

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

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4                   SUSAN M. TADEI,  
5                   *Petitioner,*

6  
7                   vs.

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9                   CITY OF ASTORIA,  
10                  *Respondent,*

11  
12                  and

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14                  BETHANY FREE LUTHERAN CHURCH (ASTORIA) and  
15                  RDA PROJECT MANAGEMENT, LLC,  
16                  *Intervenors-Respondents.*

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18                  LUBA No. 2021-105

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20                  FINAL OPINION  
21                  AND ORDER

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23                  Appeal from City of Astoria.

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25                  Susan M. Tadei filed the petition for review and reply brief and argued on  
26                  behalf of themselves.

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28                  No appearance by respondent.

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30                  E. Michael Connors filed an intervenors-respondents' brief and argued on  
31                  behalf of intervenors-respondents. Also on the brief was Hathaway Larson LLP.

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

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36                  AFFIRMED

05/03/2022

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38                  You are entitled to judicial review of this Order. Judicial review is

1 governed by the provisions of ORS 197.850.

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**NATURE OF THE DECISION**

Petitioner appeals a decision by the city council approving a conditional use permit to construct an accessory building adjacent to an existing church building.

**FACTS**

Intervenors-respondents (intervenor) applied for a conditional use permit to construct an accessory building on property located adjacent to its existing building, a church. The planning commission approved the conditional use permit and petitioner appealed the decision to the city council. The city council held a hearing on the application and, at the conclusion, voted to deny the appeal and approve the application. This appeal followed.

**DECISION**

OAR 661-010-0030 sets out the specifications for the petition for review.<sup>1</sup> As intervenor points out, the petition for review does not comply with most

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<sup>1</sup> Under OAR 660-010-0030(4), the petition for review must:

- “(a) State the facts that establish petitioner’s standing;
- “(b) Present a clear and concise statement of the case, in the following order, with separate section headings:
  - “(A) The nature of the land use decision or limited land use decision and the relief sought by petitioner;
  - “(B) A brief summary of the arguments appearing under the assignments of error in the body of the petition;

1 elements of our rules. The most significant deficiency is the lack of assignments  
2 of error and argument in support of any assignments of error.<sup>2</sup> A close second is

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“(C) A summary of the material facts. The summary shall be in narrative form with citations to the pages of the record where the facts alleged can be found. Where there is a map in the record that helps illustrate the material facts, the petitioner shall include a copy of that map in the summary of the material facts or attach it as an appendix to the petition.

“(c) State why the challenged decision is a land use decision or a limited land use decision subject to the Board’s jurisdiction;

“(d) Set 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 questions, the argument in support of those assignments of error shall be combined;

“(e) Contain a copy of the challenged decision, including any adopted findings of fact and conclusions of law; and

“(f) Contain a copy of any comprehensive plan provision, ordinance or other provision of local law cited in the petition, unless the provision is quoted verbatim in the petition.”

<sup>2</sup> Petitioner sets out a standard of review for the assignments of error for the first time in the reply brief, in which they cite ORS 197.835(9)(a)(B) and 197.835(9)(a)(C). Reply Brief 2-3.

1 the lack of challenges to any of the findings and interpretations of the applicable  
2 law that the city council adopted in response to petitioner's arguments below.

3 We have explained that, "[a]lthough each of the \* \* \* requirements [for  
4 the petition for review] is important, the requirement of OAR 661-10-030([4])(d)  
5 that the petition for review include assignments of error, supported by argument,  
6 is particularly important." *Scholes v. Jackson County*, 28 Or LUBA 407, 409  
7 (1994) (citing *Bjerk v. Deschutes County*, 17 Or LUBA 187, 194 (1988)). We  
8 understand the petition for review to assert that the city council's decision  
9 violates three Astoria Comprehensive Plan (ACP) policies and several Astoria  
10 Development Code (ADC) provisions. However, the city council adopted more  
11 than 25 pages of findings, including interpretations of the applicable ACP and  
12 ADC provisions, in support of its decision to deny the appeal and approve the  
13 application. The city council adopted findings that specifically addressed issues  
14 raised by petitioner at and prior to the planning commission hearing. Record L95-  
15 99; Intervenor's Response Brief App 3-7. The petition for review does not  
16 address any of the findings or interpretations the city council adopted, or explain  
17 why that decision should be reversed or remanded.

18 We agree with intervenor that the petition for review provides no basis on  
19 which we can reverse or remand the challenged decision. *Borrego v. City of*  
20 *Sheridan*, 30 Or LUBA 65, 68 (1995); *Deschutes Development v. Deschutes Cty.*,  
21 5 Or LUBA 218, 220 (1982) ("It is not our function to supply petitioner with  
22 legal theories or to make petitioner's case for petitioner.").

1           The city's decision is affirmed.