

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 THERESE BAGNELL, ALAN TAYLOR
5 and STEVE HOOP,
6 *Petitioners,*

7
8 vs.

9
10 CITY OF CORVALLIS,
11 *Respondent,*

12
13 and

14
15 OREGON STATE BOARD OF
16 HIGHER EDUCATION,
17 *Intervenor-Respondent.*

18
19 LUBA No. 2002-138

20
21 FINAL OPINION
22 AND ORDER

23
24 Appeal from City of Corvallis.

25
26 Blair Bobier, Corvallis, filed the petition for review and argued on behalf of
27 petitioners.

28
29 James K. Brewer, Corvallis, filed a response brief on behalf of respondent. With him
30 on the brief was Fewell and Brewer. David E. Coulombe, Corvallis, argued on behalf of
31 respondent.

32
33 Kathryn A. Lincoln, Assistant Attorney General, Salem, filed a response brief and
34 argued on behalf of intervenor-respondent.

35
36 BASSHAM, Board Chair; BRIGGS, Board Member; HOLSTUN, Board Member,
37 participated in the decision.

38
39 AFFIRMED

03/25/2003

40
41 You are entitled to judicial review of this Order. Judicial review is governed by the
42 provisions of ORS 197.850.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a city approval of a major modification to the Oregon State
4 University (OSU) Physical Development Plan (PDP), allowing construction of a new
5 building and related parking on the OSU campus.

6 **MOTION TO INTERVENE**

7 The Oregon State Board of Higher Education (intervenor) moves to intervene on the
8 side of the city. There is no opposition to the motion, and it is allowed.

9 **MOTION TO FILE REPLY BRIEF**

10 On February 24, 2003, three days prior to oral argument, petitioners requested leave
11 to file a reply brief, accompanied by the proposed reply brief, pursuant to OAR 661-010-
12 0039.¹ The city and intervenor object to the motion and reply brief, arguing that (1) the
13 motion was untimely filed, and (2) the reply brief is not confined to “new matters” raised in a
14 response brief.

15 We do not agree that the motion is untimely. The response briefs were filed by mail
16 February 18, 2003, nine days prior to oral argument. Petitioners filed their motion and
17 proposed reply brief six days later. It is true that the timing of oral argument gave
18 respondents scant opportunity to review the reply brief prior to oral argument, but that is a
19 product of LUBA’s tight deadlines, not unreasonable delay on the part of petitioners. We
20 cannot say that the motion and reply brief were not filed “as soon as possible” after the
21 response briefs were filed.

¹ OAR 661-010-0039 provides, in relevant part:

“A reply brief may not be filed unless permission is obtained from the Board. A request to file a reply brief shall be filed with the proposed reply brief together with four copies as soon as possible after respondent's brief is filed. A reply brief shall be confined solely to new matters raised in the respondent’s brief. * * *”

1 However, we agree with respondents that portions of the proposed reply brief are not
2 confined to “new matters” raised in the response briefs. Five of the seven points of
3 discussion in the reply brief are either embellishments of arguments made in the petition for
4 review or new allegations of error. The exceptions are the discussions at page 1, line 1
5 through page 2, line 14, and page 3, line 14 through page 4, line 13. The former responds to
6 the city’s argument, advanced for the first time in its response brief, that certain development
7 standards applied in the challenged decision are in fact not approval criteria. The latter
8 responds to the city’s argument, at Response Brief 10, that petitioners waived the issue under
9 the second assignment of error by not raising that issue before the city. These portions of the
10 reply brief are allowed.

11 **FACTS**

12 In April 2002, OSU filed a planned development application with the city, requesting
13 modification of the PDP to allow construction of a new 143,000-square foot engineering
14 building and associated parking on its campus. The proposed site for the new building is a
15 1.97-acre site currently occupied by two gravel parking lots and a small, landscaped park
16 known as People’s Park. The proposed site is at the corner of Memorial Place and Campus
17 Way, near the northern border of the campus. Nearby to the north are off-campus residential
18 areas.

19 The proposed new building will eliminate the existing parking spaces on the 1.97-
20 acre site, and provide only five on-site handicapped parking spaces. However, the new
21 building will include 100 covered and 50 uncovered bicycle parking spaces. City regulations
22 require that OSU provide six vehicle parking spaces per proposed classroom. OSU proposed
23 that the required parking for the proposed building be located off-site at two locations, on
24 Orchard Avenue near 30th Street and near Washington and 11th Streets. OSU commissioned
25 a traffic study that documented the traffic impacts on intersections near the building and
26 proposed parking areas.

