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

MELISSA KENNEY and JUDD MOORE,
Petitioners,

vs.

TILLAMOOK COUNTY,
Respondent,

and

KEVIN SHLUKA and KATIE SHLUKA,
Intervenors-Respondents.

LUBA No. 2020-117

FINAL OPINION
AND ORDER

Appeal from Tillamook County.

Sean T. Malone filed the petition for review and reply brief and argued on behalf of petitioner.

No appearance by Tillamook County.

Steven P. Hultberg filed the response brief and argued on behalf of intervenors-respondents. Also on the brief were Zoee Lynn Powers and Radler White Parks & Alexander LLP.

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

AFFIRMED 04/26/2021

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

Opinion by Rudd.

NATURE OF THE DECISION

Petitioners appeal a county board of commissioners decision approving a conditional use permit and height and setback variances for a 25-unit apartment complex.

MOTION TO INTERVENE

Kevin Shluka and Katie Shluka (intervenors), the applicants below, move to intervene on the side of the county. The motion is unopposed and is granted.

FACTS

The 0.58-acre subject property is located in the unincorporated community of Pacific City/Woods. Bounded by Sunset Drive to the west, Pacific Avenue to the north, the Nestucca River to the east, and residential properties to the south, the property slopes from Sunset Drive easterly towards the Nestucca River. "[R]oughly one-half of [intervenors'] property is within the FEMA 100-year floodplain. Roughly one-third of the property is burdened by [a] riparian setback." Record 34.

There is "a level terrace located within the northeastern portion of the subject property that serves as an existing unimproved parking area for recreational fisherman and visitors to the area." Record 41. Intervenors submitted applications to the county to develop a 13,000-square-foot apartment complex

providing workforce housing on the terraced portion of the subject property.[1] The subject property is zoned Pacific City/Woods Commercial One (PCW-C1) and, because residential uses in the PCW-C1 zone require a conditional use permit (CUP), intervenors applied for a CUP.[2] Intervenors also applied for variances to the applicable height and side yard setback standards.

The planning commission held public hearings on the applications and, on August 13, 2020, approved the variances and CUP. On September 1, 2020, petitioners appealed the planning commission decision to the board of commissioners. On September 9, 2020, the board of commissioners held a *de novo* hearing on the applications. On September 30, 2020, the board of commissioners held a second hearing on the appeal. After closing the oral and written record, the board of commissioners deliberated and tentatively approved the applications. On November 25, 2020, the county adopted written findings approving the CUP and variances.

This appeal followed.

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[1] Workforce housing is described in the record as housing serving those with an income between 50% and 120% of the median family income and we understand the parties to mean that when they refer to workforce housing. Record 378.

[2] The subject property also has Estuary Conservation 1 zoning.

FIRST ASSIGNMENT OF ERROR

Intervenors request that we reject the first assignment of error because it fails to comply with our rule at OAR 661-010-0030(4)(d). That rule requires that the petition for review clearly label the assignments of error and identify the applicable standards of review. OAR 661-010-0030(4)(d).[3] Petitioners identify what appears to be all of LUBA's standards of review at the beginning of the first assignment of error, with no attempt to connect the arguments in the 26 pages that comprise the first assignment of error to any particular standards of review. Petitioners also fail to clearly identify whether their challenge is to a board of county commissioners interpretation or finding or the adequacy of evidence.

We will not reject the first assignment of error for failure to comply with our rule because, in the circumstances presented here, we view that failure as a technical violation, and intervenors have not established that that violation prejudices their substantial rights. However, we will consider only the arguments

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[3] OAR 661-010-0030(4)(d) requires that the petition for review

> "[s]et forth each assignment of error under a separate heading. Each assignment of error must demonstrate that the issue raised in the assignment of error was preserved during the proceedings below. Where an assignment raises an issue that is not identified as preserved during the proceedings below, the petition shall state why preservation is not required. Each assignment of error must state the applicable standard of review. Where several assignments of error present essentially the same legal question, the argument is support of those assignments of error shall be combined[.]"

stated with sufficient clarity "to afford intervenor an opportunity to respond." *Heiller v. Josephine County*, 23 Or LUBA 551, 554 (1992).

