

1 Opinion by Bagg.

2 NATURE OF THE DECISION

3 Petitioners appeal the issuance of a building permit to
4 remodel a restaurant in a C-1 Zone in the City of Seaside.¹

5 FACTS

6 The existing building which includes a sandwich shop and
7 living quarters is on a corner lot fronting on Columbia Street
8 and bordered by Avenue "U". The applicant seeks permission to
9 remodel the building to accommodate a full service restaurant.

10 An application was filed for a building permit with the
11 city's building inspector. His determination to grant the
12 permit was appealed to the city planning commission. The
13 planning commission approved the permit after a hearing.
14 However, the planning commission required the building
15 inspector to approve a parking plan. The parking plan was
16 apparently submitted the following day and approved by the
17 building inspector.

18 Petitioners herein appealed to the city council. The city
19 council considered the matter and directed that measurements be
20 taken of the building. The number of parking spaces required
21 under the city code is in part determined by the number of
22 square feet in the building. After the measurements were
23 taken, minutes of the city council meeting suggest, but do not
24 show clearly, that the city council determined eight parking
25 spaces were necessary. The council otherwise affirmed the
26 decision of the planning commission to issue the building

1 permit.² Petitioners appealed that decision to this Board.

2 ASSIGNMENT OF ERROR NO. 1

3 "The city erred in ignoring their Comprehensive Plan's
4 prohibition against restaurants in a C-1 Commercial
5 Neighborhood Zone."

6 Petitioners argue the comprehensive plan forbids
7 establishment of restaurants in the C-1 Zone. As we understand
8 the argument, petitioners believe the prohibition in the
9 comprehensive plan controls over inconsistent provisions in the
10 zoning ordinance, which may not be read so as to allow what a
11 clear comprehensive plan prohibits. Petitioners cite §15.4 of
12 the plan which provides that where a conflict between the plan
13 and the ordinance exists, "the Plan prevails."

14 Petitioners claim the following portion of the
15 comprehensive plan No. 83-11 clearly prohibits restaurants in
16 the C-1 Zone.³

17 "Neighborhood Commercial

18 "These areas are for the location of small businesses
19 and services within residential areas primarily for
20 the convenience of nearby residents.

21 "Residential uses shall not be allowed except ones
22 that are in connection with a commercial use. For
23 example, a grocery store with the owner's residence
24 above or behind the store. Automobile service
25 stations are appropriate in neighborhood commercial
26 areas; however, because of fire danger and the very
27 narrow streets on the west side of the Necanicum
28 River, none should be located west of the Necanicum
29 River. Because of the amount of traffic generation
30 and the general incompatibility with residential uses,
31 drive-in and restaurants should not be allowed in
32 neighborhood commercial areas." (Emphasis added).

1 We do not believe the quoted provision provides a clear
2 prohibition against restaurants in the Neighborhood Commercial
3 Zone. The city attorney advises prior comprehensive plan
4 provisions prohibited "drive-in type restaurants" (emphasis
5 added) in the Neighborhood Commercial Zone. Petitioners do not
6 challenge this representation. Further, the zoning ordinance
7 at §3.064 seems to allow restaurants, with one notable
8 exception, "drive-in type restaurants" (emphasis added).

9 We agree with the city that the word "and" separating
10 "drive-in" and "restaurants" is a typographical error. Indeed,
11 the sentence is grammatically awkward when read as petitioners
12 assert, and clear when read as the city interpreted it. The
13 city's interpretation is consistent with the city attorney's
14 comments about the legislative history of the comprehensive
15 plan. Further, the city's interpretation renders the plan and
16 the zoning ordinance consistent with each other. We believe a
17 consistent reading is favored. See 2A Sands Sutherland,
18 Statutory Construction, §53.01 (4th Ed, 1984).

19 Assignment of Error No. 1 is denied.

20 ASSIGNMENT OF ERROR NO. 2

21 "The city erred in allowing a general restaurant to be
22 established in a C-1 Commercial Neighborhood Zone.
Z.O. Sec. 3.061-2."

23 ASSIGNMENT OF ERROR NO. 6

24 "The city erred in failing to evaluate the need for a
25 neighborhood restaurant in the area based on the
statutory standards which requires that the restaurant
be primarily for usage by nearby residents."
26

1 In these two assignments of error, petitioners note
2 the purpose of the C-1 Zone, as stated in the zoning
3 ordinance, is to provide for businesses "primarily for the
4 convenience of nearby residents." City of Seaside Zoning
5 Ordinance, §3.061. Petitioners argue that a full service
6 restaurant does not qualify as a service primarily for
7 nearby residents, but serves a much larger population.
8 Petitioners urge us to conclude the persons served by the
9 restaurant will be from outside the neighborhood. We
10 understand petitioners to argue the evidence supports
11 their view that the restaurant does not meet the
12 limitation imposed by §3.061 and §3.062(2).

