

LAND USE
BOARD OF APPEALS
JUL 2 3 57 PM '87

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

FLORENCE W. CUNNINGHAM,)
)
 Petitioner,) LUBA No. 87-010
)
 vs.) FINAL OPINION
) AND ORDER
 CITY OF NEWPORT,)
)
 Respondent.)

Appeal from City of Newport.

Florence W. Cunningham, Newport, filed the petition for review and argued on her own behalf.

Evan Boone, Newport, filed a response brief and argued on behalf of Respondent.

DuBAY, Chief Referee; BAGG, Referee; HOLSTUN, Referee; participated in the decision.

REMANDED 07/02/87

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

1 Opinion by DuBay.

2 NATURE OF THE DECISION

3 Petitioner appeals the city's denial of her request for a
4 variance from setback requirements.

5 FACTS

6 Petitioner's mobile home, sited prior to the action and
7 decision at issue in this appeal, is located approximately one
8 foot from the west boundary of her property. To accommodate a
9 newly built addition to the mobile home, petitioner applied for
10 a variance from the five foot sideyard setback requirements.
11 The addition, constructed without a permit, is in line with the
12 west end of the mobile home about one foot from the property
13 line.

14 The planning commission, upon recommendation of the
15 planning department staff, denied the variance request.
16 Petitioner appealed to the city council which held a de novo
17 hearing. After hearing testimony from proponents and
18 opponents, the council affirmed the planning commission and
19 denied the variance application.

20 FIRST ASSIGNMENT OF ERROR

21 Petitioner alleges the decision is erroneous because her
22 application satisfies all the variance criteria in the city's
23 code. In her petition for review, she sets forth the reasons
24 justifying her claim that she meets all applicable criteria and
25 appears to ask that we substitute a favorable decision for the
26 unfavorable decision rendered by the city. We are not

1 empowered to do what petitioner asks. In this case LUBA may
2 reverse or remand local government land use decisions only when
3 we find the kind of error described in ORS 197.835 or if the
4 decision is not in proper form for review. Hoffman v. DuPont,
5 49 Or App 699, 621 P2d 63 (1980); Dougherty v. Tillamook
6 County, 12 Or LUBA 20 (1984). Petitioner's claim that her
7 variance request satisfies ordinance criteria does not assert
8 error we can correct. The first assignment of error is
9 denied.

10 SECOND ASSIGNMENT OF ERROR

11 Petitioner alleges the findings are inadequate and not
12 supported by substantial evidence.

13 We sustain this claim because there are no findings. The
14 only record of the decision is the minutes of the council's
15 meeting on December 15, 1986. The city made no separate
16 order. The minutes include in some detail the comments of
17 individual council members, but no statement sets forth what
18 the council believed the relevant facts to be and why those
19 facts warrant the decision.

20 Without findings that meet the minimum requirements,¹ we
21 are unable to perform our review function. Hoffman v. DuPont,
22 supra. Accordingly, the decision must be remanded for entry of
23 findings.

24 THIRD ASSIGNMENT OF ERROR

25 Petitioner's last assignment of error alleges the city
26 applied the wrong standards to her application. She alleges

1 the city applied the criteria applicable to conventionally
2 constructed homes rather than to mobile homes.

3 This assignment of error is denied. Petitioner fails to
4 specify either the standards she contends were erroneously
5 applied or the standards that petitioner contends should have
6 been applied. We are, therefore, unable to determine the basis
7 of the alleged error. We note that while the city made no
8 findings, the minutes of the city council's deliberations
9 include statements of the council members applying the variance
10 criteria in the zoning ordinance and no other criteria.
11 Petitioner presents no argument that the variance criteria are
12 not applicable to her request.

13 The decision is remanded for adoption of findings as
14 described above.

