

MAY 3 4 17 PM '83

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

1
2
3 SOUTH UNIVERSITY NEIGHBORHOOD)
ASSOCIATION, a non-profit)
4 Oregon corporation, and DR.)
ARTHUR HOCKEY,)
5)
Petitioners,)
6)
v.)
7)
CITY OF EUGENE, an Oregon)
8 municipal corporation,)
9)
Respondent,)
10 and)
11)
GENA HUTTON,)
12)
Intervenor-Respondent.)

LUBA No. 82-100

FINAL OPINION
AND ORDER

13 Appeal from City of Eugene.

14 Michael E. Farthing, Eugene, filed a petition for review
15 and argued the cause for petitioners. With him on the brief
were Husk, Gleaves, Swearingen, Larsen & Potter.

16 Timothy J. Sercombe, Eugene, filed a brief and argued the
17 cause on behalf of Respondent City. With him on the brief were
Harrang & Swanson.

18 Gena Hutton, Eugene, filed a brief and argued the cause on
her own behalf.

19 Cox, Board Member; Bagg, Board Member, participated in the
20 decision.

21 Affirmed

5/03/83

22 You are entitled to judicial review of this Order.
23 Judicial review is governed by the provisions of Oregon Laws
1979, ch 772, sec 6(a), as amended by Oregon Laws 1981, ch 748.

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1 COX, Board Member.

2 NATURE OF PROCEEDING

3 Petitioners request this Board to reverse the Eugene
4 Planning Commission grant of a conditional use permit to
5 operate a bed and breakfast facility in a low density
6 residential district (R-1). Pursuant to Eugene city code,
7 conditional use permits are initially heard by a hearings
8 officer with appeal allowed to the Planning Commission. No
9 further appeals are allowed within the city's structure,
10 therefore making the Planning Commission decision the final
11 order for purposes of appeal to this Board. That order is
12 dated November 9, 1982.

13 ALLEGATIONS OF ERROR

14 Petitioners raise the following allegations of error:

15 "Assignment of error no. 1: The City of Eugene, by
16 and through its planning commission and hearings
17 official, improperly construed the Eugene code by
finding the proposed use is a conditionally permitted
use in the R-1, low density residential district."

18 "Assignment of error no. 2: The City of Eugene erred
19 by failing to support their [sic] decision with
substantial evidence in the record."

20 "Assignment of error no. 3: The City of Eugene erred
21 by improperly construing the parking requirements for
the CUP."

22 "Assignment of error no. 4: The City of Eugene erred
23 in adopting findings that are insufficient as a matter
of law to support its decision."

24 FACTS

25 Applicant Gena Hutton requests a conditional use permit
26 (CUP) to allow her to use her single family residence as a "two

1 bedroom bed and breakfast facility" within the City of Eugene
2 and in the general vicinity of the University of Oregon
3 campus. At the initial hearing before the Eugene hearings
4 official, petitioners appeared through their attorney and
5 submitted written and oral testimony in opposition to the
6 conditional use permit request. After the hearings official
7 issued his opinion and findings granting the CUP on August 20,
8 1982, petitioners appealed to the Eugene Planning Commission.
9 After hearing testimony from petitioners and applicant, the
10 Planning Commission on November 9, 1982, adopted the findings
11 and order which are the subject of this appeal. To ensure that
12 the proposed bed and breakfast facility would be compatible
13 with the surrounding property, the planning commission added
14 conditions to the permit. Those conditions include:

15 "No signs shall be permitted on the property to
16 advertise the use as a bed and breakfast facility and
17 the residential appearance of the property as a single
family dwelling shall be maintained.

18 "Review of the compatibility of this use shall be done
19 within one year from the date the conditional use
20 permit is granted. This review will be conducted by
the Hearings Official who will hold a public hearing
to insure that all conditions of the original approval
are being fulfilled."

