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

NICHOLAS KAMPS-HUGHES,
Petitioner,

vs.

CITY OF EUGENE,
Respondent,

and

PAUL T. CONTE,
Intervenor-Respondent.

LUBA No. 2019-115

FINAL OPINION
AND ORDER

Appeal from City of Eugene.

Bill Kloos, Eugene, filed the petition for review and a reply brief, and argued on behalf of petitioner. With him on the brief was the Law Office of Bill Kloos PC.

Emily N. Jerome, Deputy City Attorney, Eugene, filed a response brief and argued on behalf of respondent.

Paul Conte, Eugene, filed a response brief and argued on his own behalf.

RYAN, Board Member; RUDD, Board Chair, participated in the decision.

ZAMUDIO, Board Member, did not participate in the decision.

REMANDED 02/26/2020

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

Opinion by Ryan.

NATURE OF THE DECISION

Petitioner challenges a zoning verification decision by a city planner that identifies the applicable standards in the Eugene Code that would apply to a proposed second residential structure on petitioner's property zoned Low-Density Residential (R-1).

MOTION TO STRIKE

Intervenor-respondent (intervenor) moves to strike portions of petitioner's reply brief that intervenor argues do not comply with OAR 661-010-0039, which provides that "[a] reply brief shall be confined to responses to arguments in the respondent's brief, state agency brief, or amicus brief, but shall not include new assignments of error or advance new bases for reversal or remand." Intervenor argues that the reply brief advances new bases for reversal or remand.

In the reply brief, petitioner responds to an argument set forth in the city's response brief regarding the correct interpretation of the statute at issue in this appeal, ORS 197.312(5), with his own proffered interpretation of the statute. That interpretational argument does not "include [a] new assignment[] of error or advance new bases for reversal or remand." The reply brief is allowed.

BACKGROUND

This case is petitioner's third attempt to obtain verification from the city regarding whether he is entitled to build an additional, detached dwelling on his property. *See Kamps-Hughes v. City of Eugene*, 78 Or LUBA 457 (2018)

(*Kamps-Hughes I*); *Kamps-Hughes v. City of Eugene*, ___ Or LUBA ___ (LUBA No 2019-028, June 6, 2019) (*Kamps-Hughes II*). We first set out the applicable state law, and then describe the property that is the subject of petitioner's application before turning to the merits.

ORS 197.312(5) (2017), which was enacted as Senate Bill (SB) 1051, provided:

> "(a) A city with a population greater than 2,500 or a county with a population greater than 15,000 shall allow in areas that are zoned for detached single-family dwellings the development of at least one accessory dwelling unit for each detached single-family dwelling, subject to reasonable local regulations relating to siting and design.
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> "(b) As used in this subsection, 'accessory dwelling unit' means an interior, attached or detached residential structure that is used in connection with or that is accessory to a single-family dwelling."[1]

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[1] Petitioner submitted his zoning verification request on December 10, 2018. Thus, the prior version of ORS 197.312(5), enacted in 2017, applies to the application.

However, the city recognized in the zoning verification decision that a subsequent building permit application would be processed under ORS 197.312(5), as amended by Oregon Laws 2019, chapter 639, Section 7 (House Bill (HB) 2001), which included a new provision that "'[r]easonable local regulations relating to siting and design' does not include owner-occupancy requirements of either the primary or accessory structure or requirements to construct additional off-street parking." ORS 197.312(5)(b)(B) (2019). Record 10.

The subject property is located in the Fairmount neighborhood of the city. The subject property is comprised of approximately 5,663 square feet (with dimensions of 72.9 feet by 80 feet), is zoned R-1, and accessed only via an alleyway. The subject property is developed with a 1,680-square-foot, two-story, four-bedroom single-family dwelling that is currently used as a residential rental (existing dwelling). Petitioner submitted a zone verification request seeking to verify whether a detached accessory dwelling unit is allowed on his property.

The R-1 zone allows detached, single-family dwellings. The R-1 zone also allows what the Eugene Code (EC) previously called "secondary dwellings."[2] The city recognizes that ORS 197.312(5) requires it to allow accessory dwelling units (ADUs) in the R-1 zone, and the city treats ADUs as subject to the EC's secondary dwelling regulations. For purpose of this opinion, we refer to the proposed use as an ADU.