1 On June 4, 2002, OSU submitted a revised application that proposed a different
2 parking lot for the new building. The newly proposed parking lot is a 1.25-acre gravel area
3 located next to the Reser Stadium parking lot, that would be paved and striped for 177
4 parking spaces. The proposed parking site is three-quarters of a mile from the proposed
5 engineering building, and separated by railroad tracks that transect the campus. Street access
6 to the proposed new parking lot is through two existing parking lots, which provide access
7 onto SW Western Boulevard at two points. The proposed building requires additional
8 parking spaces beyond the 177 spaces to be provided at the Reser Stadium site; however, the
9 application proposes drawing these additional spaces from the 103-space balance in the
10 university’s parking “bank.”

11 The city planning commission approved the proposed modification, with conditions.
12 Petitioners appealed the planning commission decision to the city council. The city council
13 held a *de novo* hearing September 3, 2002, and voted to deny the appeal and approve the
14 application. This appeal followed.

15 **FIRST ASSIGNMENT OF ERROR**

16 The OSU campus has its own zoning district, denoted OSU. Major revisions to the
17 OSU PDP are reviewed under Land Development Code (LDC) 2.5 (Planned Development).
18 LDC 3.36.20. Under LDC 2.5, an applicant may seek Conceptual Development Plan
19 approval under LDC 2.5.40, but no building permits may issue until the applicant obtains
20 Detailed Development Plan approval under LDC 2.5.50. LDC 2.5.40.04 provides the review
21 criteria for Conditional Development Plan approval.²

² In relevant part, LDC 2.5.40.04 provides:

“Requests for approval of a Conceptual Development Plan shall be reviewed to assure consistency with the purposes of this chapter, policies and density requirements of the Comprehensive Plan, and any other applicable policies and standards adopted by the City Council. In addition, the following compatibility factors shall be considered:

“* * * * *

1 The city considered a traffic impact analysis (TIA) submitted by OSU. Based on that
2 TIA, the city’s findings under LDC 2.5.40.04 regarding traffic conclude that there will be a
3 decrease in vehicle trips in the vicinity of the proposed new building, given the elimination
4 of the two existing parking lots on that site, but an increase in traffic near Reser Stadium due
5 to the newly paved parking spaces proposed there. The TIA was prepared prior to the
6 revised application, and does not consider traffic impacts of the proposed Reser Stadium
7 parking. However, the city concluded that the intersections in the vicinity of Reser Stadium
8 would continue to operate at an acceptable level of service.³

9 Petitioners argue that those findings are inadequate and unsupported by substantial
10 evidence. Petitioners contend that, because the TIA did not study intersections near the Reser
11 Stadium parking site proposed in the revised application, there is no evidence in the record
12 supporting the city’s finding that intersections in the vicinity of Reser Stadium would
13 continue to operate at an acceptable level of service.

“Traffic;

“Effects on off-site parking[.]”

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

“* * * The applicant submitted a [TIA] as part of the Kelley Engineering Building Planned Development Modification Request. This report concluded that there would be a decrease in vehicle trips in the vicinity of the new Kelley Engineering Building. The decrease results from the elimination of 119 parking spaces in that vicinity. It was projected that there would be an increase in traffic in the vicinity of Reser Stadium due to the improvement of the parking spaces but that the surrounding intersections would continue to operate at an acceptable level of service.

“* * * * *

“The Council finds that traffic impact information as required by [LDC] 2.5 was submitted as part of the application and this information was sufficient to determine that there would be a reduction of traffic in the vicinity of the Kelley Engineering Building due to the elimination of 119 parking spaces. The Council also finds that there will be an increase in traffic in the vicinity of Reser Stadium with the improvement of additional parking areas but that the intersections in the vicinity will be operating at acceptable levels of service.” Record 30-31.

