

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 JOSEPH P. MCMONAGLE
5 and RUTH M. MCMONAGLE,
6 *Petitioners,*

7
8 vs.

9
10 CITY OF ASHLAND,
11 *Respondent.*

12
13 LUBA No. 2017-030

14
15 FINAL OPINION
16 AND ORDER

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18 Appeal from City of Ashland.

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20 Joseph P. McMonagle, Ashland, filed the petition for review and argued
21 on his own behalf. Ruth M. McMonagle represented herself.

22
23 David H. Lohman, City Attorney, Ashland, filed a response brief and
24 argued on behalf of respondent.

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26 RYAN, Board Chair; HOLSTUN, Board Member, participated in the
27 decision.

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29 BASSHAM, Board Member, did not participate in the decision.

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31 REMANDED 07/07/2017

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

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NATURE OF THE DECISION

Petitioners appeal a decision by the city approving a site plan for an Accessory Residential Unit.

FACTS

The planning department approved an application to site an Accessory Residential Unit (ARU) on a lot zoned R-2 (Low Density, Multi-Family Residential) located at the southwest corner of the intersection of Alida Street and Blaine Street. Alida Street runs north/south and Blaine Street runs east/west. The subject corner lot is a 60 foot by 100 foot lot, with the 60 foot long property line located on Blaine Street and the 100 foot long property line located on Alida Street. Petitioners own and live on the lot that is located on Alida Street directly to the south of the subject corner lot. The application proposes to site the ARU on the south side of the existing house located on the corner lot, so that it will be located between the existing house on the corner lot and petitioners’ house on their adjacent lot.

As part of the application, the planning director approved the applicants’ request to designate the lot line that fronts Alida Street as the “front lot line” of the property. If Alida Street is the “front lot line,” then the Ashland Municipal Code (AMC) yard requirements require a six foot “side” yard from petitioners’

1 adjacent lot line.¹ If Blaine Street is the front lot line, then the AMC yard
2 requirements require a 10-foot “rear” yard from petitioners’ adjacent lot line.
3 The proposed yard between petitioners’ north property line and the proposed
4 ARU is six feet deep.

5 Petitioners appealed the planning director’s decision to the planning
6 commission, who affirmed the planning director’s decision. This appeal
7 followed.

8 **FIRST ASSIGNMENT OF ERROR**

9 AMC 18.6.1.030 defines “Front Lot Line” to mean:

10 “In the case of an interior lot, the lot line separating the lot from
11 the street other than an alley. *A corner lot has one street line*
12 *considered the front lot line. The narrower street frontage must be*
13 *the front lot line except when the Staff Advisor determines*
14 *topographical or access problems make such a designation*
15 *impractical. See Figure below.” (Emphasis added).*

16 In their first assignment of error, petitioners argue that the city improperly
17 construed the AMC 18.6.1.030 definition of “Front Lot Line,” and the terms
18 “topographical” and “access” included in the definition, when it concluded that
19 the lot line fronting Alida Street is the “Front Lot Line.” ORS

¹ Briefly, AMC 18.2.3.040.A.4 requires a proposal in the R-2 zone to site an ARU to “conform to the overall * * * setback requirements of the underlying zone.” For a site design review application, AMC 18.5.2.050.A requires the proposal to comply with “all of the applicable provisions of the underlying zone * * * including but not limited to: building and yard setbacks * * *.” For the R-2 zone, AMC Table 18.2.5.030.A provides that the side yard must be a minimum of six feet and the rear yard must be a minimum of 10 feet.

1 197.835(9)(a)(D). Petitioners also argue that the city’s conclusion that
2 “topographical or access problems make” designation of Blaine Street as the
3 front lot line “impractical” is not supported by substantial evidence in the
4 record. ORS 197.835(9)(a)(C).

