) contains no exception for variances that do not pose conflicts with views. *Stahl v. Tillamook County*, 43 Or LUBA 518 (2003).

34. Variances. A code interpretation that limits the scope of alternative height variances that must be considered to those that provide the applicant with the same 35-foot height limitation allowed in a different regulatory zone is an impermissible amendment in the guise of interpretation, where the interpretation changes a rigorous alternatives analysis into a pro forma exercise and eliminates a regulatory distinction between zoning districts. *Stahl v. Tillamook County*, 43 Or LUBA 518 (2003).

34. Variances. A 1995 decision *denying* a request for a variance to build a house that exceeds zoning height limits by 6.5 feet does not constitute a decision *approving* construction of a house that is 6.5 feet shorter. An appeal challenging a subsequent building permit that approves construction of a house that is reduced in height is not a collateral attack on the 1995 variance decision and will not be dismissed as untimely filed. *Tirumali v. City of Portland*, 40 Or LUBA 565 (2001).

34. Variances. A stipulated agreement entered into by a variance applicant in a prior circuit court proceeding is not an exceptional or extraordinary circumstance over which the applicant has no control. *Georgeff v. Curry County*, 40 Or LUBA 101 (2001).

34. Variances. The granting of a variance to a particular standard does not, in itself, demonstrate material detriment to the purpose or objective of that standard. *Georgeff v. Curry County*, 40 Or LUBA 101 (2001).

34. Variances. Findings that a proposed road width variance will not be materially detrimental to other property owners in the area are not supported by substantial evidence when they are based on a comparison to other substandard roads rather than the effect of the proposed variance itself. *Georgeff v. Curry County*, 40 Or LUBA 101 (2001).

34. Variances. As the "extraordinary circumstances" variance criterion has traditionally been interpreted and applied, erroneous advice to a property owner about the approval criteria that might apply to a partition request in the future would not be sufficient to constitute extraordinary circumstances affecting the property. *Reagan v. City of Oregon City*, 39 Or LUBA 672 (2001).

34. Variances. Where a city governing body expressly interprets a traditional "extraordinary circumstances" variance criterion as being met in a circumstance where it traditionally would not be satisfied, that interpretation must nevertheless be affirmed under ORS 197.829(1) if the city governing body's interpretation is not inconsistent with the "express language" or the "purpose" of the variance criterion. *Reagan v. City of Oregon City*, 39 Or LUBA 672 (2001).

34. Variances. Where a variance criterion provides that a variance is not available where the applicant's circumstances "merely constitute a monetary hardship or inconvenience," the

applicants inability to create a second lot out of an existing lot without the variance would appear to "merely constitute a monetary hardship or inconvenience," absent a contrary interpretation of that criterion by the local governing body. *Reagan v. City of Oregon City*, 39 Or LUBA 672 (2001).

34. Variances. When a variance approval is based on a specific finding that the proposed use is permitted in the underlying zone, the variance approval establishes a time frame for constructing the proposed use, and when the applicant applies for the building permit within the allotted time, the city is obligated by ORS 227.178(3) to apply the same "standards and criteria" that were applicable at the time the variance application was submitted. *Gagnier v. City of Gladstone*, 38 Or LUBA 858 (2000).

34. Variances. Where a variance criterion provides that the use of a structure may not change as a result of a variance, an interpretation that a variance may nevertheless be granted to convert a storage shed to a medical hardship dwelling is clearly wrong. *Puma v. Linn County*, 38 Or LUBA 762 (2000).

34. Variances. Where one of the factors that must be considered in determining whether a variance is "necessary to prevent a hardship to the applicant" is whether the alleged hardship was created by the applicant, and the applicant's difficulty in constructing a shed in accordance with city setback requirements is attributable to the locations that were selected by the applicant for his house, garden, septic field and landscaping, the self-created hardship factor does not support a finding that a variance is necessary to prevent a hardship. *Roberts v. City of Gearhart*, 38 Or LUBA 407 (2000).

