

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 ROBERT BARMAN and SANG LEE,
5 *Petitioners,*

6
7 vs.

8
9 CITY OF CORNELIUS,
10 *Respondent,*

11 and

12
13 FRED MEYER INC.,
14 *Intervenor-Respondent.*

15
16 LUBA No. 2002-044

17
18 FINAL OPINION
19 AND ORDER

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21
22 Appeal from City of Cornelius.

23
24 John A. Rankin, Sherwood, filed the petition for review and argued on behalf of
25 petitioners.

26
27 Christopher A. Gilmore, Steven W. Abel, and Ellen P. Hawes, Portland, filed a joint
28 response brief on behalf of respondent and intervenor-respondent. With them on the brief
29 were Beery and Elsner, LLP and Stoel Rives, LLP. Christopher A. Gilmore argued on behalf
30 of respondent. Ellen P. Hawes argued on behalf of intervenor-respondent.

31
32 BRIGGS, Board Member; HOLSTUN, Board Chair; BASSHAM, Board Member,
33 participated in the decision.

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35 AFFIRMED

08/30/2002

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

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NATURE OF THE DECISION

Petitioners challenge the city’s approval of design review for the construction of an automobile service station on property located within the city’s Core Commercial Employment (CE) District.¹

MOTION TO INTERVENE

Fred Meyer, Inc. (intervenor), the applicant below, moves to intervene on the side of respondent.² There is no opposition to the motion, and it is allowed.

FACTS

The subject property is located northeast of the intersection of the Tualatin Valley Highway (Baseline Road) and South 20th Avenue in Cornelius. The proposed facility is to be located within the existing Fred Meyer Plaza. The facility will include a portion of the plaza property that is currently paved and used for parking for the Fred Meyer store. A transit stop is located on Baseline Road immediately to the south of the subject property.

Under Cornelius’ zoning ordinance, automobile service stations are permitted uses in the CE district, subject to design review. Intervenor applied for design review for the automobile service station, which was approved by the planning commission on January 15, 2002. Petitioners, owners and operators of a nearby automobile service station, appealed the planning commission’s approval to the city council. The city council affirmed the planning commission’s decision, but added a condition requiring that intervenor provide for pedestrian access from the transit stop, around the proposed automobile service station, leading to the entrance to the Fred Meyer store. This appeal followed.

¹ The parties use various terms, such as vehicle fuel sales facility or fuel station, to describe the proposed use. We use the term used in the ordinance to describe the use.

² Respondent and intervenor filed a joint response brief. Therefore, we refer to them jointly as respondents.

1 **ASSIGNMENT OF ERROR**

2 In the first subassignment of error, petitioners allege that the city erred in its
3 application of various review criteria. In the second subassignment of error, petitioners argue
4 that, based on the arguments presented in the first subassignment of error, the city’s decision
5 is not supported by substantial evidence. In the third subassignment of error, petitioners
6 contend that if we conclude that the city erred in approving the application as a matter of law,
7 reversal of the decision, rather than remand, is the appropriate remedy.

8 **A. Compliance with CDZC 11.30.14.A(2)**

9 Cornelius Development and Zoning Code (CDZC) 11.30.14 sets out the city’s design
10 review approval standards and provides, in relevant part:

11 “A. Technical Standards. * * *

12 “* * * * *

13 “(2) Traffic Generation. Based on anticipated vehicular and
14 pedestrian traffic generation and the standards and policies of
15 the Comprehensive Plan, adequate right-of-way and
16 improvements to streets, pedestrian ways, bikeways,
17 transitways and other ways are provided by the development in
18 order to promote safety, reduce congestion, conserve energy
19 and resources, and encourage transit use, bicycling and
20 walking. Consideration shall be given to the need for
21 constructing, widening, and/or improving, to the standards of
22 the Comprehensive Plan and [the CDZC], public streets,
23 bicycle, pedestrian, and other ways in the area of the proposed
24 development impacted by the proposed development. This
25 shall include, but not be limited to, improvements to the right-
26 of-way, such as installation of lighting, signalization, turn
27 lanes, median and parking strips, traffic islands, paving, curbs
28 and gutters, sidewalks, bikeways, transit facilities, street
29 drainage facilities, traffic calming devices, and other facilities
30 needed because of anticipated vehicular, transit, bicycle and
31 pedestrian traffic generation. * * *”

