

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

3
4 RONALD D. SATTLER and DAVID C. GOLDER,
5 *Petitioners,*

6
7 vs.

8
9 CITY OF BEAVERTON,
10 *Respondent,*

11 and

12
13 MURRAY HILLS CHRISTIAN CHURCH,
14 *Intervenor-Respondent.*

15
16 LUBA No. 2001-113

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18
19 FINAL OPINION
20 AND ORDER

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22 Appeal from City of Beaverton.

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24 Ronald D. Sattler, Beaverton, and David C. Golder, Beaverton, filed the petition for
25 review and argued on their own behalf.

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27 Theodore R. Naemura, Assistant City Attorney, Beaverton, filed a joint response brief
28 and argued on behalf of respondent.

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30 Jeffrey L. Kleinman, Portland, filed a joint response brief and argued on behalf of
31 intervenor-respondent.

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33 BASSHAM, Board Member; BRIGGS, Board Chair; HOLSTUN, Board Member,
34 participated in the decision.

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36 AFFIRMED

11/28/2001

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38 You are entitled to judicial review of this Order. Judicial review is governed by the
39 provisions of ORS 197.850.
40

NATURE OF THE DECISION

Petitioners appeal approval of a conditional use permit to expand an existing church.

FACTS

The subject property is a 3.88-acre parcel zoned Urban Standard Residential (R-5). In 1988, intervenor-respondent (intervenor) improved the property with a 12,510 square foot church, pursuant to a conditional use permit. The existing structure features a pitched roof, surmounted by a large dome with a steeple on top. The existing structure sits on a small hill that slopes to the south. The surrounding neighborhood is generally developed with single-family residences.

In November 2000, intervenor applied to the city for a conditional use permit to construct a 13,342 square foot addition to the existing structure. The application required conditional use review because churches are a conditional use in the R-5 zone, and an application to substantially modify an existing church is processed as a new conditional permit under the city’s code. Further, the proposed addition exceeded the 30-foot height limit applicable in the R-5 zone. Under the city’s code, any structure over 30 feet in height requires conditional use review and approval.

The proposed addition extends south from the existing church down the slope of the hill. It features a pitched roof that connects with the gable end of the roof of the existing structure below that structure’s dome. Because of the slope, the elevation of the proposed addition above grade varies from 23 feet at the northern end, where it connects to the existing structure, to 42 feet at the southern end. The addition is set back 100 feet from the nearest property line to the south.

1 The design aspects of the proposed addition were reviewed before the city’s board of
2 design review and approved by the city council.¹ The planning commission held a hearing
3 on the conditional use permit application on April 18, 2001, and issued a decision approving
4 the permit on April 26, 2001. Petitioners appealed the planning commission decision to the
5 city council, which held a hearing on the appeal on June 11, 2001. The city council voted to
6 deny the appeal and affirm the planning commission decision, and issued its written decision
7 to that effect on June 26, 2001. This appeal followed.

8 **FIRST AND SECOND ASSIGNMENTS OF ERROR**

9 Petitioners challenge the city’s approval of the conditional use permit allowing the
10 proposed addition to exceed the 30-foot height limitation in the R-5 zone. According to
11 petitioners, the city misinterpreted the applicable criteria and failed to adopt adequate
12 findings supported by substantial evidence, in allowing the proposed addition.

13 Much of petitioners’ arguments under these assignments of error turns on petitioners’
14 belief that the city erred in failing to evaluate the height of the *existing* structure, including
15 the dome and steeple, in allowing the proposed addition. However, petitioners never explain
16 why the height of the existing structure is relevant to approval of the proposed addition, or
17 why the entire structure must be evaluated under the city’s conditional use criteria, in
18 allowing the addition to exceed the 30-foot height limitation.

19 The closest petitioners come is to cite a staff report adopted by the city council’s
20 decision that explains the city’s method for calculating the height of the proposed addition.
21 The staff report explains that, under the applicable city code provisions, building height is
22 defined as “[t]he vertical distance from the average elevation of the finished grade to the
23 highest point of the structure.” Record 96 (emphasis deleted). To calculate the “average
24 elevation of the finished grade,” the staff apparently averaged the finished grade at the north

¹That decision was also appealed to LUBA, and is pending before the Board. *Sattler v. City of Beaverton* (LUBA No. 2001-162).