1 In addition, petitioners challenge the city’s finding that traffic will decrease in the
2 neighborhood of the proposed new building. Petitioners cite to opposition testimony that
3 traffic in the residential neighborhood north of the building site will increase, as individuals
4 roam nearby city streets looking for parking to replace the 119 parking spaces eliminated by
5 the city’s decision. Petitioners submit that students with classes in buildings on the north
6 side of the campus, including the new engineering building, will seek to park in the adjoining
7 residential neighborhood, rather than park almost a mile away at the Reser Stadium site.

8 Respondents note, first, that while LDC 2.5.40.04 requires the city to consider a
9 number of “compatibility factors,” including traffic, nothing in the code provision or
10 elsewhere requires a traffic study or that the city’s consideration of traffic compatibility be
11 supported by a traffic study. In any case, respondents argue, the city council was entitled to
12 rely on the TIA to conclude that traffic will decrease in the neighborhood of the proposed
13 building. With respect to the Reser Stadium parking proposal, respondents argue that the
14 city relied upon earlier traffic studies of intersections in that area, including a 2000 study for
15 expanded athletic facilities. According to the application, that study concluded that
16 expanded athletic facilities would increase traffic, but the increase was nominal compared to
17 existing traffic in the area. Record 869-70. Respondents also point to a staff report that
18 concludes, based on recent traffic modeling, that intersections in the Reser Stadium area have
19 reserve capacity. Record 758.

20 We agree with respondents that the TIA is substantial evidence supporting the city’s
21 findings regarding traffic impacts near the proposed building. Notwithstanding opposition
22 testimony to the contrary, a reasonable person could rely on the TIA to conclude that
23 elimination of the existing parking spaces would decrease traffic in the area. Although no
24 specific traffic study was prepared with respect to the proposed Reser Stadium parking
25 spaces, there is evidence in the record a reasonable fact finder could rely on to conclude that
26 the proposed parking is consistent with LDC 2.5.40.04.

1 The first assignment of error is denied.

2 **SECOND ASSIGNMENT OF ERROR**

3 LDC 4.1.40.a.3 provides in relevant part that “[n]o development site shall be allowed
4 more than one access point to any arterial or collector street * * * except as approved by the
5 City Engineer.” Petitioners argue that the proposed Reser Stadium parking area violates
6 LDC 4.1.40.a.3, because access to that area is through an existing parking lot that has two
7 driveway access points onto SW Western Boulevard, a designated arterial. Petitioner argues
8 that the city failed to address compliance with LDC 4.1.40.a.3.

9 Respondents argue, first, that the issue of compliance with LDC 4.1.40.a.3 is waived,
10 because no issue regarding that provision was raised below. ORS 197.763(1); 197.835(3).
11 Petitioner responds that city staff raised in the issue of compliance with LDC 4.1.40.a.3 in a
12 July 10, 2002 report to the planning commission. As relevant, the July 10, 2002 staff report
13 states:

14 **“Future Access to Arterial & Collector Streets.** The Reser Stadium parking
15 lot has two driveway access points to SW Western Boulevard (classified as a
16 City Arterial). The City’s Off-Street Parking and Access Standards state that
17 no site shall be allowed more than one access point to any arterial or collector
18 street, except as approved by the City Engineer. Future development at Reser
19 Stadium may require OSU to address possible LOS [level of service]
20 implications related to multiple accesses onto adjacent City arterial or
21 collector streets as well as the shifting of trip generation patterns.” Record
22 365.

23 The staff report recommends approval of the revised application, but does not
24 otherwise address the existing access points or recommend conditions of approval directed at
25 the access points. We disagree with petitioners that the above-quoted portion of the staff
26 report is sufficient to raise the issue of whether the proposed parking improvements, or
27 specifically access to those improvements, violates LDC 4.1.40.a.3. Issues that may be the
28 basis for an appeal to LUBA must be “raised and accompanied by statements or evidence
29 sufficient to afford” the decision maker and the parties an adequate opportunity to respond.
30 ORS 197.763(1). The above-quoted portion of the staff report cautions that “future

1 development” may require review, but it is not clear that it is referring to the proposed
2 parking improvements. Even if the staff report is referring to the proposed improvements, it
3 certainly does not take the position that the improvements or access to those improvements
4 violate LDC 4.1.40.a.3. As noted, the staff report recommends approval of the revised
5 application and does not propose any conditions directed at access to the parking
6 improvements. We agree with the city that the issue raised under this assignment of error
7 was not raised below, and is waived.

