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

RECOVERY HOUSE VI, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
CITY OF EUGENE, )  
 )  
Respondent. )

LUBA No. 97-021  
FINAL OPINION  
AND ORDER

Appeal from City of Eugene.

Michael E. Farthing, Eugene, filed the petition for review and argued on behalf of petitioner. With him on the brief was Gleaves Swearingen Larsen Potter Scott & Smith.

Emily K. Newton, Eugene, filed the response brief and argued on behalf of respondent. With her on the brief was Jerome Lidz, and Harrang Long Gary Rudnick.

GUSTAFSON, Board Chair; HANNA, Board Member, participated in the decision.

AFFIRMED 5/28/98

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

1 Per curiam.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a decision of the city planning  
4 commission approving a conditional use permit for operation of  
5 a drug and alcohol addiction recovery house in the city's  
6 Suburban Residential (RA) zone.

7 **FACTS**

8 The present case is on remand to us from the Court of  
9 Appeals. Recovery House VI v. City of Eugene, \_\_\_ Or LUBA \_\_\_  
10 (LUBA No. 97-021, June 26, 1997), rev'd 150 Or App 382 (1997).  
11 We recite the relevant facts from our initial decision, with  
12 additional facts and history as needed:

13 "On July 15, 1996, petitioner filed an application  
14 for a conditional use permit in order to maintain a  
15 single family dwelling as a home for 16 unrelated  
16 men recovering from alcohol and drug addiction. The  
17 preliminary staff notes in connection with the  
18 application state:

19 "The subject property is zoned RA Suburban  
20 Residential. Recovery House VI has been  
21 operating on the subject site for  
22 approximately nine months. The subject of  
23 whether or not a recovery house operation  
24 is [a] permitted or conditionally permitted  
25 use in the RA and R-1 zoning district was  
26 previously decided by the Eugene Hearings  
27 Official as well as the United State[s]  
28 District Court (Recovery House 4 vs. the  
29 City of Eugene). The Eugene Hearings  
30 Official stated that the use of the  
31 property as a recovery house requires a  
32 conditional use approval based on Section  
33 9.492 of the Eugene Code \* \* \*.' Record  
34 268.

35 "After a public hearing, the city hearings official  
36 denied the permit. Petitioner appealed the denial  
37 to the city planning commission. Petitioner asked  
38 that the planning commission either reverse the

1           hearings official's decision or "in the alternative,  
2           issue a decision that indicates a conditional use  
3           permit is not required for the use presently being  
4           conducted \* \* \* at the Subject Property." Record  
5           132. The planning commission concluded that the  
6           hearings official did not err in finding a  
7           conditional use permit to be required. Record 14.  
8           It approved the permit subject to conditions that  
9           are unacceptable to petitioner." Recovery House VI  
10          v. City of Eugene, \_\_\_ Or LUBA \_\_\_, slip op. at 2-3.

11          Petitioner appealed the city's approval of its  
12          conditional use permit application to LUBA, arguing that the  
13          proposed use is permitted as of right under the Eugene Code  
14          (EC), and thus the city had no authority to require it to  
15          obtain a conditional use permit. We affirmed the city's  
16          decision, agreeing with the city that petitioner did not  
17          present a justiciable controversy within the scope of our  
18          jurisdiction and review, because, it appeared to us,  
19          petitioner had received from the city what it had applied for,  
20          i.e., a conditional use permit, and thus our opinion regarding  
21          the city's authority to require a conditional use permit would  
22          be merely advisory.

23          The Court of Appeals reversed our decision, holding that  
24          LUBA had authority to review the planning commission's  
25          conclusion that petitioner's operation requires a conditional  
26          use permit. Recovery House VI v. City of Eugene, 150 Or App  
27          at 388. The court then remanded the case back to us to  
28          address the merits of petitioner's appeal. Id. at 390.

29          **ASSIGNMENT OF ERROR**

30          Petitioner argues that its operation of a recovery house  
31          in the RA zone is a permitted use under EC 9.384, and thus the

1 city erred in requiring petitioner to obtain a conditional use  
2 permit.

