

LAND USE
BOARD OF APPEALS
SEP 9 4 51 PM '87

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

3 CORBETT/TERWILLIGER/LAIR HILL)
4 NEIGHBORHOOD ASSOCIATION,)

84
LUBA Nos. 87-063/064

5 Petitioner,)

FINAL OPINION
AND ORDER

6 vs.)

7 CITY OF PORTLAND,)

8 Respondent.)

9 Appeal from City of Portland.

10 Neil S. Kagan, Portland, filed the petition for review and
argued on behalf of petitioners.

11 Ruth Spetter, Portland, filed a response brief and argued
12 on behalf of Respondent City.

13 Susan G. Whitney, Portland, filed a response brief and
aruged on behalf of Respondent Beartree Buildings.

14 DuBAY, Chief Referee; BAGG, Referee; HOLSTUN, Referee;
15 participated in the decision.

16 REMANDED

09/09/87

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

1 Opinion by DuBay.

2 NATURE OF DECISION

3 Petitioners appeal two decisions. The first approves a
4 parking lot. The other approves a variance from the
5 requirement of free access to each vehicle in the lot. The
6 variance will permit parking by a valet/parking lot attendant.

7 FACTS

8 The property comprises the south one third of a superblock
9 in the General Commercial (C2) zone. A superblock is defined
10 in the code as a continuous area of at least 75,000 square feet
11 of private property within the enclosure formed by surrounding
12 streets and which includes more than 5,000 square feet of
13 vacated streets. Portland Community Code (PCC), Section
14 33.12.765. The superblock is bounded by S.W. Barbur Boulevard
15 (Barbur) on the west, S.W. Third Avenue (Third) on the east,
16 S.W. Sheridan Street (Sheridan) on the north, and S.W. Meade
17 Street (Meade) on the south. Most of the property is
18 approximately 30 feet below the grade of Barbur, the only
19 improved street adjacent to the site. The property has steep
20 vegetated slopes next to Barbur on the west and Meade on the
21 south. Meade does not connect to Barbur.

22 The city has special development regulations for
23 superblocks in certain commercial zones, including the C2 zone,

24 "to assure that such developments do not adversely
25 impact light and air available to City residents and
26 visitors, and to assure proper access for pedestrians
from surrounding area locations to and through the
superblock." PCC 33.91.020.

1 The code allows adjustments to the design requirements of the
2 superblock development standards. PCC 33.98.270.

3 The city issued a building permit for the parking lot on
4 October 1, 1984. Shortly after construction started, however,
5 the city planning director became aware that the project was
6 not reviewed for compliance with the newly enacted superblock
7 regulations when the permit was issued. A stop work order was
8 posted on the property. Because some excavation occurred
9 before construction was stopped, the applicant sought and
10 obtained permission to clean up the area and stabilize the
11 slopes. A second building permit was issued for construction
12 of retaining walls only.

13 The owner of the property made a new application seeking
14 approval of the parking lot under the superblock regulations.
15 The application requested two adjustments. One adjustment
16 would waive the requirement that a plaza be constructed on the
17 property, or, in the alternative, that the plaza would be
18 reduced in size to reflect the owners proportionate ownership
19 of the superblock. The second adjustment would waive the
20 requirement for a walkway across the superblock between Third
21 and Barbur.

22 The city's design commission approved the application but
23 denied the request to eliminate the walkway. The design
24 commission's decision was appealed to the city council. After
25 hearings, the council approved the proposal but modified the
26 walkway requirement. The modification requires a walkway along

1 Third to Meade on the south boundary of the property.

2 Petitioner's appeal followed.

3 While the parking lot approval procedure was pending, the
4 owner applied for a variance from the city's parking lot
5 requirement of free access to each vehicle in the parking lot.
6 The requested variance would allow parking only by a
7 valet/attendant. The arrangement will allow an increase in the
8 number of parking spaces on the lot. The city's variance
9 committee approved the request. The decision was appealed to
10 the city council which affirmed the approval. Petitioner also
11 appeals the variance approval.