8 The second assignment of error is denied.

9 **THIRD ASSIGNMENT OF ERROR**

10 LDC 4.1 sets forth parking and access requirements. The purpose statement for
11 LDC 4.1 states that “parking requirements are intended to provide sufficient parking in close
12 proximity to the various uses for residents, customers and/or employees.” LDC 4.1.10. In
13 addition, LDC 4.1.20.j governs “Location of Required Parking,” and provides, in relevant
14 part, that “required parking * * * shall be provided on the same site as the use or upon
15 abutting property.” LDC 4.1.20.j.1. In the present case, the city concluded that the entire
16 OSU campus is a single “site” for purposes of LDC 4.1.20.j.1 and that in the context of the
17 university campus the proposed parking was sufficiently proximate to the new building to
18 satisfy LDC 4.1.10.⁴

⁴ The city’s findings state, in relevant part:

“[LDC] 4.1.10 requires ‘sufficient parking in close proximity to the various uses.’ [LDC] 4.1.20.j.1 requires that ‘parking be provided on the same site as the use or on abutting sites.’ In the context of the [PDP], the PDP provides planning for the entire campus as one ‘site,’ despite the fact that the campus is intersected by various street rights-of-way and the Willamette and Pacific Railroad. The provision of parking in area on the OSU campus that is not immediately proximate to the construction site is still the same site, provided the improvements are in the campus planning area included within the PDP. The PDP identifies the campus area as having numerous development proposals with a variety of parking areas but recognizes the campus area as one development site.

“* * * The distance between the Kelley Engineering Building and the parking improvement area at Reser Stadium is approximately [three-quarters] of a mile. In the context of the OSU campus, this is a reasonable distance for college students to walk. The provision of parking

1 Petitioners contend that the city’s decision to approve required parking for the
2 proposed new building three-quarters of a mile away is inconsistent with the “close
3 proximity” language of LDC 4.1.10 and the “same or abutting site” requirement of
4 LDC 4.1.20.j.1. Petitioners note that railroad tracks separate the building site and parking
5 site, and argue that the building and parking sites are neither in close proximity nor abutting.
6 Petitioners contend that the city’s findings to the contrary are inadequate and not based on
7 substantial evidence.

8 Respondents counter that the city’s findings broadly interpret the “close proximity”
9 and “same or abutting site” requirements of LDC 4.1.10 and 4.1.20.j.1, as applied to the OSU
10 campus, and cite to various portions of the PDP that treat the entire campus as one integrated
11 “site.” According to respondents, the city’s interpretations are consistent with its code and
12 not reversible under the deferential standard of review LUBA must apply to local
13 government interpretation of local ordinances. ORS 197.829(1); *Clark v. Jackson County*,
14 313 Or 508, 836 P2d 710 (1992). In addition, the city argues that the Planned Development
15 standards of LDC 2.5 allow the city to modify site development standards of the underlying
16 zoning district. LDC 2.5.10. The city argues that to the extent the city council varied from
17 the parking standards at LDC 4.1.10 and 4.1.20.j.1, the city is authorized to do so pursuant to
18 the planned development process.

19 It does not appear to us that the city council viewed its findings under LDC 4.1.10
20 and 4.1.20.j.1 as *modifying* those standards, even if LDC 2.5.10 authorizes such
21 modification. However, we agree with respondents that the city’s findings interpret “site”

within [three-quarters] of a mile for an educational institution is consistent with community values related to a reasonable distance for students to walk for educational opportunities.

“* * * For those students who do not desire to walk from the Reser parking area, a campus shuttle service is available that provides service at 15-minute intervals to all of the academic buildings and parking areas on the OSU campus. Provision of this shuttle service contributes to and enhances the concept that the area covered by the OSU PDP functions as a single ‘site.’” Record 11-12.

1 and “proximity” in the context of the OSU campus and its PDP more broadly than it might in
2 other contexts. The city’s findings adequately explain why it adopted that broad view. We
3 cannot say that the city’s interpretations are inconsistent with the express language of either
4 LDC 4.1.10 and 4.1.20.j.1, or otherwise reversible under the deferential standard of review
5 we must apply to the city’s interpretations of its code.

