

NATURE OF THE DECISION

Petitioner challenges the construction of a one-story addition to a municipal building located within the City of Ashland.

FACTS

In 1995, the City of Ashland embarked on a study of its office space. As a result of the study, the city determined that it required additional office space to accommodate immediate and long-term space needs. In addition, the city concluded that the building should be located within the downtown corridor. In 1998, the city acquired an historic building located approximately one block from the existing city hall. However, the property was zoned residential, and the building was too small to fully meet the city’s estimated space needs. Therefore, city staff filed an application to rezone the property to Commercial-Downtown, and also applied for a permit to site a one-story addition to the building. Because of site constraints, staff also requested a variance from four Downtown Design Standards.

During the application process, several residential neighbors of the historic building testified that a one-story addition would prevent the loss of views from the residential properties. Other persons testified that a one-story building would better fit the neighborhood landscape, would provide a transition between the residential uses and the downtown commercial core, and would provide a pedestrian and bicycle link between the historic building and a city walking trail located adjacent to the property. Petitioner testified in opposition to the one-story addition, arguing that a two-story addition would better satisfy the city’s policies regarding the retention of a compact urban form. Petitioner argued that a one-story addition unnecessarily contributed to sprawl.

The planning commission approved the application, and petitioner appealed the planning commission’s decision to the city council. The council denied the appeal and affirmed the decision. This appeal followed.

1 **FIRST, SECOND, THIRD AND FOURTH ASSIGNMENTS OF ERROR¹**

2 The common thread running throughout the petition for review is that a two-story
3 building design is the only means by which the city may comply with city policies that
4 advocate a compact urban form.² Petitioner contends that the city has prided itself on

¹As the city points out, the petition for review does not set out separate assignments of error. Our heading refers to the city's numerical designation of particular aspects of the petition for review.

²Petitioner cites to pages within the city comprehensive plan and in other documents that petitioner claims support his argument. We do not reference all of the pages to which petitioner cites. The items below are a partial list of petitioner's cites, with relevant portions summarized or quoted:

(1) *City of Ashland Comprehensive Plan, Transportation Element, Introduction, 1-3, 5.* This section describes Ashland as "a community which prides itself on innovation and pressing for positive change" and explains that, as a result of this community spirit, the city is at the forefront in recognizing the relationship between transportation and land use planning. The introduction goes on to explain that transportation planning in Oregon focuses on alternative modes of travel to avoid "the air pollution, traffic and livability problems faced by other areas of the country." *Id.* at 2. According to the introduction, "the basis for Ashland's transportation and land use planning will involve a balanced approach based on the concept of modal equity." *Id.* at 3. This section also recognizes that, except for the downtown center, much of Ashland was developed according to a single-zone model that does not capitalize on short, non-motorized trips.

(2) *City of Ashland Comprehensive Plan, Transportation Element, Street Classifications, Boulevard (Arterial), 11.*

"A mix of land uses should be encouraged within easy walking distance of a transit stop to reduce the number of separate trips. The types of land uses should be those which public transit riders can readily use."

(3) *City of Ashland Comprehensive Plan, Transportation Element, Street Classifications, Neighborhood Collector (Minor Collector), 15.*

"Mixed-use development that serves the local neighborhood should be encouraged.

"New land uses and major expansions of existing land uses which attract many traffic trips from outside the neighborhood should be discouraged on neighborhood collectors."

(4) *City of Ashland Comprehensive Plan, Transportation Element, The Street System, Land Use and Travel Patterns, 22-24.* This section discusses the relationship between transportation options and urban design, and concludes that mixed-use development with multi-modal transportation planning is the optimal design form to avoid the adverse effects of sprawl.

(5) *City of Ashland Comprehensive Plan, Transportation Element, The Street System, Future Travel, 30:*

"In every city of the world the volume of traffic is limited, intentionally or unintentionally, by measures adopted by governments. If these measures were relaxed, there would be more traffic; if they were strengthened, there would be less. In other words the volume of traffic in a city is not something like the rainfall that has to be accepted." (*quoting* Organization for Economic Co-operation and Development, *Urban Transportation and the Environment*).

1 encouraging urban designs that promote multi-modal transportation, prevent suburban sprawl
2 developments within city limits, and otherwise ensure that land is not wasted. Petitioner
3 contends that when the city is the applicant, it must exemplify the best in modern urban
4 design in order to lead the way for other applicants. Petitioner argues that in this case, the
5 city has sacrificed the goal of a compact urban form without justification. Petitioner explains
6 that there are ways to satisfy the city’s anti-sprawl policies on this site, including
7 demolishing the existing inferior structure and constructing a two-story building within the
8 same building footprint; using the existing building shell as a foundation for a two-story
9 building; or making the addition two stories instead of one.

