

NATURE OF THE DECISION

Petitioner appeals city approval of a variance to an off-street parking requirement.

FACTS

The subject property consists of two lots adjacent to and east of Highway 101, south of the Depoe Bay Bridge. The two lots total 4,400 square feet, with 90 feet of frontage on Highway 101 and only 56 feet of depth. The eastern side of the property slopes down into Depoe Bay harbor. The property is almost completely developed with an existing building, the downstairs of which had recently operated as a seafood market. Ten public parking spaces front the property within the Highway 101 right-of-way.

The applicant proposes to lease the property to open a 50-55 seat restaurant and seafood market. Depoe Bay Zoning Ordinance (DBZO) 4.030 requires compliance with off-street parking requirements upon a change of use. City staff determined that DBZO 4.030 requires provision of 10 off-street parking spaces on the subject property or within 500 feet of the property. The applicant sought a variance from the requirements of DBZO 4.030, under the variance standards at DBZO 8.020, arguing that the size, topography, and lot coverage of the subject property made it impossible to site off-street parking on the property, and that no suitable off-site locations within 500 feet were available. The planning commission approved the variance. Petitioner, who owns a business in the city, appealed to the city council, which denied the appeal and approved the variance. This appeal followed.

FIRST ASSIGNMENT OF ERROR

DBZO 8.010 authorizes a variance where, “owing to special and unusual circumstances related to a specific piece of property, strict application of the ordinance would cause an undue or unnecessary hardship.” DBZO 8.020 sets out the specific criteria under which a variance may be granted, providing in relevant part:

“Circumstances for Granting a Variance. A variance may be granted only in the event that all of the following circumstances exist:

- 1 “1. Exceptional or extraordinary circumstances apply to the property
2 which do not apply generally to other properties in the same zone or
3 vicinity, and result from lot size or shape, legally existing prior to the
4 date of this ordinance, topography, or other circumstances over which
5 the applicant has no control.
- 6 “2. The variance is necessary for the preservation of a property right of the
7 applicant substantially the same as owners of other property in the
8 same zone or vicinity possess.
- 9 “3. The variance would not be materially detrimental to the purposes of
10 this ordinance, or to property in the zone or vicinity in which the
11 property is located, or otherwise conflict with the objectives of any
12 city plan or policy.
- 13 “4. The hardship is not self-imposed and the variance requested is the
14 minimum variance which would alleviate the hardship.”

15 Petitioner challenges the city’s findings under each of these criteria, noting that a variance
16 may be granted only if all of the requisite circumstances are present. We first address
17 petitioner’s arguments under the first criterion and a part of the fourth criterion, and the
18 remaining arguments separately.

19 **A. Exceptional or Extraordinary Circumstances**
20 **Minimum Variance Which Would Alleviate the Hardship**

21 DBZO 3.110(3)(e) requires the provision of off-street parking either on the same lot
22 or within 500 feet of the property the off-street parking serves. The city found that no off-
23 street parking can be located on the subject property, and that no private off-street parking
24 within 500 feet of the property had been identified.¹ The city declined to require the

¹ The city’s findings state, as relevant:

“With the existing building covering nearly 100% of the property, no off-street parking spaces are available on-site unless the building is demolished and rebuilt with parking on the ground level with a new building on the 2nd and 3rd levels. The existing head-in parking that fronts the property is located within the Highway 101 right-of-way. The existing on-street parking cannot be designated for a specific building or property.

“No private parking within 500 feet of the site has been identified as available to accommodate the off-street parking requirement. Parking within 500 feet of the subject property that is across Highway 101 is unacceptable at this time because of safety concerns for pedestrians crossing the highway without a crosswalk.” Record 9.

1 applicant to provide off-street parking across Highway 101 from the property, noting safety
2 concerns.

