BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

SUE BRIGHT, Petitioner, vs. CITY OF YACHATS, Respondent, and RICHARD A. SILTANEN, Participant-Respondent.	LUBA No. 87-048 FINAL OPINION AND ORDER

Appeal from City of Yachats.

Allen L. Johnson, Eugene, filed the petition for review and argued on behalf of petitioner. With him on the brief was Johnson & Kloos.

Richard A. Siltanen, Yachats, filed a response brief and argued on his own behalf.

No appearance by City of Yachats.

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

REMANDED 10/13/87

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

Opinion by Holstun.

NATURE OF THE DECISION

Respondent City approved a conditional use permit for a public storage complex in the City of Yachats.

FACTS

Participant-respondent (hereafter respondent) applied for a conditional use permit for a storage facility to be built in four phases. The first three phases include three storage buildings with 18 individual storage units in each building. The fourth phase is a two-story office to be constructed over the three storage buildings.[1] Adjacent and nearby uses include city offices, a vacant school, and two churches. Record 33.

The request was approved by the planning commission, and, following a de novo hearing, the city council approved the request. This appeal followed.

Additional facts relevant to the appeal are discussed later in this opinion.

MOTION TO DISMISS

Respondent filed a motion to dismiss this appeal. That motion was denied prior to oral argument. Respondent filed a motion to reconsider. We grant the motion to reconsider, but, as explained below, we adhere to our prior determination that the motion be denied.

Petitioner in this case filed a timely notice of intent to appeal (notice) with the Board. Our rules require the notice

be served on the local government and persons receiving notice of the decision within 21 days after the local decision becomes final. OAR 661-10-015(1). Respondent was not served until six days after the date required by our rule.[2]

In respondent's motion for reconsideration, he argues he conferred with the city and was assured the 21 day deadline for filing and service of the notice of intent to appeal was a legal deadline. Respondent says the city

> "gave the applicants every reason to assume that in the absence of an appeal, contracts could be let for work to begin immediately, and the applicants began July 6, 1987 to clear the land, complete surveys and begin construction. Applicants learned of the appeal on July 8 and responded quickly on July 9, expecting dismissal as they had been assured by the city that the 21 day period for filing had passed and the appeal would be dismissed." Motion for Reconsideration at 3.

Respondent then argues,

> "The applicants having been made aware of the filing and notification deadline, felt that dismissal was a foregone conclusion (OAR 661-10-015) and that it was reasonable to proceed with construction prior to a formal telephone conference and finding by the referee on the two motions." Motion for Reconsideration 4.

We understand respondent to argue he assumed the time for service of the notice was jurisdictional.

The time for filing the notice with the Board is jurisdictional, and failure to file a timely notice with the Board will result in dismissal. Hoffman v. City of Portland, 3 Or LUBA 254 (1981). In addition, service of copies of the notice is jurisdictional. Everts v. Washington Co., Order on Motion to Dismiss, ___ Or LUBA ___ (LUBA No. 86-091, January

21, 1987). However, the time for service of the notice on the local government and the applicant is not jurisdictional. We have stated on numerous occasions failure to serve copies of the notice on the local government or an applicant within the time required by our rules will not result in dismissal, absent prejudice to substantial rights and interests. See e.g., Dodge v. Clackamas Co., Order on Motion to Dismiss, 12 Or LUBA 417 (1984); Ackerley Communications, Inc. v. Multnomah Co., Order on Motion to Dismiss, 8 Or LUBA 412 (1983). We decline to abandon this longstanding interpretation and application of our rules.

Next, respondent argues the Board was incorrect in its determination that respondent was not prejudiced by the six day delay. According to respondent, following confirmation with the city that no notice had been received, he proceeded to expend substantial time, energy and money on the project. In particular, respondent argues contracts were let and a concrete foundation was poured at a cost of $4500. The Board was unaware of this expense when it found a lack of prejudice and denied the motion to dismiss. Therefore, respondent argues the delay in service of the notice did prejudice his substantial rights and the appeal should be dismissed.

After respondent received the late notice of intent to appeal on July 8, 1987, respondent apparently concluded dismissal would automatically follow. Respondent therefore concluded he could proceed with the project and, among other

less specific expenses, spent $4500 on the concrete foundation.[3] Respondent advised the Board at oral argument he has since suspended all construction activity after he learned dismissal would not be automatic.