12 FIRST ASSIGNMENT OF ERROR

13 Petitioner alleges the city issued two building permits for
14 the parking lot development in violation of PCC 33.91.030(a).
15 This code provision prohibits building permits in superblocks
16 until the development is approved under the superblock code
17 provisions. Petitioner recognizes the city's claim that the
18 second building permit, for the retaining walls was issued in
19 reliance on Section 303 of the Uniform Building Code which
20 allows partial building permits at the owner's risk before
21 complete construction plans are approved. Petitioner says such
22 partial permits are not allowed in this instance by the terms of
23 the following code provision:

24 "Nothing in this Title [24, Building Regulations] is
25 intended to permit the establishment...of any
26 structure in any zone which is not in accordance with
the applicable sections of...Title 33 [Planning and
Zoning Regulations]." PCC 24.10.040.

1 As we understand petitioner's claim, petitioner is
2 challenging the city's decision to issue the building permits.
3 The building permits, however, are not the decisions at issue
4 in this appeal. The permits pre-dated approval of the
5 application for a parking lot in the superblock. The permits
6 have no bearing on the question whether the parking lot meets
7 the superblock code requirements, and no party has asserted
8 they do.

9 The time to challenge issuance of the building permits has
10 long passed. See Cope v. City of Cannon Beach, ___ Or LUBA ___
11 (1987) (LUBA No. 87-023, August 7, 1987). We will not consider
12 a challenge to them in this appeal. The assignment of error is
13 denied.

14 SECOND ASSIGNMENT OF ERROR

15 Petitioner alleges the findings are inadequate and fail to
16 show compliance with applicable criteria. Specifically,
17 petitioner says the city made no finding that the required open
18 spaces, plazas, and walkways meet the following standard:

19 "Where open spaces or plazas are provided, they
20 shall be accessible from required walkways either by
21 way of connecting walkways or by being located
22 directly adjacent to one or more walkways or
23 sidewalks." (Emphasis supplied) PCC 33.91.030(c)

24 The city found that the code requires 12,800 square feet of
25 walkways, open spaces and plazas in the superblock.¹ The
26 city also found:

"The proposal, as submitted, includes about 16,000
square feet of landscaped open space. Additional open

1 space is provided on the other portion of the
2 superblock located north of the parking lot site."
Record at 33.

3 Petitioner contends these findings address only the amount
4 of space dedicated to meeting the code requirements but say
5 nothing about accessibility.

6 Other council findings do address the issue. The findings
7 describe the walkways and plaza as a continuation of the plazas
8 and open spaces to the north and the pedestrian circulation
9 patterns between residential neighborhoods to the south and
10 downtown Portland. Record at 37-38. The findings do not use
11 the word "accessibility." However, the descriptions of
12 pedestrian circulation through the superblock along Third
13 adequately describe walkways, plazas and landscaped areas that
14 provide public access rather than impede it. To express
15 compliance with applicable criteria, findings need not always
16 be expressed in the exact wording of the criteria. The
17 challenged findings adequately address PCC 33.91.030(c).

18 The assignment of error is denied.

19 THIRD ASSIGNMENT OF ERROR

20 As noted above, strict compliance with certain zoning code
21 provisions may be modified by adjustments to permit development
22 deemed consistent with the plan.² The code includes general
23 standards applicable to all adjustments, PCC 33.98.120, and
24 specific standards related to specific types of adjustment.
25 The specific criteria applicable to adjustments in the
26 superblocks are set forth in PCC 33.98.280 as "Alternative

1 Design Adjustments." The city approved two adjustments for the
2 parking lot, one for the location of the walkways and the other
3 for the size of the plaza.

4 Petitioner alleges the city's findings regarding the two
5 adjustments are inadequate and not supported by substantial
6 evidence. We take up petitioner's challenges to the walkway
7 adjustment first, followed by review of the plaza adjustment.