10 The city argues that petitioner has failed to explain why any of the policies he cites
11 must be applied as approval criteria for one or more of the challenged decisions. *See*
12 *Neuenschwander v. City of Ashland*, 20 Or LUBA 144, 154 (1990) (city ordinances requiring
13 that certain land use actions be consistent with the comprehensive plan do not thereby
14 transform all parts of the plan into approval criteria). In addition, the city contends that the
15 policies that petitioner does cite to are not relevant to the application submitted by the city,

(6) *City of Ashland Comprehensive Plan, Transportation Element, Pedestrian and Bicycle Transportation*, 47:

“Mixing land uses, housing and jobs reduces traffic by locating residences close to shopping, entertainment and job centers. Because trips are short, walking and bicycling are attractive transportation methods in the mixed-use environment.”

(7) *City of Ashland Comprehensive Plan, Transportation Element, Pedestrian and Bicycle Transportation, Goal III: Emphasize Environments which Enhance Pedestrian and Bicycle Usage*, 51:

“[Policy] 2. Promote a mixed land use pattern, where appropriate, and pedestrian environment design that promotes walking and bicycling trips.”

(8) *City of Ashland Comprehensive Plan, Transportation Element, Public Transit, Goal: To Create a Public Transportation System that is Linked to Pedestrian, Bicycle and Motor Vehicle Travel Modes, and is as Easy and Efficient to Use as Driving a Motor Vehicle*, 59:

“[Policy] 2. Zoning shall allow for residential densities and a mix of commercial businesses within walking distance (one-quarter to one-half mile) of existing and planned public transit services which support use of public transportation.”

1 and to the extent they may be arguably relevant, they are not applicable approval standards.
2 In the city's view, the anti-sprawl statements cited by petitioner are, at most, aspirational
3 statements and need not be considered or applied in approving the challenged plan or zoning
4 map amendment, site design review and variances.

5 We agree with the city that petitioner fails to provide an adequate legal argument to
6 support his contention that the plan provisions he cites must be applied directly to a decision
7 to amend comprehensive plan and zoning map designations and grant site design review and
8 variances to allow construction of a one-story public building on the subject property. The
9 plan provisions that petitioner cites are general statements regarding the advantages of
10 mixed-use, compact development and encouraging different modes of transportation.
11 Although it is far from clear from the decision and the city's brief, we understand the city to
12 take the position that the plan policies that petitioner cites and relies on either already are or
13 will be implemented through the city's land use regulations and in other ways, but are not
14 implemented by applying those policies as approval criteria directly to the challenged plan
15 and zoning map amendment, site design review decision and variances. Petitioner does not
16 develop an argument in opposition to the city's legal theory that the policies do not apply
17 directly to the challenged decision.³ Rather, petitioner simply assumes that they do apply
18 and argues in favor of a broad reading and strict application of the cited plan policies to the
19 challenged decision.⁴ Petitioner's arguments are inadequately developed to allow review or

³Petitioner does suggest that the recently amended comprehensive plan transportation element should apply directly to the challenged decision because the city has not yet amended its land use regulations to implement those amendments. However, petitioner cites nothing in the transportation element itself or any other legal authority that would require that transportation element amendments, which the city apparently plans to implement by amending its land use regulations and in other ways, should apply directly to individual land use decisions such as the one challenged in this appeal until the city adopts such implementing measures.

⁴Of course even if one or more of the provisions that petitioner cites did apply directly, that does not necessarily mean that building a one-story addition rather than pursuing a different option violates those provisions. In other words, we do not agree those provisions necessarily must be interpreted and applied in the absolute and restrictive way that petitioner believes they should be applied to the challenged decision.

1 grant petitioner's request that the challenged decision be remanded. *See Neighbors for*
2 *Livability v. City of Beaverton*, 168 Or App 501, 507, 4 P3d 765 (2000) (LUBA does not
3 review land use decisions *per se*; it reviews "the arguments that the parties make about land
4 use decisions"); *Deschutes Development v. Deschutes Cty.*, 5 Or LUBA 218, 220 (1982)
5 (petitioner has the responsibility not only to allege the facts that support his claim but also to
6 tell the Board the basis upon which to grant relief).

7 The first, second, third and fourth assignments of error are denied.

8 The city's decision is affirmed.