Respondent claims he will suffer a loss of $4500 if the city's decision is not ultimately affirmed. The issue is whether such an economic injury constitutes prejudice to a substantial right justifying dismissal of the appeal. In Everts, supra, we suggested economic injury might constitute such prejudice.

Petitioner argues the bulk of respondent's expenses were incurred after a copy of the notice of intent to appeal had been received by respondent on July 8, 1987. Petitioner contends, therefore, any injury to respondent was the result of his mistaken assumption regarding the consequences of late service of a notice of intent to appeal. According to petitioner, it was that mistaken assumption, not the late service itself, that resulted in respondent incurring expense.

We agree with petitioner. It may be understandable that respondent would not be aware of our prior decisions regarding late service of notices of intent to appeal. However, our prior decisions are clear that prejudice to a substantial right is required. We do not believe expenses incurred after the notice of intent to appeal was served on respondent constitutes such prejudice.

We note respondent did file a notice of intent to

participate, filed a respondent's brief and presented oral argument. As far as we can tell respondent has been able to participate in this appeal as completely as he would have if the notice had been timely served. The time taken to complete the appeal was not materially lengthened.[4]

STANDING

Respondent challenges petitioner's standing. Respondent argues that the location of petitioner's home, numerous existing uses with negative external impacts and the relative location of the actual town center several blocks to the north of the proposed use all show petitioner will not be adversely affected or aggrieved. Respondent's Brief 8-10. Respondent also suggests petitioner should be denied standing because of improper motives.

The statutory requirements for standing to challenge a quasi-judicial land use decision to this Board are as follows:

> "(3) * * * a person may petition the Board for review of a quasi-judicial land use decision if the person:
>
> "(a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section;
>
> "(b) Appeared before the local government, special district or state agency orally or in writing; and
>
> "(c) Meets one of the following criteria:
>
> "(A) Was entitled as of right to notice and hearing prior to the decision to be reviewed; or
>
> "(B) Is aggrieved or has interests adversely

affected by the decision." ORS 197.830(3).

There is no dispute that petitioner filed a notice of intent to appeal as required by ORS 197.830(3)(a). Petitioner and two other persons submitted a three page document to the city opposing the request on various grounds. Record 21-23. Respondent characterizes the document as a petition and says it is inadequate to constitute an appearance. Petitioner says the document is a letter. We do not believe it matters how the document is characterized. It is clearly sufficient to satisfy the requirment in ORS 197.830(3)(a) for an appearance "in writing."

The Oregon Supreme Court explained that to demonstrate aggrievement a person must meet a two part test:

> "FIRST PART (applicable to all petitioners before LUBA in quasi-judicial proceedings):
>
> "1. The person filed a notice of intent to appeal; and
>
> "2. The person appeared orally or in writing before the local land use decisionmaking body.
>
> "SECOND PART (as a person 'aggrieved'):
>
> "1. The person's interest in the decision was recognized by the local land use decisionmaking body;
>
> "2. The person asserted a position on the merits; and
>
> "3. The local land use decisionmaking body reached a decision contrary to the position asserted by the person." Jefferson Landfill Comm. v. Marion Co., 297 Or 280, 284, 686 P2d 310 (1984).

We concluded above the first part of the two part test is

met. It is also apparent that while the city did not specifically recognize petitioner's interests in the decision, the record clearly demonstrates petitioner's interest was recognized, and petitioner asserted a position on the merits.[5] It is also clear the city's decision is contrary to petitioner's position. The second part of the test therefore is met, and petitioner has standing.

Because we conclude petitioner satisfies the requirements for aggrievement under ORS 197.830(c)(B), it is unnecessary for us to determine whether, as respondent argues, petitioner is not adversely affected.[6]

Finally, respondent argues that under ORS 197.825(2)(a), this Board lacks jurisdiction because petitioner failed to exhaust available remedies. Respondent argues that ORS 197.825(2)(a) forces parties to participate in all stages of the local proceeding. Respondent contends the petitioner's failure to participate before the planning commission constitutes a failure to exhaust administrative remedies.

Respondent misunderstands the purpose of ORS 197.825(2)(a). This provision is to assure that land use decisions are not brought to the Board prematurely and to require that local issues be resolved at the local level if possible. Portland Audubon Society v. Clackamas Co., 77 Or App 277, 712 P2d 839 (1986); Lyke v. Lane Co., 70 Or App 82, 688 P2d 411 (1984).

