

Opinion by Holstun.

NATURE OF THE DECISION

Petitioners appeal a county decision granting, with conditions, their application for a conditional use permit to expand an existing tire store.

FACTS

The subject property lies within the Stayton Urban Growth Boundary (UGB) and is subject to the Marion County Comprehensive Plan and Zoning Ordinance. The property includes approximately one acre and is located adjacent to and south of the interchange of Golf Club Road and State Highway 22. Golf Club Road adjoins the property for approximately 190 feet along its east property line. The subject property is zoned Interchange District. Adjoining properties to the west and south are zoned Exclusive Farm Use and used for farm purposes.

There are two buildings on the subject property, an alignment shop and a tire store. The alignment shop is located approximately in the middle of the subject property's frontage along Golf Club Road and is set back 40 feet from the right of way. The tire store is located approximately 115 feet from the Golf Club Road right of way, in the northwest corner of the property.

Petitioners applied for a conditional use permit to expand the existing tire store. The proposed addition to the front of the tire store and additional work bays would

reduce the space available for vehicles to park or maneuver between the tire store and the alignment shop and Golf Club Road.

Golf Club Road provides the only access to the subject property, and there are now two entrances. The northern entrance is the main entrance, and it is toward this entrance that the existing alignment shop and tire store are oriented. Vehicles using the northern entrance have direct access to the alignment shop bays and the tire store work bays. In addition, the northern entrance is at the same grade as Golf Club Road, and the level entrance makes it easy for large trucks and recreational vehicles to enter and leave the property. The southern entrance is used as a secondary access point. Because the existing buildings are not easily accessed from this entrance, little traffic uses this entrance. In addition, petitioner Steven Wheeler testified during the local proceedings that the grade differential between the subject property and Golf Club Road at the southern entrance causes "major access and safety problems for larger vehicles * * * as they attempt to access Golf Club Road." Record 24.

During the proceedings before the county land use hearings officer, the Oregon Department of Transportation (ODOT), Highway Division, advised the county that "ODOT is in the project development/environmental assessment phase of a Highway 22 improvement project known as Joseph Street-

Stayton North City Limits." Record 30. Among the improvements to be included in that project is replacement of the existing at-grade Golf Club Road/Highway 22 intersection with a separated grade interchange. The ODOT representative advised the county that construction of the new separated grade interchange would require closure of the existing northern entrance to petitioners' property, leaving only the existing southern access to Golf Club Road.

The county's decision to grant the requested conditional use permit includes a number of conditions. At the ODOT representative's request, the hearings officer imposed the following condition of approval:

"(f) The applicant shall be required to show the successful flow of truck traffic on the property with the expansion of the business in place, and that (1) using only the southern access point, that the site contains sufficient area to allow large trucks to enter and exit the site after the proposed expansion; or (2) that a replacement access point can be provided at a location acceptable to ODOT and Marion County Department of Public Works." Record 21.

The hearings officer's decision was affirmed on appeal by the board of county commissioners.

DECISION

A. Petitioners' Contentions

In this appeal, petitioners challenge the above quoted condition, asserting four separate assignments of error. In those assignments of error, petitioners contend the existing

access points from Golf Club Road provide adequate access to and from their existing business and would provide adequate access to and from the expanded business as well.¹ Petitioners contend the evidentiary record does not show the disputed condition is needed to protect the public health, safety or welfare. Rather, petitioners contend the condition (1) is unrelated to the proposed expansion, (2) is necessitated solely by the possibility that ODOT will at some point in the future improve the Golf Club Road/Highway 22 interchange in a way that will require closure of the existing northern entrance to the property, and (3) imposes an "impossible and unreasonable requirement." Petition for Review 8; Record 24. Finally, petitioners argue respondent improperly let ODOT impose the disputed condition of approval, abdicating its responsibility in this matter.

B. Marion County Zoning Ordinance (MCZO) Standards

MCZO § 119.070 provides, in part, that in granting a conditional use permit the approving authority must determine:

"* * * * *

"(b) That such conditional use * * * will be in harmony with the purpose and intent of the zone;

"(c) That any condition imposed is necessary for the public health, safety or welfare, or to protect the health or safety of persons

¹We do not understand respondent to dispute this point.

working or residing in the area, or for the protection of property or improvements in the neighborhood."

The purpose and intent section of the Interchange District appears at MCZO § 150.010 and provides, in part, as follows:

"The purpose and intent of the Interchange District is to provide for the location of needed highway service commercial facilities at the interchanges between the controlled access highways and the intersecting arterial roads, and to encourage the orderly and compatible development of such district * * *. In providing for the location of the highway-oriented service firms, it is essential that the principle function of the interchange (the carrying of traffic to and from the the freeway in a safe and expeditious manner) be preserved. Also, the purpose is to provide safe ingress and egress to the commercial developments through control of access points on the County throughways, arterials, streets and highways servicing the Interchange Districts.

"* * * * *"

C. Conclusion

As the ODOT representative testified, the proposed intersection improvements are in the "project development/environmental assessment phase" and with the improvements anticipated, closure of petitioners' northern entrance will be required. Record 30. We do not agree with petitioners' suggestion that the ODOT's plans are too speculative for respondent to consider in rendering its decision in this matter.

As we have explained on other occasions in describing

the obligations of local governments in imposing conditions of approval under standards similar to the above quoted standards:

"[A local government's] findings and the evidentiary record supporting its decision to impose conditions of approval need only be sufficient to demonstrate that the conditions support or further a legitimate planning purpose. It is not required that the evidentiary record 'prove the need for a condition, but it must lead a reasonable person to conclude that the evidence supports a need for the condition.'" (Citation omitted.) Vestibular Disorder Consultants v. City of Portland, ___ Or LUBA ___ (LUBA No. 89-112, April 6, 1990), slip op 10.