21 The above identified conditions are in addition to those
22 imposed by the hearings official. The hearings official found
23 the proposed bed and breakfast facility to be a specialized
24 type of lodging "consistent with the above objectives and
25 policies of the metropolitan area general plan."¹ The bed
26 and breakfast facility was also found to be consistent with the

1 intent of the low density residential zoning." In adopting the
2 hearings official's findings and order, the conditions imposed
3 by the hearings official were also adopted. Those conditions
4 include:

5 "1. The four parking spaces as indicated by the
6 applicant are to be maintained. The garage may
7 be used as two parking spaces.

8 "2. The conditional use permit is granted based on
9 the owner and operator of the facility residing
10 at the site. A change in ownership, therefore,
11 will constitute grounds for review of the
12 conditional use permit.

13 "3. All structural and Fire Department criteria must
14 be met regarding alarms and other safety
15 requirements."

16 DECISION

17 Assignment of Error No. 1:

18 "The City of Eugene, by and through its planning
19 commission and hearings official, improperly construed
20 the Eugene code by finding the proposed use is a
21 conditionally permitted use in the R-1, low density
22 residential district."

23 By this allegation of error, petitioners contest the
24 Planning Commission's decision to rely on Section 9.492 of the
25 Eugene Code as the basis for permitting the applicant's use of
26 her residence as a bed and breakfast facility. Eugene Code
27 Section 9.492 provides in relevant part:

28 "* * * Where a use is not authorized, or where
29 ambiguity exists concerning the appropriate
30 classification or procedure for the establishment of a
31 particular use or type of development within the
32 meaning and intent of this ordinance, said use or type
33 of development may be established by Conditional Use
34 Permit in accordance with the provisions of section
35 9.696 to 9.722, until such time as this ordinance is
36 amended."

1 The Planning Commission found that an ambiguity existed
2 concerning the appropriate classification under the Eugene Code
3 for bed and breakfast facilities and, therefore, relied on the
4 provisions of Section 9.492. Petitioners, however, claim that
5 the bed and breakfast facility is controlled by provisions
6 governing "boarding houses" defined by the Eugene Code as:

7 "a building or lodging with or without meals, is
8 provided for compensation but shall not include homes
9 for the aged, nursing homes or group care homes."
Eugene Code Section 9.254.

10 We agree with Respondent City of Eugene's position and deny
11 petitioners' first assignment of error.

12 In adopting the hearings officer's decision, the Planning
13 Commission found that the omnibus conditional use provision
14 (Eugene Code Section 9.492 above) should govern the proceeding
15 before it. The commission concluded an ambiguity existed as to
16 whether "boarding house" was the appropriate classification for
17 the type of use proposed by applicant Hutton.² In holding
18 the applicant's proposal not within the intention of the
19 drafters of the definition of boarding house, the Planning
20 Commission found:

21 "The determination that the bed and breakfast facility
22 is not the same as a boarding house is supported by
the following specific findings:

23 "a. This proposed bed and breakfast facility is of a
24 much smaller scale than would be found in a
boarding house.

25 "b. This facility will be in conjunction with a
26 single-family home with the owner operating and
living at the facility. This type of operation

1 is more residential than a commercial boarding
2 house.

3 "c. The definition of a boarding house found in
4 Section 9.254 could be construed to be many forms
5 of housing such as duplexes and multi-family
6 housing and is clearly ambiguous as to what it
7 does and does not include."

8 In so doing, the Planning Commission also recognized that it
9 had previously determined, pursuant to Eugene Code Section
10 9.492, a bed and breakfast facility to be different from the
11 common definition of a boarding house.³

12 Petitioners claim the city's conclusion that the bed and
13 breakfast facility is not the same as a boarding house is in
14 error because the city failed to support such a determination
15 with its findings. They argue there is no evidence in the
16 record as to what a boarding house is or is not, especially
17 regarding the scope or size of a boarding house. In addition,
18 petitioners assert there is no basis in the Eugene Code for
19 making such a determination. They argue the city was required
20 to adopt a proper definition of a bed and breakfast house
21 through legislative modification of its comprehensive plan or
22 zoning ordinances before it could allow the proposed use. They
23 conclude that a legislative decision has been made in a
24 quasi-judicial setting resulting in sanctioning the location of
25 a boarding house in a single-family residential district. In
26 so doing, petitioners are in essence requesting this Board to
reverse the local government on the grounds that it
impermissibly gave unintended meaning to exact statutory terms

1 while sitting as a quasi-judicial body.