13 Section 3.062 lists the following as an outright
14 permitted use in the C-1 Zone.

15 "(2) Retail businesses primarily for the convenience
16 of nearby residents, such as grocery, drug,
17 variety stores; barber shop and beauty shop,
18 clothes, cleaning, and other similar uses if the
19 City Manager finds them to be similar to the uses
20 listed above in this subsection."

21 The City Manager found as follows:

22 "CONCLUSION

23 "The City Manager declared the restaurant a similar
24 use and authorized the building permit based upon the
25 following conclusions:

26 "1. A small family restaurant fits the definition in
the Comprehensive Plan of a small business and
service to the nearby residents.

"2. It fits the purpose of the Zoning Ordinance as a
small business and service.

"3. The use would generate no more traffic than a

1 grocery, drug, or variety store.

2 "4. The Ordinance specifically prohibits drive-in
3 restaurants. If all restaurants are to be
4 prohibited in the zone, drive-ins would not have
5 been specifically called out.

6 "5. A restaurant presently exists in the C-1 Zone
7 near this location. The Par-Tee Room is a larger
8 and more intense use than the proposed restaurant.

9 "6. The neighborhood can utilize a second restaurant
10 and the additional seating space since the
11 neighborhood includes a large number of
12 condominium units within easy walking distance."
13 Record at 29.

14 Findings 1 and 2 state simple conclusions of compliance
15 with the ordinance. Finding 3, which we understand is intended
16 to support the city's conclusion of compliance with its
17 ordinance, includes no findings of fact but again states a
18 conclusion. Finding 4 gives the city's interpretation of its
19 ordinance, allowing it to permit the siting of restaurants in
20 the C-1 Zone. Finding 5 is of questionable relevancy. If
21 relevant at all, it would tend only to show that the city has
22 previously allowed a larger restaurant than applicant now
23 proposes in the district. However, the finding does not
24 affirmatively explain why the proposed facility satisfies the
25 standard of "retail business primarily for the convenience of
26 nearby residents." Finding 6 includes a fact, that there are a
"large number of condominium units within easy walking
distance," and a conclusion that the neighborhood "can utilize
a second restaurant."

The findings do not recite facts showing that a restaurant

1 large enough to serve 64 persons is in keeping with §3.062(2),
2 permitting businesses "primarily for the convenience of nearby
3 residents." In addition, we are not cited to any evidence in
4 the record to support the findings or the ultimate conclusion
5 that the grant of the permit complies with ordinance criteria.
6 Indeed, much of the testimony in the record on this issue is
7 given by the petitioners and tends to support their view that
8 the restaurant will serve a greater population than nearby
9 residents. See Record 32, 39-40.

10 Therefore, we must sustain Assignments of Error 2 and 6. On
11 remand, the city should provide an analysis showing why a
12 restaurant with this seating capacity serves primarily "nearby
13 residents." The analysis must be supported by substantial
14 evidence in the record. See South of Sunnyside Neighborhood
15 League v. Clackamas County, 280 Or 3, 569 P2d 1063 (1978).

16 ASSIGNMENT OF ERROR NO. 3

17 "The city erred in considering a building permit
18 application which was not accompanied by a scaled and
19 dimensioned plan for the work to be done on the
20 existing building and how the off-street parking
21 requirements were to be met. Z.O. Sec. 4.127, Sec.
22 10.040."

23 Petitioners say the City of Seaside Zoning Ordinance, at
24 §10.040 requires that applications be accompanied by scaled
25 plans and specifications. Section 4.127 of the zoning
26 ordinance calls for a parking plan, and petitioners argue the
city did not demand compliance with this ordinance provision.
Petitioners complain that a plan was submitted on order of the

1 planning commission, well after the application for the
2 building permit was submitted. The planning commission ordered
3 a parking plan in conjunction with petitioners' appeal of the
4 grant of a permit.

5 Petitioners add that a parking plan was not presented to
6 petitioners until October 22, 1984. That plan was approved by
7 the city council the same evening without any real opportunity
8 for petitioners to present a challenge.

