

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

3  
4 LONNIE VARNER and ELLEN VARNER, )  
5   ) )  
6                               Petitioners, )  
7   ) )  
8               vs.                               ) )  
9   ) )  
10 DOUGLAS COUNTY,                               ) )  
11   ) )  
12                               Respondent,                               ) )  
13   ) )  
14               and                               ) )  
15   ) )  
16 R. JAMES MAST and MICHAEL MAST,               ) )  
17   ) )  
18                               Intervenors-Respondent.                               )

LUBA No. 97-023

FINAL OPINION  
AND ORDER

(MEMORANDUM OPINION)  
ORS 197.835(16)

19  
20  
21               Appeal from Douglas County.

22  
23               Wallace D. Cegavske, Roseburg, filed the petition for  
24 review and argued on behalf of petitioners. With him on the  
25 brief was Cegavske, Johnston & Associates.

26  
27               No appearance by respondent.

28  
29               Douglas M. DuPriest, Eugene, filed the response brief  
30 and argued on behalf of intervenors-respondent.

31  
32               HANNA, Chief Referee; GUSTAFSON, Referee, participated  
33 in the decision.

34  
35                               AFFIRMED                               06/10/97

36  
37               You are entitled to judicial review of this Order.  
38 Judicial review is governed by the provisions of ORS  
39 197.850.

1 Opinion by Hanna.

2 **NATURE OF THE DECISION**

3 Petitioners appeal the county's approval of a variance  
4 under Land Use Development Ordinance (LUDO) 4.450(2),  
5 allowing a 20-foot right-of-way access rather than 25 feet  
6 as otherwise required.

7 **MOTION TO INTERVENE**

8 R. James and Michael Mast, (intervenors), the  
9 applicants below, move to intervene in this proceeding on  
10 the side of respondent. There is no objection to the motion  
11 and it is allowed.

12 **DISCUSSION**

13 In their petition for review, petitioners make three  
14 arguments.<sup>1</sup> Petitioners argue that there is not substantial  
15 evidence in the record to support the county's conclusion  
16 that the variance requirements of LUDO 4.450(2)(a) and (c)  
17 are met. Specifically, petitioners argue: (1) that there is  
18 not substantial evidence in the record that exceptional or  
19 extraordinary circumstances apply to the subject property;  
20 and (2) that granting the variance would not be materially

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<sup>1</sup>Petitioners describe three arguments but do not identify assignments of error as required by OAR 661-10-030 (3)(d). For this reason, intervenors move that the matter be dismissed. Because petitioners' arguments develop legal theories in the same manner as assignments of error, we deny the motion to dismiss. Testa v. Clackamas County, 29 Or LUBA 383, 388 n6, aff'd 137 Or App 21 (1995).

1 detrimental to other property in the zone or vicinity.<sup>2</sup>

2 We find that neither of petitioners' arguments merits  
3 remand or reversal, and both are, therefore, denied. ORS  
4 197.835.

5 The county's decision is affirmed.

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<sup>2</sup>At oral argument, petitioners withdrew their second argument, that there is not substantial evidence in the record to support the county's conclusion that the applicant would suffer extraordinary hardship if the variance were not granted, because that issue had not been raised below.