

JUL 23 3 58 PM '81

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

3 DOWNTOWN COMMUNITY)
ASSOCIATION, INC.,)
4)
Petitioner,)
5)
vs.)
6 CITY OF PORTLAND and)
7 MULTNOMAH COUNTY,)
8 Respondents.)

LUBA No. 81-042
FINAL OPINION
AND ORDER

9
10 Appeal from the City of Portland.

11 Edward J. Sullivan, Portland, and Elizabeth A. Normand,
Portland, filed the Petition for Review and argued the cause on
12 behalf of Petitioner.

13 Kathryn S. Beaumont, Portland, filed the brief and argued
the cause on behalf of Respondent City of Portland.

14 Laurence Kressel, Portland, filed a supplemental memorandum
and argued the cause on behalf of Respondent Multnomah County.

15 REYNOLDS, Chief Referee; COX, Referee; BAGG, Referee;
16 participated in this decision.

17 Reversed. 7/23/81
18

19 You are entitled to judicial review of this Order.
20 Judicial review is governed by the provisions of Oregon Laws
1979, ch 772, sec 6(a).

1 REYNOLDS, Chief Referee.

2 INTRODUCTION

3 Petitioners appeal a decision of the City of Portland
4 granting a variance from the city's Blank Wall Limitation
5 Ordinance for the Madison Avenue Facade of the proposed Justice
6 Center. Petitioners ask that the decision be reversed and
7 remanded to the City of Portland.

8 Petitioners set forth three assignments of error. In the
9 first assignment of error, petitioners contend the findings
10 adopted by the City of Portland are vague, conclusory,
11 partially irrevelant and not supported by substantial evidence
12 in the whole record in violation of ORS 227.173. Petitioners
13 say that neither the findings nor the evidence in the record
14 show the "exceptional circumstances" or "unnecessary hardship"
15 required for approval of a variance request pursuant to
16 Portland's variance code.

17 In the second assignment of error, petitioners argue the
18 City of Portland exceeded its jurisdiction by granting a
19 variance without the variance having first been considered by
20 the city's Variance Committee as required by city ordinance.
21 Petitioners argue that proper application for the variance had
22 not been filed with the city and that proper notice of the
23 hearing had not preceded the city's grant of the variance.

24 Petitioners' third assignment of error is that the city's
25 findings do not show consideration of major relevant issues and
26 applicable criteria in violation of ORS 227.173 and Goal 2.

1 The findings, according to petitioners, also fail to discuss
2 the city's Comprehensive Plan, the Downtown Plan and the
3 Downtown Design Guidelines.

4 We agree with petitioners' second assignment of error that
5 the City of Portland exceeded its jurisdiction in considering
6 this variance request without the request first having been
7 reviewed by the Variance Committee of the Planning Commission
8 as required by Portland City Code. Accordingly, we must
9 reverse the decision of the City of Portland granting a
10 variance to the blank wall limitation contained in the city's
11 zoning ordinance. We do not, therefore, address petitioners'
12 remaining assignments of error.

13 OPINION

14 1. Standing of Petitioner.

15 Respondent challenges petitioners' standing to bring this
16 appeal. Inasmuch as the city's decision in this case was
17 quasi-judicial in nature, a petitioner in order to have
18 standing must demonstrate that (1) it appeared in the local
19 governing body's proceeding, orally or in writing, and that (2)
20 it was a person entitled as of right to notice and hearing
21 prior to the decision to be reviewed or was a person whose
22 interests are adversely affected or who was aggrieved by the
23 decision. Oregon Laws 1979, Chapter 772, Section 4(3).

24 "Person" is defined in Section 3(2) of Oregon Laws 1979,
25 Chapter 772 as "any individual, partnership, corporation,
26 association, governmental subdivision or agency or public or

1 private organization of any kind."

2 Petitioner Downtown Community Association (DCA) is a
3 neighborhood association organized pursuant to Chapter 3.96 of
4 the Code of the City of Portland to represent and protect the
5 collective interest of the downtown community. Petitioner DCA
6 appeared in the proceeding below through its president, Jessica
7 Richman. The remaining petitioners are all members of DCA.
8 According to petitioners' brief, which is unchallenged by
9 respondent, Petitioner Downtown Community Association was
10 entitled to and did receive notice of the application for
11 design review and appeal to the City Council pursuant to
12 Section 3.96.060 of the Code of the City of Portland. We
13 conclude, therefore, that Petitioner DCA's standing does not
14 derive from the standing of any of its members but exists by
15 virtue of its status as an association which appeared before
16 the city and was entitled as of right to notice and hearing
17 prior to the city's decision. Since DCA has standing to bring
18 this appeal, and because the other petitioners are members of
19 DCA, we need not decide for purposes of this case whether the
20 individual members of DCA have established their standing
21 separate from that of the association.