A. Application of TCLUO 8.030

Tillamook County Land Use Ordinance (TCLUO) 8.030 provides the criteria for a variance, including:

> "(1) Circumstances attributable either to the dimensional, topographic, or hazardous characteristics of a legally existing lot, or to the placement of structures thereupon, would effectively preclude the enjoyment of a substantial property right enjoyed by the majority of landowners in the vicinity, if all applicable standards were to be met. Such circumstances may not be self-created.
>
> "* * * * *
>
> "(4) There are no reasonable alternatives requiring either a lesser or no VARIANCE."

The maximum building height in the PCW-C1 zone is 35 feet unless the property is an "ocean or bay front lot" in which case the maximum height is 24 feet. TCLUO 3.337(4)(k). The subject property's frontage on the Nestucca River results in it being a "bay front lot" under the county code, and it is therefore subject to the 24-foot height limit. TCLUO 3.337(4)(e) provides that, in the PCW-C1 zone, residential uses without a commercial element (for example, ground-floor retail) must comply with the development standards set out in the Pacific City/Woods High Density Residential (PCW-R3) zone. Because intervenors' proposed use is wholly residential, and because the subject property is on a corner lot, the required side yard setback on the street side of the subject

property is 15 feet. TCLUO 3.334(4)(e). Intervenors sought a height variance to allow a building height of 27 feet, 10 inches, based on considerations including costs and aesthetics. Intervenors also sought a setback variance to reduce the required side yard setback from 15 feet to 2 feet in order to avoid construction within the floodplain. In their first assignment of error, petitioners argue that the county misconstrued TCLUO 8.030(1) and (4) and made inadequate findings not supported by substantial evidence in granting those variances.

1. Standard of Review

We will reverse or remand a decision involving the application of a land use regulation if the decision is not in compliance with the applicable provisions of the land use regulation. ORS 197.835(8). We will also reverse or remand a decision where the local government improperly construed the applicable law. ORS 197.835(9)(a)(D).

Findings must "(1) identify the relevant approval standards, (2) set out the facts which are believed and relied upon, and (3) explain how those facts lead to the decision on compliance with the approval standards." *Heiller*, 23 Or LUBA at 556. The findings must be supported by substantial evidence, that is, evidence a reasonable person would rely upon to support a decision. *Younger v. City of Portland*, 305 Or 346, 358-60, 752 P2d 262 (1988).

2. Identification of Circumstances

As explained above, TCLUO 8.030(1) requires that the county find that the circumstances creating the need for the requested variance are not applicant-

created. Petitioners argue that the board of commissioners' interpretation of its ordinance improperly construes TCLUP 8.030(1) because that interpretation is that the applicable land use standards themselves were the "circumstance" justifying the variances. However, the county did not, either expressly or impliedly, interpret the word "circumstance" as used in TCLUO 8.030(1). Rather, the county found:

> "[TCLUO 8.030(1)] requires that the circumstances—that is, the 'dimensional, topographic, or hazardous characteristics of a legally existing lot, or the placement of structures thereupon'—cannot be self-created. [*Intervenors*] *did not impose a riparian setback, floodplain or height limit on the property, nor [are intervenors] responsible for the topography of the property.*
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> *These circumstances are a result of FEMA regulations, county land use standards, [and] prior grading activity and are therefore not 'self-created.'* Absent these 'circumstances' [intervenors] would be able to construct a building to the full height of the PCW-C1 zone and would be able to place the structure anywhere on the property, subject of course to other development standards. The Board finds that under the opponent's reading of this section, the 'self-created' provision would effectively preclude the county from granting almost any variance for any project because it is always possible to build a smaller or shorter building. *The topography, floodplain and height restriction are identified as the 'circumstances.' These circumstances are not self-created and are imposed either as a function of the TCLUO or the 100-year floodplain boundary. The Board concludes that the 'circumstances' are not self-created.*" Record 35 (emphases added).

