

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3 OREGON DIVERSE INDUSTRIES,

4 *Petitioner,*

5 vs.

6 CITY OF JACKSONVILLE,

7 *Respondent,*

8 and

9 WILLIAM R. MONFORT, Jr.,

10 *Intervenor-Respondent.*

11 LUBA No. 2002-080

12 FINAL OPINION

13 AND ORDER

14 Appeal from City of Jacksonville.

15 Allen E. Eraut, Medford, filed the petition for review and argued on behalf of
16 petitioner. With him on the brief was Frohnmayer, Deatherage, Pratt, Jamieson, Clarke and
17 Moore, PC.

18 Kurt H. Knudsen, Ashland, filed a response brief and argued on behalf of respondent.
19 With him on the brief was Lombard, Knudsen and Holtey, LLP.

20 William R. Monfort, Jr., Jacksonville, filed a response brief and argued on his own
21 behalf.

22 HOLSTUN, Board Chair; BASSHAM, Board Member; BRIGGS, Board Member,
23 participated in the decision.

24 AFFIRMED

25 10/04/2002

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

NATURE OF THE DECISION

Petitioner appeals a city council decision that removes a condition of approval from a Historical and Architectural Review Committee (HARC) certificate of appropriateness.

MOTION TO INTERVENE

William R. Monfort, Jr., the applicant below, moves to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

FACTS

Intervenor sought a certificate of appropriateness to construct a mixed residential and commercial development on General Commercial-zoned land that he owns. Part of intervenor's land is located on the north side of Jackson Creek, and part is on the south side of the creek. Commercial development was initially proposed on both sides of the creek. However, as approved, all commercial development would be located south of the creek. Multi-family residential development is approved for the north side of the creek.

One of the issues below concerned whether the properties should be connected by a vehicular and pedestrian bridge. Without such a bridge connection, the only vehicular access to the multi-family residential development on the north side of the creek would be via Nunan Street through Nunan Square, an existing residential area to the north. Access to the commercial area on the south side of the creek is provided by city streets on the south side of the creek.

Much of the discussion below, and the central issue in this appeal, focused on an existing bridge, the Blackstone Alley Bridge. The Blackstone Alley Bridge is privately owned. There is contradictory evidence in the record concerning intervenor's ability to obtain the agreement of all bridge owners to use the Blackstone Alley Bridge to provide an internal vehicular and pedestrian connection between the north and south properties. There

1 is also contradictory evidence about the desirability of such a public vehicular connection at
2 this location.

3 In its decision, the HARC approved intervenor’s application, but imposed the
4 following condition:

5 “In order to provide adequate vehicular circulation between opposite sides of
6 Jackson Creek, the proposal must be internally linked either by the use of the
7 existing Blackstone Alley Bridge or a new bridge. The applicant shall revise
8 the proposal to provide for such improved internal circulation and present to
9 the HARC for review and approval within 60 days.” Record 84.

10 Intervenor appealed the HARC decision to the city council, requesting that the above
11 condition be removed. The city council granted intervenor’s request and removed the
12 disputed condition.¹ This appeal followed.

13 **ASSIGNMENT OF ERROR**

14 Jacksonville City Code (JCC) 17.32.060 sets out “[r]equired plan elements” for
15 commercial development within the General Commercial zoning district. JCC 17.32.060
16 requires that an applicant submit

17 “[a] traffic plan that provides adequate vehicle circulation in the vicinity of
18 and within the project. The traffic plan must coordinate internal and external
19 transportation networks, including bikeway and mass transit to [the] extent
20 possible. Traffic noise must be minimized.” Record 302.

21 The disputed condition was imposed by HARC to address its concern that without the
22 bridge, the proposal would not have adequate vehicle circulation, citing concerns that the
23 only vehicular access to the residential development on the north would otherwise be via
24 Nunan Street through Nunan Square to the north. Record 82. The city council found that the
25 disputed condition was unnecessary to satisfy JCC 17.32.060 and voted to remove the
26 condition. The city council’s decision is supported by the following findings:

¹ As approved by the city council, the only required connection between the north and south properties will be a new pedestrian bridge over Jackson Creek.

1 **“Criterion 1: Section 18.05.040(A) The relevant zoning standards**
2 **contained in Title 17 and 18.10 through 18.30 must be satisfied.**

3 **“Findings of Fact:**

4 “1- Section 17.32.060 (Traffic Plan) requires that there be ‘adequate
5 vehicle circulation in the vicinity of and within the project.’

6 “2- With the application of the following conditions, the adequacy of the
7 vehicular connectivity for the multi-family portion of the proposal on
8 the north * * * side of the property was adequately demonstrated with
9 the additional testimony submitted by the appellant.” Record 3.²

10 A total of 16 conditions follow the above-quoted findings.

11 Petitioner’s assignment of error is set out below:

12 “There was not substantial evidence to support respondent’s finding that the
13 Blackstone Alley bridge was unavailable for access to the applicant’s
14 development.” Petition for Review 4.

15 Neither the assignment of error nor any of the arguments presented in support of the
16 assignment of error challenge the adequacy of the city council’s finding that the 16
17 conditions of approval that it imposed on the proposal are sufficient to ensure that the
18 proposal will have adequate vehicular connectivity, without providing a vehicular bridge
19 connection between the north and south properties. Petitioner’s assignment of error
20 challenges a finding the city did not make (that Blackstone Alley Bridge is not available) and
21 fails to challenge the finding that the city did make in addressing JCC 17.32.060 (the 16
22 conditions are adequate to ensure adequate vehicular connectivity). Petitioner’s assignment
23 of error therefore provides no basis for reversal or remand of the city’s decision.

24 The city’s decision is affirmed.

² The copy of the challenged city council decision that is included in LUBA’s copy of the record omits every other page of the decision. A copy of the decision with all of its pages is included as an appendix to the petition for review.