22 2. Petitioners' Second Assignment of Error.

23 Petitioners' second assignment of error is that the city
24 exceeded its jurisdiction in granting the variance. The basis
25 for this assignment of error lies in those sections of the
26 Portland City Code pertaining to the processing of variance

1 requests. Before we set forth the pertinent provisions of the
2 Portland City Code, however, it would be well to provide some
3 background information as to the process followed in approving
4 the variance for the Justice Center.¹

5 On February 7, 1980, the architects for the Justice Center
6 applied to the Portland Bureau of Planning for design review.
7 The Design Committee approved the conceptual plans for the
8 building, with the provision that the building's wall facing
9 Madison Street have visual penetrations in conformance with
10 Section 33.56.140 of the Code of the City of Portland.² At
11 the request of the Bureau of Police, the architects revised the
12 design of the building. The Design Committee, however,
13 determined that the revised design resulted in blank wall space
14 exceeding 50% of the length of the building on the ground level
15 along both Madison Street and Second Avenue, contrary to the
16 requirements of Section 33.56.140. The Design Committee
17 approved the detailed plans for the Justice Center Building
18 with the provision that the walls along Second Avenue and
19 Madison Street be made to conform with the requirements of
20 Section 33.56.140. The architects appealed the decision of the
21 Design Committee to the City Council.³

22 The city auditor notified all property owners within 400
23 feet of the building site as well as the Downtown Community
24 Association that the City Council would hear the appeal of the
25 Design Committee decision. The notice stated that the
26 appellant contended a variance from the blank wall limitation

1 regulation was warranted along Southwest Second Avenue "because
2 police personnel using locker, exercise and shower rooms in an
3 area facing Southwest Third Avenue should not be exposed to
4 unreasonable and unnecessary dangers."

5 On February 25, 1981, the City Council at a public hearing
6 voted tentatively to grant a variance for the wall on Madison
7 Avenue and deny the variance for the wall on Second Avenue.
8 The hearing was continued for one week with instructions to the
9 city attorney to make findings in support of the decision. On
10 March 4, 1981, the council continued the matter another week
11 because the findings were not yet completed. On March 11,
12 1981, the City Council adopted findings supporting approval of
13 a variance from the blank wall limitations regulation on
14 Madison Street. An order was entered on March 13, 1981.

15 The function of the Design Committee, a subcommittee of the
16 Planning Commission, is to review proposed development plans to
17 ensure those plans conform to the city's design criteria. It
18 is undisputed that the Design Committee has no authority to
19 grant a variance from the design criteria. While it is
20 undisputed that the Design Committee lacks such authority,
21 there is disagreement among the parties as to whether that
22 authority is vested in or may be exercised initially by the
23 City Council.

24 A variance from the blank wall limitations "may be
25 considered under Chapter 33.98 (Variances and Adjustments)."
26 Portland City Code, Section 33.56.140. Section 33.98.020 of

1 the Portland Code provides as follows:

2 "Application and fee. Any applicant whose
3 building or occupancy permit has been refused by the
4 Bureau of Buildings because of deviation from the
5 requirements of this title on the matters and under
6 the circumstances stated in Sections 33.98.015, may,
7 by written appeal, request a variance.

8 "Such written request shall be filed in the
9 office of the Bureau of Planning upon forms prescribed
10 for that purpose. Requests for variances shall be
11 signed by the applicant, and by the property owner if
12 different. The fee for such a request shall be twenty
13 (20) dollars. The request shall be accompanied by
14 three (3) copies of a site plan showing exact
15 dimensions and arrangement of the proposed development
16 or changes in an existing development or use and by a
17 statement of the facts to prove and to show that the
18 granting of the variance would be necessary and would
19 be in the public interest. Other drawings,
20 topographic surveys, photographs, or other material
21 may be required when essential to an understanding of
22 the proposed development in its relationship to
23 surrounding properties.

24 "No new applications shall be considered for
25 which the same or substantially similar variances for
26 the property have been denied until the expiration of
27 six (6) months following the denial."