Read in context, the county's reference to regulations as circumstances merely identifies the regulations from which intervenors seek relief. The county found that the floodplain, topography, and prior grading are the circumstances creating

the need for the variances. Because the property is within the floodplain, a circumstance intervenors did not create, development on part of the property is more hazardous than development on the remainder of the property. The county explained:

> "[Intervenors have] testified that the 'circumstances' relevant to [their] variance request are related primarily to the 'hazardous' characteristic of the 100-year []floodplain on the property and [intervenors'] desire to avoid building in the floodplain. The second 'circumstance' is the topography of the site, which slopes and is somewhat benched as it slopes to the river. These condition of the lot push a building envelope to the westerly portion of the property, should the proposal attempt to limit the proximity of development from hazardous areas of the subject property.
>
> "[Intervenors'] supplemental testimony shows roughly one-half of [intervenors'] property is within the FEMA 100-year floodplain. Roughly one-third of the property is burdened by the riparian setback. The 'substantial property right enjoyed by a majority of landowners in the vicinity' is the right to utilize their entire property unburdened by the riparian setback or the FEMA 100-year floodplain boundary.
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> "[Intervenors'] vicinity map demonstrates the 'vicinity' includes the area within the PCW-C1 zone boundary north, south and west of [intervenors'] property. The Board finds that it is appropriate to include the PCW-C1 zoned lots as the 'vicinity' because they are generally subject to the same use and development standards. There are 11 separate tax lots in the vicinity which carry the PCW-C1 zone. Of these 11 lots, only 4 lots (Tax Lots 5000, 5100, 4200 and [intervenors'] lot Tax Lot 800) are burdened by at least 50 percent of their property being within the FEMA 100-year floodplain.
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> "Only one lot—[intervenors']—is burdened by the riparian setback. As a result, the property right enjoyed by a majority of the landowners in the vicinity is not shared by [intervenors]." Record

34-35 (citation omitted).

The county's identification of the floodplain and topography as constraints on the property is an identification of "topographic[] or hazardous characteristics" of the property, as required by TCLUO 8.030(1).

Because the property fronts on the Nestucca River, a circumstance intervenors did not create, it is a "bay front" lot and the structure is limited to a 24-foot height. Because of the property's topography, the 24-foot height limit creates development challenges. As the county explained,

> "[w]ith respect to height, the same 11 tax lots are within the vicinity. Only [intervenors'] lot is subject to the 24-foot height standard as per TCLUO 3.337(4)(k) (imposing the 24-foot standard only on ocean or bay front lots downstream from the Beachy Bridge.) *The 24-foot height restriction, the topography of the site, primarily related to prior grading of the property, and the proposed placement of the building in the previously graded area of the property, create the 'circumstance' necessitating the need for a variance.* With the exception of [intervenors'] property, every other PCW-C1 zoned lot is able to build to 35 feet—a substantial property right not shared by [intervenors]. 'Circumstances' as used in [TCLUO 8.030(1)] relate to the 'circumstances' in the first sentence, that is, the floodplain, topography and height restrictions. None are self-created. Record 35 (emphasis added).

The county adopted findings identifying the standard and the facts relied upon and explaining that the floodplain, topography, and grading of the property by others resulted in circumstances that (1) intervenors did not create and (2) gave rise to the need for the variances.

This subassignment of error is denied.

3. Evaluation of Reasonable Alternatives

TCLUO 8.030(4) requires that the county find that there are no reasonable alternatives requiring a lesser or no variance. Petitioners argue that the board of commissioners improperly construed this requirement and that the height variance is merely based on the preferences of intervenors, specifically, their desire to build a two-story structure with a sloped roof. The county recognized that "[m]ost of the opposition testimony argues that the 'circumstances' are self-created because [intervenors] could elect to build a smaller building or propose some other use." Record 35. The county simply disagreed. Instead, the county found:

> "With respect to the height variance, * * * it is not reasonable to reduce the height and require a flat roof. In addition to increased construction costs, given the climate and rainfall, the Board finds that it would not be reasonable to require a flat roof to maintain the 24-foot height standard. With a flat roof, the building would not be as aesthetically pleasing and would not blend harmoniously with surrounding residential development. Similarly, * * * reducing the height to a single floor would result in a project with 12 to 13 units." Record 37.

We agree with intervenors that the county correctly applied its code to the facts and was entitled to make the findings that it did.