34. Variances. Where the factors that must be considered in determining whether a variance is "necessary to prevent a hardship to the applicant" include the "physical circumstances related to the property," and whether the hardship is self-created, the physical circumstances factor does not support a finding that the variance is necessary to avoid a hardship where the lot is flat, rectangular and similar to other lots in the area and the "trees, shrubs, garden area and small structures" on the property were all sited by the applicant. *Roberts v. City of Gearhart*, 38 Or LUBA 407 (2000).

34. Variances. Even under the deferential standard of review required by *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992), city interpretation of a variance criterion that requires that a variance be "necessary to prevent a hardship to the applicant" as being met because without the variance the applicant will be unable to construct as much storage as he would like to have on the property at his preferred location on the lot is erroneous. *Roberts v. City of Gearhart*, 38 Or LUBA 407 (2000).

34. Variances. The "exceptional or extraordinary circumstances" standard is a demanding traditional variance standard. Under ORS 197.829(1) and *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992), a city may be able to interpret that standard in a more lenient manner than the courts and LUBA have, but the city must articulate that interpretation in its decision. *Bates v. City of Cascade Locks*, 38 Or LUBA 349 (2000).

34. Variances. LUBA and appellate court cases reviewing decisions involving traditional variance standards are of little or no assistance in considering a challenge to a decision that applies

differently worded variance criteria, where petitioner makes no attempt to explain why those cases are relevant notwithstanding that the criteria are worded differently. *Robinson v. City of Silverton*, 37 Or LUBA 521 (2000).

34. Variances. Required findings that a variance is "necessary" due to "special conditions or circumstances peculiar to the property" are inadequate, where the findings are equivocal about whether the problems identified are present and fail to explain why the cited problems could not be eliminated by redesigning the proposed subdivision or by eliminating one or more lots. *Robinson v. City of Silverton*, 37 Or LUBA 521 (2000).

34. Variances. A city's findings of compliance with a variance criterion that requires that the variance be "necessary for the proper development of the subdivision and the preservation of property rights and values," are inadequate where the findings do not identify any "property rights" or "property values" that would be threatened by the required 60-foot right-of-way or why the proposed subdivision could not be designed to accommodate the required 60-foot right-of-way. *Robinson v. City of Silverton*, 37 Or LUBA 521 (2000).

34. Variances. Where the zoning ordinance allows a variance from its standards when those standards create a hardship due to one or more defined conditions, a hearing officer errs in requiring the applicant to demonstrate hardship in addition to those stated in the defined conditions. *Kelley v. Clackamas County*, 35 Or LUBA 215 (1998).

34. Variances. The law of the case doctrine does not bar petitioner from arguing that the city's action on remand from LUBA so altered the proposed development that the city must revisit a variance granted in the original decision. *Dodds v. City of West Linn*, 35 Or LUBA 101 (1998).

34. Variances. A decision on remand that increases a variance from a maximum lot coverage standard is not inconsistent with the initial variance approval, where the initial decision did not specify the variance allowed from the maximum lot coverage. *Dodds v. City of West Linn*, 35 Or LUBA 101 (1998).

34. Variances. Where petitioner did not specifically raise the issue of compliance with the Fair Housing Act (FHA) in the proceedings below, statements that his clients are disabled and that the property needs to be identified for emergency response services are not sufficient under ORS 197.763 to raise an issue that denial of the requested variance would constitute a failure to make a "reasonable accommodation" under the FHA. *Andrusko v. Clackamas County*, 34 Or LUBA 493 (1998).

34. Variances. A finding that an "exceptional circumstances" variance criterion is met because an existing substandard road cannot be improved to comply with the road standard without expanding the right-of-way is conclusory and inadequate. *Elder v. Douglas County*, 33 Or LUBA 276 (1997).

34. Variances. Findings of compliance with a variance criterion requiring that the variance be consistent with "the purposes" of the zoning ordinance, are inadequate where the findings fail to identify or discuss any of the three potentially applicable purpose sections in the zoning ordinance. *Elder v. Douglas County*, 33 Or LUBA 276 (1997).

