

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

RONALD D. SATTLER,
Petitioner,

vs.

CITY OF BEAVERTON,
Respondent,

and

ASHCREEK PARENT COOPERATIVE PLAYSCHOOL,
Intervenor-Respondent.

LUBA No. 2025-009

DAVID C. GOLDER,
Petitioner,

vs.

CITY OF BEAVERTON,
Respondent,

and

ASHCREEK PARENT COOPERATIVE PLAYSCHOOL,
Intervenor-Respondent.

LUBA No. 2025-010

DOUGLAS GORDON,
Petitioner,

vs.

1 CITY OF BEAVERTON,
2 *Respondent,*

3
4 and

5
6 ASHCREEK PARENT COOPERATIVE PLAYSCHOOL,
7 *Intervenor-Respondent.*

8
9 LUBA No. 2025-011
10 FINAL OPINION
11 AND ORDER
12

13 Appeal from City of Beaverton.

14
15 Ronald D. Sattler filed a petition for review and argued on behalf of
16 themselves.

17
18 David C. Golder filed a petition for review and argued on behalf of
19 themselves.

20
21 Douglas Gordon filed a petition for review and argued on behalf of
22 themselves.

23
24 Robin Rojas McIntyre filed a joint respondent's brief and argued on behalf
25 of respondent. Also on the brief were Zoe Lynn Powers and Radler White Parks
26 & Alexander, LLP.

27
28 Zoe Lynn Powers filed a joint respondent's brief and argued on behalf of
29 intervenor-respondent. Also on the brief were Robin Rojas McIntyre and Radler
30 White Parks & Alexander, LLP.

31
32 BASSHAM, Board Member; ZAMUDIO, Board Member; WILSON,
33 Board Chair, participated in the decision.

34
35 AFFIRMED 09/29/2026

36
37 You are entitled to judicial review of this Order. Judicial review is
38 governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioners¹ appeal a city council decision approving an application for design review to retroactively approve the expansion of an outdoor play area at a childcare facility.

FACTS

Intervenor-respondent (intervenor), the applicant below, operates a childcare facility as part of a church on property located at 15050 SW Weir Road, Beaverton, and that is zoned Residential Mixed B (RMB). In 2024, intervenor applied to the city for (1) a design review compliance letter for retroactive approval of its 2011 expansion of an outdoor play area on the subject property (the DRCL), and (2) a modification of its conditional use permit to increase enrollment at the childcare facility from 20 to 60 children (the CUP). The outdoor play area (play area) was approved as part of the Church's CUP and pre-dated any school use of the Church site. Record 233-34.

The planning commission held hearings on the consolidated applications on October 9 and 23, 2024, and approved the DRCL application. Petitioners appealed that determination to the city council and, on December 10, 2024, the city council held a *de novo* hearing on the appeals. On January 16, 2025, the city

¹ Petitioners each filed a petition for review. However, their arguments are largely duplicative and for ease of reference we refer to the petitioners collectively. Unless stated otherwise, all citations are to petitioner Sattler's brief.

1 issued notices of the city council decisions approving both the DRCL and the
2 CUP.

3 These appeals followed.²

4 **FIRST ASSIGNMENT OF ERROR**

5 Petitioners argue that the city misconstrued the law when it interpreted
6 Beaverton Development Code (BDC) 50.15.3 and 50.60.1 to deny petitioners
7 standing to locally appeal the decision and in doing so prejudiced their substantial
8 rights. Our standard of review for challenges based on misconstruction of law is
9 governed by ORS 197.835(9)(a)(D) (LUBA shall reverse or remand a land use
10 decision if the Board finds that the local government “[i]mproperly construed the
11 applicable law[.]”). Our review of any interpretations made by the city council is
12 governed by ORS 197.829(1).³ Under that statute and associated case law, LUBA

² Petitioners also appealed the city’s CUP decision. Those appeals were assigned LUBA Nos. 2025-012, 2025-013, and 2025-014, and were separately consolidated. On July 10, 2026, we dismissed LUBA Nos. 2025-012/013/014. *Sattler v. City of Beaverton*, LUBA Nos 2025-012/013/014 (July 10, 2026). That decision is currently under review at the Court of Appeals.