In *deBardelaben v. Tillamook County*, the petitioner sought a height variance of five feet in conjunction with an expansion of his 1,600-square-foot house. 142 Or App 319, 321, 922 P2d 683 (1996). The 2,100-square-foot expansion was intended "to make the house suitable for year-round rather than vacation or seasonal use, and to accommodate the needs of petitioner's

handicapped adult son." *Id.* The court considered the same provisions at issue in this appeal and, reversing LUBA's decision, explained that the county could, when evaluating TCLUO 8.030(4)'s requirement that there not be reasonable alternatives requiring no or a lesser variance, interpret its code to allow consideration of the personal circumstances of the applicant, the purpose of the structure, and the cost burden of alternatives. *Id.* at 325-26.

Here, the findings explain:

> "The proposed development is in response to identified existing [and] future housing needs identified in the Goal 10 Element of the Comprehensive Plan. A letter from the Tillamook County Housing Coordinator further expanding on this need is included in the record of this matter. In addition, the record includes ample testimony from third parties identifying a specific need for workforce housing in Tillamook County in general, and Pacific City specifically." Record 32.

Consistent with the court's decision in *deBardelaben*, the county concluded that the goals of the project were relevant to determining whether there were reasonable alternatives requiring no or a lesser variance. Petitioners characterize intervenors' choice to reject a flat roof as premised on a belief that a flat roof would result in the building appearing "cheap and boxy," would "compromise elegance," and would not resemble the neighborhood. Petition for Review 18. Intervenors' testimony addressing design included the following explanation:

> "[W]e have taken great care during the pre-construction process to design a building that not only looks attractive but functions in a way that fits best with the character of our community. Rather than building an ultra-efficient, monumental, single corridor building

> with small, uniform rooms, low ceilings, and a flat roof we have strived to create comfortable and unique rooms arranged in a manner that encourages a sense of individuality and community." Record 893.

The county found:

> "[Intervenors are] proposing workforce housing to meet an identified need for affordable housing in Tillamook County, and Pacific City in particular. Consequently, 'reasonableness' must be viewed in the context of the goals of the proposal. Aside from the population that the project is intended to serve, [intervenors have] been very clear that the design of the project, and a desire to have the building blend harmoniously with neighboring residential uses, are key goals of this project. Similarly, [intervenors have] stated that a constant consideration has been a desire to avoid building in the floodplain and providing as much open space adjacent to the riparian area as possible. Consequently, the Board finds that it is not reasonable for [intervenors] to construct a[] flat-roofed building on the property which bears no resemblance to the neighboring development. Likewise, it is not a reasonable alternative to push the building back into the floodplain and up to the riparian setback line. For these reasons the Board concludes that there are no alternatives that would require a lesser or no variance." Record 37.

The county applied the code to the facts and explained how the facts led to the conclusion that TCLUO 8.030(4) is met. The findings are adequate. To the extent that the county interpreted "reasonable alternatives" in this case, that interpretation is consistent with the interpretation upheld in *deBardelaben*. The county did not err in considering the purpose of the structure, the personal circumstances of intervenors, and the cost burden of alternatives.

This subassignment of error is denied.

B. Existence of Substantial Evidence

Petitioners do not challenge the evidence relied upon by the county to find that the "circumstances" prong of the variance criteria in TCLUO 8.030(1) is met. However, petitioners argue that the county's findings that the "reasonable alternatives" prong in TCLUO 8.030(4) is met are not supported by substantial evidence. Specifically, petitioners maintain that the record does not contain evidence establishing that intervenors are qualified to testify on the economics of their development project and that intervenors' materials on the economics of the project contain mathematical errors. We conclude that intervenors' submittals were evidence that a reasonable person would rely upon to make a decision and, therefore, substantial evidence.