8 Walkway Adjustment

9 Petitioner's basic concern is that the adjustment permits
10 the parking lot to develop without providing pedestrian access
11 through the superblock from Third to Barbur. Petitioner first
12 claims the findings fail to set forth facts and reasons showing
13 compliance with PCC 33.98.120(b). To comply with this
14 criterion, the proposal must not cause a substantial adverse
15 effect upon environmental conditions or property values in the
16 vicinity. Petitioner says the findings addressing this
17 criterion merely parrot the language of the code without
18 explaining how the facts relate to the standard.

19 The findings addressing this general adjustment criterion
20 state:

21 "It will not cause an adverse effect upon
22 environmental conditions or property values in the
23 vicinity. In fact, the walkway/staircase across SW
Barbur Boulevard would create a hazard." Record at
36.

24 Petitioner is correct that the first sentence of the
25 finding states a conclusion using the language of the
26 criterion, and the second sentence fails to address

1 environmental conditions and property values. Other findings,
2 however, emphasize how the proposed walkway along Third will
3 enhance neighborhood-wide pedestrian patterns and will provide
4 a pleasant, convenient and safe pathway, consistent with
5 existing pedestrian patterns, with a landscaped buffer between
6 the walkways and the parking area. Record at 36-38. Such
7 findings do address environmental conditions in the vicinity.
8 The first subassignment of error is denied.

9 Petitioner next alleges the findings fail to identify
10 comprehensive plan policies and public concerns and explain how
11 they were weighed to determine if the adjustment is in the
12 public interest. According to petitioner, PCC 33.98.120(d)
13 requires such findings. This general adjustment standard
14 requires a determination that:

15 "The benefit of granting the adjustment in support of
16 a specific policy has been weighed against other
17 relevant Comprehensive Plan policies and public
18 concerns and has been found to be in the public
19 interest."

20 Although this provision certainly could be clearer and more
21 precise, it does require consideration of relevant plan
22 policies and public concerns. The findings do not specify what
23 plan policy, if any, is furthered by the adjustment or how any
24 other plan policies bear on the decision.³ As noted below,
25 the city considered pedestrian safety a major consideration in
26 the rejection of a walkway ending at Barbur near the S.W. Meade
27 Street alignment. While safety may be a legitimate, or even
28 the most important, factor in the city's selection of walkway

1 alternatives, the code nevertheless requires weighing relevant
2 comprehensive plan policies when reaching a decision that an
3 adjustment is in the public interest. The city made no
4 findings concerning plan policies bearing on the adjustment.
5 We, therefore, sustain the subassignment of error.

6 Petitioner next challenges the city's finding that the
7 adjustment is the minimum required to achieve the proposed
8 benefit as required by PCC 33.98.120(e). Petitioner alleges
9 the city's conclusion that the criterion is met is not
10 supported by a findings of fact and does not explain how the
11 the criterion is met.

12 We disagree. The findings reveal the city's principal
13 reason for rejecting the walkway alignment championed by
14 petitioner was concern for pedestrian safety. As an example,
15 the city found:

16 "Presently, no one can use the now vacated SW Arthur
17 Street alignment to reach SW Barbur Boulevard because
18 of the grade change from former SW Arthur Street to SW
19 Barbur Boulevard. If a staircase is constructed as
20 proposed in Alternative A, a dangerous opportunity may
21 be created for pedestrians to cross SW Barbur
22 Boulevard. If a barrier is added to prevent crossing
23 SW Barbur at this location, pedestrians would not
24 experience any new additions to the surrounding
25 pedestrian networks. Upon reaching the top of the
26 staircase from the east, pedestrians could turn north
and reach the intersection of SW Barbur Boulevard and
SW Sheridan Street. However, this intersection can
also be reached by traveling north on SW Third Avenue
to SW Sheridan Street, which contains a wider, safer
sidewalk than the inadequate width of the sidewalk
along the east side of SW Barbur Boulevard. Or
pedestrians might turn south and walk along SW Barbur
Boulevard without benefit of a sidewalk. Eventually
the barrier might be breached and pedestrians could
attempt to cross the street.