³ ORS 197.829 provides, in relevant part:

“(1) The Land Use Board of Appeals shall affirm a local government’s interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government’s interpretation:

“(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;

1 must affirm a governing body's interpretation of its local land use legislation
2 unless that interpretation is inconsistent with the express language, purpose or
3 policy underlying the interpreted provision. Stated differently, LUBA must defer
4 to a governing body's code interpretation as long as that interpretation is
5 "plausible." *Siporen v. City of Medford*, 349 Or 247, 259, 243 P3d 776 (2010).

6 The city's code specifies that the appropriate procedure for a DRCL is the
7 city's "Type 1" procedure. BDC 40.20.15.1(B). The procedure for Type 1
8 decisions is laid out in BDC 50.35. In turn, the appeal of a Type 1 decision is
9 governed by BDC 50.60 which provides, among other things, that a Type 1
10 decision "may only be appealed by the applicant." BDC 50.60.1. However, the
11 DRCL was combined with the CUP application at issue in *Sattler*, LUBA Nos.
12 2025-012/013/014. Record 5. For combined applications, BDC 50.15.3 states:

13 "When an applicant submits more than one complete application for
14 a given proposal, where each application addresses a separate set of
15 code requirements and the applications are subject to different
16 procedure types, all of the applications are subject to the procedure
17 type of the application which requires the broadest notice and
18 opportunity to participate. For example, a Type 2 application will be

"(b) Is inconsistent with the purpose for the comprehensive plan
or land use regulation;

"(c) Is inconsistent with the underlying policy that provides the
basis for the comprehensive plan or land use regulation; or

"(d) Is contrary to a state statute, land use goal or rule that the
comprehensive plan provision or land use regulation
implements."

1 consolidated with a Type 3 application for the same proposal on the
2 same site, in which case, the Type 2 application will be reviewed by
3 the decision making authority of the Type 3 application. The
4 decision making authority's action on the Type 2 application will be
5 based on the approval criteria governing the Type 2 application. An
6 appeal of the decision will be processed according to the provisions
7 of Section 50.70. of this Code."

8 The city's code requires that a CUP be processed as a "Type 3" decision, and the
9 city applied Type 3 procedures to the CUP at issue in LUBA Nos. 2025-
10 012/013/014. Record 5. The appeal process for a Type 3 decision is governed by
11 BDC 50.70 and allows for the decision to be appealed "only by the applicant or
12 any other person who participated by providing either oral or written evidence on
13 the record leading to the decision by the Planning Commission." BDC 50.70.1.

14 The city found that petitioners did not have standing to appeal the DRCL,
15 reasoning that

16 "BDC 50.70 provides the *process* for hearing the appeal of decisions
17 on applications that were consolidated for review. BDC 50.70 does
18 not, however, expand the right to appeal a Type 1 decision to those
19 who would have not otherwise had the right to appeal if the
20 application had not been consolidated.

21 "* * * * *

22 "The purpose of consolidation is to increase the efficiency of the
23 development review by providing one procedure to review all
24 applications regardless of Type. Thus, when an applicant is required
25 to submit separate Type 1, 2 and 3 applications for a proposal, the
26 applications can be 'bundled' and reviewed concurrently through a
27 single review process. To ensure that consolidation does not reduce
28 the review procedure for the applications in the bundle that require
29 more discretion from the decision maker and thus broader notice and
30 opportunity for the public to participate, BDC 50.15.3 requires the

1 consolidated applications to be reviewed through the procedure that
2 provides the broadest notice and opportunity to participate.
3 Accordingly, a proposal that requires Type 1, 2 and 3 applications
4 can be reviewed concurrently through the Type 3 process. However,
5 each application remains subject to its specific criteria.

6 “* * * * *

7 “BDC 50.15.3 creates ambiguity by stating that an appeal of a
8 decision on consolidated application ‘will be processed according to
9 the provisions of’ the Type 3 appeal procedure. Because Type 3
10 decisions are appealable by the applicant and any party that
11 participated in the proceedings, it is understandable that appellants
12 would believe they have standing to appeal the consolidated Type 1
13 DRCL. However, [the city] interprets BDC 50.15.3 to apply to the
14 process for hearing and deciding the appeal of an application that
15 was consolidated. It does not expand the right of appeal to those who
16 would not have had that right if the application had not been
17 consolidated. To interpret the code otherwise would frustrate the
18 purpose of consolidation because an applicant would suffer a
19 disadvantage by bundling its Type 1 application with other higher
20 level applications. It would encourage applicants to submit their
21 Type 1 applications separately or in advance of its other
22 applications, which would greatly reduce the efficiency of
23 development review. It is worth noting that the consolidation of
24 Type 2 and 3 applications does not result in the same type of
25 disadvantage. Because both Type 2 and 3 applications involve
26 discretionary standards, the BDC requires opportunities for public
27 participation in the decision-making process. As a result, the BDC
28 provides applicant as well as any person who participated in the
29 proceeding standing to appeal. Consolidation therefore does not
30 create the same discrepancy for the appeal of Type 2 and 3 decisions
31 as it does for Type 1 decisions.” Record 7-10.