9 We agree that the city was in error in not requiring a plan
10 to accompany the application.⁴ Section 4.127 of the city's
11 zoning ordinance requires as follows:

12 "A plan drawn to scale and dimensioned, indicating how
13 the off-street parking and loading requirements are to
14 be met shall accompany an application for a building
15 permit."

16 Notwithstanding the initial failure to comply with this section
17 of the ordinance, a plan was submitted by the time the matter
18 was heard on appeal by the city council. While the plan was
19 late, failure to submit the plan on time constitutes a
20 procedural error. We will not reverse or remand a local
21 government decision simply because of procedural
22 irregularities, unless there is a showing that the petitioners
23 have somehow been prejudiced by these irregularities. ORS
24 197.835(8)(a)(B). Petitioners were given an opportunity to
25 comment on the plan, and could have, but did not object that
26 the time allotted was inadequate. We do not believe petitioners
were prejudiced by the procedure followed by the city.

1 Assignment of Error No. 3 is denied.

2 ASSIGNMENT OF ERROR NO. 4

3 "The city erred when the Planning Commission delegated
4 to the Building Inspector authority to approve or
disapprove the off-street parking plan."

5 In this assignment of error, petitioners argue that the
6 planning commission has sole authority to approve an off-street
7 parking plan. Petitioners argue the planning commission should
8 not have delegated approval of a parking plan to the city
9 building inspector.

10 Approval of a parking plan is a necessary part of an
11 application for a building permit and is therefore a
12 prerequisite to the issuance of the permit. Ordinance §4.127.
13 See also Footnote 4, supra. Whether error was committed by the
14 planning commission in this case is not relevant, since, as the
15 facts recited earlier indicate, the city council had before it
16 and did approve a building permit which included a parking
17 plan. Thus, even if the planning commission violated the
18 ordinance in delegating the power to decide whether a standard
19 of approval was met, the error was cured when the city council
20 considered the entire permit application on appeal. See
21 Margulis v. City of Portland, 4 Or LUBA 89 (1981) and Sparks v.
22 Independence, 2 Or LUBA 215 (1981).

23 Assignment of Error No. 4 is denied.

24 ASSIGNMENT OF ERROR NO. 5

25 "The city erred in approving an off-street parking
26 plan that did not meet the mandatory requirements of

1 the Zoning Ordinances. Secs. 4.100, 4.126, 4.128(6)
2 3.065(4) (5)."

3 In this assignment of error, petitioners make three
4 arguments. Petitioners first complain the parking plan
5 approved by the city does not meet ordinance requirements. The
6 ordinance calls for one parking place for each 200 square feet
7 of floor area, plus one parking place for each employee.
8 Petitioners calculate the building to include 870 square feet
9 and not 800 square feet as found by the city. See Record at
10 28, 39. Petitioners argue that because the ordinance requires
11 any fraction of a space to be counted as a whole space, the
12 city violated its ordinance by requiring four rather than five
13 parking spaces based on floor area. See Zoning Ordinance,
14 §4.100, §4.103(5).⁵

15 Petitioners next allege §4.103(5) is violated in the
16 allocation of parking spaces based on the number of employees.
17 The city found there would be only be three employees and,
18 consequently, approved only three parking places in addition to
19 those required based on total floor area. Petitioners argue it
20 is unreasonable to assume 64 patrons can adequately be served
21 by a total restaurant staff of 3 persons. We understand
22 petitioners to argue there is no evidence to support the city's
23 conclusion that 64 persons can be served by three employees.

24 Petitioners also say that the parking plan, even if it were
25 to have an adequate number of spaces, violates §4.126 of the
26 zoning ordinance. Section 4.126 requires that parking and

1 loading spaces not be located in a required front yard or
2 street side yard. Petitioners say several parking spaces are
3 inside a required side yard.⁶ Further, §4.128(6) requires
4 that groups of five or more parking spaces must be served by a
5 driveway and there is none here, according to petitioners.

6 The city's order calls for seven parking places. Record
7 28. However, the record includes a memo from the building
8 official and the city planner stating that the floor area of
9 the facility includes 828 square feet, thus requiring five
10 parking places for customers. The minutes of the city council
11 meeting of October 22, 1984, show this information to have been
12 relayed to the city council, but it is not clear that the city
13 council amended its decision to require the eight spaces (i.e.,
14 five for customers and three for employees). See page 2,
15 supra. The minutes recite the city attorney stated the record
16 should include the report on the parking plan. However,
17 nothing in the findings establishes this change.⁷ We

18 therefore sustain this challenge. On remand the city's order
19 should explain clearly how many parking spaces are required.