Respondent is correct that petitioner did not appear at the

planning commission. However, it is not disputed that the letter (or petition) was submitted to the city council during its de novo review of the planning commission's decision. While petitioner might have been better informed about considerations addressed by the planning commission had she participated at that level, nothing in ORS 197.825(2)(a) requires that she do so. Her single appearance in writing before the city council (the ultimate decisionmaker) satisfies the exhaustion requirement of ORS 197.825(2)(a).

FIRST, SECOND AND THIRD ASSIGNMENTS OF ERROR

In these assignments of error petitioner argues the decision violates the city's zoning ordinance because it does not include adequate findings supported by substantial evidence showing compliance with applicable zoning ordinance standards.

In the first assignment of error petitioner argues Section 2.050(2)(M) is violated because the use will not be compatible with existing and anticipated land uses. In the second and third assignments of error petitioner argues Section 2.050(2)(U) is violated because the proposed use was not shown to be commercial and the city fails to demonstrate that the proposed use does "not have a different or more detrimental effect upon the adjoining and adjacent areas than those uses permitted either outright or conditionally in [Section 2.050] * * *". Section 2.050(2)(U).

Section 2.050 provides for uses permitted outright and for conditional uses in the Retail Commercial zone.[7] If the

proposed use is a light industrial use it must be compatible with existing and anticipated land uses. Section 2.050(2)(M). If the proposed use is an unspecified commercial use, it may be allowed as a conditional use if it will "not have a different or more detrimental effect upon the adjoining and adjacent areas than those uses permitted either outright or conditionally in [Section 2.050] * * *". Section 2.050(2)(U).[8]

In its findings the city addressed these issues as follows:

> "Applicants consider storage buildings a commercial use. Storage facilities are not specifically mentioned in the zoning ordinance as a permitted or prohibited conditional use in C-1 zones. 'Small scale, non-polluting light industrial uses that are compatible with existing and anticipated land use' is an allowed conditional use. [Section 2.050(2)(M)]. Also allowed is 'Any commercial use not otherwise provided for in this section or specifically prohibited' provided that the use 'shall not have a different or more detrimental effect upon the adjoining and adjacent areas than those uses permitted either outright or conditionally.' [Section 2.050(2)(U)]. If storage facilities are considered light industrial, the units proposed are small scale and compatible with existing or anticipated uses. If storage facilities are considered commercial, the units proposed do not have a different or more detrimental effect upon adjoining/adjacent areas than uses that are permitted outright or conditionally * * *." Record 2.

These findings do not unambiguously state whether the city views the proposed use as a light industrial use or as a commercial use. We believe the city intended to adopt alternative interpretations so that the proposed use complies with Section 2.050 if either the light industrial standard or the standard applicable to unspecified commercial uses is met.

We therefore review the city's decision to determine whether either standard is met.

COMPATIBILITY

Petitioner contends the applicant and the city have the burden of finding the proposed personal storage facility will be compatible with existing and anticipated land uses.[9] According to petitioner, the burden is not on petitioner to show the use will not be compatible, citing Vincent v. Benton Co., 2 Or LUBA 422 (1981). Petitioner also cites Oatfield Ridge Residents v. Clackamas County Board of Commissioners, 14 Or LUBA 766 (1986), and contends the city is under an obligation to address issues raised regarding the relevant criteria and to make written findings which explain why the city believes the criteria are met. Petitioner then notes any conditions imposed to assure compatibility must be sufficiently definite to assure they will be implemented. Ash Creek Neighborhood Association v. City of Portland, 12 Or LUBA 230 (1984).

Petitioner argues she and others pointed out to the city that the flat roofed storage complex would be visually out of character with the "quaint village" character of Yachats. Petitioner's Brief 14, Record 20-23.

Petitioner then argues the proposed project is so indefinite that it is uncertain what has been approved. Petitioner also contends she raised issues regarding access, drainage, project design, landscaping, garbage disposal,

maintenance, safety, and enforcement, and none of these concerns were addressed adequately by the city. Petitioner argues the city therefore failed to meet its obligation to show the proposed use will be compatible with existing and anticipated land uses.

