

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

3
4 DIANNE LOPATIN and HUBERT FINKE,)
5)
6 Petitioners,) LUBA No. 96-013
7)
8 vs.) FINAL OPINION
9) AND ORDER
10 CLACKAMAS COUNTY,)
11)
12 Respondent.)

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14
15 Appeal from Clackamas County.

16
17 Arthur P. Stangell, Oregon City, filed the petition for
18 review and argued on behalf of petitioners. With him on the
19 brief was Stangell and Stangell.

20
21 Michael E. Judd, Chief Assistant County Counsel, Oregon
22 City, filed the response brief and argued on behalf of
23 respondent.

24
25 GUSTAFSON, Referee; HANNA, Chief Referee, participated
26 in the decision.

27
28 AFFIRMED 10/31/96

29
30 You are entitled to judicial review of this Order.
31 Judicial review is governed by the provisions of ORS
32 197.850.

1 Opinion by Gustafson.

2 **NATURE OF DECISION**

3 Petitioners appeal the county's denial of their request
4 for a temporary special medical hardship permit (temporary
5 permit).

6 **FACTS**

7 Petitioners own a 3.5-acre parcel in a county forest
8 zone. There are two residences on the property, a primary
9 dwelling in which petitioners reside, and a mobile home,
10 which was placed there under a temporary permit. Petitioner
11 Finke provides the primary care for his domestic associate,
12 petitioner Lopatin, who suffers from multiple medical
13 hardships. Lopatin's son, daughter-in-law and grandchildren
14 reside in the mobile home, and also provide her additional
15 care.

16 When petitioners purchased the property, the prior
17 owner's temporary permit for the mobile home had expired.
18 Petitioners applied to the county for another temporary
19 permit, in order to retain the mobile home. In 1992, the
20 county planning director administratively granted
21 petitioners a three-year, temporary permit based on
22 Lopatin's medical hardship. That permit expired in 1995.

23 In 1995, petitioners applied for another temporary
24 permit, their basis being that petitioner Lopatin's medical
25 condition has not improved since the 1992 permit was
26 granted.

1 The county's land development ordinance (LDO) 1204.03
2 allows special medical hardship permits as follows:

3 "SPECIAL CARE: The Planning Director may approve a
4 temporary permit * * * for a period of up to three
5 (3) years, for the use of a mobile home or trailer
6 house as a residence for the care of a person who
7 requires special attention because of age or poor
8 health, provided that the applicant provides
9 evidence substantiating the following * * *:

10 "A. There exists a need for special attention (a
11 doctor's statement establishing this need is
12 appropriate and suggested evidence); and

13 "B. There exists no reasonable housing
14 alternative, such as nearby rental housing or
15 adequate housing on the subject property."

16 The county hearings officer found that petitioners
17 established compliance with 1204.03(A), having established
18 that petitioner Lopatin has a medical need for special
19 attention. However, the hearings officer found that
20 petitioners did not establish compliance with LDO
21 1204.03(B), and thus denied the application. As an
22 alternative basis for denial, the hearings officer also
23 found that temporary permits for medical hardship dwellings
24 are not permitted under ORS 215.720(3).

25 Petitioners appeal the denial of their application.

26 **FIRST ASSIGNMENT OF ERROR**

27 Petitioners challenge the denial of a new temporary
28 permit because the hearings officer did not establish that
29 there has been a change in circumstances since the temporary
30 permit was granted in 1992. Petitioners argue that

1 regardless of whether the 1992 administrative decision to
2 grant the permit was legally correct, it must stand because
3 there has been no change in circumstances since it was
4 issued and petitioners have relied on the 1992 decision in
5 making investments on the property.

6 Change in circumstances is not an approval standard in
7 evaluation of a temporary permit application, so the
8 hearings officer was not required to evaluate any such
9 change. Nor is the hearings officer bound by staff
10 determinations on an earlier, temporary permit. Alexander
11 v. Clackamas County, 126 Or App 549, 869 P2d 873 (1994).
12 Petitioners knew or should have known in 1992 that the
13 permit they were granted allowed only a temporary use, and
14 that they could not rely on the existence of that permit
15 beyond its stated, three-year term.

16 Petitioners also argue that petitioner Lopatin's
17 condition continues to require special attention, a
18 contention the hearings officer did not dispute. However,
19 petitioners do not challenge the merits of the hearings
20 officer's finding that petitioners did not establish
21 compliance with LDO 1204.03(B).

22 Petitioners bear the burden to establish compliance
23 with all approval criteria. Petitioners acknowledge they
24 did not present any evidence before the hearings officer to
25 establish that no reasonable housing alternative exists that
26 could meet petitioner Lopatin's need for special attention.

1 Therefore, petitioners have not established compliance with
2 all mandatory approval criteria, and thus establish no basis
3 for reversal or remand of the hearings officer's decision.

4 The first assignment of error is denied.¹

5 The county's decision is affirmed.

¹Because petitioners have not established compliance with LDO 1204.03, we do not consider the additional statutory arguments petitioners make under their second and third assignments.