In *Kamps-Hughes I*, we remanded for the city to apply ORS 197.312(5) to petitioner's zoning verification request. We explained that ORS 197.312(5) "requires the city to 'allow' accessory dwellings in all zones in the city in which a detached single-family dwelling is allowed, including the R-1 zone. The city may limit accessory dwellings in those zones only pursuant to 'reasonable local

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[2] In June 2018, the city adopted two ordinances, Ordinance 20595 and Ordinance 20594 (the Ordinances) to implement in part SB 1051, including changing the EC's references to "secondary dwellings" to "accessory dwellings." In *Home Builders Ass'n of Lane County v. City of Eugene*, 78 Or LUBA 441 (2018), we remanded the city's decisions.

regulations relating to siting and design.'" 78 Or LUBA at 461. On remand, the city decided that the proposed ADU was not a permitted use in the R-1 zone based on an owner-occupancy requirement in the EC that the city found the proposal failed to satisfy. In addition, the city determined that the proposed ADU was not an ADU as defined in ORS 197.312(5)(b).

In *Kamps-Hughes II*, we determined that the proposed use is an ADU as defined in that statute, and again remanded. On remand, the city explained:

> "This Zone Verification decision evaluates whether the proposed second dwelling would be a permitted use or be subject to land use application approval or special standards applicable to the category of use and the zone of the property, based on LUBA's Order. The proposed use is not subject to a land use approval (e.g. site review, conditional use permit). The proposed use would be permitted in the zone through a building permit process alone, if the proposal meets applicable development standards, including special standards that apply in the R-1 Zone and within the boundaries of the Fairmount Neighborhood Association."[3] Record 4.

The city planner addressed 11 city code provisions that petitioner argued could not be applied to regulate an ADU. As explained in detail further below, the city determined that those 11 standards are "reasonable local regulations relating to siting and design." This appeal followed.

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[3] As we explain in more detail below, EC 9.2751(17)(c) includes different standards for ADUs in the Fairmount neighborhood. In addition, EC 9.2741(2) and EC 9.2751(18)(a)(2) prohibit new ADUs on alley access lots.

ASSIGNMENTS OF ERROR

Petitioner raises three assignments of error presenting overlapping legal arguments posing similar legal questions regarding the meaning of various provisions in ORS 197.312(5)(a). ORS 197.835(9)(a)(D). Thus, we address the three assignments of error together.

In the first assignment of error, petitioner argues that ORS 197.312(5)(a) creates a statutory right to construct an ADU on every lot within the city that includes a detached single-family dwelling, and that the city may not apply any regulation that results in prohibiting an ADU. Petitioner argues in his second assignment of error that six EC provisions that the city planner determined would apply to a future application to develop an ADU on petitioner's property do not "relate[] to siting and design." ORS 197.312(5)(a). Petitioner argues in his third assignment of error that if the six EC provisions are "regulations relating to siting and design," they are not "reasonable." *Id.*

A. "Shall Allow" and "Subject To"

This appeal requires us to again interpret ORS 197.312(5), specifically the phrases "shall allow" and "subject to reasonable local regulations relating to siting and design." We summarized the appropriate inquiry in *Kamps-Hughes II*:

> "In interpreting a land use regulation, we examine text, context, and legislative history with the goal of discerning the intent of the governing body that enacted the law. *State v. Gaines*, 346 Or 160, 171–72, 206 P3d 1042 (2009); *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993). We are required to correctly interpret the legislature's intent, independently of the