6 The third assignment of error is denied.

7 **FOURTH ASSIGNMENT OF ERROR**

8 LDC 2.5.40.04 requires that the city consider, in approving a major modification to
9 the PDP, the “[e]ffects on off-site parking.” Petitioners argue that elimination of 119 parking
10 spaces and construction of the new engineering building in the northern core area of the
11 campus near an already impacted residential area will cause an increase in the number of
12 students seeking to park on residential streets. According to petitioners, the city’s findings
13 fail to adequately address the impacts of the proposed uses on off-site parking.

14 The city’s findings discount the impacts of the proposed uses on off-site parking,
15 relying on parking restrictions in force in the adjoining neighborhood, the central location of
16 the new building and other parking mitigation measures.⁵ We agree with respondents that

⁵ The city’s findings state, in relevant part:

“* * * Loss of parking in the campus core could potentially cause parking to be displaced into the surrounding neighborhoods. However, the surrounding neighborhoods have parking managed through residential parking districts that limit the amount of time that non-residents may park in the area.

“* * * There is an ongoing need for the City, OSU, and the surrounding neighborhoods to continue to work together to manage vehicular parking impacts related to those students, faculty, or staff that are inappropriately parking in these neighborhoods. This involves coordination of enforcement activities and periodic review of the existing residential parking district boundaries and regulations.

“* * * * *

“* * * The [City] Council finds that parking in the surrounding neighborhoods is regulated through the use of residential parking districts and there may be a need to periodically reevaluate the district boundaries and regulations.” Record 30.

1 the city’s findings adequately consider the “[e]ffects on off-site parking,” as required by
2 LDC 2.5.40.04. That standard does not require, as petitioners appear to presume, that there
3 be *no* impacts on off-site parking. Given that petitioners do not explain why the parking
4 restrictions and other mitigations the city relies upon are insufficient to satisfy
5 LDC 2.5.40.04, this assignment of error provides no basis for reversal or remand.

6 The fourth assignment of error is denied.

7 **FIFTH ASSIGNMENT OF ERROR**

8 Corvallis Comprehensive Plan (CCP) Policy 11.12.2 states that “[t]he University
9 shall develop and implement a transportation and parking plan that reduces the negative
10 traffic and parking impacts on existing residential areas.” The city’s decision noted the
11 absence of an “updated OSU Master Transportation Plan,” but nonetheless found that
12 transportation and parking impacts are adequately addressed under the city’s code. Record
13 30-31. Petitioners disagree, arguing that in the absence of a “transportation and parking
14 plan” that implements CCP Policy 11.12.2 the city cannot adequately evaluate the proposal’s
15 transportation and parking impacts.

16 Respondents argue, and we agree, that petitioners have not established that CCP
17 Policy 11.12.2 is a mandatory approval criterion applicable to the proposed development, or
18 that the absence of a “transportation and parking plan” prevents the city from adequately
19 evaluating the transportation and parking impacts of the proposed development. By its
20 terms, CCP Policy 11.12.2 directs OSU to develop a plan, but nothing cited to us suggests
21 that that directive is an approval criterion with respect to particular development proposals,
22 or that such a plan is necessary to evaluate transportation and parking impacts under other,
23 applicable code provisions.

In addition, the city council adopted a staff report as findings stating, in relevant part, “* * * that the proposed [central] location of the new building will encourage walking and biking and that using parking bank credits and upgrading parking spaces at Reser Stadium coupled with OSU’s shuttle service is a reasonable approach to addressing the parking impacts of the project.” Record 300.

1 The fifth assignment of error is denied.

2 **SIXTH ASSIGNMENT OF ERROR**

3 LDC 3.36.20 requires that major modifications to the PDP “must be compatible with
4 Comprehensive Plan policies and responsive to the unique requirements of the proposed use
5 and its relationship and effects on the surrounding community.” LDC 2.5.20.c describes one
6 of the purposes of Planned Development as preserving “to the greatest extent possible
7 existing landscape features and amenities, and [utilizing] such features in a harmonious
8 fashion.” LDC 4.2.20.c requires that

9 “[s]ignificant plant and tree specimens should be preserved to the greatest
10 extent practicable and integrated into the design of a development. Trees of
11 8-inches or greater diameter * * * and shrubs * * * over 3 ft in height are
12 considered significant. * * * Existing trees may be considered preserved only
13 if no cutting, filling, or compaction of the soil takes place between the trunk
14 of the tree and the area 5 feet outside the tree’s drip line. * * *”