1 "The SW Third Avenue route would keep pedestrians away
2 from SW Barbur Boulevard except at two loctions [sic],
3 SW Barbur Boulevard at SW Sheridan Street and SW
Barbur Boulevard at SW Hooker Street where there is a
light and safe pedestrian crossing." Record at 40.

4 Given the stated purpose of the Alternative Design
5 Adjustment regulations to protect the general public, these
6 findings are adequate to explain the basis for the city's
7 determination that the selected walkway location is the minimum
8 necessary to achieve that public benefit. Accordingly, this
9 subassignment of error is denied.

10 Petitioner's next subassignment of error alleges the city
11 improperly construed PCC 33.98.120(c) requiring pleasant and
12 convenient pathways within superblocks. According to
13 petitioner this provision must be construed to exclude pathways
14 along the borders of superblocks. The drawing of the proposed
15 walkway shows the walkway will be located on the applicant's
16 property west of the property line adjacent to Third Street.
17 Record at 69. The walkway is therefore within the exterior
18 boundaries of the superblock.

19 We note, too, the provision in PCC 33.91.030(c) that

20 "Walkways, open spaces, and plazas may be located
21 anywhere on the site the developer chooses."

22 Given this latitude in the regulations, the city's decision
23 to require the walkway at the selected location is not an
24 unreasonable interpretation of the code standard. Petitioner's
25 subassignment of error is denied.

26 PCC 33.98.280(d) requires that adjustments:

1 "Reinforce the special identity or character of the
2 area by relating new buildings to surrounding
3 buildings, plazas, malls, walkways and other nearby
4 major facilities."

5 Petitioner claims the decision violates this requirement
6 because the walkway adjustment will not relate the development
7 to the Metro YMCA or Duniway Park across Barbur.

8 We do not agree with petitioner's conclusion that the
9 decision is defective for failure to show the development's
10 relationship with particular nearby facilities. As noted, the
11 city considered safety of pedestrians crossing Barbur as a
12 major factor in the walkway alignment. Instead of an adjunct
13 to facilities across Barbur, the parking lot is described as
14 serving office buildings on the eastside of Barbur, and the
15 walkway as a continuation of the historical gateway between
16 residential areas and downtown commercial areas. The city
17 correctly applied PCC 33.98.280(d) by emphasizing this
18 historical relationship. This subassignment of error is denied.

19 Petitioner next complains the refusal of the city to
20 approve a walkway connecting Third and Barbur violates the
21 following adjustment conditions:

22 "...a network of plazas and open spaces that are
23 connected along major pedestrian and/or vehicular
24 traffic routes." PCC 33.98.280(e);

25 "...good linkages to the sidewalk circulation system
26 for pedestrians." PCC 33.98.280(h).

27 Petitioner argues that only a cross connection between
28 Third and Barbur will satisfy these provisions. The city's
29 contrary review, expressed in the findings, emphasizes

1 historical pedestrian patterns and a safe connection to the
2 sidewalk system.

3 We do not read the cited criteria to require connection
4 with every street or sidewalk near the superblock. The
5 regulations are phrased in subjective terms such as "pleasant
6 and convenient," "good linkages," and "clear, safe and pleasant
7 connections." The exclusion of a walkway location for safety
8 reasons is not an unreasonable application of these standards.
9 We do not read the criteria, as petitioner suggests we should,
10 in a way that requires a walkway connection to a particular
11 sidewalk or street. This subassignment of error is denied.

12 Petitioner also alleges no substantial evidence supports
13 the finding that a connection to Barbur from the applicant's
14 property has never been part of any circulation plan.

15 Petitioner contends the finding addresses PCC 33.98.280(f).

16 This criterion states:

17 "Locate structures along a street or circulation
18 system for pedestrians to foster a sense of enclosure
19 as appropriate to the character of the area. At other
locations, provide landscaping to create or reinforce
a commercial park or office park setting."