> parties' arguments. *See* ORS 197.805 (providing legislative directive that LUBA 'decisions be made consistently with sound principles governing judicial review'); *Weldon v. Bd. of Lic. Pro. Counselors and Therapists*, 353 Or 85, 91, 293 P3d 1023 (2012) (court has the obligation to correctly construe statutes, regardless of parties' arguments); *Stull v. Hoke*, 326 Or 72, 77, 948 P2d 722 (1997) ('In construing a statute, this court is responsible for identifying the correct interpretation, whether or not asserted by the parties.').
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> "In 2017, the Oregon legislature enacted Senate Bill 1051 (SB 1051). Or Laws 2017, ch 745. The legislative policy underlying SB 1051 is to increase available housing. *Warren v. Washington County*, [78 LUBA 375, 379-80 (2018), *aff'd*, 296 Or App 595, 439 P3d 581, *rev den*, 365 Or 502 (2019)] (observing that SB 1051 was intended to increase housing supply); *Warren*, 296 Or App at 600 (observing that SB 1051 was enacted with the goal of promoting housing development)." *Id.*, __ Or LUBA __, __ (slip op at 5-6).

Petitioner's major premise is that the legislature's use of the phrase "shall allow" in ORS 197.312(5)(a) means that a local government may not apply any regulation that could have the effect of precluding an ADU on any lot in a zone that allows a detached single-family dwelling, even if that regulation qualifies as a "reasonable * * * regulation[] relating to siting and design." From that premise, petitioner next argues that "subject to" means that the city may apply limited regulations related to "siting and design," but that the city may not apply those regulations in a manner that would otherwise prohibit the development of an ADU.

We reject petitioner's major premise. The text of the statute does not support petitioner's proffered interpretation that ORS 197.312(5)(a) provides an unqualified entitlement to develop an ADU. Rather, the text of the statute

supports the city's interpretation that "the City's allowance of the ADU may be made contingent upon an applicant's demonstration of consistency with reasonable regulations relating to siting and design." Response Brief 11. ORS 197.312(5)(a) provides that local governments "shall allow" "at least one" ADU for each detached single-family dwelling to be developed "in areas" that are zoned for detached single-family dwellings. Use of the word "shall" signals an intent to impose an obligation. *Webster's Third New Int'l Dictionary* 2085 (unabridged ed 2002) (defining "shall," in part, as "2 b: used in laws, regulations, or directives to express what is mandatory"); *Legislative Administration Committee, Form and Style Manual for Legislative Measures* 5 (2019-20) ("To impose an obligation to act, use 'shall.'") However, the statute includes an exception to the general requirement to allow ADUs in areas zoned for detached single-family dwellings. Cities are required to allow ADUs "*subject to* reasonable local regulations relating to siting and design." (Emphasis added.) Thus the statute allows the city to "subject" ADUs "to reasonable local regulations relating to siting and design."

Land use planning and decision making is distributed between the state and local governments. The legislature, the Land Conservation and Development Commission (LCDC), and the Department of Land Conservation and Development (DLCD) set state-wide land use policies and review local plans for compliance with the statewide planning goals. Local city and county governments are primarily responsible for developing local comprehensive plans

and making land use decisions. *See, e.g.*, ORS 197.005(3) ("[C]ities and counties should remain as the agencies to consider, promote and manage the local aspects of land conservation and development for the best interests of the people within their jurisdictions."). However, the legislature sometimes prescribes limits on local planning. In ORS 197.312(5) the legislature encourages the development of ADUs and limits the city's ability to categorically prohibit ADUs. However, contrary to petitioner's argument, the legislature did not create an outright, unqualified entitlement to develop an ADU on every property with a single-family dwelling. Instead, the legislature provided the local government some regulatory discretion in regulating ADUs. That regulatory discretion could have the effect of prohibiting an ADU on a particular property, so long as the regulation is reasonable and related to "siting and design."[4]

ORS 197.312 is entitled "Limitation on city and county authority to prohibit certain kinds of housing[.]" Context provided by other provisions of the same statute, in ORS 197.312, demonstrates one example and provides context supporting our interpretation of ORS 197.312(5). Other subsections of ORS 197.312 limit cities' and counties' otherwise wide latitude in prohibiting and allowing certain uses within their boundaries, by either defining uses that are

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[4] Although no party raises the issue, we question whether the legislature intended the word "and" in the phrase "regulations relating to siting and design" to be used in the conjunctive, to require a regulation to relate to both siting *and* design, or whether the legislature intended to allow local governments to apply regulations to ADUs that relate to either siting *or* design.