3 Petitioner does not dispute the city’s finding that no off-street parking can be located
4 on the subject property. However, petitioner challenges the adequacy and evidentiary
5 support for the city’s findings that no off-street parking is available within 500 feet of the
6 property. Petitioner disputes the city’s finding that off-street parking on the vacant lot on the
7 west side of Highway 101 across from the subject property is “unacceptable,” arguing that
8 nothing in the city’s ordinance allows off-street parking requirements to be waived based on
9 lack of crosswalks or pedestrian facilities. According to petitioner, the city has required
10 other businesses in the city to provide off-street parking across the highway from the
11 property served by that parking.

12 Petitioner also argues that there are at least two available sites on the east side of
13 Highway 101. Petitioner cites to evidence that the vacant lot adjacent to the subject property
14 on the south is for sale, and argues that there is no evidence that that lot cannot be used to
15 provide at least some of the required off-street parking spaces. Petitioner also asserts that

“The two lots are very small (combined approximately 90 [feet] wide, 56 [feet] deep). The existing building covers the majority of the lot. The front of the building (west side) is on the property line. The topography of the surrounding area (to the south and east) is very steep. The combination of the small lot area, existing building coverage, location of the existing building, and surrounding steep land eliminate the possibility of any off-street parking on or near the property. Many commercial properties, particularly those on the east side of the highway, north of the bridge, are larger (deeper) and extend to the east where parking is available. For this subject property, the east property boundary and topography preclude the ability to have parking behind the building. This creates an extraordinary circumstance which does not apply generally to other properties. It also provides a circumstance over which the applicant has no control.

“* * * * *

“Other commercial properties, *i.e.*, on the west side of Highway 101 and north of the bridge, have available parking in the near vicinity and on the same side of the highway. The subject property does not have available off-street parking on the same side of the highway due to topographic conditions. Obtaining parking on the opposite side of the highway is found to be unsafe due to the lack of pedestrian facilities, *i.e.*, crosswalks and sidewalks.” Record 9.

1 there is vacant land within 500 feet to the south of the property, at the site of a proposed
2 winery.

3 The city responds that the city council reasonably interpreted DBZO 3.110 to require
4 off-street parking that can be used safely by customers of the proposed use. According to the
5 city, Highway 101 south of the bridge is a four-lane highway without crosswalks, sidewalks,
6 signals or other facilities that would enable pedestrians to cross safely. Although the
7 findings do not explicitly address providing off-street parking on the winery property, the
8 city disputes that that property is within 500 feet of the subject property. Even if the winery
9 property is within 500 feet, the city argues, requiring patrons of the restaurant to walk along a
10 two-foot wide shoulder next to a four-lane highway for 500 feet or more is unsafe. With
11 respect to the vacant lot adjacent to the subject property, the city argues that it is a steep lot
12 that is currently covered with blackberry bushes, and that it is not identified as a possible
13 location for off-street parking in the Downtown Refinement Plan (DRP).

14 The city council clearly views safe access between parking spaces and the property
15 served to be a critical issue, in evaluating an application for a variance to the off-street
16 parking requirements of DBZO 3.110. In the city council's view, an off-site parking lot that
17 cannot provide safe access to the property served by that parking lot is not an acceptable
18 basis to deny a variance to the off-street parking requirement. We cannot say that that
19 interpretation of the pertinent parking requirements and the variance criteria is inconsistent
20 with the language of the applicable code provisions, and accordingly defer to that
21 interpretation. ORS 197.829(1)(a).²

² ORS 197.829(1) provides, in relevant part:

“[LUBA] shall affirm a local government’s interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government’s interpretation:

“(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;

1 Petitioner appears to dispute the evidentiary foundation for the city’s finding that
2 providing a parking lot across Highway 101 from the subject property would be unacceptable
3 unsafe in the absence of crosswalks, sidewalks or other pedestrian facilities. However, the
4 city cites to evidence supporting that finding, and petitioner points to no countervailing
5 evidence.