1 wall of the *existing* church structure with the finished grade at the south wall of the *proposed*
2 addition.² However, petitioners argue, other parts of the city council’s decision consider
3 only the proposed expansion. If we understand petitioners correctly, they argue that it is
4 inconsistent for the city to calculate the finished grade, a component of the height
5 calculation, by considering the footprint of the existing *and* proposed structures, while at the
6 same time refusing to consider the height of the existing structure. According to petitioners,
7 the city must also calculate and consider the height of the existing structure, so it can
8 determine whether to allow the proposed addition to exceed the height limitation.

9 Although it is not clear to us why the staff report chose to calculate the finished grade
10 based on the existing and proposed footprints, we disagree with petitioners that the necessary
11 consequence of that choice is that the city is compelled to consider the height of the existing
12 structure in granting conditional use approval for the proposed addition. Petitioners do not
13 identify any conditional use criterion that requires that the height of the existing structure be
14 calculated or considered in approving the proposed expansion. Absent such a criterion,
15 petitioners have not demonstrated that the height of the existing structure has any bearing at
16 all on the city’s conditional use permit to allow the proposed addition to exceed the 30-foot
17 height limitation.

²The staff report states in relevant part:

“The method for determining the ‘*average elevation of the finished grade*,’ for purposes of the [code definition,] is not described in the City Development Code. * * * One simple method for determining *average elevation* would be a calculation based on two points, the high and low points of ground, where building pads for the north and south walls are shown. According to the applicant’s plan set, the site elevation at the entrance to the Church building (the north wall) is approximately 262 feet [above sea level]. Further down the slope, where the south wall of the proposed addition is shown, the elevation changes to approximately 246 feet [above sea level]. Taking the average of these two numbers would amount to an *average elevation* of approximately 254 feet. Sheet 1 of the applicant’s plan set shows the existing south wall of the existing church building to be roughly at an average ground elevation of 254 feet. The highest point of the [proposed] building wall, measured from the average grade elevation of 254 feet, is over the 30-foot standard. Accordingly, Conditional Use approval for a height exception is warranted.” Record 96-97 (emphasis in original).

1 Finally, petitioners appear to contend that the city erred in failing to approve a
2 specific height for the proposed addition. Petitioners do not explain why the city’s code
3 requires a finding specifying the precise height over 30 feet. In any case, a portion of the
4 staff report adopted by the city council’s decision identifies the precise height of the
5 proposed addition, based on the site plans in the record. Record 91.

6 The first and second assignments of error are denied.

7 **THIRD ASSIGNMENT OF ERROR**

8 The city’s conditional use criteria require a finding “[t]hat the location, size, design,
9 and functional characteristics of the proposed use are such that it can be made reasonably
10 compatible with and have a minimum impact on the livability and appropriate development
11 of other properties in the surrounding neighborhood.” Beaverton Development Code (BDC)
12 40.05.15(C)(3).

13 Petitioners challenge the city’s findings of compliance with BDC 40.05.15(C)(3),
14 arguing that the city failed to address testimony regarding ongoing problems with water
15 runoff from the subject property onto residential property to the south. Further, petitioners
16 argue that the “size and height of the proposed structure are, in the petitioners’ view, beyond
17 being reasonably compatible with the neighborhood.” Petition for Review 10. Finally,
18 petitioners complain that the proposed landscaping covers only part of the south face of the
19 proposed addition and is inadequate to completely screen the addition from view.

20 Intervenor argues, and we agree, that the city’s extensive findings adequately address
21 issues regarding water runoff, adequately explain why the size of the proposed addition is
22 compatible with the surrounding neighborhood, and adequately explain why the proposed
23 and existing landscaping, combined with the proposed setback, help ensure that the addition
24 is compatible with the neighborhood. Petitioners obviously disagree with those conclusions,
25 but their disagreement does not demonstrate that the city erred in finding compliance with
26 BDC 40.05.15(C)(3)

- 1 The third assignment of error is denied.
- 2 The city's decision is affirmed.