"permitted uses" (197.312(2)(a) and (3)(a)), or by prohibiting cities and counties from prohibiting certain uses (ORS 197.312(1) and (4)). However, even where ORS 197.312(2) and (3) require a city or county to allow a particular use as a permitted use, the statute allows the city or county to impose zoning requirements on those uses, as long as the zoning requirements are not more restrictive than zoning requirements for the same use in other zones.[5]

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[5] ORS 197.312 provides as relevant here:

"(2)(a)A single-family dwelling for a farmworker and the farmworker's immediate family is a permitted use in any residential or commercial zone that allows single-family dwellings as a permitted use.

"(b) A city or county may not impose a zoning requirement on the establishment and maintenance of a single-family dwelling for a farmworker and the farmworker's immediate family in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other single-family dwellings in the same zone.

"(3)(a)Multifamily housing for farmworkers and farmworkers' immediate families is a permitted use in any residential or commercial zone that allows multifamily housing generally as a permitted use.

"(b) A city or county may not impose a zoning requirement on the establishment and maintenance of multifamily housing for farmworkers and farmworkers' immediate families in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning

In ORS 197.312(5), the legislature acknowledged local governments' authority and responsibility by instructing local governments to allow ADUs, and at the same time permitting limited local regulation of ADUs. If, as petitioner argues, the legislature intended to eliminate the local government's discretion to deny an ADU, the legislature knows how to make that clear.[6] We conclude that ORS 197.312(5)(a) does not constitute an unqualified entitlement to develop an ADU on every lot that allows a detached single-family dwelling.[7]

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requirement imposed on other multifamily housing in the same zone.

"(4) A city or county may not prohibit a property owner or developer from maintaining a real estate sales office in a subdivision or planned community containing more than 50 lots or dwelling units for the sale of lots or dwelling units that remain available for sale to the public."

[6] For example, ORS 197.307(4) allows local governments to "adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing." The statute also prohibits the local government from applying those "clear and objective standards, conditions and procedures" that "have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay."

[7] We note that the legislative history of HB 2001 indicates that a proponent of HB 2001 urged the legislature to adopt additional amendments to ORS 197.312(5) that would have provided that "reasonable local regulations" are regulations that "do not include regulations that preclude the development of at least one accessory dwelling unit for each detached single family dwelling on a lot." Testimony, House Committee On Human Services and Housing, HB 2001, Mar 18, 2019, Ex 9. The legislature did not adopt the proposed amendments.

B. "Reasonable Local Regulations Relating to Siting and Design"

Petitioner also argues "siting" relates only to where a building is located on a lot, not whether it may be developed. The next question we must answer is whether the six regulations that petitioner challenges that the city found it could apply to a proposal from petitioner to build an ADU on his property are regulations "relating to siting and design," and if they are, whether they are "reasonable."

In order to ascertain the meaning of a statute, we examine text, context, and legislative history with the goal of discerning the intent of the legislature. *State v. Gaines*, 346 Or 160, 171–72, 206 P3d 1042 (2009); *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993). The words "siting" and "design" are not defined by statute or legislative rule, so we refer to dictionary definitions for the meaning of those terms. *Schnitzer Steel Industries Inc. v. City of Eugene*, 68 Or LUBA 193, 202, *aff'd*, 260 Or App 562, 318 P3d 1146 (2013). As used in ORS 197.312(5), "siting" is a gerund of the verb "site." The most relevant dictionary definitions of "site" are: "2 a : the local position of building * * * either constructed or to be constructed esp. in connection with its surroundings * * * b : a space of ground occupied or to be occupied by a building * * * c : land made suitable for building purposes by dividing into lots, laying out streets, and providing facilities * * *." *Webster's* at 2128.

As used in ORS 197.312(5)(a), "design" is a noun. The most relevant dictionary definitions of "design" are: "6 a : the arrangement of elements that

make up a work of art, a machine, or other man-made object * * * b : the process of selecting the means and contriving the elements, steps, and procedures for producing what will adequately satisfy some need * * *; *specif* : the drawing up of specifications as to structure, forms, positions, materials, texture, accessories, decorations in the form of a layout for setting up, building, or fabrication * * *." *Webster's* at 611–12.

