



1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioner, the applicant below, appeals an order of  
4 the city denying his request to reduce city setback  
5 requirements.<sup>1</sup>

6 **FACTS**

7 The subject property is a 5,000 square foot city lot  
8 zoned Residential (R-5). The surrounding area is developed  
9 with single family residential dwellings. The challenged  
10 decision states the following additional facts:

11 " \* \* \* The applicant's original house (built in  
12 1947) has a twelve-foot setback with a projecting  
13 bay. The applicant has remodeled and added a  
14 carport [and a] second-story addition to the  
15 northwest corner in front of the original house  
16 and a trellis in the front. He has also added a  
17 covered walkway along the west side of the  
18 building. These additions were made without  
19 getting the appropriate building permit or  
20 adjustments at the time.

21 "In 1992, the applicant was notified by the Bureau  
22 of Buildings that [the above improvements to the  
23 subject property] were in violation [of the city  
24 code] and that [the improvements] needed to be  
25 removed, or adjustments needed to be approved by  
26 the Bureau of Planning. \* \* \*

27 "In order to maintain the additions to the house  
28 and stop the removal order, the applicant is

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<sup>1</sup>The requested setback adjustments are proposed to (1) reduce the required front building setback for a carport and second-story covered storage area from 10 feet to 30 inches, (2) reduce the required distance from the carport entrance to the front property line from 18 feet to 30 inches, and (3) reduce the required west side building setback for a walkway from 5 feet to 30 inches.

1 requesting to reduce the front building setback  
2 for the trellis, carport and second-story storage  
3 area; to reduce the distance from the carport  
4 entrance to the front property line; and to reduce  
5 the west side building setback for the covered  
6 walkway. \* \* \*

7 "On March 2, 1994, the requested adjustments were  
8 administratively denied. The applicant appealed  
9 the Administrative Decision on March 16, 1994 and  
10 a public hearing was scheduled before the City of  
11 Portland Adjustment Committee. On April 19, 1994,  
12 the Adjustment Committee opened the public hearing  
13 on this case. The applicant and his attorney  
14 could not attend and requested that the hearing be  
15 kept open. On April 19, 1994, the [Adjustment]  
16 Committee viewed the photographic slides taken by  
17 the staff of the site and adjacent street, heard  
18 testimony from the neighbor to the west who  
19 opposed the [proposal]; heard the staff report and  
20 voted to continue the hearing to May 3, 1994 in  
21 order to allow the applicant to present his  
22 position.

23 "The staff contacted the applicant's attorney and  
24 informed him that the case had been continued for  
25 two weeks as per their request and that the slides  
26 and the audio tape of the hearing were available  
27 during the interim at the Bureau of Planning  
28 Office during business hours. Neither the  
29 applicant nor his attorney reviewed the audio  
30 tapes or slides. On May 3, 1994, the [Adjustment]  
31 Committee continued the case and heard testimony  
32 from the applicant and his attorney. There was no  
33 other public testimony. As part of [the  
34 applicant's] testimony, [he] presented photographs  
35 of other garages in the neighborhood that were  
36 close to the sidewalks. The applicant requested  
37 that the record be kept open in order to allow him  
38 to submit more information and [certain]  
39 photographs and a map showing [the] specific  
40 location [of the properties in the photographs] in  
41 relationship to his property. After closing the  
42 public testimony, the [Adjustment] Committee  
43 discussed the case and tentatively voted to uphold  
44 the Administrative Decision of denial for the

1 three adjustments, except for the nine-foot high  
2 trellis in the front setback area. The  
3 [Adjustment] Committee set May 31, 1994 as the  
4 date to make [its] final decision \* \* \*.

5 "The record was kept open for seven days. The  
6 applicant submitted copies of the photographs and  
7 a map showing [the] location [of the buildings  
8 represented in the photographs] in the  
9 neighborhood. A new front elevation/artistic  
10 rendering of the front of the house with the  
11 additions was also submitted. No new substantive  
12 information was presented that was not presented  
13 during the public hearing. \* \* \*" Record 9-10.

14 Thereafter, the adjustment committee adopted the challenged  
15 decision denying petitioner's requested adjustments. This  
16 appeal followed.

17 **ASSIGNMENT OF ERROR**

18 **A. Interpretation of PCC 33.895.040.B**

19 Portland City Code (PCC) 33.895.040.B provides:

20 "If [the requested adjustment is] in a residential  
21 zone, the proposal will not significantly detract  
22 from the livability or appearance of the  
23 residential area \* \* \*." (Emphasis supplied.)

24 Petitioner argues the city erroneously interpreted  
25 "residential area" to mean the area within a 150 foot radius  
26 of the subject property. Petitioner argues the city should  
27 have interpreted residential area to require an analysis of  
28 the "neighborhood" in which the subject property is located.  
29 However, petitioner does not explain why the city was  
30 required to interpret "residential area" to mean  
31 "neighborhood."

32 Because the challenged decision was not adopted by the

1 city governing body, this Board owes no deference to the  
2 challenged interpretation of the term "residential area."  
3 Gage v. City of Portland, 319 Or 308, \_\_\_ P2d \_\_\_ (1994);  
4 Watson v. Clackamas County 129 Or App 428, \_\_\_ P2d \_\_\_\_  
5 (1994). Nevertheless, petitioner does not establish that  
6 the challenged interpretation is unreasonable or that it is  
7 incorrect, based on other provisions in the city's code.  
8 The city did not err by interpreting PCC 33.895.040.B to  
9 require an assessment of the impacts of the proposal on the  
10 residential area within 150 feet of the subject property.

11 This subassignment of error is denied.

12 **B. Photographic Evidence**

13 Petitioner argues:

14 "[The] Adjustment Committee erred in [its] denial  
15 and disregard of evidence that was submitted and  
16 not allowed into the record. \* \* \*" Petition for  
17 Review 7.

18 The photographs which are the subject of this  
19 subassignment of error were submitted into the record, as  
20 stated above in the facts. Petitioner does not establish  
21 that the city "disregarded" those photographs, and we do not  
22 see that it did. This allegation provides no basis for  
23 reversal or remand of the challenged decision.

24 This subassignment of error is denied.

25 Petitioner's assignment of error is denied.<sup>2</sup>

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<sup>2</sup>The petition for review includes undeveloped arguments asserting the challenged decision is unconstitutional. However, this Board does not

1           The city's decision is affirmed.

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consider undeveloped constitutional claims. Constant v. Lake Oswego, 5 Or  
LUBA 311 (1982).