6 Finally, petitioner cites to evidence that the city has approved at least one off-site
7 parking lot that is across Highway 101 from the property served. Record 27. However, the
8 city did not conclude that all parking lots across Highway 101 from the property served are
9 unsafe; it concluded that such a parking lot in the present circumstance would be unsafe, due
10 to the absence of crosswalks, sidewalks, signals or other pedestrian facilities on the relevant
11 stretch of Highway 101. Petitioner has not established that similar circumstances prevail in
12 the vicinity of the parking lot the city previously approved across Highway 101 from the
13 property served. Further, there is no indication that the applicant of that development sought
14 and was denied a variance. Finally, even if the city’s application of the off-street parking
15 requirements has been inconsistent in this respect, petitioner does not explain why any
16 inconsistency compels the city to deny the present application to vary those parking
17 requirements.

18 Turning to the issue of potential off-street parking lots on the east side of Highway
19 101, the findings do not explicitly address the vacant adjacent lot or the winery property,
20 except to generally reject all properties south of the subject parcel for “topographic” reasons.
21 The city council did not reject either potential lot for safety reasons. The city may be correct
22 that requiring patrons to walk along the shoulder of Highway 101 presents the same type and
23 degree of safety concerns that motivated the city to reject the parking lot across the highway,

“(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;

“(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation[.]”

1 but there are no findings to that effect, and the city does not argue that the evidence is such
2 that we can affirm the city’s decision on that point notwithstanding the lack of findings.
3 ORS 197.835(11)(b). In addition, nothing cited to us in the record resolves the parties’
4 dispute over whether the winery property is within 500 feet of the subject property. Remand
5 is therefore necessary for the city to adopt findings addressing the potential use of the winery
6 property for off-site parking.

7 We reach the same conclusion with respect to the adjacent lot. While there is a
8 suggestion in the findings and evidence that that vacant lot, like the subject property, has
9 steep slopes, there is no evidence cited to us or findings explaining why the property cannot
10 be developed to provide at least some off-street parking spaces. The applicant testified that
11 the area south of the subject property apparently including the vacant lot is covered with
12 blackberry bushes, but does not explain why such bushes preclude development of at least a
13 portion of the vacant lot.³

14 Relatedly, petitioner argues under the fourth variance criterion, at DBZO 8.020(4),
15 that the city failed to demonstrate that the requested variance is the “minimum necessary to
16 alleviate the hardship.” Petitioner argues that there is no finding or evidence that a total
17 variance from the required 10 off-street parking spaces is necessary. That argument seems
18 particularly germane when applied to the adjacent lot. It may be that the lot as a whole is too
19 steep to provide ten parking spaces, but that the western portion next to the highway could be
20 developed to provide some of the required spaces. The city’s findings with respect to the
21 DBZO 8.020(4) “minimum variance which would alleviate the hardship” language are

³ We note in this respect that the city’s DRP contemplates future development of the western portion of the vacant lot with a “harbor overlook” platform and a pedestrian path. Record 123. That would suggest that at least the western portion of the vacant lot has potential for development, notwithstanding the presence of blackberry bushes.

1 conclusory and make no attempt to explain why a total variance to the off-street parking
2 requirements is the minimum necessary to alleviate the hardship.⁴

3 For the above reasons, remand is necessary for the city to adopt findings addressing
4 whether the adjacent lot or winery property could provide at least some of the required off-
5 street parking spaces. The first subassignment of error is sustained; the fourth sub-
6 assignment of error is sustained, in part.

7 **B. Necessary for the Preservation of a Property Right**

8 DBZO 8.020(2) requires a finding that the variance is “necessary for the preservation
9 of a property right of the applicant substantially the same as owners of other property in the
10 same zone or vicinity possess.” The property right the city identified is the right to use the
11 subject property for uses allowed in the Marine Commercial (M-C) zone, specifically a retail
12 market and restaurant.⁵ The city also found that other retail businesses in the M-C zone rely
13 on on-street parking located in front of their businesses.