Having defined those statutory terms, we turn to petitioner's arguments that certain EC provisions do not relate to siting and design or are not reasonable regulations. Petitioner argues that in using the word "siting" to describe the regulations that the city may apply to ADUs, the legislature intended "siting" to describe a regulation that allows the city to specify the location of an ADU *on a site*. The city takes the position that the legislature's use of the word "siting" must be read in context with the requirement to allow ADUs "in areas zoned for detached single-family dwellings," and that when read in that context, the word "siting" allows the city to regulate where in each of the city's residential zones ADUs are allowed based on factors such as traffic, livability, and existing density. Response Brief 18-19; Record 5.

For the following reasons, we think petitioner's interpretation of the term "siting" is the correct one. First, the dictionary definition of the word "site" is specific to a particular property, and not to a wide area, and supports an interpretation of the word "siting" as relating to an ADUs' location or placement on a property that includes a single-family dwelling. An example of a typical

siting regulation is a setback that requires a building located on a property to be constructed some specified distance from a marker, such as a property line. Additional examples of typical siting regulations are a requirement that development not occur in a wetland or otherwise environmentally sensitive area or inside a flood plain, or an access site distance requirement to ensure safe ingress and egress.

Second, as we and the court of appeals have concluded, the purpose of the legislation that enacted ORS 197.312(5), SB 1051, was to create more housing, and the purpose of ORS 197.312(5) is to allow a particular type of housing to be developed. ADUs are a type of housing that supplies smaller, often less expensive, infill development on already developed properties. To adopt the city's wide ranging definition of a siting regulation as one that determines where in areas of the city zoned for residential development ADUs can be developed is not consistent with the legislature's intent to create more housing and more housing types, including more ADUs, because a city could effectively prohibit development of ADUs in most areas of a city through adoption or application of minimum lot sizes or other regulations that petitioner challenges below. We turn to petitioner's challenges to specific EC provisions.

1. Alley Access Lots

The subject property is accessed only via an alleyway. EC 9.2741(2) and EC 9.2751(18)(a)(2) together prohibit new ADUs on alley access lots, and if

applied to a proposal to build an ADU on petitioner's property, would prohibit approval.

The city determined that the alley access lot prohibition on ADUs is a "reasonable local regulation relating to siting and design." The city's decision explains that the provision is intended to limit additional traffic from new dwellings on alleys because alleys are not typically improved to support additional traffic, and to limit increased densities on alley access lots so as to "not create 'livability' issues that arise when neighborhoods become overcrowded with unregulated infill."[8] Record 5. We agree with petitioner that EC

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[8] The city found:

> "The prohibition on siting an accessory dwelling on an R-1 lot if the lot does not have street frontage and can be accessed only from an alley is a regulation relating to siting. It relates to the location of buildings, specifically those that are proposed for location on an alley; it relates to the ground that may be occupied by an accessory dwelling.
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> "ORS 197.312(5)(b) specifically makes the allowance of accessory dwellings *subject to* local regulations. Although this regulation does make an accessory dwelling a prohibited use on some lots, it is reasonable because it is necessary to addresses the impacts of a potential doubling of the number of vehicular trips on city alleys that are not typically improved to a level to support such traffic. It also helps ensure that the increased densities on these inherently small lots do not create 'livability' issues that arise when residential neighborhoods become overcrowded with unregulated infill. Livability issues must be balanced with growth for the welfare of a community's members. Goal 14 is '[t]o provide for an orderly and efficient transition from 'rural' to urban land, to accommodate urban

9.2751(18)(a)(2) is not a regulation "relating to siting and design." Nothing in the provision regulates the location of a building on a particular piece of property. Additional traffic and increased density are not relevant to the "siting" of a building on a particular property, as that term is used in ORS 197.312(5). Additional traffic and increased density are also not related to the design of the ADU.

Moreover, we reject the city's reliance on Statewide Planning Goal 14 (Urbanization) to justify its conclusion. First, Goal 14 is a statewide planning goal, or standard, that may be varied by legislative action. The legislative decision in adopting ORS 197.312(5) is that more housing, and more ADUs, should be developed.