34. Variances. A finding that an unlawful partition occurred prior to the date the variance applicant took title to the property is not adequate to demonstrate that the hardship is not "self-created," where the county provides no interpretation of the term "self-created hardship" and the variance applicant knew the property had been unlawfully partitioned. *Elder v. Douglas County*, 33 Or LUBA 276 (1997).

34. Variances. Where a city's interpretation of a variance criterion is not inconsistent with the purpose and policy of the applicable chapter of the local code, as stated in that chapter's intent and purpose statement, the city's interpretation is not indefensible. *Shaffer v. City of Salem*, 33 Or LUBA 57 (1997).

34. Variances. Where a challenged decision does not discuss why granting a variance is the most effective method to relieve the special conditions of parcel size and shape, the findings do not establish that the variance meets local code requirements that special conditions apply to the subject property that "can be most effectively relieved by a variance." *Shaffer v. City of Salem*, 33 Or LUBA 57 (1997).

34. Variances. Where the city's comprehensive plan expressly requires that new subdivisions shall have sidewalks, the city may not use the variance procedures of its subdivision ordinance in order to grant an exception to the comprehensive plan sidewalk requirement. *Wicks-Snodgrass v. City of Reedsport*, 32 Or LUBA 292 (1997).

34. Variances. Neither the age nor the physical condition of a property owner (or his family) can justify a variance. *DeBardelaben v. Tillamook County*, 31 Or LUBA 131 (1996).

34. Variances. When a residential use is established on the subject property and the existing residence may be expanded without a variance, a requested height variance is not necessary under any colorable interpretation of the standard "necessary to accommodate a use or accessory use on the parcel which can be reasonably expected to occur within the zone or vicinity." *DeBardelaben v. Tillamook County*, 31 Or LUBA 131 (1996).

34. Variances. Development that has not occurred and that will be governed by the limitations of the applicable zone cannot be used to justify a variance on the basis that the property owner seeking the variance will otherwise be precluded from the enjoyment of substantial property rights enjoyed by the majority of landowners in the vicinity. *DeBardelaben v. Tillamook County*, 31 Or LUBA 131 (1996).

34. Variances. When a house already exists on the subject property, the fact it cannot be enlarged in precisely the manner desired by the property owner does not render the property incapable of reasonable economic use without a variance. *DeBardelaben v. Tillamook County*, 31 Or LUBA 131 (1996).

34. Variances. The county's interpretation of the "incapable of reasonable economic use" variance standard to mean "incapable of the property's highest and best use under its zoning and of an

intensity of use consistent with other similarly situated properties" is clearly wrong. *DeBardelaben v. Tillamook County*, 31 Or LUBA 131 (1996).

34. Variances. Under *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992) and ORS 197.829(1), LUBA must defer to local government interpretations of traditional variance standards, including those made without reference to traditional strict interpretations. *DeBardelaben v. Tillamook County*, 31 Or LUBA 131 (1996).

34. Variances. The commencement of proceedings to amend a local code provision cannot justify a variance; a variance cannot be granted without reference to variance standards existing at the time the application is submitted. *Krieger v. Wallowa County*, 31 Or LUBA 96 (1996).

34. Variances. Where a city's variance criteria include a "self-imposed hardship" provision, which requires that the hardship necessitating the variance not result from actions of the applicant or the previous owner, and the restriction from which petitioner seeks a variance is the result of an agreement entered into by the previous owner, the city can find that petitioner did not satisfy the "self-imposed hardship" provision. *Gionet v. City of Tualatin*, 30 Or LUBA 96 (1995).

34. Variances. That a subdivision may have detrimental effects on adjacent property does not compel a finding that the variance which makes the subdivision possible will itself have such detrimental effects. *Williams v. City of Philomath*, 30 Or LUBA 5 (1995).