2 Both parties reference either directly or indirectly
3 Springfield Education Association vs. School District, 290 Or
4 217, ___ P2d ___ (1980) as important to this case. This Board
5 has relied on the Springfield Education case on previous
6 occasions as a handy analytical tool for evaluating a local
7 government's interpretation of its ordinances.

8 While we may agree with the respondent's argument that this
9 Board's scope of review over a local government's application
10 of its own ordinances differs from a state court's review of
11 state agency application of state statutes, we find it
12 unnecessary to reject carte blanche, as requested, our use of
13 the Springfield Education ruling. While respondent may be
14 correct in saying that LUBA's scope of review is different in
15 most cases where the city council is acting in its
16 quasi-judicial role, it seems to overlook the fact that the
17 decision in this case is being made by the Planning
18 Commission. As such, the Planning Commission must apply local
19 code provisions which were enacted by the city council while
20 acting in its legislative role. The Planning Commission then
21 is acting much the same as a state agency acts in applying
22 statutes created by the state legislature. Furthermore, we do
23 not need to enter the quagmire of legislative versus
24 quasi-judicial actions in land use decisions in this case
25 because the City of Eugene has provided us a bridge over that
26 quagmire. That bridge is the above cited Eugene Code Section

1 9.492. With the above explanation of LUBA's use of the
2 separation of powers based Springfield Education decision, we
3 nevertheless find the case to be a convenient tool for logical
4 evaluation of fact situations.

5 Applying Springfield Education terminology, the question
6 presented is: when interpreting the Eugene Code 9.254
7 definition of boarding house was the Planning Commission
8 construing a term of exact meaning, an inexact term, or a term
9 of delegation? We find, as did the Planning Commission, that
10 "boarding house," as used in the Eugene code, is not an exact
11 term. The term is over inclusive and includes in its ambit
12 several land uses that are separately defined in the Eugene
13 Code. As petitioners point out, "boarding house" includes "all
14 lodging provided for compensation." The Eugene Code, however,
15 separately defines apartment house, campus living organization,
16 controlled income and rent housing, duplex, single family
17 dwelling, dwelling room, hotel, housing project, and mobile
18 home. All these categories could be lodging provided for
19 compensation yet they are separate from the definition of
20 boarding house. By providing separate provisions for these
21 other categories, the city could not have intended the term
22 "boarding house" to be all inclusive. In order to use the term
23 in specific cases, it needs to have further explanation. Only
24 if one were to conclude that "boarding house" was intended to
25 be an umbrella definition covering several categories of
26 sub-uses does petitioners' argument become persuasive. When

1 read in context with other Eugene Code provisions, we believe
2 the Planning Commission was correct in concluding that the term
3 is not an umbrella. The Planning Commission was sitting as
4 quasi-judicial decider and an ambiguity in the standards it was
5 to apply appeared in the case before it. It was, therefore,
6 allowed to rely on Eugene Code Section 9.492.

7 By adopting Section 9.492, the city recognized, in essence,
8 that it may not have thought of everything when it adopted its
9 code. It, therefore, allowed itself some leeway to rule on
10 conditional use permit requests for uses not previously
11 contemplated. During hearings on those unanticipated requests
12 it established a means by which the final decision could be
13 used to guide subsequent legislative actions aimed at
14 correcting ordinance ambiguities and establishing new
15 ordinances. When relying on this provision, the Planning
16 Commission did not have to, as petitioners argue, first have
17 the City Council legislatively establish a final definition of
18 bed and breakfast facility or correct the ambiguity created by
19 its definition of boarding house. It can grant the use through
20 a conditional use permit until such time as the ordinances or
21 ambiguous provisions are amended.