5 Relying on dictionary definitions of “topographical” and “access,” the
6 planning commission identified topographical and access problems. Record 33-
7 34. The topographical problems the planning commission identified were the
8 existing house and existing trees on the property. The access problems the
9 planning commission identified were the lack of a sidewalk on Blaine Street
10 and the absence of doors on the north side of the existing house that fronts
11 Blaine Street. Record 34. The planning commission also concluded that the
12 historical site plan and orientation of the existing house supported a conclusion
13 that the front lot line fronts Alida Street. *Id.*

14 Petitioners argue that the plain language of AMC 18.6.1.030 allows the
15 planning staff to designate a street other than the narrower street frontage as the
16 front lot line *only* when “topographical or access problems make such
17 designation impractical,” and consequently the city may not rely on the
18 historical treatment of the Alida Street lot line as the front lot line to designate
19 Alida Street as the front lot line. We agree. AMC 18.6.1.030 uses the word
20 “must” and specifies the two situations in which the planning staff has
21 discretion to designate a street other than the narrower street as the front lot
22 line. Historical practices are not one of those two situations.

1 Next, we understand petitioners to argue that even under the dictionary
2 definition of “topographical” that the planning commission relied on, there is
3 no evidence in the record to support a determination that “topographical
4 problems” exist on the subject property. According to petitioners, the
5 placement of the existing “natural and man-made features” on the subject
6 property - the house and existing trees - are not “topographical problems” that
7 make designating Blaine Street as the front lot line “impractical.” We agree.
8 The planning commission’s findings do not explain why, even if the existing
9 house and trees are “topographical problems,” the location of the existing
10 house and trees make designating Blaine Street as the front lot line
11 “impractical.”

12 Finally, petitioners point out that the lack of sidewalks on Blaine Street
13 and the absence of a door on the side of the house fronting Blaine Street are not
14 “access problems,” and that nothing in the AMC requires access to a lot from
15 the front lot line. Again, we agree. The planning commission’s findings do not
16 explain why, even if there are no sidewalks and there is no door on the Blaine
17 Street side of the existing house, that makes access to the lot “impractical” and
18 necessitates designating Alida Street as the front lot line.

19 Accordingly, we agree with petitioners that the planning commission’s
20 decision that the Alida Street lot line should be the front lot line improperly
21 construes AMC 18.6.1.030 and is not supported by substantial evidence in the
22 record.

1 The first assignment of error is sustained.

2 **SECOND ASSIGNMENT OF ERROR**

3 In their second assignment of error, petitioners argue that the city’s
4 decision effectively reduced the “lot depth” of the subject property by more
5 than 20%, and that change requires a Type II variance pursuant to
6 AMC 18.5.5.030. According to petitioners, the city’s decision to designate
7 Alida Street as the front lot line “created” a 60-foot deep lot, and the AMC
8 requires a minimum lot depth of 80 feet.

9 The city responds, and we agree, that the city’s decision did not change
10 the subject property’s depth and therefore, no variance to the lot depth
11 standards was required.

12 The second assignment of error is denied.

13 **CONCLUSION**

14 Petitioners seek reversal or remand of the decision. OAR 661-010-0071
15 provides that LUBA shall reverse a decision when “[t]he decision violates a
16 provision of applicable law and is prohibited as a matter of law,” while LUBA
17 shall remand a decision when “[t]he decision improperly construes the
18 applicable law, but is not prohibited as a matter of law[.]” In sustaining the first
19 assignment of error, we agreed with petitioners that the city’s decision to
20 designate Alida Street as the front lot line improperly construed AMC
21 18.6.1.030 and was not supported by substantial evidence in the record. Based
22 on that disposition, the front lot line of the subject property is the lot line

1 fronting Blaine Street, and under AMC Table 18.2.5.030.A, a rear yard of 10
2 feet is required. The application proposes a rear yard of six feet. It might be
3 possible that compliance with the rear yard requirement could be demonstrated
4 on remand, without significant changes to the proposed development. Because
5 petitioners offer no argument on whether reversal or remand is appropriate, we
6 conclude that remand is the appropriate remedy.

7 The city's decision is remanded.