15 The city’s findings quote LDC 2.5.20.c and 3.36.20 but do not directly address them.⁶
16 However, the findings appear to suggest that those provisions or at least the concerns that

⁶ As relevant, the city’s findings state:

“The Council notes that [petitioners] state that the loss of People’s Park is inconsistent with * * * [LDC] 2.5.20.c * * *. Included in [LDC] 2.5.20.c is a purpose statement ‘Preserve to the greatest extent possible existing landscape features and amenities and utilize such features in a harmonious fashion.’ * * * The Council notes that [LDC] 3.36.20 implies that ‘major revisions to this plan are required to be submitted for review and approval by the City in accordance with the Conceptual Development Plan review procedures in [LDC] 2.5. The [PDP] must be compatible with Comprehensive Plan policies and responsive to the unique requirements of the proposed use[.]’

“The Council notes that LDC 4.2.20.c states, ‘significant plant and tree specimens should be preserved to the maximum extent practicable and integrated into the design of the development[.]’ The Council further notes that:

“A. The site contains a number of significant plant and tree specimens * * *.

“B. The building has been sited so that all of the existing significant street trees aligning Memorial Place and Campus Way will be retained and other significant vegetation that can be relocated will be transplanted to other locations on campus. Additional vegetation will be planted as part of the development proposal to mitigate the loss of the existing significant vegetation.

1 petitioners raised under those provisions are satisfied by findings addressing LDC 4.2.20.c.
2 The challenged decision concludes that LDC 4.2.20.c is satisfied because the proposed
3 development will preserve significant street trees, and trees and vegetation removed due to
4 construction will be replaced or mitigated. Petitioners challenge the findings addressing
5 LDC 3.36.20, 2.5.20.c, and 4.2.20.c. We address those arguments in turn.

6 **A. LDC 3.36.20**

7 With respect to LDC 3.36.20, petitioners argue that the proposed development
8 destroys People’s Park, a unique and historic resource. According to petitioners, People’s
9 Park was created as a memorial to student activists and as a reaction to increased paving of
10 natural areas. Petitioners cite to evidence that some members of the OSU community regard
11 People’s Park as a “sacred” resource of unique social significance. Petitioners contend that
12 the city findings addressing this issue and LDC 3.36.20 are inadequate.

“C. The [PDP] guides development within the OSU district and the PDP contains a number of statements related to open space. * * * The landscape/open space area known as People’s Park is not one of the areas identified as permanent open space in the [PDP].

“D. Another PDP statement indicates that about 30 percent average ground coverage by all buildings and parking is the maximum that will preserve the aesthetic and open space quality of the main campus. Evidence in the record indicates that the development of the Kelley Engineering Building is within this guideline.

“E. Development of the Kelley Engineering Building at the proposed site will preserve more open space than if the current building were constructed on a vacant site since a portion of the site is currently occupied by a parking lot. The Kelley Engineering Building is also designed to include a courtyard that will provide usable open space for the campus users.

“F. The University has offered to develop an area for a park to replace the park area lost as part of the Kelley Engineering Building project. The offer involves an area not currently accessible to the public that could be designed to provide the values that have been expressed as important—an area for quiet contemplation, open space, and visual relief.

“The Council finds that * * * the development proposal has preserved, to the greatest extent practicable, the significant vegetation. The Council also finds the [proposal] is consistent with the [PDP] statements pertaining to retention of permanent open space and the amount of area that should be retained as open space to preserve the aesthetic character of the University.” Record 31-33.

1 Respondents argue, and we agree, that to the extent LDC 3.36.20 is concerned with
2 preserving the open space or other qualities of the existing site, the city’s findings adequately
3 explain why the proposed use is consistent with that provision.⁷ The city apparently views
4 LDC 3.36.20 as satisfied if open space and other natural qualities of the site are significantly
5 preserved or their loss is mitigated. Petitioners do not explain why they believe LDC 3.36.20
6 requires more.

7 **B. LDC 2.5.20.c**

8 With respect to LDC 2.5.20.c, petitioners argue that the city’s findings do not address
9 preserving “existing landscape features and amenities,” much less “to the greatest extent
10 possible.” We understand petitioners to contend that preservation of significant vegetation
11 “to the maximum extent practicable” under LDC 4.2.20.c is not sufficient to demonstrate
12 compliance with LDC 2.5.20.c, which addresses different concerns. In addition, petitioners
13 cite to opposition testimony that, “with a little re-orientation,” the proposed engineering
14 building could be constructed without destroying People’s Park. Record 718. If so,
15 petitioners ask, then how can the proposed development preserve “existing landscape
16 features” “to the greatest extent possible”? Petition for Review 22.

