

31.3.7 Permits – Particular Uses – Shopping Centers. Where a prior decision approved a plan amendment and zone change for the subject property and included a condition of approval limiting the type of future development to a “retail shopping center” and the size of future development to a certain square footage of gross leasable area, but where the prior decision approved no specific development, voluntary descriptions, statements, or representations made by the applicant during the prior proceeding regarding the particular store with which the shopping center would be developed are not binding on the applicant in a subsequent site plan review proceeding unless they were memorialized in conditions of approval for the prior decision. *M & T Partners, Inc. v. City of Salem*, 80 Or LUBA 221 (2019).

31.3.7 Permits – Particular Uses – Shopping Centers. LUBA will sustain a city council interpretation of a 1991 planning commission site plan decision to approve both a 70,000-square-foot retail store and a 30,000-square-foot “future expansion” area, notwithstanding a condition that refers only to approval of the retail store, where the site plan depicts both improvements, the 1991 decision approves the “site plan” without restriction, and the record indicates that the planning commission intended to approve both improvements. *Hood River Citizens for a Local Economy v. City of Hood River*, 65 Or LUBA 392 (2012).

31.3.7 Permits – Particular Uses – Shopping Centers. LUBA will sustain a city council interpretation of a site plan condition of approval to impose no limits on the type merchandise sold at a retail store that is allowed outright in the applicable zone, where the condition authorizes sale of “general merchandise, to include” listed examples, and the fairest reading of the condition is that the list of examples is illustrative, not exclusive. *Hood River Citizens for a Local Economy v. City of Hood River*, 65 Or LUBA 392 (2012).

31.3.7 Permits – Particular Uses – Shopping Centers. A site plan decision that approves (1) a building and (2) a “future expansion” of that same building is a single building, not separate phases or components of a multi-phase development, for purposes of determining whether there is a vested right to construct the expansion. *Hood River Citizens for a Local Economy v. City of Hood River*, 65 Or LUBA 392 (2012).

31.3.7 Permits – Particular Uses – Shopping Centers. A governing body’s interpretation of a design review criterion requiring that the “bulk and scale” of a proposed retail supercenter be “compatible” with surrounding buildings as necessitating a comparison of the size of the proposed buildings and surrounding buildings—and not just visual compatibility—is consistent with the text of the criterion and not reversible under ORS 197.829(1)(a). *Wal-Mart Stores, Inc. v. Hood River County*, 47 Or LUBA 256 (2004).

31.3.7 Permits – Particular Uses – Shopping Centers. A finding that sales of non-construction related materials at a home improvement store, such as house plants, barbecues, etc., are incidental and subordinate to the primary use of “Construction Sales and Services” is supported by substantial evidence, where the testimony cited by petitioners takes a broader view of what constitutes non-construction related material that the local decision maker and in any case fails to establish that the sales of such non-construction related materials is so predominant as to make such sales the principal use. *Heilman v. City of Corvallis*, 47 Or LUBA 305 (2004).

31.3.7 Permits – Particular Uses – Shopping Centers. A traffic study concluding that there is adequate vehicular access to a shopping mall is substantial evidence supporting a finding of “adequate access and traffic control,” notwithstanding that the study did not consider or quantify internal store-to-store vehicular traffic, where there is no evidence that such internal traffic is significant. *Graham Oil Co. v. City of North Bend*, 44 Or LUBA 18 (2003).

31.3.7 Permits – Particular Uses – Shopping Centers. A local government decision that a shopping center may be allowed in a particular zone under code “similar use” provisions must (1) express an interpretation of the “similar use” provisions that is adequate for LUBA review, (2) actually apply the interpretation adopted, and (3) explain how the decision is consistent with that interpretation. *Loud v. City of Cottage Grove*, 26 Or LUBA 152 (1993).

31.3.7 Permits – Particular Uses – Shopping Centers. Where a local code imposes limitations on “shopping complexes,” a local government approving a commercial use may not simply conclude that those limitations do not apply, where the issue of the applicability of the shopping complex limitations is raised during local proceedings. *O’Neal v. Deschutes County*, 26 Or LUBA 126 (1993).

31.3.7 Permits – Particular Uses – Shopping Centers. Where a prior city decision approving a PUD preliminary development plan for a shopping center does not clearly identify the particular commercial uses it approves, but describes the applicant’s proposal and states that the proposed uses are approved, submittal of a site plan proposing an entirely different mixture of commercial uses constitutes more than a minor modification of the approved development plan. *Owen Development Group, Inc. v. City of Gearhart*, 25 Or LUBA 88 (1993).

31.3.7 Permits – Particular Uses – Shopping Centers. To show a public need for a 10-acre “community shopping center,” of which the property proposed to be annexed would be a part, the city’s findings must establish a nexus between the stated “need” to have additional retail businesses within the city and to stop retail leakage to a neighboring city, and the “need” for a “community shopping center” requiring a 10-acre vacant retail zoned site within the city. *Neuenschwander v. City of Ashland*, 20 Or LUBA 144 (1990).