32 Petitioners argue that the city erred in concluding that the proposed facility satisfies
33 CDZC 11.30.14.A(2). According to petitioners, intervenor relied on a 1996 Traffic Impact
34 Analysis (1996 Analysis) that concludes that, with improvements, the intersection of

1 Baseline Road and South 20th Avenue meets the city’s street development and transportation
2 service standards. Petitioners argue that the 1996 Analysis is inadequate, because it is based
3 on an overall *estimated* 192,000 developed square feet of commercial and office uses within
4 the Fred Meyer Plaza and not on the specific impacts that the proposed facility will have on
5 traffic. In addition, petitioners argue that the 1996 Analysis does not take into account
6 significant transportation improvements in the area that may have changed the number of
7 vehicle trips generated by existing facilities, and where those trips are directed. For example,
8 petitioners cite to the construction of a nearby light rail station, the opening of a fast food
9 restaurant immediately to the east of the proposed automobile service station, and
10 transportation improvements to the frontage of the subject property as a result of the East
11 Baseline local improvement district (LID) project, as examples of major impacts on the local
12 transportation system that have occurred in the vicinity since 1996. Petitioners argue that
13 CDZC 11.30.14.A(2) requires that intervenor provide a new or revised traffic analysis that
14 reflects existing conditions, and the impacts the proposed use will have on those existing
15 conditions.

16 In addition, petitioners argue that the city erred in its conclusion that a 2000 service
17 station trip survey (2000 survey) that polled users of service stations within the Portland
18 Metropolitan area for their preferences regarding options for fuel service accurately reflects
19 the service needs for patrons in the vicinity of the proposed automobile service station.
20 Petitioners argue that the 2000 survey is not site-specific to the subject property. Petitioners
21 also argue that the 2000 survey cannot be relied upon because it is “intended only to ‘present
22 shared and pass-by trip information to [an automobile service station] within a retail center.’”
23 Petition for Review 6 (*quoting* Record 150).

1 Respondents argue that the city interpreted CDZC 11.30.14.A(2) not to require a new
2 traffic impact analysis as part of the proposed design review application.³ Intervenor
3 contends that the interpretation is not clearly wrong and is therefore subject to the deference
4 afforded local government interpretations established in *Clark v. Jackson County*, 313 Or
5 508, 515, 836 P2d 710 (1992). Respondents also argue that the 1996 Analysis and the 2000
6 survey constitute evidence a reasonable person would believe and rely on to conclude that
7 the proposed automobile service station will not adversely affect the nearby transportation
8 system. Respondents argue that the 1996 Analysis was general enough to include the types of
9 impacts the proposed facility would have. In addition, respondents contend that the 1996
10 Analysis assumes 192,000 square feet of developed space that has yet to be fully developed.
11 Respondents argue that the evidence demonstrates that the small number of vehicle trips that
12 will be added to the intersection as a result of the proposed service station does not exceed
13 the capacity estimates established in the 1996 Analysis for the entire 192,000 square foot
14 development. Therefore, respondents argue, the 1996 Analysis, when supported with
15 evidence in the 2000 survey that the proposed automobile service station will result in more
16 combined trips, is adequate to show that the proposed facility will not adversely affect traffic
17 within the area.

18 We agree with respondents. While a more recent and site-specific traffic analysis may
19 provide more accurate evidence of existing conditions and the likely impact the proposed
20 automobile service station would have on traffic in the area, the city's findings adequately

³ The city's findings state, in relevant part:

"The express language of [CDZC] 11.30.14.A(2) requires only that evidence in the record establish that adequate improvements will be provided to address 'anticipated vehicular and pedestrian traffic.' * * * No criterion *requires* a site-specific traffic study. [Petitioners'] failure to cite any such criterion only reinforces this point. During the application review process the City *may* determine on a case by case basis whether the application provides enough information * * * or whether to recommend a site-specific traffic study * * *. [However, no provision] requires a site-specific traffic study based on the 'specific development.' * * *" Record 9 (emphasis added).

1 explain why such a detailed analysis is not necessary in this case. The city interpreted its
2 code to permit more generalized evidence of compliance with CDZC 11.30.14.A(2), and that
3 interpretation is not clearly wrong. To the extent we understand petitioners' argument that
4 the 2000 survey is not reflective of the anticipated impact the proposed facility will have on
5 traffic, we do not understand why petitioners believe that the proposed automobile service
6 station differs materially from the stations that were the subject of the 2000 survey. The
7 proposed service station is within a retail center, and will also serve pass-by traffic. We
8 conclude that the 1996 Analysis and the 2000 survey comprise substantial evidence that the
9 proposed facility satisfies CDZC 11.30.14.A(2) as that provision is interpreted by the city.