We agree with petitioner's outline of the city's and applicant's obligation. However, we note that ORS 197.835 was amended during the last legislative session to add the following:

> "Whenever the findings are defective because of failure to recite adequate facts or legal conclusions or failure to adequately identify the standards or their relationship to the facts, but the parties identify relevant evidence in the record which clearly supports the decision or part of the decision, the Board shall affirm the decision or the part of the decision supported by the record and remand the remainder to the local government, with direction indicating appropriate remedial action. Or Laws 1987, Ch 729, Sec. 2.

We therefore review the city's findings, recognizing that we may overlook defective findings and affirm the city's decision if the respondent calls our attention to evidence in the record which "clearly supports the decision."

The city's decision includes several conditions which arguably mitigate some of the compatibility concerns expressed by petitioner. For example, the applicant is required to improve access; natural vegetation is to be retained; overnight parking is prohibited; and landscaping in accordance with the application is required. Record 3-4. However, the findings which precede these conditions clearly are inadequate. Record

1-3. The city simply concludes "the units proposed are small scale and compatible with existing and anticipated uses." Record 2. As petitioner correctly notes the findings are also inadequate because the city does not identify what existing or adjacent land uses a light industrial use at the subject site would be compatible with." Petitioner's Brief 14.

Respondent answers in several places in his brief as follows:

> " * * * had petitioner been a participant she would have only to look out the door or window of the council chambers, and common sense would have told her that an attractive, well designed mini-storage, as proposed, would not only be compatible and have less impact than nearly all other allowed uses in a commercial zone, it would enhance an area that already had a foul smelling sewage treatment plant, an unsightly maintenance yard, and a sludge drying shed as neighbors. Respondent's Brief 24.

Respondent also says the city hall is close by and the real city center is located several blocks away. Respondent attaches a map and several photographs to his brief to show adjacent or nearby uses which respondent argues will not be affected by the proposed use due to their nature or location.

We are not able to locate in the record any of the additional information petitioner identifies in his brief. This material might well provide a basis for the city to find the proposed use would not be incompatible with existing and anticipated land uses. However, since it is not part of the record we can not consider it. In addition, respondent pointed to no evidence in the record which would "clearly support" a

decision that the proposed use will be compatible. Determining what is or is not compatible requires an exercise of considerable judgement by the city. We are therefore unable to overlook the inadequacy of the city's findings by virtue of Oregon Laws 1987, Ch 729, Sec 2.

Respondent argues it is petitioner's obligation under ORS 197.350(1) to demonstrate the proposed use will not be compatible with adjoining land uses. ORS 197.350 provides

> "(1) A party appealing a land use decision made by a local government to the board or commission has the burden of persuasion.
>
> "(2) A local government that claims an exception to a goal adopted by the commission has the burden of persuasion.
>
> "(3) There shall be no burden of proof in administrative proceedings under ORS 197.005 to 197.855. ORS 197.350.

Under ORS 197.350(3), no party has a burden of proof in our review proceedings. ORS 197.350(1) does require the petitioner to demonstrate that grounds for remand or reversal under ORS 197.835 exist. However, this burden of persuasion does not mean petitioner must assume a burden of showing the decision does not comply with the city's approval standards. The burden of demonstrating compliance with applicable approval standards is the city's. See ORS 227.173. Petitioner's burden under ORS 197.350(1) is to explain how the city failed to meet its obligation to follow proper procedures, apply required standards and "justify the decision based on criteria, standards and facts set forth." ORS 227.173.

We conclude the city's determination that the proposed use would be compatible with existing and anticipated land uses in the area is not supported by findings of fact and substantial evidence in the record.

The first assignment of error is sustained.

COMMERCIAL USE NOT HAVING A DIFFERENT OR MORE DETRIMENTAL EFFECT

In her brief, petitioner argues

"A mini-warehouse is not a use similar to the enumerated permitted commercial uses, which are governmental, sales, and service uses. It is just the type of use described in the following definition of 'Industry' taken from the glossary of the newest text on Oregon Land Use:

> ' * * * in planning, the term almost always denotes only those businesses that process raw materials or that manufacture, repair, or store products. A mill, furniture factory, and a warehouse would all be industrial uses." Rohse, Land Use Planning in Oregon; A No Nonsense Handbook in Plain English, 128 (OSU Press, 1987) (emphasis added).'