Second, and more importantly, while it is true that one of the purposes of Goal 14 is "to provide for livable communities," the city has not explained why allowing an ADU on an alley access lot (or, as we explain below, on a lot of a particular size or dimension) results in a lack of a "livable community," and we

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> populations and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.' Development on alley access lots can be more impactful to surrounding properties because they are generally small lots surrounded by homes on three sides. The existing alleys are within the older neighborhoods where there is a traditional grid pattern of blocks and streets along with older homes that limits the location and overall size of alley access lots. The regulation is an effective way to limit traffic on the city's alleys, many of which are unimproved, and to address livability concerns associated with overcrowding." Record 5 (emphasis in original).

do not think that it does.[9] Because we agree with petitioner that the provision is not a "regulation relating to siting and design," we need not address petitioner's alternative argument in the third assignment of error that the provision is not "reasonable."

2. Minimum Lot Size

EC 9.2751(17)(c)(5) requires a 7,500 square-foot minimum lot size for an ADU in the Fairmount neighborhood where petitioner's property is located, as well as two other neighborhoods in the city. The subject property is comprised of approximately 5,663 square feet.

The city determined that the minimum lot size regulation is a "reasonable local regulation[] relating to siting and design." The city found that the regulation is intended to preserve large lots with yards and parking, consistent with existing neighborhood development. We agree with petitioner that EC 9.2751(17)(c)(5) is not a regulation "relating to siting and design" because it does not regulate the location of an ADU on a property or the ADU's physical attributes. Preservation of existing and adjacent large lots, yards, and parking are not relevant to the

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[9] In the response brief, the city takes the position that "Eugene's alley access lots are the result of earlier infill actions (creating alley access lots essentially results in backyard houses that can be sold). ORS 197.312(5) could give those infill houses an ADU of their own, a level of density for which the alleys were not planned." Response Brief 18. Nothing cited to us in the record supports the city's assertions.

location of a building on a particular piece of property.[10] Because we agree with petitioner that the provision is not a "regulation relating to siting and design" we need not address petitioner's alternative argument in the third assignment of error that the provision is not "reasonable."

3. Lot Dimension

EC 9.2751(17)(c)(2) requires that the boundaries of the subject property be able to "fully encompass an area with minimum dimensions of 45 feet by 45 feet." The subject property dimensions are 72.9 feet by 80 feet. LUBA No 2019-028, Record 56, 65.[11] The city found the lot dimension provision to be a regulation relating to "siting and design," largely for the same reasons it

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[10] The city found:

> "Lot area minimum standards are regulations relating to siting because they set out the necessary specifications for sites on which a secondary dwelling can (and cannot) be placed (identifying 'the local position of a building to be constructed' or 'the space of ground to be occupied by a building'). Requiring a minimum lot size of 7,500 square feet to site a secondary dwelling in the university area neighborhoods is reasonable because it provides for little more than adequate room for both a primary dwelling and a secondary dwelling with a bit of yard/open space (and possibly parking) in a way that could successfully blend with these established neighborhoods. The City has a responsibility to balance the need for housing, the efficient use of land, and the need for its neighborhoods to be livable. Statewide Planning Goal 14 requires all of these things." Record 6.

[11] The record from *Kamps-Hughes II*, LUBA No 2019-028 is incorporated into the record in this appeal.

concluded that minimum lot sizes relate to "siting," reasoning that odd-shaped lots are "an anomaly in the neighborhood, with its existing home inherently close to its neighbors."[12]

We agree with petitioner that EC 9.2751(17)(c)(2) is not a regulation related to siting and design. For the same reasons we rejected the city's conclusion regarding minimum lot sizes, we reject the city's conclusion regarding minimum lot dimensions. The shape of a lot is not related to the location of a building on a particular property. Because we agree with petitioner that the provision is not a "regulation relating to siting and design," we need not address petitioner's alternative argument in the third assignment of error that the provision is not "reasonable."

