

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

LEONARD A. GIONET,)
Petitioner,) LUBA No. 95-097
vs.) FINAL OPINION
CITY OF TUALATIN,) AND ORDER
Respondent.)

Appeal from City of Tualatin.

Yvonne P. Meekcoms, Portland, filed the petition for review on behalf of petitioner.

Brenda L. Braden, City Attorney, Tualatin, filed the response brief on behalf of respondent.

Both parties waived oral argument.

GUSTAFSON, Referee; LIVINGSTON, Chief Referee,
participated in the decision.

AFFIRMED 10/18/95

29 You are entitled to judicial review of this Order.
30 Judicial review is governed by the provisions of ORS
31 197.850.

1 Opinion by Gustafson.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a decision of the Tualatin City
4 Council denying a sign variance request.

5 **FACTS**

6 Petitioner is an owner of a parcel (Parcel 5) in an
7 urban mixed use development known as the "Tualatin Commons."
8 Petitioner's parcel fronts Tualatin/Sherwood Road, a major
9 arterial. The city's sign ordinance allows one monument
10 sign for a single frontage lot, such as petitioner's.

11 Petitioner purchased Parcel 5 from the Tualatin
12 Development Commission. At approximately the same time, the
13 Tualatin Development Commission sold Parcel 2, which adjoins
14 Parcel 5, to another venture. Parcel 2 is designated a
15 "restaurant site" for up to three restaurants. Parcel 2 has
16 no arterial frontage. Petitioner's purchase agreement was
17 subject to a condition requiring the owner of Parcel 5 to
18 share a sign monument with future businesses on Parcel 2.
19 Likewise, the purchase agreement between the Tualatin
20 Development Commission and the owners of Parcel 2 provides
21 that Parcel 2 is entitled to share the sign monument space
22 with the businesses on Parcel 5.

23 Parcel 2 is now occupied by three restaurants and
24 Parcel 5 is now occupied by three office businesses. The
25 single sign monument is insufficient to provide adequate
26 identification for all six businesses.

1 Petitioner requested a sign variance from the city in
2 order to add a second monument sign on Parcel 5. The city
3 council determined that the request did not satisfy all six
4 of the city's sign variance criteria, and denied the
5 request. This appeal followed.

6 **ASSIGNMENTS OF ERROR ONE THROUGH THREE**

7 Petitioner argues the city's findings are inadequate
8 and lack evidentiary support for the conclusion that the
9 request fails to comply with three sign variance criteria.¹

10 The Tualatin Sign Ordinance (TSO) authorizes the city
11 to grant sign variances when each of six criteria are
12 satisfied. The city determined petitioner's request failed
13 to satisfy three of the six sign variance criteria, as
14 follows:

15 * * * * *

16 "25.3.2 The hardship does not result from
17 actions of the applicant, owner or
18 previous owner, or from personal
19 circumstances such as age, or from the
20 financial situation of an individual or
21 the company, or from regional economic
22 conditions.

23 "25.3.3. The variance is the minimum remedy
24 necessary to eliminate the hardship.

25 "25.3.4 The variance is necessary for the
26 preservation of a property right of the
27 applicant substantially the same as is
28 possessed by owners of other property in

¹Petitioner discusses each alleged criterion violation as a separate assignment of error, each based on the same legal standards.

1 the same planning district, however, non
2 conforming and/or illegal signs on the
3 subject property and/or on nearby
4 properties shall not constitute
5 justification to support a variance
6 request.

7 " * * * * "

8 Petitioner contends the evidence in the record demonstrates
9 compliance with each of these criteria.

10 Where the challenged decision is one of denial, the
11 city need only adopt findings, supported by substantial
12 evidence, demonstrating that one or more standards are not
13 met. Duck Delivery Produce v. Deschutes County, 28 Or LUBA
14 614, 616 (1995); Horizon Construction, Inc. v. City of
15 Newberg, 28 Or LUBA 632, aff'd 134 Or App 414, 894 P2d 1267
16 (1995). Moreover, in challenging a local government's
17 determination of noncompliance on evidentiary grounds,
18 petitioner must demonstrate he sustained his burden of proof
19 of compliance with all applicable standards as a matter of
20 law. Horizon Construction 28 Or LUBA at 641.

21 In addition, this Board is not entitled to substitute
22 its judgment of the evidence in the record for that of the
23 governing body. If there is substantial evidence in the
24 whole record to support the city's decision, LUBA will defer
25 to it, notwithstanding that reasonable people could draw
26 different conclusions from the evidence. Adler v. City of
27 Portland, 25 Or LUBA 546, 554 (1993). Where the evidence is
28 conflicting, if a reasonable person could reach the decision

1 the city made, in view of all the evidence in the record,
2 LUBA will defer to the city's choice between conflicting
3 evidence. Bottum v. Union County, 26 Or LUBA 407, 412
4 (1994); McInnis v. City of Portland, 25 Or LUBA 376, 385
5 (1993); Mazeski v. Wasco County, 28 Or LUBA 178 (1994),
6 aff'd, 133 Or App 258, 890 P2d 455 (1995).

7 With regard to TSO 25.3.2, the "self-imposed hardship"
8 criteria, petitioner cites to evidence in the record that
9 the hardship was not of petitioner's making, but rather
10 existed when he purchased the property; and that the lot
11 configuration, proximity to arterial streets, the necessity
12 for businesses to be identifiable from the street, and the
13 number of tenants on Parcel 2, create the hardship.
14 However, while this evidence may be accurate, it does not
15 diminish the city's finding that this criterion is not
16 satisfied.

17 The city's findings regarding TSO 25.3.2 are based on
18 its application of the ordinance requirements. TSO 25.3.2
19 addresses not only hardships created by the applicant, but
20 rather expressly requires that "[t]he hardship does not
21 result from the actions of the applicant, owner or previous
22 owner." (Emphasis added.) The lot configuration, and the
23 requirement that all businesses on Parcels 2 and 5 share a
24 single monument sign, were created by the Tualatin
25 Development Commission, from which petitioner purchased the
26 property. Petitioner acknowledges he was aware of the

1 number of businesses permitted on Parcels 2 and 5 when he
2 purchased the property, and petitioner's purchase agreement
3 specifically recognizes the sign limitation. The city's
4 finding that petitioner's variance request fails to comply
5 with TSO 25.3.2 is consistent with both the language of the
6 requirement and the evidence in the record.

7 The city also made adequate findings that the variance
8 is not the minimum remedy necessary to eliminate the
9 hardship (TSO 25.3.3), nor necessary for the preservation of
10 a property right substantially the same as possessed by
11 owners of other property in the same planning district (TSO
12 25.3.4). The city found, in part, that the office buildings
13 within the Tualatin Commons "could provide sufficient
14 identity for their tenants without allowing signage for each
15 tenant on the street" and that wall sign locations on the
16 Parcel 5 building could be redesigned to offer office
17 tenants improved exposure on the Tualatin/Sherwood Road side
18 of the property. Record 12. The city also found that the
19 signage allowed is substantially the same as that allowed by
20 other properties within the Tualatin Commons. While
21 petitioner may disagree with the city's evaluation and
22 conclusions, the findings are both adequate and supported by
23 substantial evidence in the record.

24 The three assignments of error are denied.

25 The city's decision is affirmed.