28 A variance from the blank wall limitations contained in the
29 Portland Code is considered a "major" variance. Section
30 33.98.015(b)(6). In addition to the requirements for variances
31 generally set forth in Section 33.98.020, supra, a major
32 variance is governed by the procedure set forth in Section
33 33.98.025(b), pertinent provisions of which are as follows:

34 "(b) Major Variance. When a variance request
35 meets the criteria as specified for a major variance
36 in Section 33.98.015(b), the procedure shall be as
37 follows:

38 "(1) Application shall be made on the

1 standard variance forms and the filing fee shall
2 be paid.

3 "(2) Notification shall be mailed by the
4 city auditor to the owners of the property in the
5 affected area fourteen (14) days prior to a
6 specified date at which time all written comments
7 shall be received for consideration and
8 twenty-one (21) days prior to a specified date at
9 which a public hearing before the Variance
10 Committee is offered.

11 ***

12 "(3) If no request for a public hearing has
13 been received, the planning director or
14 designated agent, after consultation with the
15 Bureau of Buildings, may by administrative action
16 grant, grant with conditions, modify or deny the
17 variance request with consideration to any
18 written comments received; and the decision and
19 findings shall be made in writing within ten (10)
20 working days of the date specified in Item (2)
21 above for written comments to be received.***The
22 findings of the administrative action shall
23 include the conclusions and the basic facts upon
24 which the decision is based, although such
25 findings need not be transmitted along with the
26 decision but shall be on file in the office of
the Bureau of Planning unless such decision has
been appealed; then such findings shall accompany
the decision to the appeal body for their
consideration. Such decision shall be
transmitted within five (5) days after rendering
the written decision to the applicant, to the
city auditor, to the Bureau of Buildings, and to
any party of record in the case requesting the
same. The decision shall be final unless an
appeal, by a person as defined in 33.12.600 who
has an interest in the action, to the Variance
Committee has been filed in writing with the city
auditor, and copy with the Bureau of Planning
within fourteen (14) days of filing of the
written decision with the city auditor.

27 "(4) If there has been an appeal of the
28 administrative decision, the variance request
29 shall be placed for public hearing on the
30 Variance Committee agenda within thirty (30) days
31 of such appeal, and the standard notification
32 shall be mailed by the city auditor fourteen (14)

1 days prior to the said public hearing.

2 "(5) Upon review at the public hearing the
3 committee, considering all written and oral
4 testimony, may affirm, reverse, or modify in
5 whole or in part any administrative decision; or
6 if an initial action, the committee may grant,
7 grant with conditions, modify or deny the
8 variance request. The committee shall accompany
9 its decision with a statement setting forth its
10 findings and the reasons for the decision it
11 reached; and such decision shall be made in
12 writing. The findings shall include the
13 conclusions and the basic facts upon which the
14 decision is based, although such findings need
15 not be transmitted along with the decision but
16 shall be on file in the office of the Bureau of
17 Planning unless such decision has been appealed;
18 then such findings shall accompany the decision
19 to the appeal body for their consideration. Such
20 decision shall be transmitted within five (5)
21 days after rendering the decision at the public
22 hearing to the applicant, to the city auditor, to
23 the Bureau of Buildings, and to any party of
24 record in the case requesting same. The decision
25 shall be final unless an appeal to the city
26 council has been filed in writing with the city
auditor and a copy with the Bureau of Planning
within fourteen (14) days of the filing of the
written decision of the Variance Committee with
the city auditor."

17 Appeals of variance decisions made by the Variance
18 Committee are governed by Section 33.98.025(c) of the Portland
19 City Code. That section provides as follows:

20 "Appeal to the city council. Any person
21 aggrieved by a decision of the Variance Committee may
22 appeal such decision to the city council by filing
23 with the city auditor a written notice of appeal and a
24 copy with the Bureau of Planning within fourteen (14)
25 days of the written decision, provided that the person
26 is an applicant or applicant's representative whose
application has been denied or specifically
conditioned, or that the person or representative of
that person is one who objected either personally or
in writing to the requested variance on the grounds
that were stated have not been removed. The
procedures for such an appeal shall be as follows:

1 "(1) Filed with the notice of appeal shall
2 be a statement stating clearly the contention of
3 the application for review as to the correct
4 facts or proper application of the zoning code as
5 the case may be.

6 "(2) The Bureau of Planning shall within
7 fourteen (14) days file with the auditor a report
8 on the decision and the findings and a list of
9 persons appearing or writing on the matter before
10 the committee.