20 We also sustain petitioners' second complaint, that there
21 is nothing to support the city's apparent conclusion a 64
22 person capacity restaurant is adequately served by a total of
23 three employees. We are cited to no evidence in the record on
24 this question. From the city's findings and the present
25 record, we are left with the conclusion that the city simply
26 accepted the applicant's statement that three employees would

1 serve the restaurant. The city's conclusion appears
2 arbitrary.⁸ That is, there is nothing to show the city's
3 allocation of spaces for employees is reasonably likely to be
4 sufficient and therefore true when the facility is in operation.

5 On remand, the city should determine whether the number of
6 employees proposed at the restaurant will be reasonably
7 adequate to serve the expected number of patrons, given the
8 seating capacity of the facility. Based on this determination,
9 the city will be in a position to conclude whether the proposal
10 reasonably satisfies the total number of parking places
11 required under §4.103(5). This conclusion must, of course, be
12 supported by substantial evidence in the record.

13 Petitioners' last complaint is that the permit improperly
14 authorizes parking places within a side yard and a driveway.
15 The claim is difficult to review, because as we understand the
16 city's ordinance, the building inspector must first decide what
17 is the front yard on a corner lot.⁹ Apparently, no such
18 determination has been made in this case (at least the record
19 does not indicate such a determination).¹⁰ A remand is thus
20 in order.

21 On remand, the city should make a determination of what is
22 the front and side of the building and from that ensure that
23 §4.126 and 4.128(6) are not violated. Only if such a
24 determination is made will we be in a position to consider
25 petitioners' challenge.

26 The fifth assignment of error is sustained insofar as

1 petitioners allege the city has not shown compliance with
2 parking requirements.

3 ASSIGNMENT OF ERROR NO. 7

4 "The city erred in refusing to evaluate by any
5 stanared [sic] Applicants projection of the number of
6 employees needed at peak season in relation to parking
7 spaces needed by workers."

8 In this assignment of error, petitioners urge the city was
9 under an obligation to consider the number of employees needed
10 at "peak season" and from that calculation to arrive at the
11 number of employee parking places required under §4.103(5) of
12 the ordinance.

13 We believe we have adequately discussed petitioners'
14 objection as part of our analysis of the fifth assignment of
15 error.¹¹

16 ASSIGNMENT OF ERROR NO. 8

17 "The city erred in denying to Petitioners their right
18 of due process in not notifying them of the
19 application to put a restaurant within 50 ft. of their
20 property; in not publishing notice of hearing before
21 the Planning Commission; in giving Petitioners only
22 one day notice of the Planning Commission hearing; in
23 not sending notices of the City Council hearing to
24 neighboring owners; in refusing to have building plans
25 for the remodeling project that interested persons
26 could examine; in refusing to conduct quasi-judicial
hearings; in failing to record by tape or otherwise
the hearings before the Planning Commission and the
City Council."

27 We understand petitioners' complaint to be that the city
28 violated petitioners' right to due process of law by failing to
29 provide petitioners with personal notice of the pendency of the
30

1 permit application.

2 We find no violation. We have been cited to no provision
3 in the city zoning ordinance requiring individualized notice of
4 the pendency of building permit applications. Also, we are
5 aware of no requirement in the law that the issuance of a
6 building permit be accompanied by notice of the kind required
7 in a contested case proceeding. See ORS 227.175(5).

8 Therefore, we do not believe the city to have committed error
9 in its failure to give petitioners individualized notice of the
10 pendency of the building permit application.¹²

11 Petitioners' other complaints are stated in a summary
12 fashion and are not explained. We will not review undeveloped
13 allegations of due process violations.

14 The eighth assignment of error is denied.

15 Remanded in accordance with the discussion herein.

1 DuBay, Concurring in part and dissenting in part.

2 Although I concur with the result in the foregoing opinion,
3 I cannot agree with the majority view that the city erred by
4 not determining the reasonable number of employees for the
5 restaurant.

6 Section 4.103 of the city's ordinance requires a restaurant
7 to have one parking space for each employee. The record shows
8 the owner represented the restaurant would have no more than
9 three employees. The record does not show the city council
10 held any discussion of the proposed number of employees, nor
11 does the record disclose any challenge made to the council that
12 three employee parking spaces fails to meet ordinance
13 requirements.

14 Ordinance §4.103(5) is a straightforward standard based on
15 the number of employees as a yardstick for determining the
16 number of required parking spaces. The majority, however,
17 would modify the standard by adding a requirement for findings
18 that the number of employees is reasonable under the
19 circumstances.