⁴ The city’s findings with respect to DBZO 8.020(4) state:

“The applicant[s are] not eliminating any existing parking, nor are they expanding or enlarging the existing building. They are trying to create a viable business that will be a benefit to the community. The request is to acknowledge that adequate parking is provided by the existing on-street parking. The recent use of the building as a seafood market was not a viable business. The combination of a seafood market and restaurant may be a viable business.

“By proposing no loss of existing parking, by not expanding or enlarging the existing building, and [the] fact that the existing building occupies nearly 100% of the site, the City Council finds that the request is the minimum variance needed to alleviate the hardship and enable the establishment of the seafood market/restaurant business” Record 10.

⁵ The city findings of compliance with DBZO 8.020(2) state:

“The property is zoned marine-commercial (M-C). The M-C zone allows retail uses and eating and drinking establishments as outright permitted use[s]. One of the highest priorities expressed by the community is the need to revitalize the commercial area south of the bridge. This is an opportunity to provide a viable commercial establishment south of the bridge. Waldport Seafood Company is the company that has been selected by the City to lease the seafood plant located at the end of Shell Avenue. The seafood plant and proposed seafood market and restaurant provide the type of business that enhances Depoe Bay’s fishing village character.

1 Petitioner contends that the city misconstrued DBZO 8.020(2) and that, properly
2 construed, that standard allows a variance only where the record shows that other business
3 owners in similar situations have been granted a variance to the off-street parking
4 requirements. Because the city has never granted a variance to off-street parking
5 requirements, petitioner argues, granting this applicant a variance would in fact be giving the
6 applicant a special right that no one else has ever had.

7 The city responds, and we agree, that it is petitioner who misconstrues
8 DBZO 8.020(2). That standard requires a comparison of property rights, and a finding that
9 the variance is necessary to preserve substantially similar property rights, which the city has
10 identified as the right to develop the property with retail commercial uses allowed in the M-C
11 zone. The standard does not require a showing that the city has granted other property
12 owners a variance to off-street parking requirements. Accordingly, petitioner’s arguments
13 under this sub-assignment of error do not provide a basis for reversal or remand.

14 The second sub-assignment of error is denied.

15 **C. Materially Detrimental to the Purposes of the Ordinance**

16 DBZO 8.020(3) requires a finding that the variance is not materially detrimental to
17 the purposes of the zoning ordinance, or otherwise conflict with the objectives of any city
18 plan or policy. The city found that the variance is not detrimental to the purpose of the off-
19 street parking requirement—to provide adequate parking—because there is adequate on-
20 street parking.⁶ The city also found that the variance does not conflict with the DRP, which

“There are several retail establishments in the Depoe Bay commercial zone that substantially rely on on-street highway parking located in front of their businesses. This parking variance will provide a property right that is substantially the same as many other properties in the same zone and vicinity.” Record 10.

⁶ The city’s findings addressing DBZO 8.020(3) state:

“The parking variance will not be detrimental to the purpose of the ordinance. The purpose of the parking ordinance is to provide adequate parking for various land uses. There is

1 contemplates eventually replacing the current head-in parking in front of the subject property
2 with a larger number of parallel parking spaces along the east side of Highway 101.

3 Petitioner challenges the city’s finding that current on-street parking in the area is
4 “adequate.” Petitioner argues that the DRP discusses a parking occupancy study indicating
5 that the existing parking supply in the city is at capacity during peak days. Further,
6 petitioner cites to a table indicating that parking in the vicinity of the subject property is from
7 20 to 51 percent occupied during the peak spring break period, even without the new
8 restaurant use.

9 In addition, petitioner argues that the city errs in relying on public on-street parking
10 to supply parking for the new restaurant, contending that doing so shifts the burden from the
11 applicant to the taxpayer. According to petitioner, that shift in burden is inconsistent with
12 city comprehensive plan goals and policies that require equitable treatment of property
13 owners and that new development provide for public off-street parking.⁷ Further, petitioner
14 disputes the city’s finding of consistency with the DRP, noting that the DRP recommends
15 that businesses south of the subject property “should provide ample off-street parking
16 thereby reducing the need for people to park along the highway.” Record 66.