20 This code provision includes no requirement that superblock
21 walkways must be located in accordance with specific
22 circulation plans. While city plans may have a bearing on
23 whether a proposed location meets the design criteria, the
24 provision above quoted does not address the issue.

25 Consequently, petitioner's claim, even if true, would not

26

1 affect the findings addressing this criterion.

2 In fact, the challenged finding addresses the following
3 criterion:

4 "Develop a strong positive character in the area by
5 creating or reinforcing a sense of gateway at
6 appropriate transitions within and at the edge of the
7 area." PCC 33.98.280(g).

8 The city found the Arthur - Third - Sheridan pattern and the
9 S.W. Second and First Avenues have been the historical gateways
10 between the residential neighborhood and downtown commercial
11 areas. The city found:

12 "The South Portland Circulation Study adopted by the
13 city council in 1978, confirms that circulation and
14 gateway system. The proposed connection strengthens
15 this system by adding the link long SW Third Avenue to
16 SW Meade Street." Record at 37.

17 The evidentiary support for these essential findings is not
18 challenged. Petitioner's evidentiary claim is denied.

19 Plaza Adjustment

20 The code requires superblocks to provide plazas equal to 5
21 percent of the superblock area. This would require plazas
22 totalling 7,400 square feet for the superblock under
23 consideration. The applicant, as owner of one third of the
24 superblocks area, requested a downward adjustment to 2,580
25 square feet.

26 Petitioner's first challenge to the plaza adjustment
contends the findings fail to address the requirement that the
adjustment will not cause substantial adverse effects upon
environmental conditions. Petitioner also alleges the city's

1 finding that property values would not be reduced is not
2 supported by substantial evidence.

3 The relevant criterion requires findings that an adjustment
4 "will not cause a substantial adverse effect upon
5 environmental conditions or upon property values in
6 the immediate vicinity of the property of the
7 applicant." PCC 33.98.120(b).

8 The city found property values would not be adversely
9 affected because the plaza is a positive design element, and
10 the site is separated from private property by a right-of-way,
11 landscaping and a change in grade. Record at 39.

12 The findings do not use the term "environmental
13 conditions." However, the findings describe the plaza as
14 "meeting the objective of a quality environment" by its
15 extensive landscaping. Record at 39. Further, the findings
16 state:

17 "The landscaping will provide for pedestrians a
18 significant buffer from the Bear Tree parking lot
19 because pedestrians will have a minimum of 15 feet of
20 landscaping between staircase and parking lot."
21 Record at 38.

22 We believe these findings adequately address the code's
23 requirement to protect the environment, contrary to
24 petitioner's allegations that no findings address the
25 criterion. This subassignment of error is denied.

26 Petitioner's second challenge to the plaza adjustment
re-asserts the charge that the city failed to identify and
consider any relevant comprehensive plan policies in accordance
with PCC 33.98.120(a). Petitioner correctly points out that

1 the city made no findings identifying and weighing
2 comprehensive plan policies in either the walkway or the plaza
3 adjustment. For the reasons set forth in our discussion of the
4 same challenge to the walkway adjustment, we sustain this
5 subassignment of error.

6 In summary, petitioner's claims that the city failed to
7 consider its comprehensive plan policies in granting the two
8 adjustments are sustained. Petitioner's other claims in this
9 assignment of error are denied.

10 FOURTH ASSIGNMENT OF ERROR

11 The applicant applied for, and received, a variance from
12 the code requirement that "each space shall be accessible
13 without moving another vehicle." PCC 33.82.030(f).⁴

14 Petitioner first alleges the city misconstrued its
15 ordinance requirement that variances may be granted only if
16 "literal interpretation and enforcement of the
17 regulations applicable to the property would result in
18 practical difficulties or unnecessary hardships." PCC
19 33.98.010.

20 Petitioner contends the property can be used for a parking
21 lot without the variance, and the only hardship related in the
22 findings is the applicant's wish to increase the number of
23 parking spaces. Petitioner says the city misconstrued the
24 "practical difficulties or unnecessary hardship" criterion to
25 reach its decision.