10 **B. Compliance with CDZC 11.20.63.C(1)(b)**

11 The purpose of the CE district is set out at CDZC 11.20.61, and provides in relevant
12 part:

13 “The purpose of [the CE] district is to implement the provisions of the Core
14 Area Enhancement Plan, as set forth in Chapter IV of the Comprehensive Plan
15 [(Economic Development)]. The [CE] Planning District is designed to provide
16 for a coordinated mixed use (commercial and employment) center [that] is
17 both Transit Supportive and Pedestrian Friendly. The general intent of this
18 planning district is to create or re-create a better sense of coordinated
19 development, while maintaining and recognizing the separate ownerships and
20 business interests within the District.

21 “The [CE] District is designed to provide a wide variety of goods, services
22 and employment opportunities. By providing a greater mix of uses, the overall
23 level of activity and interactivity within the District is expected to be
24 enhanced. This greater mix and intensity, in turn, will create greater
25 opportunities to attract people to the District and encourage them to stay for
26 more than short, single purpose trips.

27 “* * * * *

28 “[T]he design criteria for this District focus more on the location and
29 orientation of uses and buildings to each other, than it does on specific uses.
30 The primary intent of this design is to create a Pedestrian Friendly and Transit
31 Oriented development plan. It is hoped that through coordinated development
32 planning that a desirable mix and pattern of uses can be accomplished towards
33 these purposes, regardless of the ownership pattern.”

1 CDZC 11.20.60 sets out the standards for development within the CE district, in
2 conformance with the purpose outlined in CDZC 11.20.61, above. CDZC 11.20.63.C(1)(b)
3 provides that:

4 “A good mix of complementary pedestrian oriented commercial uses *should*
5 be oriented to and clustered near (within 500 feet) transit stops.” (Emphasis
6 added.)

7 As noted above, the primary purpose of the CE district is to promote transit-friendly
8 and pedestrian-friendly development. Petitioners contend that CDZC 11.20.63.C(1)(b)
9 implements that purpose by prohibiting any commercial uses within 500 feet of a transit stop
10 that is not transit-friendly or pedestrian-friendly. The facility is proposed to be located within
11 500 feet of the existing transit stop. Petitioners argue that under any understanding of the
12 term, an automobile service station is not a “pedestrian oriented commercial” use. Therefore,
13 petitioners argue, CDZC 11.20.63.C(1)(b) requires that the proposed automobile service
14 station application be denied.

15 Petitioners concede that automobile service stations are permitted uses within the CE
16 district, but argue that the CDZC resolves that apparent contradiction by allowing a use that
17 is not transit or pedestrian-oriented *only* when that use is located more than 500 feet from a
18 transit stop. Petitioners argue that the city erred in interpreting the 500-foot limit set out in
19 CDZC 11.20.63.C(1)(b) to be aspirational, rather than a mandatory criterion.⁴ According to

⁴ The city’s findings with respect to CDZC 11.20.63.C(1)(b) state, in relevant part:

“[CDZC] 11.20.63.C(1)(b) * * * states [that] ‘a good mix of complementary pedestrian oriented commercial uses *should* be oriented and clustered near (within 500 feet) transit [stops.]’ [CDZC 11.20.63.C(1)(b)] does not require pedestrian oriented commercial uses, it states that a good mix of complementary pedestrian oriented uses should be clustered near transit stops. * * * The emphasis of the requirement is to encourage pedestrian oriented uses but [it] is not a mandatory requirement that only those types of uses may be located within 500 feet of a transit area. [Petitioners ask] the City to read the term ‘should’ as ‘must.’ As such * * * [petitioners’] interpretation is contrary to the plain language of [CDZC] 11.20.63.C(1)(b). This criterion is a permissive or aspirational standard, not a mandatory requirement.