11 "(3) If the application for review contains
12 the foregoing requirements, the auditor shall set
13 a date for public hearing before the council and,
14 no less than fourteen (14) days prior thereto,
15 shall give notice thereof to all persons notified
16 of any previous hearings and all persons who have
17 made an appearance in the matter.

18 "(4) Upon review, the council may affirm,
19 reverse, or modify in whole or in part any
20 decision of the committee. The council shall
21 accompany its decision with a statement setting
22 forth its findings and the reasons for the
23 decision it reached. Such affirmation,
24 modification, or reversal may be made a motion,
25 and shall not require a separate permit or
26 ordinance."

16 In granting the variance request in this case, the City of
17 Portland did not follow the above set forth procedures. The
18 Design Committee of the Planning Commission concluded that the
19 Justice Center Building would have to conform to the blank wall
20 limitations contained in the city's code. The Design Committee
21 did not purport to grant a variance to the blank wall
22 limitations. The applicants appealed the Design Committee's
23 decision to the City Council.⁴ Nothing in the notice of
24 appeal filed with the City Council indicated that the
25 applicants were seeking a variance. The first indication that
26 the City Council would be considering a variance appears to

1 have been made in the notice sent by the city auditor to
2 affected property owners. This notice indicated that the City
3 Council would be considering a request for a variance from the
4 blank wall limitations.

5 It is clear from the foregoing that the City Council was
6 making an initial determination as to whether a variance should
7 be granted. Petitioners contend that in making the initial
8 determination instead of acting solely in a review capacity,
9 the City Council violated the procedures set forth in its code
10 and exceeded its jurisdiction. Respondents, in a supplemental
11 memorandum filed with the Board concerning this issue, argued
12 that petitioners' position "ignores the inherent power of the
13 council to interpret and apply the zoning code in a manner
14 appropriate to the circumstances presented" (here design
15 review). Respondents proceed in their supplemental memorandum
16 to present the following argument:

17 "The city council is the body authorized to
18 create, implement and interpret land use controls for
19 the city. Bienz v City of Dayton, 29 Or App 761, 566
20 P2d 904 (1977). The council may establish inferior
21 tribunals (e.g. the design committee) and may limit
22 the jurisdiction of those tribunals (e.g. design
23 committee may not authorize variances). The council
24 may also establish procedures to regulate operation of
25 its inferior tribunals. But these delegations cannot
26 be read to divest the council of the inherent power to
grant the same relief which its inferior tribunals
have been authorized to grant. Since the council
retains this inherent power, the failure of a lower
tribunal to initially take action on a proposal does
not deprive the council of jurisdiction to take action
in its place.

"This fundamental principle is implicit in the
Oregon Supreme Court's decision in South of Sunnyside

1 Neighborhood Association v. Clackamas Board of County
2 Commissioners, 280 Or 3, 569 P2d 1063 (1977). In
3 Sunnyside, petitioners objected on jurisdictional
4 grounds to a comprehensive plan amendment which had
5 been approved by the county commission. The
6 jurisdictional argument was based on the fact that the
7 plan contemplated prior planning commission action on
8 any amendment. Petitioners pointed out that the
9 planning commission had failed to muster the requisite
10 number of votes for a valid recommendation.
11 Accordingly, petitioners contended (as they do in this
12 case) that the county commission '***having adopted
13 the procedural rules which required planning
14 commission action as a condition precedent to board
15 action, was required to follow those rules.'" 280 Or
16 App 7.

17 "Both the court of appeals and the supreme court
18 rejected this jurisdictional argument. As noted by
19 the supreme court, the local governing body was
20 charged by law with the duty to adopt and revise a
21 comprehensive plan. Concomitant with the ultimate
22 duty must be the power to act concerning the plan,
23 regardless of any procedural irregularity (effectively
24 resulting in inaction) by a lower municipal tribunal.
25 280 Or App 7-9.