17 Respondents argue first that LDC 2.5.20.c is simply one of the purpose statements in
18 LDC 2.5, and not an applicable approval criterion for conceptual approval of a request to
19 modify the OSU PDP. To the extent LDC 2.5.20.c is applicable, respondents argue that the
20 city adequately addressed its concerns in addressing the vegetation preservation requirements
21 of LDC 4.2.20.c. Respondents argue that there is no meaningful difference between
22 preserving “existing landscape features and amenities” “to the greatest extent possible” under

⁷ Respondents note that LDC 3.36.20 is concerned with the “unique requirements of the *proposed use*,” not the existing resources on the *site*. Therefore, respondents argue, LDC 3.36.20 does not require any consideration of the qualities, unique or not, of the existing site. However, the city’s decision does not express that view, and appears to treat LDC 3.36.20 as being one of several code criteria that require some consideration to preserving existing vegetation, open space and similar values.

1 LDC 2.5.20.c and preserving and integrating existing significant trees and vegetation “to the
2 maximum extent practicable” under LDC 4.2.20.c.

3 As noted, the city’s findings appear to regard LDC 2.5.20.c as being potentially
4 applicable to the proposed modification, but choose to address that code provision’s concerns
5 under LDC 4.2.20.c. Given the similarity between the operative language in the two code
6 provisions, we cannot say that that view of the city’s code is reversible under
7 ORS 197.829(1). For the same reason, we do not agree with petitioners that the city’s
8 findings are inadequate for failure to address the particular language of LDC 2.5.20.c.

9 As to the assertion at Record 718 that the proposed new building could be re-oriented
10 to preserve the park, that assertion is simply that. Petitioners cite to no evidence that the new
11 building can in fact be re-oriented in such a way as to preserve the park, even assuming
12 LDC 2.5.20.c is properly viewed as requiring consideration of that possibility. Respondents
13 point us to site plans showing that the proposed building occupies almost the entire site.
14 Record 366. We agree with respondents that, to the extent LDC 2.5.20.c requires that the
15 city consider re-orienting the building to preserve the park, petitioners have not demonstrated
16 that such re-orientation is in fact possible. Accordingly, the city’s failure to address that
17 possibility is not a basis for reversal or remand.

18 **C. LDC 4.2.20.c**

19 Finally, with respect to LDC 4.2.20.c, petitioners argue that the proposed
20 development does not in fact preserve significant trees and vegetation “to maximum extent
21 practicable.” Petitioners cite to evidence that a chain link fence will be constructed at the drip
22 lines of seven trees along Campus Way, and argue therefore that those trees will not be
23 “preserved” within the meaning of LDC 4.2.20.c, which prohibits cutting, filling or
24 compacting of soils within 5 feet outside of a significant tree’s drip line. Record 471-72.
25 Further, petitioners argue that the city does not attempt to preserve trees or vegetation on the

1 building site itself. According to petitioners, placing a building on top of a park does not
2 preserve significant trees to the “maximum extent practicable.”

3 As far as we can tell, the chain link fence at the drip lines of significant trees is a
4 protective measure recommended by the university’s arborist. Record 472. Petitioners do
5 not explain why that fence constitutes cutting, filling or compaction of soil within the
6 prescribed area. As for preservation of significant trees and shrubs on the building site itself,
7 petitioners appear to argue for an interpretation of LDC 4.2.20.c that would in the present
8 case require significant redesign and reduction of the proposed building footprint in order to
9 preserve People’s Park. The city implicitly rejected that view, in finding that LDC 4.2.20.c
10 is satisfied because the proposed design preserved some significant trees and vegetation and
11 others lost through development would be mitigated on and off-site. We cannot say that the
12 city’s view of LDC 4.2.20.c, as not requiring consideration of significant redesign of the
13 proposed building in order to preserve on-site vegetation, is reversible under
14 ORS 197.829(1).

15 The sixth assignment of error is denied.

16 The city’s decision is affirmed.