22 Review of Findings

23 Since we have determined above that the issue raised in
24 petitioners' assignment of error is one of law, it is
25 unnecessary for us to review the City of Eugene's order for
26 findings of fact but rather merely look to its order to

1 determine whether it has explained how it reached its decision
2 pursuant to Eugene Code Section 9.492. We believe its findings
3 do explain the basis for its reliance on Section 9.492, and its
4 adherence to that provision's mandates. When deciding that the
5 term "boarding house" was inexact, the Planning Commission did
6 not, as petitioners urge, have an affirmative duty to request
7 from the City Council a legislative definition of the terms
8 parameters before it could act on the applicant's request.

9 Based on the above, the Board denies petitioners' first
10 assignment of error.

11 ASSIGNMENTS OF ERROR 2, 3 AND 4

12 While petitioners set out assignments of error 2, 3 and 4
13 individually, all those assignments relate to questions of
14 findings and substantial evidence in support thereof. For the
15 sake of discussion, we have combined those three similar
16 allegations of error.

17 The criteria applicable to granting the requested
18 conditional use permit are those set forth in Eugene's
19 Conditional Use Permit Ordinance Code Section 9.702.⁴ Fairly
20 read, petitioners' are contesting the appropriateness of the
21 findings relating to the provisions of Section 9.702.

22 COMPATIBILITY AND PARKING

23 Compatibility

24 Petitioners claim there is no evidence to support the
25 city's findings of compatibility and state the decision is
26 "based on mere conjecture and opinion and, therefore, not

1 supported by substantial evidence in the record." In contrast,
2 they claim they introduced evidence that the impact of this
3 proposed use will be adverse to the neighborhood.

4 Petitioners complain about a failure by the hearings
5 official and, therefore, the Planning Commission to be
6 sensitive to the location of the proposed use. They claim the
7 use creates a potential threat to the residential character of
8 R-1 areas within the South University Neighborhood
9 Association's scope of influence. Petitioners address the
10 provisions of Section 9.702(a) which requires consideration
11 that:

12 the location, size, design, and operating
13 characteristics of the proposed development are such
14 that it can be made reasonably compatible with and
15 have minimal impact on the livability or appropriate
16 development of abutting properties and the surrounding
17 neighborhood * * * *"

18 Our review of the findings reveals a complete discussion of
19 the character of this facility. The findings state that
20 because of the conditions imposed "the site will maintain its
21 residential appearance with no signs or other indications of
22 other than single-family use." In addition, the findings
23 indicate "however the use is characterized, the focus here must
24 be on the operating characteristics of the use that might con-
25 flict with the surrounding single-family residential uses."
26 The hearings official then recognized additional traffic as a
petitioner's announced source of conflict with surrounding uses,
but found that the maximum number of cars using the facility,

1 in addition to the vehicles of the owner/operator, would be
2 only two. It was found parking is available in the garage and
3 driveway and that those spaces will be used in the same manner
4 as they would in traditional single-family residential use.
5 The hearings official then found that the addition of one or
6 two cars will not be incompatible with or have more than a
7 minimal impact on the livability of the abutting properties and
8 the surrounding neighborhood. He also determined petitioners'
9 claim that the use will be incompatible because of the fact
10 that it will house outsiders or "transients" rather than a
11 family of equal size, to have no basis in fact. It is
12 interesting to note petitioners in their brief identified the
13 proposed use to be "perceived" as adverse.

14 Finally, petitioners are concerned about the precedential
15 value the decision will have because of the lack of objective
16 review standards presently existing in the Eugene Code. They
17 argue the precedential nature of the decision was not addressed
18 by the city. Petitioners point to the hearings official's
19 acknowledgment in his order that he is uncertain what form bed
20 and breakfast ordinances now under consideration will take as
21 an indication that the necessary standards are lacking.

22 Contrary to petitioners' allegation, the findings of the
23 hearings official directly address the precedential value of
24 the decision. The findings state in pertinent part:

25 "No one is certain what form the new Bed and Breakfast
26 ordinance will take, but [sic] is reasonable to
anticipate it will provide for these uses in

1 residential zones as such facilities are residential
2 uses by their very nature. The number of these uses
3 allowed in a given area will have to be examined but
4 certainly the existence of one such permit in an area
5 does not make any more likely the approval of future
6 requests.

