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

RECOVERY HOUSE VI,)
)
Petitioner,)
)
vs.)
)
CITY OF EUGENE,)
)
Respondent.)

LUBA No. 97-021

FINAL OPINION
AND ORDER

Appeal from City of Eugene.

Michael E. Farthing, Eugene, filed the petition for review and argued on behalf of petitioner. With him on the brief was Gleaves Swearingen Larsen Potter Scott & Smith.

Emily K. Newton, Eugene, filed the response brief and argued on behalf of respondent. With her on the brief was Jerome Lidz, and Harrang Long Gary Rudnick.

GUSTAFSON, Board Chair; HANNA, Board Member; HOLSTUN, Board Member, participated in the decision.

01/19/99 REVERSED

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

1 Opinion by Gustafson.

2 This matter is before us on remand from the Court of Appeals.

3 Petitioner challenged the city's approval of a conditional use permit to allow
4 petitioner's operation of a drug and alcohol addiction recovery facility in a suburban
5 residential (RA) zone. Petitioner raised no assignments of error regarding the merits of the
6 conditional use permit. Rather, petitioner argued only that its proposed use is allowed
7 outright in the RA zone and that, therefore, the city did not have authority to attach
8 conditions to petitioner's use through a conditional use permit. We determined that we did
9 not have authority to consider the issue petitioner raised, and affirmed the city's decision.
10 Recovery House VI v. City of Eugene, ___ Or LUBA ___ (LUBA No. 97-021, June 26, 1997.)
11 Essentially, we determined that because petitioner voluntarily applied for a conditional use
12 permit, it could not subsequently challenge the city's authority to require the permit it
13 requested. On petitioner's appeal, the Court of Appeals reversed our decision, and instructed
14 us to reach the merits of petitioner's appeal. Recovery House VI v. City of Eugene, 150 Or
15 App 382, 946 P2d 342 (1997).

16 On remand from the Court of Appeals, we considered petitioner's argument that the
17 proposed use is allowed outright under Eugene City Code (EC) 9.015. EC 9.015 defines
18 "dwelling, single family detached" as "a free-standing building designed or used for the
19 occupancy of one family, with housekeeping facilities for only one family." Petitioner
20 argued the disjunctive word "or" in EC 9.015 means that the proposed use need not constitute
21 single-family occupancy, so long as the building in which the use will be located was
22 "designed" for single family occupancy. We rejected petitioner's argument, and agreed with
23 the city's determination that petitioner's proposed use is a conditional use in the RA zone.
24 Accordingly, we affirmed the city's decision. Recovery House VI v. City of Eugene, ___ Or
25 LUBA ___ (LUBA No. 97-021, May 28, 1998).

26 On petitioner's petition for judicial review, the Court of Appeals again reversed and

1 remanded our decision. The court agreed with petitioner that EC 9.015 does not require
2 single-family occupancy in the RA zone, so long as the use is proposed for a building that
3 was "designed" for the occupancy of one family. The court concluded that because the
4 dwelling in which petitioner's use is to be located was designed for single-family occupancy,
5 the use is allowed outright in the RA zone. Recovery House VI v. City of Eugene, 156 Or
6 App 509, 965 P2d 488 (1998).

7 Resolution of this issue resolves all issues in this matter. The city decision to require
8 petitioner to obtain a conditional use permit and, consequently, the city's conditional use
9 permit decision, is reversed.