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

JAMES G. LIVINGSTON,)
)
Petitioner,)
)
vs.)
)
JACKSON COUNTY,)
)
Respondent.)

LUBA No. 93-150

FINAL OPINION
AND ORDER

Appeal from Jackson County.

James G. Livingston, Jacksonville, filed the petition for review.

Georgia L. Daniels, Assistant County Counsel, Medford, filed the response brief.

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

AFFIRMED 01/10/94

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

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county order denying his request
4 to amend a 1979 zoning map change by deleting a condition of
5 approval.

6 **MOTION TO FILE REPLY BRIEF**

7 Petitioner requests permission to file a two-page reply
8 brief. There is no objection, and the motion is allowed.

9 **FACTS**

10 Petitioner owns .75 acres of land on the east side of
11 McKee Bridge Road, located approximately 50 feet south of
12 the intersection of McKee Bridge and Applegate Roads.¹ The
13 eastern portion of the subject property is developed with
14 two dwellings and three mobile homes. The western portion
15 of the subject property is graveled for approximately 125
16 feet in from McKee Bridge Road, and is used for parking by
17 residents of the subject property, patrons of McKee Bridge
18 Store, visitors to McKee Bridge Park and other members of
19 the public.²

20 Land to the east and north is zoned Exclusive Farm Use

¹The parcel owned by petitioner also includes approximately .25 acres of land on the west side of McKee Bridge Road. This portion of the parcel was unconditionally zoned Rural Service Commercial (RS) some time prior to 1979, and is not at issue in this appeal.

²The extent to which this parking area continues to be used by persons other than the residents of the subject property is a matter of dispute in this appeal.

1 (EFU) and used as pasture. Land to the south is zoned
2 Forest Resource (FR-160) and contains the McKee Bridge
3 picnic grounds (park), an improved recreational site owned
4 and managed by the Rogue River National Forest. Land to the
5 west is zoned RS and contains the McKee Bridge Store.

6 **INTRODUCTION**

7 In 1979, petitioner's parcel was zoned Farm Residential
8 (F-5) and was developed with five dwellings and a gravel
9 parking area, as it is today. The adjoining properties were
10 also zoned and used in 1979 as they are today (described
11 above), except that in 1979 Applegate Fire District #9 (fire
12 district) used property across McKee Bridge Road from the
13 subject property for a fire equipment station.³ Also, in
14 1979, the McKee Bridge Store was owned and operated by a
15 relative of petitioner's.

16 Sometime in 1979, petitioner requested a zone change
17 from F-5 to RS for the subject property, so that he could
18 lease the existing de facto parking area to the store for
19 use as a parking lot. Record 236. During the proceedings
20 on the requested zone change, concern was expressed
21 regarding the large range of commercial uses potentially
22 allowable in an RS zone.⁴ Record 236-37, 139-43. On

³The fire equipment station was subsequently relocated to a new fire station located approximately one mile up Applegate Road.

⁴The uses allowed as permitted uses in the RS zoning district in effect in 1979 included business or professional offices, grocery stores,

1 December 5, 1979, the county board of commissioners approved
2 the requested zone change, with the following conditions:

3 "(1) An instrument shall be recorded with the
4 county clerk. The instrument shall limit the
5 portion of [the subject property] lying east
6 of McKee Bridge Road to approximately 125
7 feet for parking of vehicles for the McKee
8 Bridge Store and the McKee Bridge Park. The
9 remainder of the property shall be limited to
10 the existing residential uses and accessory
11 uses, and the location of the fire equipment.

12 "(2) The zone change shall become effective upon
13 receipt of a recorded copy of the above
14 restriction at the Board of Commissioners
15 Office. * * * Record 235.

16 On January 2, 1980, a "Declaration of Use Restrictions"
17 corresponding to the above quoted condition (1) was recorded
18 by petitioner.⁵ Record 176-77.

19 LDO 285.025(4)(a) provides:

20 "The [Planning] Department, Hearings Officer,
21 Planning Commission and Board [of Commissioners]
22 are hereby authorized to consider requests for the
23 amendment, modification or recision [sic] of
24 conditions required by the County under a previous
25 decision upon receipt of a properly filed
26 application with the required fee. Such
27 amendments may be considered when changes in land
28 use policies or ordinance language have occurred;
29 or the use, division or development is

bakeries, auto or equipment repair, laundries, dry cleaners, second hand stores and banks. Jackson County Land Development Ordinance (LDO) 9.2 (1979). Uses conditionally allowed in the RS zone in 1979 included veterinary clinics, animal hospitals and planned unit developments. LDO 9.3 (1979).

⁵Petitioner maintains the recorded deed restriction mistakenly varied from the parking use limitation required by condition (1) of the 1979 zone change approval in certain respects. However, petitioner's arguments in this regard do not affect our resolution of this appeal.