26 The city found steep slopes on the west and south portions
of the property result in a limited amount of area for a

1 surface parking lot. The city also found a need for additional
2 parking spaces to accommodate nearby office buildings because
3 on-street parking in the area is either prohibited or limited
4 to residents of the area.

5 The city says that the code requires a finding of either
6 practical difficulties or unnecessary hardship. The city
7 argues that the physical constraints of the site, exacerbated
8 by the shortage of nearby on-street parking spaces, constitute
9 practical difficulties meeting the variance standard.

10 Some jurisdictions do consider "practical difficulties" and
11 "unnecessary hardships" as separate standards. See Anderson,
12 American Law of Zoning, 3rd Ed, Section 20.10, 20.51. Where
13 the distinction is recognized, practical difficulties is
14 treated as a less strict standard than unnecessary hardship and
15 is applicable to area variance cases only. See Anderson,
16 supra, at Section 20.49. The distinction has not been
17 recognized in Oregon. While the courts have not refused to
18 recognize the distinction, the two terms have not been
19 considered separate standards in those variance cases where
20 "practical difficulties or unnecessary hardship" was the
21 ordinance standard under review. See Lovell v. Independence
22 Planning Comm., 37 Or App 3, 586 P2d 99 (1978); Moore v. Bd of
23 Clackamas Co. Comm'rs, 35 Or App 39, 580 P2d 583 (1978);
24 Erickson v. Portland, 9 Or App 256, 496 P2d 726 (1972).
25 Further, a distinction between use variances and area variances
26 is not recognized in this state. Bienz v. City of Dayton, 29

1 Or App 761, 566 P2d 904 (1977).

2 Practical difficulties or unnecessary hardship is a
3 demanding standard, requiring proof that the benefits of
4 property ownership would be prevented by strict enforcement of
5 zoning regulations. Erickson v. City of Portland, supra, at
6 261. While no precise definition of the terms is available to
7 guide decisionmakers, judicial precedent makes it clear that
8 the difficulties must be more than an obstruction of the
9 personal desires of the landowner. Further, any hardship must
10 be self created. Moore v. Bd of Clackamas County Comm'rs,
11 supra, at 45.

12 While the applicant did not create the distinctive
13 topography of the site, the applicant asserts the vegetated
14 slopes satisfy the open space requirements of the superblock
15 regulations. Assuming the steep slopes are not dedicated to
16 open spaces to satisfy these regulations, nothing in the
17 findings, or anything in the record cited to us, states how
18 many parking spaces could be built if the steep slopes were not
19 present on the property. The application requests a waiver of
20 the access requirements merely to increase the number of
21 parking spaces that can be built under existing conditions
22 based on the need for additional parking spaces in the area.
23 The additional spaces are desired by the applicants to meet
24 that need.

25 Although the desire to build the maximum number of spaces
26 on the parking lot may be prevented by topographic conditions,

1 the practical difficulties or unnecessary hardship standard
2 demands more than frustration of the applicant's wishes. We
3 therefore sustain petitioner's claim on this subassignment of
4 error.

5 Petitioner also alleges the decision fails to adequately
6 address the following criterion:

7 "The variance is required in order to modify the
8 impact of exceptional or extraordinary circumstances
9 or conditions that apply to the subject property that
do not apply generally to other properties in the
vicinity;"

10 The city found the topographical conditions of the site
11 constitute exceptional circumstances but did not find such
12 circumstances do not apply generally to other properties in the
13 vicinity. The city argues that evidence in the record shows
14 that topographic conditions in the area and that the steep
15 slopes affect only a few properties. However, whether the
16 evidence shows the criterion is met is not for us to decide.
17 That is the city's obligation. Sunnyside Neighborhood v.
18 Clackamas Co. Comm., 280 Or 3, 569 P2d 1063 (1977). The city's
19 findings do not explain how the criterion is met. Petitioner's
20 claim is sustained.