32 Petitioners argue that the city misconstrued BDC 50.15.3 because it
33 requires consolidated applications to be processed with the “broadest notice and
34 opportunity to participate[,]” which in this appeal would be the process allowed

1 for a Type 3 decision, and that the provision explicitly requires that an appeal of
2 a decision concerning consolidated applications “be processed according to the
3 provisions of [BDC] 50.70.”

4 Intervenor and the city (together, respondents) respond that the city
5 interpreted BDC 50.70.1, stating that a decision on a “Type 3 *application* may be
6 appealed,” in harmony with BDC 50.15.3’s requirement that the *process* in BDC
7 50.70 be accorded to the combined applications, to mean that only the applicant
8 could appeal the Type 1 decision because it was clearly not a Type 3 decision as
9 required by BDC 50.70.1. This harmonization of the code provisions,
10 respondents argue, is plausible and should be affirmed. ORS 197.829(1);
11 *Siporen*, 349 Or at 259. However, even if it is not plausible, respondents argue
12 that the error is harmless because the city held a *de novo* hearing on both
13 applications and petitioners were allowed to appear and present evidence and
14 argument to the city council on their appeals, thus their substantial rights were
15 not prejudiced and this assignment of error does not provide a basis for reversal
16 or remand.

17 We tend to agree with petitioners that the city’s interpretation of BDC
18 50.15.3 fails to give effect to its key terms and is therefore inconsistent with the
19 express language of BDC 50.15.3. Again, BDC 50.15.3 states that “all of the
20 applications are subject to the procedure type of the application which requires
21 the broadest notice and opportunity to participate.” The broadest notice and
22 opportunity to participate, in comparing the process allowed for Type 1 and Type

1 3 decisions, is that afforded to Type 3 decisions, which allows for appeals by
2 participants to the proceedings below. The city offers no textual or contextual
3 basis to understand “broadest * * * opportunity to participate” to exclude the
4 basic participatory right to appeal the underlying decision to the city council, but
5 instead reasons that giving effect to the plain language of BDC 50.15.3 would
6 discourage applicants from consolidating applications, with resultant
7 inefficiencies. Such reasoning might justify amending the text of BDC 50.15.3 to
8 state what the city council wishes it to say, but it does not provide a basis to ignore
9 the text of that provision as currently written. ORS 197.829(1)(a). However, we
10 need not and do not decide this point, because we agree with respondents that
11 because the city in fact provided petitioners with a local appeal and full
12 participatory rights in the consolidated appeal proceeding, petitioners have not
13 established that any misinterpretation of BDC 50.15.3 caused procedural error
14 that prejudiced their substantial rights. ORS 197.835(9)(a)(B).⁴

⁴ Petitioners cite and refer to the standards of review for both a “land use decision,” ORS 197.835(9), and “limited land use decision,” ORS 197.828, while the joint respondent’s brief cites and refers to only ORS 197.835(9). ORS 197.828(2)(d) authorizes LUBA to reverse or remand a limited land use decision where “[t]he local government committed a procedural error which prejudiced the substantial rights of the petitioner.” Similarly, but differently, ORS 197.835(9)(a)(B) authorizes LUBA to reverse or remand a land use decision where the local government “[f]ailed to follow the procedures applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner[.]” We assume that circumstances exist in which application of these somewhat differently worded standards of review could yield different results. However, in the present case we do not see that application of one standard of

1 A petitioner's substantial rights include the right to an adequate
2 opportunity to prepare and submit one's case and to a full and fair hearing. *Muller*
3 v. *Polk County*, 16 Or LUBA 771, 775 (1988). Petitioners state that the city
4 "accepted the appeal, conducted a City Council appeal proceeding, received
5 testimony, and then denied the appeal on the ground[s] that [petitioners] lacked
6 standing *while also adopting alternative merits findings*." Sattler Petition for
7 Review 16 (emphasis added). Local governments often adopt findings in the
8 alternative and petitioners make no argument that the alternative findings do not
9 address all issues raised in the city council proceedings or that they were in some
10 other way deprived of the opportunity to prepare and submit their case or to a full
11 and fair hearing. *Muller*, 16 Or LUBA at 775. The city's finding regarding
12 petitioners' standing therefore did not prejudice petitioners' substantial rights.