3 EC 9.384 is a matrix that sets out permitted, prohibited  
4 and conditional uses in five residential zones. Under the  
5 category of "dwellings," EC 9.384 lists various residential  
6 uses that are permitted in the RA zone, including, as relevant  
7 here, "Single Family detached."<sup>1</sup> EC 9.015 defines a "Single  
8 Family detached" dwelling as "a free standing building  
9 designed or used for the occupancy of one family with  
10 housekeeping facilities for only one family." (Emphasis  
11 added.)

12 The subject dwelling in this case is a converted single  
13 family dwelling totaling 2,549 square feet, with eight  
14 bedrooms, two bathrooms, a kitchen, laundry room, living room  
15 and deck. Petitioner contends that the subject dwelling in  
16 this case is "designed" for the occupancy of one family within  
17 the meaning of EC 9.015, notwithstanding that petitioner  
18 currently uses the structure to house 16 unrelated occupants,  
19 and thus, concludes petitioner, its operation is a permitted  
20 use. Petitioner reasons that

21 "[a] 'single family dwelling' is the 'use' that is  
22 permitted outright in the RA zone. As defined by  
23 the Eugene Code, that use is a building that is  
24 either 'designed or used for the occupancy of one

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<sup>1</sup>Other permitted residential uses in the RA zone include Duplexes, Fourplexes, Triplexes, Single Family Accessory Units and Single Family attached. "Multi-family" dwellings and "Boarding & Rooming Houses" are not listed as either a permitted or conditional use in the RA zone. Group Care facilities of 3-5 persons are a permitted use in the RA zone, while Group Care facilities of 6 or more persons are a conditional use.

1 family.' There is no ambiguity or confusion as to  
2 what the 'use' is in this particular circumstance.  
3 Use of the word 'or' suggests no other meaning that  
4 the use can either be the building's design or its  
5 occupancy." Petition for Review 4.

6 The planning commission rejected petitioner's  
7 interpretation of EC 9.384 and 9.015, because that  
8 interpretation

9 "clearly conflicts with the entire purpose and  
10 framework of land use planning and zoning in Eugene  
11 and the State of Oregon. The interpretation would  
12 allow for large increases in the density of persons  
13 in the many areas of Eugene where housing is  
14 provided primarily in detached single family  
15 housing. More significantly, the interpretation  
16 would allow single family residences to be used for  
17 commercial, or even industrial uses that would  
18 generate traffic, noise, and other negative impacts  
19 and would essentially make the concept of zoning  
20 districts meaningless." Record 20.

21 On appeal, petitioner contends that the planning  
22 commission's implicit interpretation of EC 9.015 is contrary  
23 to the plain terms of that provision. According to  
24 petitioner, the term "or" is necessarily disjunctive, denoting  
25 a choice between either of two possibilities. As support for  
26 this reading, petitioner points to the city's definition of  
27 "dwelling, multiple," which states:

28 "A building designed and used for occupancy by three  
29 or more families, all living independently of each  
30 other, and having separate housekeeping facilities  
31 for each family." EC 9.015 (emphasis added).

32 Petitioner argues that use of the conjunctive "and" in the  
33 city's definition of "dwelling, multiple" demonstrates that  
34 the drafters of the Eugene Code made a deliberate word choice  
35 in requiring that single family dwellings be "designed or

1 used" for single family occupancy. Had the drafters intended  
2 a conjunctive reading of the definition of "Single Family  
3 detached" at EC 9.015, petitioner contends, they could easily  
4 have inserted "and" rather than "or."

5 Our standard of review of the planning commission's  
6 interpretation of EC 9.015 and 9.384 is whether that  
7 interpretation is reasonable and correct. Jackson County  
8 Citizens League v. Jackson County, \_\_\_ Or LUBA \_\_\_ (LUBA No.  
9 96-050, November 27, 1996), citing McCoy v. Linn County, 90 Or  
10 App 271 (1988). On appeal, the city argues that we should  
11 affirm the planning commission's interpretation because,  
12 considered in context, EC 9.015 is reasonably and indeed  
13 necessarily construed to require that a "single family  
14 detached dwelling" be both designed and used for single family  
15 occupancy.

16 In Wilbur Residents v. Douglas County, 151 Or App 523,  
17 \_\_\_ P2d \_\_\_ (1997), decided after oral argument in this case,  
18 the Court of Appeals addressed a similar argument with respect  
19 to ORS 215.416(11)(a), which allows a county to approve or  
20 deny an application for a permit without a hearing if the  
21 county

22 "gives notice of the decision and provides an  
23 opportunity for appeal of the decision to those  
24 persons who would have had a right to notice if a  
25 hearing had been scheduled or who are adversely  
26 affected or aggrieved by the decision." (Emphasis  
27 added.)