26 "In the present case, as in Sunnyside, the
27 governing body (the city council) is ultimately
28 responsible for performing land use planning and
29 control functions, including the granting of variances
30 from code requirements in appropriate cases. Here as
31 in Sunnyside, the code contemplates that normally
32 design variances will be first reviewed by the
33 variance committee. However, the code is permissive
34 on this point: it does not expressly make such review
35 a prerequisite to council action. Here, as in
36 Sunnyside the council conducted a full scale (i.e. de
37 novo) evidentiary hearing concerning the
38 appeal/variance request, essentially performing the
39 function otherwise to be played by the lower
40 tribunal."5

41 Respondents also argue that their jurisdictional analysis
42 is consistent with previous opinions of this Board in which we
43 have held that whether a procedural defect is jurisdictional
44 requiring dismissal of an appeal depends upon the intent of the

1 legislative body which enacted the procedural requirement which
2 has been violated. See Tribbet v Benton County, 2 Or LUBA 161
3 (1981); B & L Holdings v City of Corvallis, 1 Or LUBA 204
4 (1980).

5 We agree, in part, with respondents that intent is a
6 critical factor to be analyzed in deciding whether the Portland
7 City Council had authority to grant a variance without
8 following the procedures set forth in the city code. However,
9 the intent with which we are concerned is not whether the City
10 Council intended that failure to follow the procedures set
11 forth in the city code would be jurisdictional, causing the
12 City Council to be required to dismiss a matter before it.
13 Rather, the intent with which we are concerned is whether the
14 City Council intended the code to delegate to the planning
15 director or to the Variance Committee of the Planning
16 Commission what would otherwise be the City Council's power to
17 initially consider a variance request. Thus, the question with
18 which we are concerned is the City Council's intent to delegate
19 this initial responsibility, not whether the City Council
20 intended that failure to follow the procedures would be a
21 jurisdictional defect.

22 The only Oregon case to which we have been cited which is
23 close to the present case from a factual standpoint is South of
24 Sunnyside Neighborhood Association v Clackamas County, 280 Or
25 3, 569 P2d 1063 (1977), cited by respondent in its supplemental
26 memorandum. The distinction, however, between that case and

1 the present case is an important one. In that case a
2 comprehensive plan amendment was sought rather than a variance
3 from a zoning code provision. By statute only the governing
4 body, i.e. the board of commissioners in that case, had the
5 authority to adopt or amend a comprehensive plan. See ORS
6 215.050. The Supreme Court, we think, relied upon this
7 statutory requirement in the following:

8 "****The amendment procedures adopted by the Board
9 appear to contemplate that proposed amendments will
10 normally be considered first by the Planning
11 Commission.² Nothing in those procedures, however,
12 expressly makes planning commission action a necessary
13 prerequisite to consideration by the Board. In light
14 of the statutory provision that the 'county governing
15 body shall adopt and may from time to time revise a
16 comprehensive plan****,'³ we are unwilling to imply
17 such a prerequisite. Rather, we read the plan as
18 prescribing the procedures necessary to valid
19 commission action but not as requiring such action
20 before the Board may consider a plan amendment."
21 (Footnotes omitted).

22 In other words, we interpret the reasoning of the Supreme Court
23 to be that it would not assume the board of commissioners
24 intended the planning commission action to be a prerequisite to
25 the board's authority to consider a plan amendment when, by
26 statute, the board and not a subsidiary planning commission, is
the body charged with the responsibility of adopting
comprehensive plans and making amendments thereto.

In the present case we are not concerned with an amendment
to a comprehensive plan which can only be amended by the
governing body. In this case we are concerned with a variance
to a zoning code provision. A city clearly by statute has

1 authority to delegate to an inferior body such as a planning
2 commission or administrative officer initial review authority
3 and the authority to make a final, binding decision in the
4 absence of an appeal. See ORS 227.160 to 180. In our view,
5 the City of Portland has made such a delegation in its zoning
6 code pertaining to variances. It has delegated to its planning
7 director or to the Variance Committee of the Planning
8 Commission, authority to act initially on variance requests.
9 The City Council reserved in its ordinance only the power to
10 review decisions of the Variance Committee. The City Council
11 did not reserve the power to act initially on variance
12 requests, and there is no procedure set forth in the variance
13 code by which the City Council might do so.