7 "It is of particular note in the matter of this
8 application, that this site could accommodate a duplex
9 use without any public review or comment. Certainly
10 the use proposed is of lesser impact than a duplex
11 which would accommodate two families full time."
12 Record 71.

13 The seeming lack of standards addressed by petitioners, even if
14 true, are allowed by Code Sections 9.492 supra. The very
15 purpose of 9.492 is to allow flexibility to deal with
16 unforeseen circumstances.

17 Parking

18 Petitioners complain the finding that a maximum number of
19 cars in addition to the vehicles of the owner/operator would be
20 two has no basis in the record. They claim there is nothing
21 such as a condition, which will prevent "two couples from
22 independently driving four vehicles to the facility." They
23 also relate a litany of horrors about how the "transients"
24 will be using the public streets day and night and increase the
25 traffic on the residential streets.

26 Petitioners' concerns were addressed in part by the
27 hearings official when he found:

28 "A two-car garage and a two car driveway currently
29 exist on the site and will satisfy Building Department
30 requirements for parking. The site will maintain its
31 residential appearance with no signs or other
32 indications of other than single-family use. * * *

33 "It is noted, however, the parking area and garage is

1 below this house and not immediately adjacent to the
2 abutting residences. * * *

3 "Potential sources of conflict with surrounding uses
4 involve the fact that more traffic may be associated
5 with the use and that the house will, at times, have
6 people that can be termed 'transients,' as they were
7 described by the neighbor.

8 "The maximum number of cars, in addition to the
9 vehicles of the owner/operator, would be two. As
10 indicated above, parking is available in the garage
11 and driveway on Onyx Street. This parking area will
12 be used in the same manner as it would be for a
13 single-family residence. It cannot be said that the
14 addition of one or two cars will not be reasonably
15 compatible with or will have more than a minimal
16 impact on the livability of the abutting properties
17 and the surrounding neighborhood.

18 "It was not established that only by virtue of being
19 'transients' that the guests of this facility will
20 somehow introduce an undesirable element into this
21 neighborhood. * * *

22 "As indicated above, no external indications of other
23 than single-family use will be present." Record 70-71.

24 To reverse this determination on the bases argued by
25 petitioners, LUBA would be required to conclude that
26 compatibility determinations necessarily include issues on
27 identity of automobiles or persons using the facility, rather
28 than how many persons or cars are generated by the use.
29 Respondent did not interpret its code in that manner and to
30 this Board's knowledge there is no legal, logical or practical
31 reason for LUBA to do so. The Planning Commission concluded
32 there would be no greater external effect resulting from this
33 conditional use than the ordinary effects of those of the uses
34 permitted in the R-1 zone which include truck gardens,
35 churches, home occupation uses, schools, fire stations, and

1 other public buildings. Petitioners cite to no competent
2 evidence in the record to prove the city wrong in its
3 finding/conclusion that two autos will be the maximum number to
4 park at the facility.

5 It should be pointed out that the commission set a one year
6 review period at which time a public hearing will be held to
7 assure that this decision was proper and that the compatibility
8 requirements, parking requirements, etc. are complied with.

9 It is interesting to note that much of the petitioners'
10 compatibilty and parking issues are based on assumed
11 quantitative differences this use will have from those familial
12 uses permitted. In reviewing the code, one cannot overlook the
13 definition in Eugene Code Section 9.254 of family. The code
14 definition of family is such that any of the fears proposed by
15 the petitioners could equally arise from "normal family"
16 activity in a residential neighborhood. Family is defined in
17 the code as

18 "One or more persons occupying a single housing
19 keeping unit or using common housekeeping facilities;
20 provided, unless all members are related by blood or
21 marriage, no such family shall contain over five
22 persons."

21 In their argument, petitioners seem to fail to keep in
22 perspective that even during traditional single-family
23 residential use of the property, more than four vehicles may be
24 used by people visiting the home at any one time. The
25 requirement is that no more than four parking spaces will be
26 allowed for the site and that sufficiently addresses the

1 requirements under Section 9.702(a). (See footnote 1). The
2 petitioners' concerns largely devolve into a difference of
3 judgment. Respondent City applied its conditional use permit
4 provisions and addressed each of the petitioners concerns. It
5 then concluded that the bed and breakfast use proposed would be
6 appropriately placed in the requested location.

