

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

CAMRON SETTLEMIER,  
*Petitioner,*

vs.

CITY OF ALBANY,  
*Respondent.*

LUBA No. 2020-106

FINAL OPINION  
AND ORDER

Appeal from City of Albany.

Camron Settlemier filed the petition for review and reply brief and argued on behalf of himself.

M. Sean Kidd filed the response brief and argued on behalf of respondent.

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

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

AFFIRMED 05/27/2021

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

**NATURE OF THE DECISION**

Petitioner appeals Ordinance 5947, which amends the Albany Development Code.

**BACKGROUND**

In August 2020, the city initiated proceedings to amend various provisions of the Albany Development Code (ADC). The amendments are “related to improving clarity and consistency with state law, establishing clear and objective standards and criteria for residential development and a two-track system for review of residential applications, and improving the overall functionality of the design standards applicable to commercial and institutional development.” Supplemental Record 6.<sup>1</sup> The planning commission held a public hearing on the amendments and voted to recommend approval to the city council. The city

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<sup>1</sup> Briefly, 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.” However, ORS 197.307(5)(b) provides that the requirement to adopt and apply only clear and objective standards, conditions, and procedures does not apply to “[a]n application or permit for residential development in historic areas designated for protection” under Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces).

ORS 197.307(6) allows local governments to “adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective” as long as an applicant retains the option of proceeding under an approval process that meets ORS 197.307(4).

1 council held a public hearing on the amendments and, at the conclusion, voted to  
2 adopt the amendments. This appeal followed.

3 **ASSIGNMENT OF ERROR**

4       ORS 197.835(7)(a) requires LUBA to reverse or remand an amendment to  
5 a land use regulation that is “not in compliance with the comprehensive plan.”  
6 Petitioner’s single assignment of error is exceedingly difficult to follow and  
7 includes undeveloped and underdeveloped arguments. We address the  
8 assignment of error to the extent that we understand it.

9       We understand petitioner to argue that some of the amendments do not  
10 comply with Albany Comprehensive Plan (ACP) Goal 5, Policy 3(c); ACP Goal  
11 5, Implementation Method 7(c); and ACP Goal 5, Implementation Method 8.<sup>2</sup>

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<sup>2</sup> ACP Goal 5 is to “[p]rotect Albany’s historic resources and utilize and enhance those resources for Albany residents and visitors.” ACP Goal 5, Policy 3(c), provides that the city will maintain historic review ordinances for historic structures and districts to “[e]nsure that the design of new construction within historic districts does not detract from the architectural qualities of the district.” ACP Goal 5, Implementation Method 7 is to

“[s]tabilize and improve property values in existing and proposed historic districts. Methods might include:

“\* \* \* \* \*

“c. Ensuring that [ADC] regulations enhance the preservation and renovation of historic structures.”

ACP Goal 5, Implementation Method 8, is to “[d]evelop review criteria which would discourage those zone changes resulting in increased pressure to replace historic structures with more intense land uses.”

1           **A.     *Former* ADC 2.450(5) (Jan 1, 2015)**

2           Under *former* ADC 2.450(5) (Jan 1, 2015), in order to grant site plan  
3 review approval, the city must conclude that “[t]he design and operating  
4 characteristics of the proposed development are reasonably compatible with  
5 surrounding development and land uses, and any negative impacts have been  
6 sufficiently minimized.” The amendments renumbered *former* ADC 2.450(5)  
7 (Jan 1, 2015) as ADC 2.455(3) and limited its applicability to site plan review  
8 applications for non-residential development. Petitioner argues that that  
9 amendment means that the ADC fails to comply with ACP Goal 5, Policy 3(c),  
10 and ACP Goal 5, Implementation Method 8, because the city did not replace  
11 ADC 2.450(5) with an equivalent standard applicable to residential development  
12 that is clear and objective. The city responds that the city council is not obligated  
13 to replace ADC 2.450(5) with an equivalent objective standard applicable to  
14 residential development as long as the decision and the ADC remain in  
15 compliance with the ACP. We agree. Petitioner has not pointed to anything that  
16 requires the city to adopt an equivalent standard applicable to residential  
17 development, and they have not explained why removing ADC 2.450(5) from the  
18 standards applicable to residential development means that the decision is not in  
19 compliance with the ACP.

20           **B.     ADC 8.140**

21           Next, we understand petitioner to argue that unspecified amendments to  
22 ADC 8.140 (Oct 14, 2017) fail to comply with Goal 5, Implementation Method

1 8. ADC 8.140 contains “Additional Standards for Infill and Redevelopment” and  
2 includes several subsections that regulate setbacks, garages and carports, and  
3 building height. Record 373-83. Petitioner does not develop any argument  
4 explaining why ADC 8.140, as amended, fails to comply with ACP Goal 5,  
5 Implementation Method 8, and we will not develop their argument for them.<sup>3</sup>  
6 *Deschutes Development v. Deschutes Cty.*, 5 Or LUBA 218, 220 (1982).

7 **C. ACP Goal 5, Implementation Methods 7 and 8**

8 We also understand petitioner to argue that the city council erred in  
9 concluding that ACP Goal 5, Implementation Methods 7 and 8, do not apply to  
10 the amendments. The city council concluded:

11 “[Implementation Method] 7 is not applicable to the proposed  
12 amendments because Article 7 of the ADC provides regulations to  
13 enhance the preservation of historic structures and districts.  
14 Proposed amendments in Article 7 are limited to the name of the  
15 Landmarks Commission, and general formatting such as cross  
16 references and naming conventions. No changes are proposed to  
17 Article 7 that are applicable to [Implementation Method] 7.” Record  
18 140.

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<sup>3</sup> In another portion of the assignment of error, petitioner argues that the decision “loosen[s] development standards in ADC 8.110 to 8.160.” Petition for Review 10. ADC 8.110 to 8.160 include six sections with dozens of subsections. Petitioner does not develop any argument regarding any particular provision of ADC 8.110 to 8.160.

1 The city council also concluded that “[t]he proposed code amendments do not  
2 propose changes to the zoning district boundaries; therefore, [Implementation  
3 Method] 8 is not applicable.” *Id.*

4 We understand petitioner to argue that Implementation Method 7 is  
5 intended to protect both historic districts and historic structures located outside  
6 of historic districts; that, while ADC article 7, governing the Historic Overlay  
7 District, applies only to historic districts, ADC article 8, governing Design  
8 Standards, applies to historic structures located outside of historic districts; and  
9 that unspecified amendments to ADC article 8 are inconsistent with  
10 Implementation Method 7. We also understand petitioner to argue that the  
11 amendments to ADC article 8 constitute a “zone change” within the meaning of  
12 Implementation Method 8. *See* n 2.

13 The city council concluded that the amendments are consistent with ACP  
14 Goal 5, its policies, and its implementation methods because the provisions in  
15 ADC article 8 continue to protect the city’s historic resources that are not located  
16 in historic districts. Record 141. Petitioner does not explain why the city council’s  
17 conclusion that Implementation Method 7 does not apply where no changes are  
18 proposed to ADC article 7 is incorrect. In addition, we agree with the city that  
19 the amendments are not “zone changes” within the meaning of Implementation  
20 Method 8.

21 The assignment of error is denied.

22 The city’s decision is affirmed.