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

TIMOTHY ROOZENBOOM,)
)
Petitioner,) LUBA No. 92-165
)
vs.) FINAL OPINION
) AND ORDER
CLACKAMAS COUNTY,)
)
Respondent.)

Appeal from Clackamas County.

Barbara Smythe, Keizer, represented petitioner.

Gloria Gardiner, Assistant County Counsel, Oregon City,
represented respondent.

KELLINGTON, Referee; SHERTON, Chief Referee; HOLSTUN,
Referee, participated in the decision.

AFFIRMED 01/15/93

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

1 Opinion by Kellington.

2 **NATURE OF THE DECISION**

3 Petitioner appeals an order denying his application for
4 a home occupation permit for an automobile repair business.

5 **FACTS**

6 The subject parcel is zoned Urban Low Density
7 Residential, and is designated on the comprehensive plan map
8 as Low Density Residential. The subject parcel abuts
9 property upon which petitioner maintains his residence
10 (parcel 2). The subject parcel is developed with (1) a
11 residence which petitioner leases to others, and (2) a
12 recently constructed outbuilding. Petitioner wishes to
13 conduct an automobile repair business from the outbuilding
14 on the subject parcel.¹

15 In 1990, petitioner applied for, and was granted, a
16 home occupation permit to conduct an automobile repair
17 business from his home on parcel 2. However, on
18 November 27, 1991, petitioner's application to renew this
19 home occupation permit on parcel 2 was denied by the county
20 hearings officer. Thereafter, petitioner submitted another
21 application for a home occupation permit to conduct an
22 automobile repair business on the subject parcel. The
23 county hearings officer also denied this request. This
24 appeal followed.

¹The record establishes that petitioner has, in fact, been conducting such a business on the subject parcel.

1 **FIRST ASSIGNMENT OF ERROR**

2 "The hearings officer concluded incorrectly that
3 petitioner's application is 'substantially
4 similar' to a major home occupation permit
5 [application] that was denied * * * on November
6 27, 1991."

7 Clackamas County Zoning and Development Ordinance
8 (ZDO) 1303.13 provides:

9 "If the application [for an administrative
10 action]^[2] * * * is denied, an applicant may refile
11 for consideration of the same or substantially
12 similar application if the Planning Director finds
13 that one of the following applies:

14 "1. All the specific findings, as set forth in
15 the written decision denying the application
16 no longer apply because of changes in the
17 ordinance and/or Comprehensive Plan as
18 applicable; and

19 "2. A change has occurred in the zoning of the
20 property, or adjacent property, that
21 substantially affects the merits of the
22 application; or

23 "3. There have been substantial changes in the
24 surrounding area, or on the subject property,
25 such as availability of services or
26 improvements to public facilities, that
27 affect the merits of the application."

28 In the challenged decision, the hearings officer
29 determined petitioner's application for a home occupation
30 permit was substantially similar to the application he
31 submitted, and which was denied, in 1991. The hearings
32 officer determined that none of the exceptions listed by

²Approval of a home occupation permit is considered an "administrative action."

1 ZDO 1303.13 (1)-(3) were applicable,³ and that:

2 "The issue raised is whether this application is
3 the same or substantially similar to the
4 application [denied in 1991]. There are some
5 changes in the business proposed in this
6 application. The auto repair portion of the
7 business is now conducted on a different parcel
8 [the subject parcel], adjoining the previous
9 location. Since the former denial, [petitioner]
10 has purchased the subject [parcel], constructed an
11 approximately 500 square foot utility building
12 which serves as the repair shop and he has erected
13 a fence and a gate. But the use requested remains
14 the same. Relocating the business next door into
15 a different repair shop does not substantially
16 change the nature of the application. The
17 application is for the same use, or at least a
18 substantially similar use, as that previously
19 denied [by the 1991 decision]." Record 2-3.

20 The issue under this assignment of error is whether the
21 county properly determined the subject application for a
22 home occupation permit is substantially similar to the
23 earlier application for a home occupation permit denied in
24 the 1991 decision. Petitioner argues the county improperly
25 interpreted ZDO 1303.13 in determining the subject
26 application is "substantially similar" to the earlier
27 application.