34. Variances. Even under the highly deferential review standard imposed by ORS 197.829 and *Clark v. Jackson County*, 313 Or 508, 514-15, 836 P2d 710 (1992), a local governing body cannot interpret an "exceptional or extraordinary circumstances * * * which do not apply generally to other properties in the same vicinity" variance standard to include any circumstance that does not apply uniformly to all, or nearly all, properties in the vicinity. *Wicks v. City of Reedsport*, 29 Or LUBA 8 (1995).

34. Variances. There can be no possible rational dispute that an adjustment changing the number of parking spaces required for a proposed development does not violate a code prohibition against adjustments that are "exception[s] to the procedural steps of a procedure or to change assigned procedures." *Champion v. City of Portland*, 28 Or LUBA 618 (1995).

34. Variances. LUBA will defer to a governing body's interpretation of a traditional local code "unnecessary hardship" variance standard, where the governing body determines that so long as some beneficial use of the subject property could be established, the unnecessary hardship standard is not satisfied. *Duck Delivery Produce v. Deschutes County*, 28 Or LUBA 614 (1995).

34. Variances. A city council's interpretation of a city code "unreasonable hardships or practical difficulties" variance standard, as requiring that it be "extremely difficult" to use the subject property for a proposed concrete operation without the requested variance, is not clearly wrong and, therefore, must be affirmed. *Salem Golf Club v. City of Salem*, 28 Or LUBA 561 (1995).

34. Variances. Although the substance of particular objections by neighbors may lead to a conclusion that one or more local code adjustment criteria are violated, the *fact* that one or more neighbors object has no legal significance. *Edwards v. City of Portland*, 27 Or LUBA 262 (1994).

34. Variances. Petitioners' allegations that an applicant cannot simultaneously seek the benefit of two separate local code provisions allowing deviations from code height and setback requirements provide no basis for reversal or remand, where nothing in the code precludes seeking approval under both provisions. *Edwards v. City of Portland*, 27 Or LUBA 262 (1994).

34. Variances. To govern deviations from local code standards, a local government may adopt approval standards for "adjustments" which are less stringent than the standards typically adopted for "variances." *Edwards v. City of Portland*, 27 Or LUBA 262 (1994).

34. Variances. Even if petitioner has constitutional defenses against an action by a local government to enforce its code fence height limitation, that does not provide an independent basis upon which to compel the local government to grant a variance to its code fence height limitation. *Stern v. City of Portland*, 26 Or LUBA 544 (1994).

34. Variances. Where a local government has not adopted traditional, strict variance standards, it may interpret a variance approval standard requiring a variance to be "the minimum variance necessary to make reasonable use of the property" as requiring that (1) the proposed use be a reasonable use of the subject property, and (2) the requested variance be the minimum necessary to allow the proposed use. *Friends of Bryant Woods Park v. Lake Oswego*, 26 Or LUBA 185 (1993).

34. Variances. Where a zoning ordinance variance provision includes three alternative standards for granting variances, and petitioner challenges the city's findings concerning only the traditional "unreasonable hardship" standard, petitioner's challenge provides no basis for reversal or remand where the city found all three variance standards were met. *Eola-Glen Neighborhood Assoc. v. City of Salem*, 25 Or LUBA 672 (1993).

34. Variances. A variance criterion requiring that there be no reasonably practical alternatives to granting the variance is met where the local government finds the subdivision roadway necessitating the variance is needed for compliance with the comprehensive plan, and petitioners do not challenge that finding. *Eola-Glen Neighborhood Assoc. v. City of Salem*, 25 Or LUBA 672 (1993).

34. Variances. Where a local government denies a setback variance to allow a deck on the side of a dwelling, and petitioners cite no evidence in the record establishing that having such a deck on the dwelling is more than a personal preference or amenity, petitioners fail to show the evidence in the record establishes, as a matter of law, that enforcement of the setback requirement will cause "practical difficulty or unnecessary hardship." *Thomas v. City of Rockaway Beach*, 24 Or LUBA 532 (1993).