In *Reeves v. Washington County*, a comprehensive plan transportation policy required that development likely to generate high volumes of traffic be discouraged from locating on minor collector streets serving residential areas. 24 Or LUBA 483, 489 (1993). On appeal, the petitioner argued that the traffic count on which the county relied to conclude that traffic volumes would not be too high should have been taken at a different location. *Id.* We concluded that, "[a]bsent some indication in the record that the information provided by the traffic count at a single location is an unreliable indicator of the number of daily trips on [the minor collector at issue]," a reasonable person could rely on the evidentiary record to conclude that the policy was met. *Id.* at 490. In this case, petitioners argue that the record does not show that intervenors are qualified to provide the

analysis of the economics of housing development and the need for the variances that they provided to the county. Petitioners did not challenge intervenors' qualifications below and, absent some indication in the record that intervenors were not qualified or that their math was incorrect, a reasonable person could rely on their analysis.

Petitioners also argue that the county failed to address contrary evidence presented by petitioner Moore, a retired architect, who maintained that building a flat roof would not have the negative consequences put forth by intervenors, including reductions in quality, ceiling height, and aesthetic appeal. The county found that a flat roof would result in "increased construction costs, given the climate and rainfall," and that,

> "[w]ith a flat roof, the building would not be as aesthetically pleasing and would not blend harmoniously with surrounding residential development. Similarly, * * * reducing the height to a single floor would result in a project with 12 to 13 units. * * * Regarding the setback, for similar reasons the Board concludes that pushing the building back and into the floodplain would unnecessarily increase construction and ongoing insurance cots to a point that it would be infeasible to construct workforce housing." Record 37.

We see no reason that the board was required to choose Moore's evidence over the evidence provided by intervenors. The case cited by petitioners, *Landwatch Lane County v. Lane County*, ___ Or LUBA ___ (LUBA No 2019-048, Aug 9, 2019), is inapposite. In that case, we considered whether a Goal 5 ESEE analysis that evaluated the impacts of a proposed zone change that would

have allowed higher residential densities in peripheral big game habitat and, on which the county relied in making its decision, had to be prepared by an expert. "We agree[d] with [the] petitioner that general [Oregon Department of Fish and Wildlife (ODFW)] guidance related to residential density and the ODFW letter provided by [the] petitioner addressing cumulative impacts constitute[d] expert testimony and that expertise [was] required in or to establish the sufficiency of responsive evidence." *Landwatch Lane County*, ___ Or LUBA at ___ (slip op at 21). We explained:

> "In *Oregon Coast Alliance*[*v. City of Brookings*, 72 Or LUBA 222, 232-33 (2015) (addressing an impact assessment prepared to comply with a Statewide Planning Goal 16 (Estuarine Resources) implementation requirement)], we noted that where adverse expert testimony is submitted, some level of expertise may be required to establish the sufficiency of a response to the adverse expert testimony." *Id.* at ___ (slip op at 20-21).

Here, however, we disagree with petitioners that the fact that Moore is a retired architect requires that expert testimony be provided to sufficiently respond to Moore's testimony on the aesthetics of a flat roof in the subject neighborhood. We also disagree with petitioners that, as a retired architect, Moore is necessarily an expert on current construction costs and other flat-roof-versus-sloped-roof considerations.

The record included a depiction of a flat roofed structure and a depiction of a pitched roof structure. As discussed above, the county reasonably relied upon intervenors to provide evidence on the economics of the project. The county

found that "construction in the floodplain increases both construction costs and ongoing insurance premiums to a point where it is no longer feasible to provide workforce housing." Record 37. The county also found that it is not reasonable to push the building into the floodplain and up to the riparian setback line where the goal is to avoid building in the floodplain and to provide as much open space adjacent to the riparian area as possible. *Id.* The county found:

> "There is substantial evidence in the record which demonstrates that the primary goal of [intervenors] is to provide workforce housing. As such, construction costs are a limiting factor. [Intervenors'] testimony also demonstrates that in order for the project to succeed financially, the project [must] include the 25 units as proposed. Any reduction in units will make the project infeasible from an economic perspective and would preclude the project. * * *With respect to the minor height variance from 24 feet to 27 feet 10 inches, [intervenors have] stated that the height variance is necessary to allow for a sloped roof rather than a flat roof and to provide a building that more harmoniously blends with neighboring residential uses. The record also demonstrates that a reduction to a single floor would reduce the number of units below what is financially feasible and would prevent [intervenors] from providing workforce housing.
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> "Given these considerations, the Board concludes that there are no 'reasonable' alternatives." *Id.*

The county's choice to rely on intervenors' evidentiary materials was reasonable.