21 Petitioner's last challenge is directed at the findings
22 addressing the following variance criteria:

23 "(1) It will not be contrary to the public interest or
24 to the interest and purpose of this Title (33,
Zoning and Planning) and particularly to the zone
involved."

25 * * *

1 "(3) It will not cause substantial adverse effect upon
2 property values or environmental conditions in
3 the immediate vicinity or in the zone in which
 the property of the applicant is located." PCC
 33.98.010(a).

4 We deny petitioner's claim. The city found the public
5 interest could be served by providing relief from congested
6 parking on nearby streets and an opportunity to provide
7 after-business-hour parking for members of the nearby YMCA.
8 The decision also explains the free access requirement in the
9 code is intended to protect maneuverability in unattended
10 parking lots. The city reasons that the use of parking
11 attendants to move cars would make such protection
12 unnecessary. This explanation adequately addresses PCC
13 33.98.010(a)(1).

14 As noted above, the city denied applicant's request to
15 reduce the amount of internal landscaping required by the
16 code. The findings describe how the internal landscaping, when
17 mature, will obscure the paved surface from higher residences
18 on the south. The findings conclude:

19 "Both the potential relief from traffic congestion
20 provided by the attendant parking and the visual
21 relief provided by requiring the full amount of
22 internal landscaping on the site will help to improve
23 a negative environmental condition in the neighborhood
 (congested onstreet parking in unbroken paved lot) in
 a way that should have been neutral or positive effect
 on property values in the surrounding neighborhood."
 Record at 15.

24 These findings are adequate to explain how the city views
25 the proposal meets the criterion of PCC 33.98.010(a)(3). The

1 subassignment and the assignment of error are denied.

2 The decision is remanded.

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FOOTNOTES

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4 The code requires superblock developments to include
5 walkways, open spaces and plazas in a superblock equal to
6 50 percent of the area of the vacated streets incorporated
7 in the superblock. PCC 33.91.030(b). The superblock here
8 includes 12,782 square feet resulting from the 1971
9 vacation of Arthur Street and 12,800 square feet
10 previously vacated in the northern two thirds of the
11 superblock.

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13 2
14 The purpose for the adjustment provisions are stated
15 as follows:

16 "The purpose of this [adjustment] Chapter is to
17 provide a mechanism that will allow provisions of
18 Title 33 to be adjusted when such action will allow
19 development that is supportive and consistent with the
20 City's Comprehensive Plan and plans contained
21 therein. The adjustment process recognizes the fact
22 that the zoning regulations apply to a broad range of
23 circumstances, and in some cases their strict
24 application makes desirable development impractical or
25 impossible. Detailed public review of individual
26 proposals through the adjustment process provides a
27 mechanism to adjust regulations while preventing the
28 specific problems that the regulations were created to
29 deal with."

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32 The city alleges comprehensive plan policies were
33 considered by the city, citing to a Bureau of Planning memo
34 that comments on the application. Although the memo was made
35 an exhibit to the final order, the memo was not incorporated as
36 a finding in the final order. The memo recommends construction
37 of both walkway alternatives offered by the applicant,
38 including the walkway rejected by the council as unsafe.
39 Nothing in the order indicates the memo was adopted by the
40 council as either the factual base or explanation for its
41 decision.

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43 4
44 We have some doubt about the number of spaces approved by
45 the city. Respondent-intervenor alleges the city approved 158
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1 spaces. Respondent-intervenor's brief at 13. The findings
2 note two variances were applied for. One would waive the space
3 per vehicle requirement to allow a 158 space lot. The other
4 request was to reduce the square feet of required internal
5 landscaping from 2,327 to 190. The city denied the latter
6 request and found:

7 "Although the topography of the site results in
8 restricting the actual buildable area for the parking
9 lot, there are still enough room to design a 144 space
10 attendant parking lot with the required internal
11 landscaping." Record at 105.

12 Although the above finding indicates the city approved a 144
13 space lot with all required internal landscaping, the decision
14 grants the variance request to permit the valet/attendant
15 parking without fixing the number of parking spaces in the
16 lot.

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