See also Sellwood Harbor Condo Assoc. v. City of Portland, 16 Or LUBA 505, 522 (1988); Benjamin Franklin Dev. v. Clackamas County, 14 Or LUBA 758, 761 (1986).²

Although the county's findings concerning the disputed condition are brief, we understand those findings to state that the proposed expansion will make the existing area for customer ingress and egress and on-site circulation more limited than it now is.³ In view of the impending closure of the northern entrance, the hearings officer found it necessary for the applicant to demonstrate that, with the proposed improvements, such customer ingress and egress and

²In Flynn v. Polk County, 17 Or LUBA 68, 78 (1988), we determined that, under code provisions very similar to MCZO § 119.070, a county must adopt findings explaining why conditions of approval are necessary to protect the public health, safety or welfare.

³The drawings of the proposed expansion make it clear that such is the case. Record 32, 48.

on-site circulation can be adequately accommodated utilizing the existing southern access or another access point acceptable to ODOT and the Marion County Department of Public Works.⁴

We conclude the evidentiary record and the findings adopted by the county in this case are adequate to demonstrate that the disputed condition is needed to assure that the proposed expansion will allow adequate vehicular circulation on-site without the benefit of the existing northern entrance.⁵

⁴While it is not certain at this point that the northern entrance will be eliminated, certainty is not required. The county reasonably concluded the northern access might not be available in the near future. It is within the county's authority under MCZO § 119.070 to impose a condition that the petitioners demonstrate that their proposed expansion will be able to accommodate that limitation.

⁵The ODOT representative testified during the local proceedings:

"The applicant's site currently operates with two accesses onto Golf Club Road: the main entrance is the northern entrance. Some of the proposed expansion will be near this entrance, the rest will occur near the western property line. Our concern lies in vehicle circulation on the site, particularly for large trucks delivering goods or needing repair. Will sufficient area exist after the proposed development to allow for truck movements?

"* * * We have discussed a replacement access with the applicant, but this possibility becomes much more limited if [the proposed expansion] is approved. Large trucks entering the site may not be able to exit the property if the application is approved. * * *" Record 30.

In its findings, the county specifically found the conditions it imposed "are necessary for the public health, safety and welfare." Record 21. The findings also state:

"The closure of one entrance may restrict truck movement on the site and interfere with the proposed new expansion plan.

The purpose and intent of the Interchange District is to "encourage orderly and compatible development" and a principle function of interchanges is to carry "traffic to and from the freeway in a safe and expeditious manner." MCZO § 150.010. Under MCZO § 150.010, the county has a legitimate planning interest in assuring adequate vehicular circulation in the Interchange District. The county has a legitimate planning interest in assuring that petitioners' customers have adequate access to and from petitioners' place of business. That planning interest includes more than just the access to petitioners' property from Golf Club Road. It includes an interest in assuring that vehicles will be able to park and circulate on petitioners' property as well. Recognizing the purpose and intent of the Interchange District, we conclude the evidence and findings are adequate to demonstrate that the disputed condition is necessary to protect the "public health, safety or welfare," as MCZO § 119.070(c) requires.⁶

Approval of this expansion, therefore, is subject to the conditions submitted by the Region 2 Planner, including providing a plan for adequate truck traffic on the lot." Record 20.

We disagree with petitioners' contention that respondent "abdicated" its responsibility in this matter by imposing the condition ODOT requested. The county simply agreed with ODOT that the condition was needed and imposed it.

⁶Although petitioners contend that the condition is impossible to comply with, we have no way to confirm whether that is true. Specifically, we have no way to determine whether, as petitioners suggest, it will be impossible -- with or without the proposed expansion or some modified

We agree with petitioners that conditions of approval imposed by the county must have some reasonable connection with the proposed expansion. However we do not agree with petitioners that such a reasonable connection is lacking here. As proposed, the expansion will both maintain the present orientation toward the northern entrance and further constrict the maneuvering area between the tire store and alignment shop. When the northern entrance is eliminated in the future, the proposed expansion may further complicate the steps that will be necessary to provide acceptable access to the subject property from the southern entrance. The expansion therefore has a direct connection with the county's legitimate interest in assuring harmony with the "purpose and intent" of the Interchange District, and we conclude there is a clear connection between the approval sought and the disputed condition.

Finally, two additional arguments presented by petitioners merit a brief response. First, we reject petitioners' suggestion that ODOT and the county are attempting to improperly shift the costs of relocating the northern entrance from ODOT to petitioners. The challenged decision simply requires that petitioners demonstrate to the county that their expansion will not make future relocation of the main entrance more difficult or impossible.

version of the proposed expansion -- for large vehicles using the southern entrance to circulate to desired locations on site.

Second, petitioners complain that the county decision does not include objective standards for locating a new entrance. We see no error in this failure either. We do not believe the county was required to identify in its decision the standards that will be applicable if petitioners wish to establish the main entrance at a location other than the existing southern entrance.⁷ Although the condition provides that replacement access must be "acceptable to ODOT and Marion County Department of Public Works," we do not understand the condition to state that approval of a replacement access will be subject to the unbridled discretion of those agencies. Instead, we understand the disputed condition to state that any future decision to approve a new entrance will be subject to review by those agencies for compliance with applicable siting and safety standards.⁸

Petitioners' assignments of error are denied.

The county's decision is affirmed.

⁷The decision does not preclude petitioners' continued use of the existing southern entrance. However, we understand that petitioners contend the existing southern entrance is undesirable.

⁸For example, MCZO § 150.150(a) provides standards for approving connections to public rights of way in the Interchange District. Petitioners do not explain why these standards are inadequate.