28 The county in Wilbur Residents argued that ORS  
29 215.416(11)(a), by its plain terms, allows it to make land use

1 decisions without a hearing if it provides notice either to  
2 persons who had a right to notice or to persons who are  
3 adversely affected by the decision. The court disagreed,  
4 holding that ORS 215.416(11)(a) requires the county to provide  
5 notice to both categories of persons, stating that

6 "the sense of the statute and its context compel the  
7 interpretation that its use of the disjunctive  
8 contemplates a series of things that must be  
9 satisfied seriatim rather than ones that may be  
10 chosen among." 151 Or App at 528.

11 The court relied on its decision in McCoy v. Linn County, 90  
12 Or App 271, 752 P2d 323 (1988), where it construed an  
13 ordinance requiring that proposed development "will be  
14 compatible with and will not adversely affect the liveability  
15 or appropriate development of abutting properties and the  
16 surrounding neighborhood." McCoy, 90 Or App at 273 (emphasis  
17 added). The court in McCoy agreed that use of the term "or"  
18 in the quoted provision is disjunctive, but explained that

19 "[p]etitioners are incorrect \* \* \* in their  
20 understanding of what the ordinance treats  
21 disjunctively. It does not contemplate that a  
22 proposed development may qualify for approval if it  
23 satisfies either criterion; the meaning of the  
24 provision is that approval cannot be granted if  
25 either of the criteria is not satisfied by the  
26 proposal." 90 Or App at 276 (emphasis in the  
27 original).

28 EC 9.384 and 9.015 are similar to the provisions at issue  
29 in McCoy and Wilbur Residents in that all three provisions set  
30 forth serial criteria in contexts that mandate application of  
31 each criterion. EC 9.384 and 9.015 together describe the  
32 criteria necessary for a proposed use to qualify as a "Single

1 Family detached dwelling" under those provisions. The sense  
2 of those provisions, read in context, is that a proposed use  
3 does not qualify as a "Single Family detached dwelling" if  
4 either criterion (design or use for the occupancy of one  
5 family) is not satisfied. Like the provisions at issue in  
6 Wilbur Residents, EC 9.015 sets forth criteria that must be  
7 satisfied seriatim, rather than alternatively.

8 Our analysis of EC 9.384 and 9.015 is not limited to the  
9 text and sense of those provisions, but may also consider  
10 their purpose, and the effects thereon of petitioner's literal  
11 interpretation. See Wilbur Residents, 151 Or App at 529  
12 (illustrating how a literal reading of the statute at issue in  
13 that case undermines the purpose of the statute). As the city  
14 noted below, petitioner's interpretation of EC 9.015 and 9.384  
15 would permit any use, even commercial or industrial uses, in  
16 the RA zone as long as those uses occurred within a building  
17 designed for single family occupancy. That result is  
18 inconsistent with the plain terms of EC 9.384, which prohibit  
19 commercial and industrial (as well as multi-family) uses in  
20 the RA zone. It is also contrary to the purpose of EC 9.384  
21 in particular and zoning laws in general, which are designed  
22 to group compatible uses, and separate dissimilar,  
23 incompatible uses. Petitioner's literal reading of EC 9.015  
24 and 9.384 not only undermines that purpose, but eviscerates  
25 it.

1           With respect to petitioner's argument, based on the  
2 definition of "dwelling, multiple," that the drafters of the  
3 Eugene Code intended a literal reading of EC 9.015  
4 notwithstanding its absurd consequences, the city notes that,  
5 under petitioner's reading, multiple family zoning would be  
6 more restrictive than single family zoning. That result, the  
7 city argues, is again inconsistent with the structure and  
8 purpose of EC 9.384 and zoning schemes in general, which tend  
9 to subject single family uses to the most restrictive  
10 criteria.

11           For the foregoing reasons, we conclude that the  
12 interpretation urged by petitioner is not within the range of  
13 any reasonable construction of EC 9.015 and 9.384, understood  
14 in their context, and the planning commission did not err in  
15 rejecting that interpretation.

16           The assignment of error is denied.

17           The city's decision is affirmed.