7 Service Driveway

8 Next, in connection with petitioners' concerns about
9 parking and traffic, they allege that Eugene Code Section 9.584
10 has been violated. They claim there is nothing in the findings
11 to explain why a service driveway was not required even though
12 such a condition would most certainly mitigate one of
13 petitioners' major concerns regarding the impacts of traffic
14 generated by the bed and breakfast facility. Eugene Code
15 Section 9.584 entitled "Parking Area Design" states:

16 "(1) All public or private parking areas or garages,
17 except those required in conjunction with a
18 single-family or two-family dwelling on a single lot,
19 shall be designed, layed out and constructed in
20 accordance with the provisions of Sections 9.580 to
21 9.598. See Section 9.544(e).

22 "(2) * * *

23 "(3) * * *

24 "(4) Groups of three or more parking spaces, except
25 those in conjunction with single family or two family
26 dwelling on a single lot shall be served by a service
drive so that no backward movement or other
maneuvering of a vehicle within a street, other than
an alley will be required. Service drives shall be
designed and constructed to facilitate the flow of
traffic, provide maximum safety and traffic access and
egress and maximum safety of pedestrian and vehicular
traffic on the site, but in no case shall two and one

1 way drives be less than 20 feet and 12 feet
2 respectively." (Emphasis added).

3 Respondents argue the provision does not apply to the
4 subject proposed use because this remains a single-family
5 dwelling and, therefore, falls within the exception.

6 Petitioners, on the other hand, claim that the single-family or
7 two-family dwelling exception is inapplicable since the
8 additional parking is not for the use of the family members or
9 their occasional, personal guests but rather would be used by
10 paying customers of the bed and breakfast facility.

11 We agree with the respondent. The Code language does not
12 appear to rely on who personally uses the parking, but rather
13 whether the parking is "in conjunction with a single-family or
14 two-family dwellings * * * *" The "dwelling", i.e. structure,
15 in question here remains single-family. Petitioners' argument
16 relies on the concept that once a single family dwelling is
17 used for income generating purposes, the nature of its use
18 changes; and, therefore, it is no longer a single family
19 dwelling subject to the exception in Section 9.584. Such an
20 argument ignores the reality that single family dwellings held
21 for investment or economic reasons can be rented or leased to
22 non-owner families or groups of individuals such as students.
23 The use in such a case does not alter the fact the facility is
24 still a "single family dwelling." The petitioners must keep in
25 mind that the governing conditional use permit provision,
26 Section 9.702, allows a use whose "operating characteristics

1 are such that it can be made reasonably compatible * * * *"
2 See Footnote 4. The city's findings address the parking issue
3 and conclude use of this single family dwelling will be
4 compatible with abutting properties. The protections provided
5 by Section 9.584, i.e. preventing backward movement or other
6 maneuvering of a vehicle within a street, are encompassed
7 within the city's reasonably compatible conclusion and its
8 findings the "parking area will be used in the same manner as
9 it would be for a single-family residence."

10 Much of petitioners' argument apparently is based on a
11 misreading of the Planning Commission's findings and order
12 since they allege, in effect, that additional parking spaces
13 were required. The relevant finding merely states that
14 existing parking space be "maintained." The hearing official
15 found:

16 "The maximum number of cars, in addition to the
17 vehicles of the owner/operator, would be two. As
18 indicated above, parking is available in the garage
19 and driveway on Onyx Street. This parking area will
be used in the same manner as it would be for a
single-family residence."

20 Final approval was then condition on:

21 "The four parking spaces as indicated by the applicant
22 are to be maintained. The garage may be used as two
parking spaces."

23 Apparently in the alternative, petitioners then argue
24 Eugene Code Section 9.586(a)(1) has been violated because
25 additional parking spaces were not required. That code section
26 requires that single-family dwellings shall have two parking

1 spaces for "each dwelling unit on a single lot." We see no
2 violation, however, because "dwelling unit" is defined in
3 Eugene Code Section 9.254 as:

4 "One or more habitable rooms which are occupied or
5 which are intended or designed to be occupied by one
6 family with housekeeping facilities for living,
7 sleeping, cooking and eating." (Emphasis added).
8 Record 115.