28 This Board is required to defer to a local government's
29 interpretation of its own ordinances, unless the challenged
30 interpretation is contrary to the express words, policy or
31 context of the local enactment. Clark v. Jackson County,

³The parties do not dispute this conclusion.

1 313 Or 508, 836 P2d 710 (1992). We see nothing inconsistent
2 between the express words, policy or context of the ZDO and
3 the county's interpretation of ZDO 1303.13, as expressed in
4 the above quoted portion of the decision. That the
5 application at issue here requests permission to conduct the
6 home occupation on the subject parcel, rather than on parcel
7 2, does not change the fact that both applications by
8 petitioner have been for essentially the same thing, viz,
9 permission to conduct petitioner's automobile repair
10 business as a home occupation.

11 The first assignment of error is denied.

12 **SIXTH ASSIGNMENT OF ERROR**

13 While the challenged decision states the subject
14 application was improperly filed because it is substantially
15 similar to the application filed and denied in 1991, the
16 challenged decision does not explicitly make this a basis
17 for denial of the subject application. The challenged
18 decision provides the following additional basis for denial
19 of the application based on noncompliance with ZDO
20 822.04(M):⁴

21 "This subsection limits the number of vehicles
22 which may be on the property for repair to not
23 more than two vehicles at any time, and requires

⁴ZDO 822.04(M) provides the following standard for home occupations:

"Vehicle Repair: No more than two vehicles for repair shall be located on the property at any time, and such vehicles shall be stored, parked, and repaired within an enclosed building."

1 that such vehicles be stored and parked within an
2 enclosed building.

3 "The record of this proceeding is clear that this
4 home occupation regularly involves the parking of
5 more than two vehicles which are there for repair
6 by the applicant on the subject property at any
7 given time.

8 "There is no reason to believe that [ZDO
9 822.04(M)] will be met if this home occupation
10 permit were granted. The applicant has offered no
11 plan or business modification to establish that
12 the nature of this business would change
13 sufficiently to assure strict compliance with
14 those standards. For this reason, the proposed
15 home occupation is found to be outside the scope
16 of the home occupation criteria, and must be
17 denied." Record 3-4.

18 Petitioner challenges the evidentiary basis for this
19 conclusion that the proposal violates ZDO 822.04(M).
20 However, in order to overturn on evidentiary grounds a local
21 government's determination that an applicable approval
22 criterion is not met, it is not sufficient for petitioner to
23 show there is substantial evidence in the record to support
24 its position. Rather, the "evidence must be such that a
25 reasonable trier of fact could only say petitioner['s]
26 evidence should be believed." Morley v. Marion County,
27 16 Or LUBA 385, 393 (1987); McCoy v. Marion County, 16 Or
28 LUBA 284, 286 (1987). Petitioner must demonstrate that he
29 sustained his burden of proof of compliance with the
30 applicable criteria as a matter of law. Jurgenson v. Union
31 County Court, 42 Or App 505, 600 P2d 1241 (1979);
32 Consolidated Rock Products v. Clackamas County, 17 Or LUBA

1 609, 619 (1989).

2 The county cites evidence in the record establishing
3 that the subject home occupation has involved the outside
4 parking of more than two vehicles awaiting repair, in
5 violation of ZDO 822.04(M). Although it is true these
6 violations occurred in the past and might not occur in the
7 future, we cannot say that petitioner has established
8 compliance with ZDO 822.04(M) as a matter of law.⁵

9 The sixth assignment of error is denied.

10 Petitioner's second through fifth assignments of error
11 challenge other ZDO bases for denial. However, to support a
12 denial decision, the county need only establish the
13 existence of one adequate basis for denial. Garre v.
14 Clackamas County, 18 Or LUBA 877, aff'd 102 Or App 123
15 (1990). Here, the county's findings and the evidence
16 supporting the challenged decision establish an adequate
17 basis for denial of the application based on ZDO 822.04(M).

18 The county's decision is affirmed.

⁵Petitioner argues that the county should have imposed conditions of approval to ensure compliance with the ZDO. However, it is well established that a local government decision maker is not obliged to develop conditions of approval to achieve compliance with relevant approval standards. Reeder v. Clackamas County, ___ Or LUBA ___ (LUBA No. 92-081, August 11, 1992); Simonson v. Marion County, 21 Or LUBA 313, 325 (1991).