1 substantially modified; or circumstances which
2 [gave] rise to the condition(s) being required are
3 no longer applicable * * *." (Emphasis added.)

4 On April 10, 1992, pursuant to LDO 285.025(4), petitioner
5 filed an application requesting removal of condition (1) of
6 the 1979 zone change approval for the subject property.
7 Approval of this request would have the effect of changing
8 the zoning of the subject property to unrestricted RS
9 zoning.⁶ The parties agree that petitioner's request is
10 based solely on the above emphasized portion of
11 LDO 285.025(4)(a).

12 After a public hearing, the planning commission
13 recommended denial of petitioner's request. After an
14 additional public hearing, the board of commissioners
15 adopted the challenged order denying petitioner's request.

16 **DECISION**

17 The challenged decision explains the county's decision
18 to deny petitioner's application as follows:

19 "While the Board [of Commissioners] recognizes
20 that there have been changes [in] several of the
21 circumstances such as the relocation of the [fire
22 district] facilities, ownership of the
23 store/restaurant and the nature of the vehicular
24 traffic, it does not feel that there has been a
25 substantive change in the original circumstances
26 that resulted in the application of the condition.

⁶Petitioner's application indicates an intent "to construct a convenience market on the portion of the property which is presently limited to parking." Record 231. However, petitioner's application does not ask that the RS zoning be conditioned to limit use of the property to such a use.

1 In 1979, at the time of the initial zone change
2 request, the property was in use for vehicle
3 parking. This usage [continues].

4 * * * * *

5 * * * With the zone change request in 1979,
6 public need was only evaluated in terms of vehicle
7 parking associated with the commercial and
8 recreational uses adjacent to the property and not
9 for the public need [for] additional commercial
10 land, traffic, timing or the impact on the
11 adjacent recreational and historic resources such
12 as the Rogue River National Forest facilities at
13 McKee Bridge Park or McKee Covered Bridge.

14 * * * * *

15 "The Board [of Commissioners] concludes that to
16 rescind the condition * * * limiting usage of the
17 subject property, it must be demonstrated that the
18 circumstances which resulted in the application of
19 the condition are no longer relevant. The
20 circumstances which required the application of
21 the condition pertained to a need for public
22 vehicle parking including adjacent commercial and
23 recreational facilities; and a need to
24 specifically limit the scope of allowable uses
25 that may occur on the subject property under the
26 [RS] designation." Record 27-29.

27 We understand the above findings to indicate that two
28 different circumstances gave rise to condition (1) (limiting
29 use of the subject property to the existing parking and
30 residential uses) being imposed as part of the 1979 zone
31 change. The first circumstance was a need for public
32 vehicle parking for adjacent commercial and recreational
33 facilities. The second circumstance was that the county did
34 not evaluate the 1979 zone change request in terms of the
35 public need for and the impacts of uses allowed by the RS

1 zone, other than the proposed vehicle parking. The above
2 findings also interpret LDO 285.025(4)(a) to require that
3 neither circumstance remain applicable, in order for the
4 1979 condition to be rescinded. Finally, the decision
5 concludes neither circumstance has substantially changed.

6 Petitioner challenges the evidentiary support for the
7 county's determination that there is still a need for public
8 vehicle parking on the subject property to serve adjacent
9 commercial and recreational uses. However, petitioner does
10 not contest the county's determinations that (1) it did not
11 evaluate his 1979 zone change request in terms of the public
12 need for, and impacts of, uses allowed in the RS zone other
13 than vehicle parking; and (2) this circumstance required the
14 imposition of condition (1) limiting the use of the subject
15 property to the existing parking and residential uses.
16 Neither does petitioner contend he demonstrated during the
17 proceedings below that the county's substantive zone change
18 criteria are satisfied, with regard to allowing unrestricted
19 RS uses of the subject property.

20 To support a denial decision, the county need only
21 establish the existence of one adequate basis for denial.
22 Roozenboom v. Clackamas County, 24 Or LUBA 433, 437 (1993);
23 Garre v. Clackamas County, 18 Or LUBA 977, 981, aff'd 102
24 Or App 123 (1990). Petitioner does not challenge the
25 county's conclusion that LDO 285.025(4)(a) is not satisfied
26 because a circumstance giving rise to the imposition of

1 condition (1) remains unchanged. Therefore, petitioner's
2 assignment of error must be denied.⁷

3 The county's decision is affirmed.

⁷Because we uphold the county's determination based on the continued applicability of the circumstance that the county did not evaluate petitioner's 1979 zone change request in terms of RS uses other than parking, we do not consider petitioner's evidentiary challenge to the county's determination of noncompliance with LDO 285.025(4)(a) based on a continued need for vehicle parking on the subject property.