(adequate) on-street parking in front of the building that has been in place for many years.
Recent parking studies show that parking requirements have been overly restrictive.

“The seafood market/restaurant does not conflict with the objectives of the City plan. The use
helps implement an important objective of the City to revitalize the commercial area south of the
bridge. The [DRP] recommends that parking for commercial establishments south of the
bridge be provided on-street along the frontages of the buildings. Once the [DRP] is
implemented, the existing head-in parking along the east side of the highway will be
converted to parallel parking. This will reduce the number of on-street parking spaces
fronting the subject building from 10 parking spaces to 4 parking spaces. However, there will
be a significant overall increase in parking along Highway 101 south of the bridge because
identified parallel parking will be provided from the bridge south to Schoolhouse Street.”
Record 10.

⁷ Petitioner cites to a comprehensive plan goal, discussed below under the second assignment of error,
stating that it is the city’s goal “[t]o promote, on an equitable basis, the highest level of services the citizens are
willing to support.” Petitioner also cites to a policy implementing that goal, which states that “Depoe Bay shall
designate lands suitable for development of off-street public parking facilities and shall require new
development to provide for such off-street parking.” We reject petitioner’s argument below, that the cited
comprehensive plan goal and policy are mandatory approval criteria applicable to the challenged variance.

1 The city responds that the parking occupancy study’s conclusions regarding capacity
2 are referring to the downtown core north of the bridge, not the area around the subject
3 property, which is currently underdeveloped and underutilized. The city notes that in
4 addition to the 10 on-street parking spaces immediately in front of the subject property, there
5 are 15 other on-street parking spaces located just north of the property. The city cites to
6 evidence that those spaces are generally empty, even during peak periods. The city also
7 disputes that granting the variance shifts the burden of supplying parking to the public or that
8 the variance conflicts with the objectives of plan policies calling for equitable treatment and
9 for new development to provide public off-street parking.

10 We agree with the city that substantial evidence in the record supports the city’s
11 reliance on the adequacy of on-street parking in the area to find compliance with
12 DBZO 8.020(3). The city’s findings deem the relevant purpose of the off-street parking
13 requirements to be the provision of adequate parking. A reasonable person could rely on
14 evidence that there are 25 on-street parking spaces in the immediate vicinity of the subject
15 property that are only partially occupied even during peak periods, to conclude that parking
16 in the area is adequate, and hence that a variance to off-street parking requirements is not
17 materially detrimental to the purpose of ordinance requirements for off-street parking.

18 With respect to the DBZO 8.020(3) requirement that the variance not conflict with
19 the objectives of any city plan or policy, petitioner has not established that the variance
20 conflicts with the objectives of the DRP. The DRP language petitioner cites to applies to
21 properties south of Evans Street, which is south of the subject property. With respect to the
22 plan goal requiring equitable treatment of property owners, petitioner does not explain why a
23 variance based in part on the existence of underutilized public on-street parking in the area
24 “shifts the burden to the taxpayer” or even if so why that would conflict with the objective of
25 equitable treatment between property owners. Finally, with respect to the plan policy
26 requiring that new development provide public off-street parking facilities at designated

1 sites, as explained below, that policy concerns future *public* off-street parking facilities on
2 designated sites. Petitioner does not explain why a variance to DBZO 4.030, which requires
3 *private* off-street parking spaces, conflicts with the objective of a plan policy that concerns
4 public parking facilities.⁸ Petitioner has not demonstrated that the city misconstrued
5 DBZO 8.020(3) or otherwise erred in finding that the proposed variance complies with that
6 criterion.

7 The third sub-assignment of error is denied.

8 **D. Self-Imposed Hardship**

9 DBZO 8.020(4) requires a finding that “[t]he hardship is not self-imposed” as well as
10 a finding that “the variance requested is the minimum variance which would alleviate the
11 hardship.” We addressed above the latter requirement. We address here petitioner’s
12 challenges to the city’s finding that the “hardship is not self-imposed.”