"By contrast, the handbook says that the word 'commercial'

> ' * * * is applied to all nonmanufacturing business activities, such as retail stores, offices, and tourism. A furniture store would thus be counted as a commercial, not an industrial, land use.' Id." Petitioner's Brief 12-13.

Respondent also quotes a definition of commercial as follows:

"'As used by planners, an adjective to describe business activities that do not involve manufacturing. A grocery store, for example, is a commercial land use. A mill, however, is not; it would be considered an industrial land use." Rohse, Land Use Planning in Oregon: A No Nonsense Handbook

in Plain English, 62 (OSU Press, 1987).'"
Respondent's Brief 27.

We do not find the above quoted definitions to be determinative or even particularly helpful. Whether a use is properly characterized as a light industrial use or a commercial use frequently can be uncertain. We believe the use as described in the application and in the city's findings reasonably could be classified as either. We believe the city's finding quoted supra at page 10 shows the city was uncertain how the use should be classified and therefore elected to proceed on the basis that the use would be approved regardless of which classification was correct. As explained supra we believe that interpretative approach is reasonable and we defer to the city. West Hills & Island Neighbors v. Multnomah Co., 68 Or App 782, 683 P2d 1032 (1984); Alluis v. Marion Co., 64 Or App 478, 668 P2d 1242 (1983).

A more difficult question is posed by the requirement in Section 2.050(2)(U) that "such commercial use shall not have a different or more detrimental effect upon the adjoining and adjacent areas than those uses permitted either outright or conditionally in this section." Petitioner contends the city's finding that this requirement is met is not supported by substantial evidence in the record.

We agree with petitioner. The no "different or more detrimental effect" requirement is a problematic standard in view of the large number of permitted and conditional uses in

the C-1 zone. However, at a minimum, it requires the city to examine the use proposed to determine what the likely effects of the proposed use will be. After the city has identified the likely effects, it will be in a position to discuss how those effects compare with the kinds of effects that can be expected from specific permitted or conditional uses. In this case, the city has failed to provide any discussion of likely effects, or comparison of the likely effects from the proposed use and permitted and conditional uses.

The applicant did attach as part of his application a chart that employs a rating system to compare impacts of the proposed mini storage facility with five other uses allowed in the C-1 zone. Record 36. With regard to traffic, lighting, noise, signs, property taxes, pollution, and water and sewer use, the chart shows the proposed use compares favorably. The rating for impacts on appearance simply says the proposed use and permitted and conditional uses conform to the code. That rating does not show the appearance of the proposed use would not be "different or more detrimental" than other uses allowed in the zone. More importantly, the city did not discuss or adopt the chart as a finding in support of its decision.

As was the case with the finding on compatibility, the evidence in the record respondent calls our attention to does not "clearly support" the city's decision. This fact does not mean the city could not on remand find that this standard is met on this record or a supplemental record. However, even

with the charge given this Board under Oregon Laws 1987, Ch 729, Sec 2, the required standard is imprecise and the record is sufficiently unclear for us to supply the missing explanation for the city and conclude that the use would "not have a different or more detrimental effect."

The second and third assignments of error are sustained.

FOURTH ASSIGNMENT OF ERROR

Petitioner argues that Plan Policy I (9) provides in part

"I. Provide adequate public services

> "' * * * In order to provide services in an economic, orderly and environmentally sound manner, the city shall adhere to the following policies:
>
> > "'1. * * *
> >
> > "'9. Future developments shall provide adequate offstreet parking.'"
> > Petitioner's Brief 5.

Petitioner specifically raised the parking issue with the city council by asking whether there would be provisions for off-street parking. Record 21.

Again, our review would be assisted if the city had adopted a finding responding to petitioner's concern. The city did not do so.

Respondent argues, however, the parking issue was addressed. Respondent says parking for Phase IV is not an issue in this appeal and will be addressed later if the Phase IV office use is permitted. Regarding the storage facililty, respondent says the record shows areas around the individual

storage units will be used for access and the storage facility only requires space for stopping, standing and unloading.

The record does show the general design of the storage buildings and units. Record 37-43. However, the record does not show the units will require no space for parking or where the parking will be provided if it is needed. Therefore, while we agree with respondent that the city did not need to address the parking that may be necessary for Phase IV, the record does not show the proposed storage units will require no parking. It may well be correct, as respondent argues in his brief, that the storage facility requires no parking. If so, the city may adopt and explain that position in its findings addressing this standard.