34. Variances. The code provision that was in effect when the application for a variance was filed, and which states a variance "shall become void after the expiration of one (1) year if no substantial

construction has taken place," must be interpreted and applied when the local government determines whether a previously approved variance remains valid. *Todd v. Columbia County*, 24 Or LUBA 289 (1992).

34. Variances. A local code standard for variance approval requiring it be established that without the requested variance the applicant would not have a reasonable use of his property, is not satisfied by establishing that in the absence of variance approval the applicant cannot make the maximum use of his property possible under applicable density regulations. *Roberts v. City of Lake Oswego*, 23 Or LUBA 302 (1992).

34. Variances. Where topographic conditions make it difficult, but not impossible, to both comply with required setbacks and maintain optimal transmission tower elevation, variance standards requiring a demonstration of "practical difficulties or unnecessary hardships" and "exceptional or extraordinary circumstances or conditions" are not satisfied. *Harris v. Polk County*, 23 Or LUBA 152 (1992).

34. Variances. Where a subdivision ordinance provision limiting the length of blocks states that exceptions to the limitation may be granted where justified by topography or location of adjoining streets, a variance need not be granted to allow a block in excess of the length specified in the subdivision ordinance. *Southwood Homeowners Assoc. v. City of Philomath*, 22 Or LUBA 742 (1992).

34. Variances. Where a local government approved a height variance in 1977, but at that time had no code provision authorizing density transfers or a master plan approval process, the 1977 height variance approval does not also authorize a density transfer or give master plan approval. *Terraces Condo Assoc. v. City of Portland*, 22 Or LUBA 151 (1991).

34. Variances. A code requirement that a variance be "necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possess" authorizes approval of a variance only when necessary to establish a use allowed by the applicable zoning regulations. *Schmaltz v. City of Hood River*, 22 Or LUBA 115 (1991).

34. Variances. Where one code variance approval standard requires that a variance be "the minimum variance which would alleviate the hardship," and a second such standard requires that a variance be "necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possess," the "hardship" referred to in the first standard is correctly interpreted to be the deprivation of a "property right" possessed by other property owners, referred to in the second standard. *Schmaltz v. City of Hood River*, 22 Or LUBA 115 (1991).

34. Variances. A local code variance approval standard that a variance must be necessary to modify the impact of exceptional or extraordinary circumstances applicable to the subject property, is not satisfied by findings that local government would rather preserve a particular view and a treed area on a parcel, than adhere to code height restrictions. *Hawkins v. City of Portland*, 22 Or LUBA 65 (1991).

34. Variances. Where a local code makes it clear that it does not intend to impose traditional stringent variance standards, LUBA will give effect to the more permissive variance standards specified in the code. *Wentland v. City of Portland*, 22 Or LUBA 15 (1991).

34. Variances. The traditional "exceptional or extraordinary circumstances or conditions" variance standard, like the traditional "practical difficulties or unnecessary hardships" variance standard, is a demanding one. A variance from code open-space requirements is not "required to modify the impacts of exceptional or extraordinary circumstances or conditions" in order to allow a facility to accommodate 60 clients rather than the 46 clients that could be accommodated without a variance to the code open-space requirements. *Wentland v. City of Portland*, 22 Or LUBA 15 (1991).

34. Variances. A code requirement that an applicant for an "extraordinary exception" for a boathouse demonstrate "an extraordinary and unreasonable hardship which can be relieved only by allowing the intensification of use" is a stringent standard traditionally applied to requests for variances. *Boldt v. Clackamas County*, 21 Or LUBA 40 (1991).

34. Variances. That the applicant's boat may be a tempting target for vandals, there is a maintenance problem due to nearby trees and there is a lack of available covered moorage space do not demonstrate "an extraordinary, unnecessary and unreasonable hardship," as that requirement has been interpreted by appellate courts and LUBA. *Boldt v. Clackamas County*, 21 Or LUBA 40 (1991).

34. Variances. An applicant is not entitled to extraordinary exception approval for a boathouse simply because boathouses may have been approved for nearby property owners. *Boldt v. Clackamas County*, 21 Or LUBA 40 (1991).