13 The city’s findings under DBZO 8.024(4) are quoted above at n 4. The city’s finding
14 that the hardship is not self-imposed explain that the applicant is not eliminating existing
15 parking spaces, or expanding or enlarging the existing building, and has done nothing to
16 create the hardship caused by the lack of space on the subject property for off-street parking.
17 Petitioner challenges that finding, arguing that the applicant created the hardship by
18 proposing a change of use from a seafood market to a market/restaurant. According to
19 petitioner, the applicant could have sought to lease a different building in the city to operate a
20 restaurant, on property that does not require a variance from off-street parking requirements.

21 The city responds, and we agree, that DBZO 8.020(4) does not require denial simply
22 because the applicant might find a different property that does not require a variance to off-
23 street parking requirements. It is likely that no variance could ever be approved under that

⁸ Indeed, it would seem to conflict with that plan policy if the city required the applicant to acquire property designated for future off-street public parking and commit that property to the private parking required by DBZO 4.030.

1 view of DBZO 8.020(4). The focus of DBZO 8.020(4) is on whether the applicant acted in
2 some manner that created the hardship that justifies a variance from applicable requirements.
3 Here, the identified hardship stems from the lack of space on the subject property for off-
4 street parking, and the alleged absence of any suitable property within 500 feet for off-site
5 parking spaces. Petitioner does not explain how the applicant is responsible for either of
6 those conditions. Petitioner’s arguments regarding the “self-imposed hardship” language of
7 DBZO 8.020(4) do not provide a basis for reversal or remand. This part of the fourth sub-
8 assignment of error is denied.

9 The first assignment of error is sustained, in part.

10 **SECOND ASSIGNMENT OF ERROR**

11 The city’s comprehensive plan includes a chapter, titled Goal 11 (Public Facilities
12 and Services). Goal 2 under that chapter is “[t]o promote, on an equitable basis, the highest
13 level of services the citizens are willing to support.” One of the policies implementing that
14 goal is Policy 11, which states that “Depoe Bay shall designate lands suitable for
15 development of off-street public parking facilities and shall require new development to
16 provide for such off-street parking.”

17 Petitioner argues that Goal 2 and Policy 11 are “criteria” that must be addressed in
18 evaluating the subject application for a variance to the DBZO 4.030 off-street parking
19 requirements, and that the city erred in failing to address these criteria. According to
20 petitioner, Goal 2 is not met because the variance fails to treat property owners on an
21 equitable basis and because it fails to provide the highest level of services (parking spaces)
22 the citizens are willing to support. Petitioner contends that Policy 11 is not met, because the
23 DRP identifies several properties south of the bridge for future off-street public parking
24 facilities, and argues that the city erred in failing to require the applicant to acquire one of
25 these sites to provide for off-street public parking.

1 The city responds, and we agree, that petitioner has not demonstrated that either Goal
2 2 or Policy 11 is a mandatory approval criteria applicable to the challenged variance. While
3 comprehensive plan goals and policies are a potential source of approval standards for
4 specific quasi-judicial decisions, not all comprehensive plan are necessarily approval
5 standards. *Save Our Skyline v. City of Bend*, 48 Or LUBA 192, 209 (2004). A
6 comprehensive plan goal to promote, on an equitable basis, the highest level of services the
7 citizens will support is simply too general and nonmandatory to function as an approval
8 criterion to an application seeking a variance to off-street parking requirements.

9 Policy 11 is at least focused on off-street parking, but it is concerned with *public* off-
10 street parking facilities on specific sites identified by the city. The variance here concerns
11 the DBZO 4.030 requirements for *private* off-street parking spaces, that is, spaces dedicated
12 to the use of patrons for the development that triggers the parking requirement. *See*
13 DBZO 4.030(5) (required parking spaces shall be available for the use of residents,
14 customers, patrons and employees only); DBZO 3.110(3)(e)(1) (off-street parking required in
15 the M-C zone “shall be committed to the use for which it is approved.” Policy 11 appears to
16 be directed at acquisition of public parking lots—spaces available to the general public—
17 from the owners of designated sites, as a condition of approving “new development”
18 proposed by those owners. Petitioner has not demonstrated that Policy 11 is an applicable
19 approval criterion with respect to an application to vary the private off-street parking
20 requirements of DBZO 4.030.

