

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 GEOFFREY FARRER and
5 GEOFFREY FARRER, SR., Trustee,
6 *Petitioners,*

7
8 vs.

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10 CITY OF GRANTS PASS,
11 *Respondent,*

12
13 and

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15 NORTHRIDGE CONSTRUCTION
16 AND DEVELOPMENT, LLC,
17 *Intervenor-Respondent.*

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19 LUBA No. 2003-033

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21 FINAL OPINION
22 AND ORDER

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24 Appeal from City of Grants Pass.

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26 Duane Wm. Schultz, Grants Pass, filed the petition for review and argued on behalf
27 of petitioners.

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29 No appearance by City of Grants Pass.

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31 James R. Dole and Jed L. Van Loan, Grants Pass, filed the response brief on behalf of
32 intervenor-respondent. With him on the brief was Schultz, Salisbury, Cauble and Dole. Jed
33 L. Van Loan argued on behalf of intervenor-respondent.

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

37
38 REVERSED

07/18/2003

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

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NATURE OF THE DECISION

Petitioners appeal a city decision approving a minor site design modification.

MOTION TO INTERVENE

Northridge Construction and Development, LLC, (intervenor), the applicant below, moves to intervene on the side of respondent. There is no opposition to the motion and it is allowed.

FACTS

Petitioners own a parcel of land that is developed with multi-family housing. As originally approved and constructed, access to petitioners’ development was via a paved shared access to Fairview Avenue, a city street.¹ That shared access straddles the property line that separates petitioners’ and intervenor’s properties. In 2001, the city granted site design approval for a multi-family development on intervenor’s property. The approved site design included access to intervenor’s development via the shared access, and was conditioned on intervenor’s acquisition of an access easement from petitioners prior to the issuance of a certificate for occupancy for the buildings.

Negotiations between petitioners and intervenor regarding the value of the easement reached an impasse. As a result, intervenor requested that the city modify its site design approval to allow access to intervenor’s development via an access located entirely on intervenor’s property, approximately 12 feet to the west of the existing access. The city manager, acting as the planning director, approved the modification pursuant to Grants Pass Development Code (GPDC) 19.058. GPDC 19.058(2) permits the planning director to approve site design modifications without a hearing, if the planning director concludes they

¹ It is not entirely clear how the shared access came into being, or why petitioners have the right to use the entire shared access, while intervenor is obliged to obtain an easement from petitioners in order to use the shared access. However, that background is not necessary to resolve this appeal, given the agreement of the parties that intervenor has to obtain an easement from petitioners in order to use the shared access.

1 are not “major” modifications. The modification required that intervenor construct a shared
2 access on intervenor’s property and grant an easement to petitioners to allow access to
3 petitioners’ property via the access on intervenor’s property. In order to comply with
4 maximum driveway width standards, the city also required that petitioners’ access to their
5 property be limited to the driveway on intervenor’s property.

6 Petitioners did not become aware of the city’s modification approval until intervenor
7 constructed its access and installed a curb and sidewalk that cut off petitioners’ direct access
8 to Fairview Avenue. Petitioners appealed the modification approval to the planning
9 commission, arguing that the challenged decision was a “major” modification that required a
10 new hearing and review by the planning commission. The planning commission affirmed the
11 city manager’s decision, and petitioners appealed that decision to the city council. On
12 February 5, 2003, the city council denied petitioners’ appeal and affirmed the planning
13 commission’s decision. This appeal followed.

14 **DECISION**

15 As relevant, GPDC 19.058 provides:

16 “Modification to Approved Plans. The *applicant* may petition for
17 modification of a previously approved site plan. The petition shall include
18 reasons for modifying the plan standards of this Code. If, at time of building
19 permit request, the approved site plan has been modified, issuance of a
20 building permit will be postponed until the revised map has been processed in
21 accordance with the provisions of this section.

22 “(1) Major Modification. When modification to an approved plan is
23 determined to be a Major Modification, the plan shall be resubmitted,
24 with fee, to the Site Plan Committee for review and decision. A major
25 modification constitutes one or more of the following:

26 “* * * * *

27 “(d) Relocation of vehicle access points and parking areas where
28 the change will potentially affect the safety of off-site and on-
29 site traffic circulation.”

30 “* * * * *

1 “(2) Minor Modification. A minor modification to an approved plan or
2 conditionally approved plan may be made by the Director provided the
3 Director determines that the modification does not constitute a major
4 modification.” (Underlining in original, italics added.)

5 The parties dispute whether the city adequately explained why the disputed
6 modification qualifies as a minor modification under GPDC 19.058(2). Petitioners contend
7 the modification should have been treated as a major modification under GPDC 19.058(1)(d)
8 and that the city’s failure to treat the requested modification as a “major modification”
9 prejudiced their substantial rights in a number of ways. We find it unnecessary to address
10 each of the parties’ specific arguments because petitioners’ assignments of error, fairly read,
11 raise an issue that requires that we reverse the city’s decision.

12 A modification of a previously approved site plan under GPDC 19.058, whether it is
13 viewed as a *major* modification (as petitioners argue) or a *minor* modification (as intervenor
14 argues), is initiated by a petition from “[t]he applicant.” GPDC 30.020 defines “applicant” as
15 “[t]he owner of affected property, or such owner’s duly authorized representative. * * *”
16 Intervenor, as the applicant for the site plan approval for its property, may petition for
17 modification of intervenor’s site plan. However, GPDC 19.058 does not authorize intervenor
18 to petition for modification of petitioners’ prior site plan approval, since intervenor is not
19 “the owner of [the] affected property” or the owner’s “duly authorized representative.” If the
20 modifications that intervenor seeks for its previously approved site plan cannot be performed
21 in a manner that does not alter petitioners’ existing site plan approval, GPDC 19.058 appears
22 to require that petitioners join intervenor as an applicant for that modification request.
23 Neither GPDC 19.058 nor any other authority cited by the parties authorizes intervenor to
24 propose and the city to approve a modification to intervenor’s site plan that also modifies
25 petitioners’ approved site plan.

26 Accordingly, the city’s decision is reversed.