34. Variances. While a decision to approve a zone change does not approve a "permit," within the meaning of ORS 227.160(2), a decision which approves both a variance and a minor partition does approve a "permit." *Harvard Medical Park, Ltd. v. City of Roseburg*, 19 Or LUBA 555 (1990).

34. Variances. Findings showing a parcel is close to an urban growth boundary, has road access, has residences nearby and includes areas with steep slopes and poor drainage are inadequate to show the property is affected by unique conditions not generally applicable to other properties. *DLCD v. Columbia County*, 19 Or LUBA 125 (1990).

34. Variances. Where a zoning district is designed to protect small parcels for farm and forest use that are impacted by adverse physical features and other limiting factors, and the county's findings establish only that the property is small, includes soils that are marginal for farm and forest purposes and is impacted by steep slopes and poor drainage, the findings establish that the property is appropriately zoned, *not* that a variance from that zone's minimum lot size is warranted. *DLCD v. Columbia County*, 19 Or LUBA 125 (1990).

34. Variances. Where findings explain that an alternative pathway would ultimately make possible a safe pedestrian connection to a controlled intersection, whereas the pathway that would otherwise be required by the code would encourage dangerous street crossings, the findings are adequate to

demonstrate an "adjustment" to allow the alternative pathway is consistent with plan policies, as required by the city code. *Corbett/Terwilliger Neigh. Assoc. v. City of Portland*, 19 Or LUBA 1 (1990).

34. Variances. Where an existing plaza fully satisfies a code requirement for at least one plaza in excess of five percent of the area of the block, no "adjustment" was required to grant a requested development approval which includes a plaza of less than five percent of the block's area. Because no "adjustment" was required, even if the findings explaining the justification for the "adjustment" are inadequate, they provide no basis for remand. *Corbett/Terwilliger Neigh. Assoc. v. City of Portland*, 19 Or LUBA 1 (1990).

34. Variances. The fact that property is regulated in ways that reduce the amount of land that may be developed does not, by itself, justify a variance under traditional "practical difficulties or unnecessary hardships" and "exceptional or extraordinary circumstances or conditions" variance standards. *Corbett/Terwilliger Neigh. Assoc. v. City of Portland*, 19 Or LUBA 1 (1990).

34. Variances. The loss of 22 out of 155 possible parking spaces due to topographic constraints is insufficient, as a matter of law, to constitute a "practical difficulty or unnecessary hardship" or "exceptional or extraordinary circumstances." *Corbett/Terwilliger Neigh. Assoc. v. City of Portland*, 19 Or LUBA 1 (1990).

34. Variance. An ordinance variance standard that there be "exceptional or extraordinary circumstances or conditions * * * which do not apply generally to other properties in the same zone" requires a strict interpretation, that the "exceptional or extraordinary circumstances "must arise out of the land itself. *Cope v. Cannon Beach*, 15 Or LUBA 546 (1986).

34. Variance. That the subject lots are the only lots in the vicinity which fail to meet an ordinance access requirement does not describe conditions inherent in the land which constitute exceptional or extraordinary circumstances justifying a variance from that access requirement. *Cope v. Cannon Beach*, 15 Or LUBA 546 (1986).

34. Variance. Circumstances which do not affect a lot's ability to comply with an ordinance access requirement do not constitute exceptional or extraordinary circumstances justifying a variance from that access requirement. *Cope v. Cannon Beach*, 15 Or LUBA 546 (1986).

34. Variance. That lots were previously excepted from an ordinance minimum lot size requirement cannot be a basis for granting a variance from an ordinance development restriction unrelated to lot size. *Cope v. Cannon Beach*, 15 Or LUBA 546 (1986).

34. Variance. Where city ordinance provides that variances "ordinarily" should not be granted if the special circumstances upon which the applicant relies are a result of actions of the applicant, owner or previous owner, the city may approve a variance even where the exceptional circumstances relied upon are self-created. *Cope v. Cannon Beach*, 15 Or LUBA 546 (1986).