1 petitioners, the word “should,” as it is used in CDZC 11.20.63.C(1)(b), is synonymous with
2 “shall.” Petitioners contend that the ordinary understanding of the word “should” connotes an
3 obligation to proceed. By interpreting “should” to have a less demanding meaning,
4 petitioners argue that the interpretation is patently inconsistent with comprehensive plan and
5 Metro regional policies aimed at ensuring that development decisions are consistent with the
6 transit-oriented nature of the area. According to petitioner, the proposed automobile service
7 station will, along with the recently approved fast food restaurant next door, contribute to
8 strip commercial development of the area, in contravention of explicit comprehensive plan
9 policies that discourage such development.⁵ Petitioners argue that the city’s interpretation is

“Currently, the subject property is used as a parking area for the Fred Meyer Shopping Center and is totally auto-oriented with limited pedestrian provisions. The [proposed automobile service station] provides for a retail business located within 500 feet of the existing transit stop on Baseline Road in place of a parking area. The [proposed facility] clusters complementary uses such as the Fred Meyer Shopping Center and the approved Burger King to the east. The proposed fuel station is not a pedestrian oriented use, the proposal includes pedestrian connections which improve pedestrian connectivity between the transit stop * * * and the Fred Meyer shopping complex by adding a safe, direct pedestrian connection directly east of the proposed [facility.] * * * [A]s conditioned, the proposed development adequately complies with [CDZC 11.20.63.C(1)(b)].” Record 12-13 (emphasis in original).

⁵ Petitioners argue that Cornelius Comprehensive Plan (CCP) Chapter VI, Economic Development; and Chapter IX, Transportation, support their contentions that the primary development focus within the area should be transit-oriented, pedestrian-friendly commercial development. Those chapters state, in relevant part:

“So-called ‘strip’ commercial development along the Tualatin Valley Highway is a concern in the Cornelius community. Such development can cause a dangerous, inefficient, confusing, and unsightly development if not properly controlled. Much of the land fronting the highway is suitable and needed for commercial development. To counter this limitation, the City has developed master planned special districts [such as the CE district], each with specific design criteria and focus on transit/pedestrian orientation and mixed-use design.” Petition for Review App B 16, *quoting* CCP Chapter VI, Economic Development.

“* * * A primary focus of the [city’s transportation systems plan (TSP)] is to increase local multi-modal access while maintaining regional mobility.

“In order to establish a better relationship between transportation and land use the TSP creates * * * special subdistricts along [the Tualatin Valley Highway]. The intent of these districts is to provide a framework for special function mixed-use areas adjacent to the highway and major transit route. To maximize the utility of the traffic corridor, the mixed land uses are to be designed and implemented relying upon pedestrian and transit friendly development criteria.

1 inconsistent with those plan policies and the purpose of the zone and should not be subject to
2 any deference whatsoever. *See* ORS 197.829(1)(a) and (b) (LUBA shall not uphold a local
3 government interpretation that is “inconsistent with the express language of the
4 comprehensive plan” or is “inconsistent with the underlying policy” that provides the basis
5 for the comprehensive plan policy).

6 Respondents argue that petitioner reads too much into the word “should.” According
7 to respondents, the city interpreted “should” as that word is used in CDZC 11.20.63.C(1)(b)
8 as being permissive. Respondents argue that such an interpretation is reasonable, and similar
9 interpretations have been upheld by LUBA on several occasions. *See Andrews v. City of*
10 *Prineville*, 28 Or LUBA 653, 664 (1995); *Champion v. City of Portland*, 28 Or LUBA 618,
11 628 (1995). Respondents also argue that, consistent with CDZC 11.20.63.C(1)(b), the city
12 found that the proposed automobile service station will promote pedestrian connectivity by
13 adding a pathway from the transit stop, along the east perimeter of the subject property,
14 adjacent to the fast food restaurant, and leading to the shopping plaza. Respondents argue
15 that the city could, and did, find that improvements to pedestrian access to the plaza were
16 sufficient to satisfy the standard. Respondents contend that the city’s application of the siting
17 standard, as interpreted, is supported by substantial evidence.

18 While we might agree with petitioners that it may make more sense from a public
19 policy standpoint to approve only pedestrian-oriented commercial uses within 500 feet of the
20 transit stop so as to create a stronger pedestrian linkage between the transit stop and the
21 plaza, we agree with respondents that CDZC 11.20.63.C(1)(b), as interpreted by the city,

“* * * * *

“The [CE District] consists of land north of [the Tualatin Valley Highway] * * * between [South] 19th and 26th Avenues. It provides for a mix of both commercial and industrial uses and promotes inter-related activities and complementary land uses. Transit orientation of land uses and creation of a comfortable pedestrian environment throughout the District are fundamental design guidelines.” Petition for Review App B 18, *quoting* CCP Chapter IX, Transportation Plan.