This subassignment of error is denied.

The first assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

Petitioners' third assignment of error is that the county's findings are inadequate because they fail to address the project's compliance with the

Americans with Disabilities Act (ADA), specifically ADA parking requirements. However, petitioners have not identified a local land use standard requiring that the county's land use decision comply with the ADA. We agree with intervenors that this assignment of error provides no basis for reversal or remand. *Rogue Advocates v. Josephine County*, 72 Or LUBA 275, 292 (2015) ("Absent a land use regulation or other applicable law that requires the county to address compliance with state and federal * * * laws in approving the application, or impose a condition of approval requiring compliance with such laws, the county's failure to adopt such findings or impose conditions is not legal error.").

The third assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

Petitioners' second assignment of error is that the county's findings are inadequate because they incorporate "elements of the project that have been modified or withdrawn and are inconsistent with other findings." Petition for Review 31. Petitioners must identify how any confusing findings warrant remand. *Rosenzweig v. City of McMinnville*, 64 Or LUBA 402, 409 (2011) ("[C]onfusing findings may warrant remand where the confusing findings leave LUBA unable to understand the local government's rationale for concluding that one or more mandatory approval standards are satisfied."). We agree with intervenors that petitioners have failed to show how any inconsistency in the findings is material to the decision.

Intervenors initially applied for a parking variance to authorize the placement of six parking spaces within the right-of-way, for a total of 32 parking spaces serving the apartment building. As the county explained in the challenged decision,

> "[Intervenors have] withdrawn the variance request for on-street parking. *The Board finds that on-street parking is properly addressed through other county procedures and that a variance is not the proper method to obtain approval for on-street parking on county right-of-way.* The Board finds that TCLUO 4.030(13) imposes a numerical requirement of 26 off-street parking spaces. [Intervenors'] site plan demonstrates that this numerical number is met." Record 32 (emphasis added).

The county found that its parking requirements were met with the 26 spaces to be provided on-site, and petitioners do not argue that more than 26 spaces are required. The decision is therefore clear that the parking requirement has been met on-site.

Petitioners' charge of inconsistency with respect to the amount of parking provided is based on the county's adoption of findings allowing six parking spaces above and beyond those required by the code, in the right-of-way. Despite the finding that (1) the 26 required parking spaces are provided on-site, (2) intervenors withdrew their variance application for six on-street parking spaces, and (3) the allowance of on-street parking is not properly part of this land use process, the county included in its decision conditions of approval providing that "[intervenors are] permitted to place six (6) parking spaces on-street as designed and approved in 'Exhibit B.'" Record 38, 58. This inconsistency is not, however,

material to the decision. In *Larmer Warehouse Co. v. City of Salem*, we remanded a decision where the city incorporated a staff report containing findings for *approval* of the application into its decision *denying* the application, thereby taking both sides with respect to the underlying application. 43 Or LUBA 53, 59-60 (2002). Here, however, both the staff report and the board of commissioners' decision support approving the applications. Petitioners do not explain how the inconsistent parking statements are material to the decision. The county found that parking in the right-of-way did not require a variance and provided in conditions of approval that six parking spaces could be placed in the right-of-way. Petitioners do not explain why the county could not, under its code, approve parking in its right-of-way. We see no basis for petitioners' argument that, for staff "that are checking the verification of conditions or zoning permit submittal and that have not been involved in local proceedings, or reading the briefing, the decision is so fundamentally contradictory that the County may allow elements that have been expressly withdrawn or prohibited." Petition for Review 33. The county did not prohibit on-street parking in its decision. Rather, it held that the necessary parking was provided on-site.[4]

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[4] While neither party discusses the November 18, 2020 board of commissioners order in the record approving two ADA spaces in the right-of-way, that order appears to be an example of intervenors utilizing a separate county process for approving parking in the right-of-way. Record 59-60.