14 Authorities elsewhere seem to adhere to the general
15 proposition that where a governing body has the authority to
16 delegate to an inferior tribunal the power to act on a matter
17 and does, in fact, do so, the governing body must reserve unto
18 itself the authority to act. In Weiner and Associates, Inc. v
19 Caroll, (DEL), 276 Atlantic 2d 732 (1971), the Dover City
20 Council delegated to its Planning Commission certain powers in
21 addition to those placed on the planning commission by state
22 statute. The court held that the powers given to the planning
23 commission could not "summarily" be reclaimed by the council at
24 will:

25 "Such delegated powers and functions may not be
26 reclaimed summarily by the council at will. The
council may not pre-emptorily interpose and substitute

1 itself in the place of the Commission in the
2 performance of powers and duties thus lawfully
3 assigned to the Commission. No where in the statute
4 or the regulations is there reserved to the city
5 council the power to intervene in the Commission's
6 deliberations and decisions or to substitute itself
7 for the Commission; nor is there reserved to the
8 council power summarily to review and reverse
9 decisions made by the Commission. Having failed to
10 reserve the power to review and reverse action of the
11 Planning Commission, it is clear on the face of the
12 Land Subdivision Regulations that the decisions of the
13 Planning Commission made in accordance therewith are
14 final, subject only to judicial review." 276 Atlantic
15 2d 752 at 735.

16 See also McQuillan, Municipal Corporations, 3rd Ed, Section
17 12.40.

18 Based on the foregoing, we conclude that the Portland City
19 Council intended to delegate away the authority to pass
20 initially on variance requests and intended only to reserve the
21 power to review decisions of the Variance Committee. For this
22 reason, the City Council exceeded its authority, and, hence,
23 its jurisdiction in granting a variance request without that
24 request having been first acted upon by the Variance Committee
25 of the Planning Commission. We reverse. Oregon Laws 1979, ch
26 772, section 5(4)(a)(A).

1 FOOTNOTES

2
3 1

4 The Justice Center Building is being built by the City of
5 Portland and Multnomah County. The building will cover a city
6 block and be several stories in height. The property is zoned
7 CIZ, Central Commercial, and Downtown Development Zone. The
8 Central Police Precinct for the city will be located on the
9 first level of the Justice Center Building. Multnomah County
10 Courts and corrections offices will be located on the second
11 level. Prisoner detention facilities will be on the third
12 through seventh levels and additional police offices will
13 occupy the top five levels.

9
10 2

11 Section 33.56.140 of the Code of the City of Portland
12 places a limit on the amount of blank wall space which may be
13 designed into the ground floor of a new building in the
14 Downtown Development Zone, as follows:

15 "Limitation of Blank Walls.

16 "(1) In order to encourage continuity of retail
17 and consumer service and to avoid a monotonous
18 pedestrian environment within the Downtown Development
19 Zone, blank walls at pedestrian levels are prohibited
20 in certain locations.

21 "(2) Along block faces within the AX and C1
22 Zones when combined with the Downtown Development
23 Zone, excepting in the case of residential development
24 on the first story, at least 50% of the width of a new
25 or restructured first story building wall facing a
26 street shall be devoted to pedestrian interests,
display windows or windows affording views into
retail, office, or lobby space.

"(3) Initial determination of whether a proposed
use or building arrangement meets the intent, purposes
and requirement of Section 33.56.140(1) and (2) above
shall be made by the Design Committee of the City
Planning Commission as part of the design review
undertaken pursuant to Chapter 33.62 (Design Zone)
and the provisions of Section 33.114.030(I
Interpretation -- Purpose -- Conflict).

"(4) Any variances from these regulations may be
considered under Chapter 33.98 (Variances and

1 Adjustments)."

2
3

3 The architects "appeal" consisted of a one paragraph
4 letter to the City Council stating:

5 "On behalf of the property owners, City of
6 Portland and Multnomah County, this letter serves to
7 appeal the December 18, decision of the Downtown
8 Design Review Committee as indicated in the Design
9 Committee action notice dated December 24, 1980."

8
9

9 The apparent reason why the applicants appealed the
10 Design Committee's decision to the City Council rather
11 than filing a request for a variance with the Variance
12 Committee is contained in the following excerpt from a
13 memo to the City Council from the chief planner in the
14 city's decision of the code administration:

12 "The architects were advised that a decision on
13 this issue could more readily be reached by appealing
14 the Design Committee's decision to City Council than
15 by submitting a request to the Variance Committee,
16 with possible appeal to City Council."

15
16

16 We note that the city code contemplates variance
17 requests will normally be acted upon first by the planning
18 director, rather than the Variance Committee. See Section
19 33.98.025(b)(3) and (4), quoted supra. There is, however,
20 language in Section 33.98.025(b)(5) which suggests the
21 Variance Committee may pass initially on variance requests:

20 "Upon review at the public hearing, the
21 committee, considering all written and oral testimony,
22 may affirm, reverse or modify in whole or in part any
23 administrative decision; or if an initial action, the
24 committee may grant, grant with conditions, modify or
25 deny the variance request.***"