1 does not compel that result. Nor do the plan policies that petitioners cite require that only
2 pedestrian and transit-oriented uses be promoted within the CE district. Fairly read, the plan
3 policies seek to create a mix of transit and pedestrian-oriented uses, to promote multi-use
4 trips and to facilitate economic development within the district. The city’s interpretation of
5 CDZC 11.20.63.C(1)(b) is not clearly wrong. Nor does it contravene ORS 197.829(1)(a) or
6 (b). Therefore, we defer to it. We also agree with respondents that the proposed facility, as
7 conditioned, satisfies CDZC 11.20.63.C(1)(b), as the city interpreted that provision.

8 **C. Compliance with CDZC 11.20.63.C(1)(d)**

9 CDZC 11.20.63.C(1)(d) provides:

10 “Uses that complement or support existing uses within the district generally
11 will be allowed. More specifically, those that complement or support
12 immediately adjacent uses will be encouraged. Related uses and supporting
13 activities should be clustered to create greater possibilities for interactivity
14 between uses:

15 “i. Complementary uses are those that share customers or otherwise
16 provide additional opportunities and activities for customers and
17 employees that are already in the District associated with other uses.
18 For example, restaurants provide both customers and employees with
19 food and refreshment without having to leave the District.

20 “* * * * *

21 “iii. Auto dependent commercial uses and land intensive uses will be
22 discouraged. However, such uses that would provide multiple
23 activities for customers or the existing car wash, for example, could be
24 allowed. Such complementary or supportive uses should be clustered
25 around the existing use to minimize auto movements within the
26 District.”

27 Petitioners argue that the city erred in allowing the proposed automobile service
28 station to be sited within the CE district because it is an auto-dependent commercial use.
29 Petitioners contend that CDZC 11.20.63.C(1)(d)(iii) contains mandatory language that
30 requires the city to approve only those uses that are not auto dependent. Petitioners argue that
31 the city’s interpretation of CDZC 11.20.63.C(1)(d) to allow approval of the automobile
32 service station is inconsistent with the plain language of CDZC 11.20.63.C(1)(d)(iii) and,

1 therefore, that interpretation is clearly wrong. *Goose Hollow Foothills League v. City of*
2 *Portland*, 117 Or App 211, 217, 843 P2d 992 (1992) (the question is not whether the
3 governing body’s interpretation is right, but whether it is “clearly wrong”).⁶

4 The city interpreted CDZC 11.20.63.C(1)(d)(iii) not to require an outright prohibition
5 of auto-dependent uses, such as an automobile service station. That interpretation is
6 supported by the text and context of the ordinance and is well within the interpretative
7 discretion afforded the city by virtue of ORS 197.829(1). There is substantial evidence to
8 support the city’s conclusion that the proposed automobile service station complies with
9 CDZC 11.20.63.C(1)(d)(iii) because it is clustered near existing uses and is likely to

⁶ The city’s findings state, in relevant part:

“[Petitioners] take specific language from [CDZC 11.20.63.C(1)(d)(iii)] out of context. The guiding theme of [CDZC] 11.20.63.C(1)(d) is that proposed uses * * * support and complement existing and new uses in the CE District. [CDZC] 11.20.63.C(1)(d) further states that, ‘such uses that would provide multiple activities for customers of the existing car wash for example, could be allowed. Such complementary or supportive uses should be clustered around *the existing use* to minimize auto movements within the District.’ * * * [T]he proposed fuel station contributes to the provision of multiple activities within the District and is located in close proximity to the Fred Meyer shopping complex, an existing use. The city supports uses [that] may have a net effect of reducing vehicle trips on local and state roadways. Clustering of development and uses is one way that could reduce such vehicle trips.