The fourth assignment of error is sustained.

The decision of the City of Yachats is remanded.

FOOTNOTES

1 Only the first three phases were approved by the city's decision.

2 Not all of the facts and reasoning in our previous order denying the motion to dismiss are repeated in this decision.

3 Although respondent was asked twice at oral argument about the timing of expenditures, it is not entirely clear when the concrete foundation was poured. It is our understanding that the foundation was poured after service of the notice of intent to appeal on July 8, 1987 and before petitioner found out the appeal would not automatically be dismissed.

4 We also note that our rules require service of the notice on the local government and other parties within 21 days. Service by mail is permitted and is complete upon deposit. OAR 661-10-075(5)(b)(B). Even if service had been timely, six day delays in delivery of mail are not unheard of. Developers anxious to commence construction routinely avoid the uncertainty occasioned by service of notice by mail by contacting the Board directly to determine whether an appeal has been filed with the Board.

5 We are cited no city code procedure that would control whether petitioner's interests were recognized.

6 As the Oregon Supreme Court explained

> "'Adversely affected' means that a local land use decision impinges upon the petitioner's use and enjoyment of his or her property or otherwise detract from interests personal to petitioner. Examples of adverse effect would be noise, odors, increased traffic or potential flooding. (Citations omitted) Jefferson Landfill Comm. v. Marion Co., 297 Or 280,

283, 686 P2d 310 (1984).

Also, petitioner does not claim to have standing by virtue of ORS 197.830(3)(c)(A).

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[7] "Section 2.050 - Retail Commercial Zone C-1. In a C-1 zone the following regulations shall apply:

"1. Uses Permitted Outright. In a C-1 zone the following uses and their accessory uses are permitted subject to the provisions of Articles 3 and 4 where applicable:

"A. A governmental structure or use of land and public utility facility.

"B. Any use which would be permitted outright in any residential zone.

"C. Retail stores and shops such as food, drug, apparel, hardware, furniture, and similar establishment.

"D. Personal or business service establishment such as barber or beauty shop, tailor shop, or similar establishment.

"E. Financial institution.

"F. Business or professional office.

"G. Private museum or art gallery.

"2. Conditional Uses Permitted. In a C-1 zone the following uses and their accessory uses may be permitted subject to the provisions of Articles 3, 4 and 10 where applicable:

"A. Automobile service station.

"B. Temporary office.

"C. Church, non-profit religious or philanthropic institution.

"D. Community center.

"E. Day nursery, nursery school, kindergarten, or similar facility.

"F. Hospital nursing home, retirement home, or similar facility.

"G. Private non-commercial recreation club such as tennis, swimming, or archery club, but excluding commercial amusement or recreation enterprise.

"H. Laundry or dry cleaning establishment.

"I. Public park, playground, swimming pool, or similar recreation area.

"J. Public school or private school offering curricula similar to public school.

"K. Public parking area.

"L. Outdoor commercial amusement or recreation establishment such as miniature golf course or drive-in theater, but not including uses such as race track or automobile speedway.

"M. Small scale, non-polluting light industrial uses that are compatible with existing and anticipated land uses.

"N. Hotel, motel or resort with accessory commercial uses provided that those accessory commercial uses are limited to gift shops, eating and drinking establishments and not to exceed ten (10%) per cent of the total floor space area of the main use.

"O. Repair shop for the type of goods offered for sale in those retail trade establishments permitted in a C-1 zone provided all repair and storage shall occur entirely within an enclosed building.

"P. Clinic or veterinary clinc.

"Q. Club, lodge, or fraternal organization.

"R. Indoor commercial amusement or recreation establishment such as a bowling alley, theater, pool hall, ballroom, or skating rink.

"S. Mortuary.

"T. Restuarant, bar, or tavern.

"U. Any commercial use not otherwise provided for in this section or specifically prohibited, provided, however, such commercial use shall not have a different or more detrimental effect upon the adjoining and adjacent areas than those uses permitted either outright or conditionally in this section.

"V. Bed and breakfast facility [Ord. 73C]"

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[8] Petitioner does not contend any other conditional use standards are violated by the city's decision.

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[9] Respondent strenuously objects to petitioner's occasional reference to the proposed use as a mini-warehouse. We do not think the terminology is important. It is the nature and character of the use that is important. The use is described in the application. Record 32-46.