20 The evidence was unchallenged in the proceedings below that
21 the restaurant will have no more than three employees. Under
22 these circumstances the city should be entitled to apply its
23 ordinance to require the number of employee parking spaces by
24 simple application of the formula in the ordinance. By
25 requiring the city to determine that the proposed number of
26 employees is a reasonable number, the majority adds a

1 subjective criteria to the ordinance standards. The vice in
2 this approach is that it opens the door to ad hoc imposition of
3 parking space requirements in individual cases. Therefore, I
4 would deny the portion of petitioners' assignments of error
5 challenging the city's determination of the required number of
6 employee parking spaces.

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FOOTNOTES

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4 The C-1 Zone is a "Neighborhood Commercial Zone" in the
city. The purpose of the zone is

5 "[t]o provide for the location of small businesses and
6 services in residential areas of the City primarily
7 for the convenience of nearby residents. Businesses
8 are intended to fit into the residential character of
the neighborhood and not create either architectural
or traffic conflicts."

9 2
10 While not expressly stated, we understand that the city
11 adopted the findings of the planning commission appearing at
12 pages 26 to 30 of the record. However, there is no "order"
13 executed by the city council or any other city official clearly
14 stating that the city council adopted the findings of the
15 planning commission as their own. These findings do not
include the determination that eight parking places were
needed. The reference to eight parking places appears in the
minutes of the city council meeting and in a memo to the city
council from the building official and the city planner.
Record 45, 49.

16 3
17 This version of the comprehensive plan is claimed by
18 petitioners to be the same version submitted for acknowledgment
19 by the Land Conservation and Development Commission and on file
with that agency. These facts do not in themselves rule out
the city's claim, which we find reasonable, that the filed
documents contain a typographical error in connection with the
use to be permitted in the C-1 Zone.

20 4
21 Respondent City argues that §10.040 requiring detailed
22 plans and specifications to accompany an application or appeal
is not applicable. Respondent argues that the application for
23 a building permit does not fall within that section. Whether
or not respondent is correct, §4.127 is quite clear in its call
24 for a parking plan for any building permit application.

25 While the city stated in its findings that §4.100 does not
26 apply because there would be no expansion or enlargement of the
building, the city went on to require a parking plan. The

1 findings state:

2 "At the time a structure is erected or enlarged, or
3 the use of a structure or parcel of land is changed
4 within any zone in the City, off-street parking spaces
5 shall be provided in accordance with the requirements
6 of this Section [quoting a portion of §4.100].

7 "The Building Official interpreted this as not meeting
8 the above definition since it was the remodel of an
9 existing restaurant use and there was no expansion or
10 enlargement of the building.

11 "In its ruling on this matter, the Planning Commission
12 determined that the only way the parking compliance
13 issue could be resolved was to require the developer
14 to submit a parking plan. The developer submitted his
15 parking plan on September 19. It is attached.

16 "The applicant also alleges that the plan submitted
17 does not comply with City parking requirements.

18 "The Building Official has approved the plan as
19 complying."

20 The city went ahead and applied §4.100. We do not
21 understand how the city can state the off-street parking
22 requirements are not applicable, and then proceed to apply the
23 off-street parking requirements. Further, §4.100 requires a
24 parking plan not only when a structure is expanded or enlarged,
25 but also when the use is changed. We believe the change from a
26 sandwich shop-residence to a full service restaurant is a
"change" bringing the development within the scope of §4.100.
We conclude §4.100 applies (as apparently the city concluded
when it attempted to apply the parking provisions of its code).

We note also that respondent claims that a permit was not
required because there was no expansion of the building and no
change in the anticipated use. In support of this view,
respondent cites the uniform building code. We see no
provision in the city ordinance excusing the requirement for a
parking plan because of some contrary provision in the uniform
building code.

5

"Section 4.100 Off-Street Parking Requirements:"

"At the time a structure is erected or enlarged or
the use of a structure or parcel of land is changed
within any zone in the City, off-street parking spaces

1 shall be provided in accordance with the requirements
2 of this Section and Section 4.120, unless greater
3 requirements are otherwise established. If parking
4 space has been provided in connection with an existing
5 use, the parking space shall not be eliminated if it
6 would result in less than is required by this
7 Section. Where square feet are specified, the area
8 measured shall be the gross floor area primary to the
9 functioning of the particular use of property, but
10 shall exclude space devoted to off-street parking or
11 loading. Where employees are specified, persons
12 counted shall be those working on the premises,
13 including proprietors, during the largest shift at
14 peak season. Fractional space requirements shall be
15 considered as a whole space."