9 The record reveals that only two existing bedrooms will be used
10 in this endeavor. There is nothing in the record to indicate,
11 nor do petitioners allege, there are cooking facilities in the
12 bedrooms. Therefore, we do not agree that two dwelling units
13 have been added. The single-family dwelling remains a single
14 dwelling unit by definition. Consequently, no additional
15 parking spaces are required by Section 9.586(a)(1).

16 Next petitioners claim:

17 "The proposed stacking of cars may also violate Eugene
18 Code Section 9.538(5) which requires a twenty-foot
19 driveway measured from the street to the area where
20 permanent parking occurs." (Emphasis added).

21 Petitioners assert "this setback" has not been made a condition
22 of approval.

23 We deny petitioners' claim for the following reasons.

24 First, the code provision addressed by petitioners requires a
25 minimum of 18 feet of space, not 20 as alleged. Second,
26 petitioners do not argue there is less than the required 18
feet of driveway now available at the site. Third, they do not
explain how the purpose of this code section, "to require
parking * * * wholly on private property," has been violated.

1 Finally, the hearings official found that

2 A two car garage and a two car driveway currently
3 exist on the site and will satisfy Building Department
4 requirements for parking." Record 70.

5 In their last assignment of error, petitioners make a
6 blanket assertion that the findings are conclusional and
7 otherwise inadequate. Much of their emphasis is in effect a
8 collateral attack on the city's reliance on code sections 9.492
9 and 9.702 which we discussed in our rulings in assignment of
10 error one and previous sections of this opinion. We believe
11 the findings meet the test announced by the Oregon Supreme
12 Court in Sunnyside Neighborhood v. Clackamas Co. Comm., 280 Or
13 3, 21, 569 P2d 1063 (1977), wherein it stated:

14 "No particular form is required, and no magic words
15 need be employed. What is needed for adequate
16 judicial review is a clear statement of what
17 specifically, the decision-making body believes, after
18 hearing and considering all the evidence, to be the
19 relevant and important facts upon which its decision
20 is based."

21 Affirmed.

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FOOTNOTES

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"Objective No. 2: Provide residential areas that offer a variety of housing densities, types, sizes, costs, and location to meet projected demand.

"Objective No. 3: Locate residential development in relation to the availability of employment, commercial services, public utilities and facilities, and transportation modes.

"Policy No. 2: Encourage economic development which utilizes local and imported capital, entrepreneurial skills, and the resident labor force."

10 2

Boarding houses are allowed outright in R-4 zones within Eugene.

13 3

Black's Law Dictionary, Revised Fourth Edition, 1968, defines "Boarding House" as:

"A house where the business of keeping boarders generally is carried on, and which is held out by the owner or keeper as a place where boarders are kept; one for the accommodation of those who enter under contract for entertainment at a certain rate for a certain period of time, as for a week or month, at a rate of compensation agreed on; a house kept principally for the residence of permanent boarders."

20 4

Section 9.702 provides:

"General Conditional Use Permit Criteria. A Conditional Use Permit may be granted only if the proposal conforms to all the following general use permit criteria, as well as to all other applicable use permit criteria:

"(a) That the location, size, design, and operating characteristics of the proposed development are such that it can be made reasonably compatible with and have minimal impact on the livability or appropriate development of abutting properties and the surrounding neighborhood, with

1 consideration to be given to harmony in scale, bulk,
2 coverage, and density; to the availability of public
3 facilities and utilities; to the generation of traffic and
4 the capacity of surrounding streets, and to any other
5 relevant impact of the development.

6 "(b) That the location, design, and site planning of
7 the proposed development will provide a convenient and
8 functional living, working, shopping, or civic environment,
9 and will be as attractive as the nature of the use and its
10 location and setting warrants.

11 "(c) That the proposed development will be consistent
12 with the objectives of the Zoning Ordinance, the General
13 Plan, and any other applicable plans or policy resolutions
14 as adopted by the city."
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