13 Petitioners' first assignment of error is denied.

14 **SECOND ASSIGNMENT OF ERROR**

15 BDC 40.20.15.1.C.3 requires that, as part of the approval criteria for a
16 DRCL, "[t]he proposal contains all applicable application submittal requirements
17 as specified in [BDC] 50.25.1[.]" BDC 50.25.1, in turn, requires application
18 completeness, which includes "[a] completed original application * * * [that]
19 must contain the signature or other acceptable form of written consent" from the

review over another would change the outcome. No party argues that these differently worded standards of review would yield a different outcome in the present appeal and we refer to the standards of review found in ORS 197.835.

1 applicant or, if the applicant is not the owner, the property owner or the property
2 owner's authorized agent. BDC 50.25.1.A.1-2. Petitioners argue that the
3 application before the planning commission did not constitute a complete
4 application because it did not contain a signature of the property owner or the
5 property owner's authorized agent. Therefore, petitioners argue, the city
6 misconstrued BDC 40.20.15.1.C.3 and made a decision that was not supported
7 by substantial evidence in the whole record in approving the application. ORS
8 197.835(9)(C), (D).

9 In response to petitioners' misconstruction of law argument, respondents
10 argue that BDC 40.20.15.1.C.3 does not require a specific timing for submittal
11 requirements. Further, respondents argue that any error made by the planning
12 commission was cured by the city council proceedings. The city council held a
13 *de novo* appeal and accepted new evidence and testimony, including a completed
14 application containing a signature of the property owner's representative.
15 Respondents argue that petitioners had an opportunity to respond or raise issues
16 regarding that completed application, but did not.

17 Petitioners dispute that city council acceptance of a completed application
18 with owner signatures can "cure" the absence of that completed application
19 before the planning commission. However, petitioners do not explain why not. It
20 is not uncommon for deficiencies in application submittals to be discovered at an
21 early stage of the review proceedings, and for those deficiencies to be cured later
22 in the review proceedings. The city adopted findings rejecting this argument

1 below, concluding that the completed application submitted during the city
2 council proceedings was sufficient to satisfy the applicable submittal
3 requirements. Record 12. Petitioners disagree with that conclusion, but have not
4 established that it represents an erroneous construction of the city code. We agree
5 with respondents that any error in failing to submit a signed application in time
6 for the planning commission hearings was harmless, as the required document
7 was submitted during the subsequent *de novo* evidentiary proceedings.

8 Petitioners next argue that the omission of the signed application before
9 the planning commission results in a city council decision that is not supported
10 by substantial evidence.⁵ Again, BDC 40.20.15.1.C.3 requires that, as part of the
11 approval criteria for a DRCL, “[t]he proposal contains all applicable application
12 submittal requirements” which include, among other things, “[a] completed
13 original application * * * [that] must contain the signature or other acceptable
14 form of written consent” from the applicant or, if the applicant is not the owner,
15 the property owner or the property owner’s authorized agent. BDC 50.25.1.A.1-
16 2. The record before the city council included an application signed by the

⁵ Substantial evidence is evidence that a reasonable person would rely on in making a decision. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608 (1993). In reviewing the evidence, LUBA may not substitute its judgement for that of the local decision maker. Rather, LUBA must consider all the evidence to which it is directed, and determine whether, based on that evidence, a reasonable local decision maker could reach the decision that it did. *Younger v. City of Portland*, 305 Or 346, 358-60, 725 P2d 262 (1988).

1 property owner's authorized agent. Record 11-12, 255. A signed application is
2 substantial evidence a reasonable person would rely on in finding that BDC
3 40.20.15.1.C.3 was satisfied regarding the signature requirement of BDC
4 50.25.1.A.

5 Petitioners' second assignment of error is denied.

6 **THIRD ASSIGNMENT OF ERROR**

7 Petitioners argue that the city misconstrued BDC 20.05.20.12.A, in finding
8 that the play structure was not a public playground requiring a separate
9 conditional use permit, and BDC 40.20.15.1, in determining that the play
10 structure met the threshold for DRCL review. ORS 197.835(9)(a)(D). Petitioners
11 also argue that the city did not make adequate findings and that both of those
12 determinations are not supported by substantial evidence. ORS 197.835(9)(a)(C).