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[12] The city found:

> "It is reasonable to limit the siting of secondary dwellings to lots with dimensions that include a space sufficient to encompass a 45-foot by 45-foot area because it ensures that an extremely narrow lot, already with a single-family home, will not also have a secondary dwelling. Such a narrow or odd-shaped lot will already be an anomaly in the neighborhood, with its existing home inherently locate close to its neighbors. The City has a responsibility to balance the need for affordable housing and the efficient use of land with the need for these densely populated university area R-1 neighborhoods to remain livable for all residents, not just the transitory student population. Livability is an important Statewide Planning Goal 14 concept, along with accommodating the need for compact development." Record 6-7.

4. Occupancy Limits

EC 9.2751(17)(c)(8) imposes occupancy limits in three city zones, including the Fairmount neighborhood, that are intended to have the effect of limiting the total number of occupants of a property with a primary dwelling and an ADU to a maximum of three occupants in the ADU, calculated based on the number of bedrooms in the primary dwelling. The city found the provision is related to siting and design, mainly because it is intended to assure that the ADU remains an accessory use to the primary existing single-family dwelling. Petitioner argues that the occupancy limits have no relationship to the location of the dwelling on the property or its design. Again, we agree. The city's concern about assuring that ADU uses remain accessory to the primary dwelling is unrelated to the location of the ADU on the property or its design. Because we agree with petitioner that the provision is not a "regulation relating to siting and design," we need not address petitioner's alternative argument in the third assignment of error that the provision is not "reasonable."

5. Vehicle Use Areas

In the Fairmount neighborhood where petitioner's property is located, EC 9.2751(17)(c)(4) limits the percentage of total lot area that can be "vehicle use areas" such as driveways, parking spaces and turn arounds to 20 percent of the total lot area. The city found the provision to be a regulation "relating to siting and design" because "it ensures an adequate amount of area for yard/open space

(and possibly parking). It also operates as a limit on impermeable surfaces and/or surfaces that contribute to stormwater flow and quality issues." Record 9.

Petitioner argues that the provision is not related to "siting and design" because the provision does not regulate the ADU itself or its placement on the property, but rather regulates how the non-ADU portion of the property can be used. The city responds that the provision is related to both "siting" and "design" because it influences the location of the ADU on the property by limiting the area of the property that can be used for parking. While it is a close call, we agree with the city that the limit on vehicle use areas is a "regulation[] related to siting and design."

Petitioner also argues, in the alternative, that if the regulation is "related to siting and design," the vehicle parking area limits are not "reasonable" because they apply to only three areas of the city, and because using a fixed percentage that is applied to lots of varying sizes could result in inconsistent application of the provision. Absent a developed argument, we agree with the city's response that the provision is "reasonable."

6. Alley Access Parking

EC 9.2751(17)(c)(16) and EC 9.2751(18)(a)(11) set out standards for development of garages, carports, and parking areas on alley access lots in three areas of the city. The standards include limits on the number of garages or

covered parking areas, maximum dimensional standards and minimum setbacks for garages, and maximum driveway widths.[13]

The city found that *if* an ADU proposes off-street parking, the standards for development of garages and parking areas on alley access lots are "reasonable regulations relating to siting and design." Petitioner again argues that the standards do not regulate the ADU itself but are siting standards that relate only to garages, and therefore are not "reasonable regulations relating to siting and design." However, we agree with the city's response that *if* a proposed ADU includes a garage, for example an attached below unit garage, or an enclosed parking area or other parking area, the provisions are siting and design standards that relate to the development of the ADU on the property, and the city may apply them. We also agree with the city that the standards are "reasonable," and reject petitioner's argument that the standards are unreasonable because they apply in only three city neighborhoods. Petitioner has not established that the city's legislative choice to apply the standards in some areas of the city's and not others is unreasonable.

Portions of petitioner's first and second assignments of error are sustained. Petitioner's third assignment of error is denied.

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[13] The city's decision references the enactment of the 2019 amendments to ORS 197.312(5) at ORS 197.312(5)(b)(B), which provides that a local government may not apply an off-street parking requirement to an application for a new ADU. Record 4; *See* n 1.

The city's decision is remanded.