“* * * [Petitioners ask] the City to find that an ‘auto dependent commercial use’ such as an [automobile service station] is prohibited by [CDZC] 11.20.63.C(1)(d)(iii). Such an interpretation would of course stand in direct contrast to the express list of permitted uses provided under [CDZC] 11.20.62, including by way of reference automobile service stations as permitted under [CDZC] 11.20.72.B. Basic principles of statutory construction require the City to harmonize potentially conflicting provisions to bring full force and [e]ffect to both provisions. By permitting [automobile] service stations as expressly provided for under [CDZC] 11.20.62 only where such facilities fall into the exception provided under [CDZC] 11.20.63.C(1)(d)(iii) will have the effect of ‘discouraging’ auto dependent uses. * * * The plain language of this section is consistent with the City’s interpretation. Where an auto dependent commercial use provides ‘multiple activities for customers’ of the existing use, * * * and such uses are ‘clustered around the existing use,’ the auto dependent commercial use is allowed. The plural ‘multiple activities’ in the second sentence refers to the existing use and the proposed use together. As such it is not required that the proposed use actually offer ‘multiple activities.’ As provided above, the [automobile service] station complements and is located adjacent to existing uses in the area. Refueling a vehicle is clearly complementary to vehicle trips associated with a trip to the shopping center and [the fast food restaurant].” Record 14 (emphasis in original).

1 encourage employees of and visitors to the district to combine trips by providing a
2 complementary service.

3 **D. Compliance with CDZC 11.20.63.D(2)**

4 CDZC 11.20.63.D provides, in relevant part:

5 “(1) To meet the design objectives, building location, orientation and
6 design needs to create a pleasant, safe, and walkable environment.
7 * * * Building a human scale, pedestrian friendly environment is of
8 primary concern within this District. Site plans shall * * * encourage
9 pedestrian movement within the District. * * *”

10 “(2) Movement within the [CE] District should favor pedestrians over
11 autos. Movement to and from the District also needs to adequately
12 provide for both auto and non-auto movements, with minimal conflicts
13 and confusion between the various modes. * * *”

14 Petitioners argue that the siting of an automobile service station in the proposed
15 location does not provide a walkable environment within the meaning of CDZC
16 11.20.63.D(1), because the service station is a completely auto-oriented use that will result in
17 a barrier to pedestrian access from the transit stop to the shopping plaza. Petitioners contend
18 that the city’s condition of approval that requires a walkway leading around the proposed
19 service station to the plaza is not sufficient to satisfy CDZC 11.20.63.D, because it merely
20 provides a detour around an auto-dependent use. According to petitioners, CDZC
21 11.20.63.D(1) requires a design that results in “a pleasant, safe and walkable environment,”
22 and the proposed design accomplishes none of those objectives. Therefore, petitioners argue,
23 the city misconstrued CDZC 11.20.63.D by finding that the proposed automobile service
24 station satisfies that standard. Petitioners also argue that to the extent the city interpreted
25 CDZC 11.20.63.D, that interpretation is not consistent with CDZC 11.20.61, the
26 comprehensive policies set out in n 5 above and Metro’s 2040 Growth Management
27 Functional Plan.

28 Respondents argue that the proposed use is more pedestrian friendly than the current
29 parking lot use, which is also auto-oriented. According to respondents, currently persons who

1 leave the transit stop must walk through an open parking area, which does not have a defined
2 pedestrian path. Respondents argue that the lack of a pedestrian path results in conflicts
3 between automobiles driving through the parking lot and the pedestrians. Respondents
4 contend that the city properly found that, compared to the existing situation, the proposed
5 pedestrian walkway will provide a defined access between the transit stop and the plaza.
6 According to respondents, that access is certainly safer and more pleasant for pedestrians
7 than the current open parking lot. Therefore, respondents argue, the city could, and did,
8 properly find that the proposed design will result in a pedestrian-friendly design that
9 complies with CDZC 11.20.63.D(1) and (2).

10 As we stated before, while petitioners' view of the ordinance may result in a more
11 pedestrian-oriented environment than will result under the challenged decision, the city's
12 conclusion that the proposed use will improve existing conditions, and that the improvement
13 is enough to satisfy CDZC 11.20.63.D(1) and (2) is within the city's interpretive discretion
14 and supported by substantial evidence.

15 **E. Compliance with the Hierarchy of Uses Described in CDZC 11.20.63.D(2)**

16 CDZC 11.20.63.D(2) provides, in relevant part:

17 “* * * As a general guideline, the desired hierarchy of activities from the
18 street into the site should be transit, pedestrian (bike), buildings, including
19 courtyards and plazas, then parking.”

20 Petitioners argue that, with CDZC 11.20.63.A(2) and the other provisions of CDZC
21 11.20.63.D, the hierarchy set out in CDZC 11.20.63.D(2) work in a unified fashion to
22 promote pedestrian-oriented development. Petitioners contend that the city violated the
23 hierarchy by approving an auto-dependent use in an area that is to be developed for
24 pedestrian oriented uses.