9 "Section 4.103 Commercial

10 "5. Eating or drinking One space per
11 establishment. 200 sq. ft. of
12 floor area."

12 Petitioners also argue that not only the dining room area
13 but also wash room facilities and other portions of the
14 building must be considered when making the calculation to
15 arrive at the total square footage of the building and,
16 therefrom, the total number of parking places required. The
17 city, on the other hand, argues that the calculation need only
18 include the dining area. The city argues the requirement for
19 one parking place for each employee is the means in the
20 ordinance to ensure there will be an adequate total number of
21 parking places. We believe this construction of the ordinance
22 is reasonable and not contrary to the express terms of the
23 ordinance. Indeed, it seems more reasonable to conclude as
24 does the city than to accept petitioners' argument,
25 particularly where a structure may have a very small dining
26 area but a very large kitchen and other private use area.
Alluis v. Marion County, 64 Or App 478, 668 P2d 1242 (1983).

21 6

22 Petitioners' argument is based on §3.065 of the zoning
23 ordinance. Section 3.065 establishes the setback requirements
24 for side yards abutting a Residential (R) Zone. As we
25 understand the argument, petitioners allege the parking places
26 provided in the parking plan are within a side yard abutting an
R Zone.

25 Respondent disputes this contention, but there are no
26 findings explaining the orientation of the building and
illustrating what is and what is not the front and side yard,

1 and we are cited to no evidence in the record that might help
2 us understand the orientation of the structure.

3 7
4 There is a reference by one city councilman that he was in
5 favor of accepting "the staff's findings." Record 45. It is
6 unclear to us what document constitutes the "staff's
7 findings." We can only assume that the findings are those
8 included in the staff report dated September 26, 1984 and
9 appearing at pages 26-30 of the record.

7 8
8 If the city can simply approve the use in question without
9 consideration of whether in fact the governing standards can be
10 met, there would be nothing to prevent approval of a restaurant
11 serving twice as many customers, yet providing the same number
12 of employee parking spaces. We do not believe such a
13 circumstance furthers the purpose of the ordinance.

11 "The purpose of this Ordinance is to further the
12 objectives and goals of the Comprehensive Plan and to
13 provide the public health, safety and general welfare
14 of the citizens of Seaside through orderly community
15 development with considerations for: desirable
16 concentrations of population, protection of property
17 values, aesthetic, recreation and economic
18 development; limitation of dangerous or offensive
19 trades or industries; maintenance of adequate open
20 space for light and air; provisions for access and
21 privacy; facilitate community utilities such as
22 transportation, power, water and sewerage; and to
23 adequately provide for community facilities such as
24 schools, parks, community centers, and other public
25 requirements." City of Seaside Zoning Ordinance,
26 §1.020.

20 9
21 The definitional section of the city ordinance defines a
22 front yard, in part, as follows:

22 "In the case of corner lots as well as those with
23 reversed frontage, a front yard of the required depth
24 shall be provided in accordance with the Ordinance
25 along with required side yard depths on all other
26 frontages. In the case of corner lots with more than
two frontages, the building official shall determine
which frontage shall be considered the front yard and
which shall be considered the side yards."

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Presumably, the inspector could make such a determination based on the orientation of the building. However, we note findings do not include any analysis of the orientation of the building. The record shows a site plan giving the location of various parking places, the building and Avenue "U" and South Columbia Street. The record does not show what portion of the structure is to be considered the front of the building and what portion the side of the building.

11

We note the city attorney advises that the seating capacity of the restaurant will be 36 persons. We are cited to nothing in the record to support this view, and we note the city's findings conclude the number is 64 patrons. Record 29.

Given the focused attention on the question of seating capacity and its relation to §3.062(2) of the ordinance allowing only businesses "primarily for the convenience of nearby residents," we believe the city was under an obligation to respond in a manner clearly showing compliance with the ordinance. See Norvell v. Portland Area LGBC, 43 Or App 849, 853-854, 604 P2d 896 (1979); Hillcrest Vineyards v. Board of Commissioners of Douglas County, 45 Or App 285, 293, 608 P2d 201 (1980).

12

It appears the city complied with its ordinance in this regard. The ordinance requires the matter be published in a newspaper of general circulation ten days prior to the date of the hearing. The city states it published such a notice. See Record 23.