13 **A. Public Park**

14 Petitioners argue that there was evidence submitted into the record "that
15 the play area was used by the preschool, open to the public, and audible at nearby
16 residences [which] was relevant to whether the expanded play area was truly
17 incidental and subordinate to the Church or instead required conditional use
18 review or modification." Sattler Petition for Review 34. Petitioners identify BDC
19 20.05.20.12.A (2023),⁶ providing that "Public Parks, Parkways, Playgrounds,

⁶ The city has amended its code, including renumbering some of the relevant provisions, since the application at issue in this appeal was filed. We refer to the BDC provisions that were in place at the time the application was filed.

1 and Related Facilities” are conditional uses in the RMB zone, and argue that the
2 evidence submitted supports the play area being classified as a “public
3 playground” which would require its own conditional use permit and requisite
4 process.

5 The city council adopted findings rejecting that argument:

6 “[T]here is no language in the BDC that requires a play area of a
7 certain size be reclassified as a Public Playground. Furthermore, [the
8 city] finds that the term ‘Public’ is used repeatedly in the BDC to
9 denote buildings or property owned and/or operated by a public
10 entity. As the property owner, [the Church], is a private entity, the
11 play area should not be considered a Public Playground. Finally, the
12 [city] finds that the play area should be considered an Accessory
13 Use, consistent with BDC 60.50.05.1, which reads: ‘Structures or
14 uses incidental and subordinate to the uses allowed as Permitted or
15 Conditional Uses in any zone are allowed as accessory uses and
16 structures subject to the provisions of this section. Therefore, [the
17 city] finds that the play area does not constitute a Public Playground
18 and does not require a separate [CUP.]” Record 12-13.

19 Respondents cite to evidence that the play structure is an accessory use to the
20 Church because it was approved as part of the Church’s original CUP, predating
21 the school use at the Church site. Joint Respondent’s Brief 5 (citing Record 233-
22 34).

23 We agree with respondents that petitioners have not established that the
24 city erred in rejecting arguments that the play structure must be evaluated as a
25 conditional use. The city found, and the record supports, that the play structure is
26 an accessory use to the church. As the city found, that members of the public or
27 school children sometimes use a private accessory play structure does not change

1 that accessory use into a stand-alone conditional use as a “public park,” or as
2 something other than an accessory use to the church. Petitioners have not
3 identified any misconstruction of law, inadequacy, or lack of evidentiary support
4 for the city’s findings on this point.

5 **B. Thresholds for Design Review**

6 Petitioners next argue that the city misconstrued BDC 40.20.15.1 in
7 determining that the structures in the play area were subject to the design review
8 process allowed for a DRCL. BDC 40.20.15 provides for three types of design
9 review. The least intensive type or level is a DRCL, followed by more intensive
10 Design Review Two and Design Review Three. Each type of design review has
11 identified “thresholds” that, if exceeded, trigger more intensive design review for
12 more expansive or intensive types of development.

13 As the findings describe, the proposed play area consists of “improvements
14 to the [existing] play area [which] include replacing the previously approved play
15 structure and swing set, the construction of low fencing and retaining wall with
16 minor grading along portions of the south and west edge of the playground area,
17 a new toddler swing set, and several picnic tables.” Record 75. Among the
18 thresholds for a DRCL are additions or modifications of fences and retaining
19 wall, and changes to the existing grade. BDC 40.20.15.1.A.1.h and i (2023). The
20 proposed play area includes those elements, but it also includes new or replaced
21 permanent play structures, which petitioners argue cause the proposal to exceed
22 the permissible threshold for a DRCL. We understand petitioners to argue that

1 the installation of permanent play structures triggers the threshold for Design
2 Review Two or Three instead of a DRCL.