25 CDZC 11.20.63.D(2) establishes the hierarchy of activities from the street as a
26 “general guideline.” It does not prohibit the establishment of automobile service stations next
27 to transit stops. For the same reasons we found that the city did not err in its interpretation of

1 CDZC 11.20.63.A(2) and 11.20.63.D(1), we conclude that the city did not err in allowing an
2 auto dependent use adjacent to a transit stop.

3 **F. Master Plan Requirement**

4 Petitioners argue that CCP Commercial Land Use Policy 5 (Policy 5) provides that
5 development within the CE District must be governed by a master plan.⁷ According to
6 petitioners, the Cornelius Town Center Master Plan was adopted to guide development in
7 and near the Fred Meyer Plaza, but the Cornelius Town Center Master Plan has since
8 expired. Petitioners contend that a new master plan must be adopted before the proposed
9 automobile service station is approved so the city has the opportunity to consider whether
10 and how the proposed use fits within the city’s development vision for the district.

11 Respondents argue that a new master plan for the CE district is not a necessary
12 prerequisite for design review approval of the proposed automobile service station, because
13 the design review process for the service station is the “master plan” as that term is defined
14 in the development code. According to respondents, the city does not have an independent
15 process for establishing a master plan, and design review is the opportunity for the city to
16 look at the proposed use in context with existing and anticipated uses within the area.
17 Respondents contend that Policy 5 does not impose an independent requirement for a master
18 plan for the area, because the comprehensive plan’s policies are implemented through the
19 CDZC. Respondents point to a finding that articulates this interpretation and again argues
20 that it is not clearly wrong and therefore is subject to deference.⁸

⁷ Policy 5 provides that “[m]aster plans shall control land use intensities and mixes within Special Districts.” The CE District is a “special district.”

⁸ The finding respondents rely on states, in relevant part:

“[A] ‘Master Plan’ for the CE District is not required for the [proposed automobile service station] for the following reasons: (1) there is no separate requirement for a ‘Master Plan’ under the [CDZC]; (2) the [CDZC] specifically implements Chapter IV of the Comprehensive Plan including COMMERCIAL LAND USE Policy #5 regarding ‘Master Plans’ and as such [petitioners’] argument is a collateral attack on the City’s adoption of those provisions; (3) the

1 Policy 5 appears to impose a mandatory requirement that a master plan be established
2 prior to allowing development within the CE district. Unlike the other code language that
3 petitioners rely on elsewhere in the petition for review, the word “shall” requires a master
4 plan for the site. The question becomes, what must be included in a “master plan” within the
5 meaning of the policy.

6 CDZC 11.60.00(98) defines “master plan” as:

7 “A plan for a defined geographic area in single or multiple ownership that is
8 consistent with the Comprehensive Plan and includes a land use and
9 circulation plan, utilities plans and a program of implementation measures and
10 other mechanisms needed to carry out the plan. The plan shall be created
11 through the land use review processes of this Code pursuant to Sections
12 11.30.10 [design review] and 11.30.30 [conditional use review], as
13 applicable.”

14 While a common understanding of the term “master plan” might require something
15 more than a plan for a component site within a larger development, CDZC 11.60.00(98) may
16 be interpreted, as the city apparently did to: (1) allow a master plan to be limited to a
17 proposed design for a single use within the CE district; and (2) permit review of that “master
18 plan” through the city’s design review process. Under *Clark’s* deferential review standard,
19 we cannot say that the city’s interpretation was “clearly wrong” or “beyond all colorable
20 defense.” *Huntzicker v. Washington County*, 141 Or App 257, 261, 917 P2d 1051 (1996);
21 *Zippel v. Josephine County*, 128 Or App 458, 461, 876 P2d 854 (1994). Accordingly, we
22 defer to it.

23 Petitioners’ assignment of error provides no basis for reversal or remand. The city’s
24 decision is affirmed.

reference to a ‘Master Plan’ in the [CDZC] refers to existing ‘Master Plans’ and does not create an independent ‘Master Plan’ requirement; (4) the intent of the [CDZC] was to address issues regarding a ‘Master Plan’ as part of the Site Design Review process, and (5) even if the Comprehensive Plan independently requires a ‘Master Plan,’ the requirements of the Site Design Review and standards and guideline of the CE District satisfy the substantive requirements of a ‘Master Plan’ provided for in the definition of that term.” Record 20.