

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

RON McCARTY,)	
)	
Petitioner,)	LUBA No. 90-090
)	
vs.)	FINAL OPINION
)	AND ORDER
CITY OF PORTLAND,)	
)	
Respondent.)	

Appeal from City of Portland.

Ron McCarty, Portland, filed the petition for review and argued on his own behalf.

Peter A. Kasting, Portland, filed the response brief and argued on behalf of respondent.

HOLSTUN, Referee; SHERTON, Chief Referee; KELLINGTON, Referee, participated in the decision.

AFFIRMED

10/08/90

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Holstun.

NATURE OF THE DECISION

Petitioner appeals a city decision denying his request for a comprehensive plan and zone map change to allow continued use of his single family residence as both a residence and a tax return preparation office. The city's decision also denied petitioner's request for a variance to allow off-street parking in the front yard.

FACTS

The city comprehensive plan map presently designates the subject property Medium Density Single Family Residential with site review overlay. The property is zoned R7sr.¹ Petitioner requests that the plan designation be changed to Commercial with site review overlay and that the zoning be changed to C5sr, a Limited Commercial zone which allows business and professional offices as a permitted use.

The Parkrose Phase I Annexation Study, adopted by the city in 1987, recommended R7 zoning for the property. The current plan and zone designations apparently were applied by the city pursuant to that study. Adjoining properties to

¹The R7 zone is a single family residential zone, with a minimum lot size of 7,000 square feet. The "sr" designation denotes the Site Review Overlay Zone. Portland City Code §§ 33.24.050; 33.903.

By order dated April 16, 1990, the city ordered petitioner to stop conducting his "tax service and tax preparation business * * * until an appropriate zone change, conditional use permit, or revocable permit has been obtained * * * expressly authorizing such activities on the subject property." Record 46.

the west, north and south, like the subject property, are zoned R7sr and are improved with single family residences. N.E. 122nd adjoins the subject property on the east. The area across N.E. 122nd from the subject property is zoned C2sr (General Commercial Zone with Site Review Overlay). The property directly across N.E. 122nd from the subject property is occupied by a Home Club shopping center. Two medical/dental offices are located a short distance south of the subject property, at the intersection of N.E. Broadway and N.E. 122nd, on property zoned C5sr. Two other nearby properties adjoining N.E. 122nd are zoned C5sr -- one a short distance to the north and one a short distance to the south. With the exception of the C5sr zoned properties noted above, all of the block in which the subject property is located is zoned R7sr. Record 38.

In a February 28, 1990 decision, the city land use hearings officer denied the requested zone change, plan map amendment and variance. Record 60-75. On June 6, 1990, the city council denied petitioner's appeal and upheld the hearings officer's decision and adopted the hearings officer's findings in support of its decision.

ASSIGNMENT OF ERROR

"The city's decision is not supported by substantial evidence, and there was not sufficient evidence for an ordinary and reasonable person to deny petitioner's request."

Although the above quoted assignment of error alleges

the city's decision is not supported by substantial evidence, petitioner does not offer any argument in support of that position. Instead, petitioner appears to argue that the city's decision denies his right to equal protection under the law. The sole basis for this claim is petitioner's contention that Multnomah County granted a variance allowing seasonal income tax preparation in a home in a residential zone located six and one-half blocks away from the subject property.

We reject petitioner's equal protection argument for several reasons. First, the cited decision was rendered by Multnomah County, not the city, and therefore provides no basis for petitioner's contention that he is receiving unequal treatment from the city. Second, petitioner makes no attempt to explain why the cited variance decision is similar, factually or legally, to the decision challenged in this proceeding, and the record provides no way for us to determine whether such is the case. Finally, unequal administration of the law does not in every case constitute a violation of the Fourteenth Amendment to the U.S. Constitution. See Williamson v. Lee Optical Co., 348 US 483, 487-488, 75 S Ct 461, 99 L Ed 563 (1955); Archdiocese of Portland v. Washington County, 254 Or 77, 88, 458 P2d 682 (1969); Wagner v. Marion County, 15 Or LUBA 260, 272, aff'd 85 Or App 220 (1987). In order to prevail on his equal protection argument, petitioner must show the city's

decision to deny his request was based on race, religion, the exercise of constitutional rights or some other arbitrary classification. See City of Eugene v. Crooks, 55 Or App 351, 354-355, 637 P2d 1350 (1981), rev den 292 Or 722 (1982); Wagner v. Marion County, supra. However, petitioner neither challenges the reasons the city gave for denying his request nor makes an attempt to demonstrate that he has been singled out, in an impermissible way, for unequal treatment by the city.

Petitioner's remaining arguments are essentially explanations of why petitioner believes his property is better suited for commercial plan and zone designations than for the existing residential planning and zoning. Petitioner essentially asks us to substitute his view of the proper plan and zone designation for the property for that of the city, because he believes the city's decision is unreasonable and unfair.

As we explained in Dougherty v. Tillamook County, 12 Or LUBA 20, 34 (1984) and Tichy v. City of Portland, 6 Or LUBA 13, 23-24 (1982), expressions of disagreement with a local government's decision, which are unrelated to the local government's findings or the legal standards applicable to a request for land use approval, are inadequate to constitute a basis for reversal or remand. See also Gann v. City of Portland, 12 Or LUBA 1, 6 (1984).

The city's findings identify and apply Portland

City Code, comprehensive plan and statewide planning goal standards governing the approvals requested by petitioner. For each of the requested approvals, the city found the applicable standards are not met. Record 64-72. Petitioner makes no attempt to challenge those findings or their evidentiary support. The arguments petitioner does offer lack merit for the reasons explained above. Because petitioner neither challenges the city's findings that applicable approval standards are violated by his request nor disputes the evidentiary support for those findings, and fails to identify any other reason why the city's decision should be remanded, petitioner's assignment of error is denied.

The city's decision is affirmed.