Petitioners also argue that the decision is inconsistent on the matter of building height because, while the county approved a variance allowing a building height of 27 feet, 10 inches, the staff report that the county incorporated as findings refers to a variance allowing 32 feet in building height. Petitioners do not address the county's findings that make it clear that "[intervenors] had initially sought a variance to a maximum height of 32 feet but revised the request during the pendency of the application." Record 31. In *Spiro v. Yamhill County*, the county incorporated a report as findings and the petitioner argued that the report was inconsistent with other parts of the decision. 38 Or LUBA 133, 139-40 (2000). We concluded that the decision explained the discrepancy in estimates, the basis for the county's selected estimate, and that the discrepancy did not impact the county's conclusion and was therefore immaterial. *Id.* at 140. We agree with intervenors that the inconstencies identified by petitioners are equally immaterial.

The second assignment of error is denied.

FOURTH ASSIGNMENT OF ERROR

As explained above, residential uses in the PCW-C1 zone require a CUP. TCLUO 6.040 sets out the criteria applicable to CUPs and requires, in part, a finding that "[t]he parcel is suitable for the proposed use considering its size, shape, location, topography, existence of improvements and natural features." TCLUO 6.040(3). Petitioners argue that the county misconstrued this suitability

standard and made inconsistent findings inadequate for review and unsupported by substantial evidence. Petitioners' fourth assignment of error is that

> "[Intervenors have] sought and received variances from the County for the very reasons the [intervenors allege] that the property is 'suitable.' Petitioners submit, as a matter of law, that a property cannot be 'suitable,' on one hand, and so unsuitable, on the other hand, that variances are necessary to carry out the proposal. For example, the findings complain of the natural features of the property, alleging that they are circumstances that are not 'self-created': '[Intervenors] did not impose a riparian setback, floodplain or height limit on the property, nor [are intervenors] responsible for the topography of the property.' In the next breath, however, the findings find that the topography is suitable: 'Regarding topography, the Board finds that the parcel slopes toward the river with a slight bench due to prior grading activities associated with the prior use of the property. As [intervenors] testified, the topography is well suited for the building and use because it allows for 'tuck under' parking for a portion of the building." Petition for Review 40-41 (citation omitted).

The county found:

> "With respect to location, the Board concludes that the proposed use (workforce housing) is ideally located in proximity to employment uses in Pacific City and for this reason alone, the parcel is suitable for the proposed use given its location.
>
> "* * * * *
>
> "Other parties have argued that transportation impacts of the proposal make it an unsuitable location. Again, the Board concludes that the primary consideration for this proposal is that it is a workforce housing project in close proximity to employment uses, for which there is a demonstrated need.
>
> "* * * * *

> "The 'suitability' standard above relates solely to the 'proposed use' and the Board concludes that the primary consideration regarding location is the proximity to nearby employment uses." Record 32-33.

The county also found:

> "With respect to size, the Board finds that the proposed project will retain significant open space and continued access to the river. The Board finds that because the improvements can be constructed while still maintaining ample open space and access to the river, the size of the parcel is suitable for the proposed use.
>
> "With respect to shape, the parcel is rectangular, which allows for the placement of the generally rectangular building, while still retaining nearly one-third of the property in open space. For this reason, the Board finds that the shape of the parcel is suitable for the proposed use." Record 32.

The county recognized petitioners' argument:

> Public comments have argued that the location is not suitable due to [intervenors'] request for variances. The Board finds that the criteria for variances, and [intervenors'] requests for variances, do not impact the locational suitability standard." *Id.*

We agree with intervenors that the variance findings and the CUP findings do not undermine each other. As the findings quoted above explain, the county interpreted the CUP "suitability" criterionand the variance "circumstances" criterion to require different analyses and rejected petitioners' argument that the need for a variance automatically renders a property unsuitable for a proposed development. We will defer to the county's interpretation of those criteria. ORS 197.829(1); *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010). Petitioners have not established that that interpretation is inconsistent with the

express language of either provision or of any other provision of the TCLUO. Petitioners do not address these findings and we conclude that they are adequate.

Although petitioners' fourth assignment of error refers to a substantial evidence challenge, petitioners do not develop any argument in this assignment of error that challenges the evidence relied upon by the county to conclude that the property is suitable for the proposed development.

The fourth assignment of error is denied.

The county's decision is affirmed.