3 BDC 40.20.15.1.A.1.m (2023) is one of the threshold criteria for a DRCL
4 and one that the planning commission initially found applicable to the subject
5 application. Record 11. However, petitioners successfully argued to the city
6 council, below, that BDC 40.20.15.1.A.1.m (2023) is inapplicable, because it
7 concerns uses “permitted within the underlying zoning district[,]” noting that the
8 Church is a conditional use. Record 11. The city council agreed with petitioners
9 that subsection (m) is inapplicable, but then found that “there is no threshold in
10 the BDC that addresses the construction of small structures, not considered
11 buildings, for a conditional use,” and “that there is no alternate land use
12 application for the construction of play structures.”⁷ *Id.* The city goes on to find

⁷ The findings state in full on this point:

“The appellants in their written and oral testimony assert that the proposal did not meet the thresholds for a [DRCL]. They reference threshold BDC 40.20.15.1.A.1.m, which reads ‘Construction or modification of a permanent structure, not considered a building, which has a footprint of up to 1,000 square feet and is a use permitted within the underlying zoning district.’ The appellants state that the play area is approximately 8,500 square feet in size, above the 1,000 square foot threshold. [The city] disagrees and finds that the threshold applies to structures, not the overall footprint of the play area. The record demonstrates that the overall square footage of the structures is 575 feet, which is less than the threshold. The appellants also contend that the play area is associated with a church, which is a conditional use in the RMB zone. Because the threshold

1 that the play area meets the DRCL thresholds in two other ways, under BDC
2 40.20.15.1.A.1.h and i (2023), and therefore the application was properly
3 processed as a DRCL. Petitioners contend that these findings misconstrue the
4 applicable law, are not adequate and not supported by substantial evidence in the
5 whole record.

6 On misconstruction of law, petitioners repeat their arguments that the city
7 failed to evaluate whether the play area is an accessory use to the church or the
8 school, or whether it should be evaluated as a public park allowed as a conditional
9 use in the RMB zone. We reject those arguments for the same reasons set out
10 above. Further, those arguments do not establish any error with respect to
11 application of the design review thresholds. On that point, petitioners fault the
12 city for not applying any design review threshold to the proposed play structures.
13 However, petitioners do not dispute the city's conclusion that the subsection (m)

only addresses permitted uses, BDC 40.20.15.1.A.1.m was the incorrect threshold to reference. [The city] finds that BDC 40.20.15.1.A.1.m is not applicable because the play area is not associated with a conditional use, and the threshold only applies to permitted uses. As there is no threshold in the BDC that addresses the construction of small structures, not considered buildings, for a conditional use, [the city] finds that there is no alternate land use application for the construction of the play structures. [The city] further finds that two separate thresholds [BDC] 40.20.15.1.A.1.h and i, which address fencing and retaining walls, and site grading, respectively, were met by the proposal. Therefore, with the removal of findings [by the planning commission] in response to threshold BDC 40.20.15.1.A.1.m, [the city] finds that the application meets the [DRCL] thresholds, consistent with 40.20.15.1.C.1." Record 36.

1 threshold does not apply, and do not identify any other threshold under the
2 DRCL, Design Review Two, or Three standards, that would apply. As far as we
3 can tell, the city council is correct that there are no design review thresholds in
4 BDC 40.20.15 (2023) that apply to the proposed play structures. That may
5 represent an inadvertent gap in the city's scheme for applying the design review
6 thresholds,⁸ but petitioners have not demonstrated that the city misconstrued the
7 applicable 2023 BDC provisions in concluding that no threshold applies to the
8 play structures, or that the city otherwise erred in concluding that the application
9 was properly processed as a DRCL rather than a Design Review Two or Three.
10 The city went on to apply the DRCL approval standards to the play structures,
11 but as far as the threshold determinations regarding which level of design review
12 applies, the city appears to be correct that the only applicable thresholds point to
13 application of DRCL standards and process, not Design Review Two or Three.

14 In sum, the city's determination that the proposed play area improvements
15 are properly evaluated under DRCL standards, given that two DRCL thresholds
16 apply, and no other applicable thresholds appear to point toward any other type

⁸ We note that subsequent to this decision the city amended BDC 40.20.15, and those amendments appear to close the gap for small non-building structures that are associated with a conditional use. As we understand the current BDC, at least one DRCL threshold would now apply to proposed play structures accessory to a conditional use, and the amended thresholds for Design Review Two would not apply to such structures. *See* BDC 40.20.15.1.A.1.1 (2025); BDC 40.20.15.2.A.10 (2025).

1 of review, is certainly a plausible, if not correct, interpretation of the 2023 BDC
2 provisions. Accordingly, we must defer to that interpretation. *Siporen*, 349 Or at
3 259. Petitioners have not demonstrated that the city's findings with respect to the
4 design review thresholds are inadequate or not supported by substantial evidence.

5 Petitioners' third assignment of error is denied.

6 The city's decision is affirmed.