21 The second assignment of error is denied.

22 **THIRD ASSIGNMENT OF ERROR**

23 DBZO 1.020 states the purpose of the city’s zoning ordinance:

24 “The purpose of this ordinance is to promote the public health, safety, and
25 general welfare and to assist in carrying out the comprehensive plan for the
26 City of Depoe Bay.”

1 Petitioner contends that the variance fails to promote the public health, safety and
2 general welfare, and is therefore inconsistent with DBZO 1.020. According to petitioner, the
3 variance increases parking congestion in the area and will adversely impact the public
4 welfare and safety. Petitioner argues that the city erred in failing to adopt findings of
5 compliance with DBZO 1.020.

6 Although the city does not raise this point, we seriously question whether
7 DBZO 1.020 is an approval criterion for variance applications under DBZO 8.020. Whether
8 general zoning ordinance purpose statements function as approval criteria for individual land
9 use decisions depends on the wording of the specific provisions and their context. *Tylka v.*
10 *Clackamas County*, 22 Or LUBA 166, 173 (1991); *Randall v. Washington County*, 17 Or
11 LUBA 1202, 1207 (1989). Further, where a petitioner argues that development approval is
12 inconsistent with a purpose statement, the petitioner must, at the very least, provide some
13 explanation as to why the purpose statement is an approval criterion. *Rouse v. Tillamook*
14 *County*, 34 Or LUBA 530, 537 (1998). Nothing in the text of DBZO 1.020 or elsewhere
15 cited to our attention suggests that that purpose statement is intended to function as an
16 approval criterion for specific land use applications in general, or variance applications in
17 particular, and petitioner offers no explanation for why the zoning ordinance purpose
18 statement is a mandatory approval criterion.

19 The city responds on the merits that the city council findings in fact sufficiently
20 address public welfare and safety issues, for example by rejecting as unsafe petitioner's
21 argument that the applicant must provide off-site parking that requires patrons to cross
22 Highway 101 without a crosswalk or other pedestrian facilities. We agree with the city that,
23 to the extent DBZO 1.020 could be construed as an approval criterion, petitioner fails to
24 explain why the findings the city adopted are insufficient to show that the proposed variance
25 is consistent with that purpose statement.

26 The third assignment of error is denied.

1 **FOURTH ASSIGNMENT OF ERROR**

2 Petitioner contends that the city erred in calculating the number of off-street parking
3 spaces required by the proposed 50-55 seat restaurant. According to petitioner, the number
4 of required parking spaces is calculated based on “serving area,” which the applicant and
5 staff understood to mean the area occupied by tables and chairs, but not including walkways
6 and other spaces between seating areas. However, petitioner argues that properly understood
7 “serving area” must be interpreted to include access aisles and other open areas in the
8 restaurant. Petitioner contends that this issue was raised before the city council, but the
9 council failed to adopt any findings addressing the issue.

10 The city council decision adopts findings, including a table of calculations, that are
11 consistent with the staff and applicant’s method of calculating “serving area.” Record 8.
12 While those findings do not explicitly interpret the scope of “serving area,” it is reasonably
13 clear that the city council agreed with staff and the applicant how serving area is calculated.
14 As the city points out, the city council discussed the issue during its deliberations, and
15 apparently decided to accept the staff and applicant’s calculations. Petitioner does not argue
16 that a city council interpretation of “serving area” that explicitly adopts the understanding of
17 staff and applicant would be reversible under ORS 197.829(1). Accordingly, we see no
18 purpose in remanding the decision to the city council to adopt an explicit interpretation of
19 “serving area.”

20 The city’s decision is remanded.