



# City of Portland, Oregon - Bureau of Development Services

1900 SW Fourth Avenue - Portland, Oregon 97201 | 503-823-7300 | www.portlandoregon.gov/bds



## Type III Decision Appeal Form

LU Number: LU18-174083 CU

### FOR INTAKE, STAFF USE ONLY

Date/Time Received 9/26/18 @ 2:00pm

☒ Action Attached

Received By Elizabeth Duncan

Fee Amount \$2100.00

Appeal Deadline Date 9/26/18 @ 4:30pm

☒

[N] Fee Waived

☐ Entered in Appeal Log

Bill # 4388961

☐ Notice to Auditor

[Y] ☒ Unincorporated MC

☐ Notice to Dev. Review

### APPELLANT: Complete all sections below. Please print legibly.

PROPOSAL SITE ADDRESS 1404 SE Ankeny St. DEADLINE OF APPEAL 9/26/18

Name Deborah A. Byrne

Address 224 SE 15<sup>th</sup> Ave. City Portland State/Zip Code OR 97214

Day Phone 503-206-5788 Email Deborah.byrne@comcast.net Fax \_\_\_\_\_

Interest in proposal (applicant, neighbor, etc.) concerned neighbor

### Identify the specific approval criteria at the source of the appeal:

Zoning Code Section 33. \_\_\_\_\_ . \_\_\_\_\_

Zoning Code Section 33. \_\_\_\_\_ . \_\_\_\_\_

Zoning Code Section 33. \_\_\_\_\_ . \_\_\_\_\_

Zoning Code Section 33. \_\_\_\_\_ . \_\_\_\_\_

Describe how the proposal does or does not meet the specific approval criteria identified above or how the City erred procedurally:

attached

Appellant's Signature attached

### FILE THE APPEAL - Submit the following:

- ☐ This completed appeal form
- ☐ A copy of the Type III Decision being appealed ☐ An appeal fee as follows:
  - ☐ Appeal fee as stated in the Decision, payable to City of Portland
  - ☐ Fee waiver for ONI Recognized Organizations approved (see instructions under Appeals Fees A on back)
  - ☐ Fee waiver request letter for low income individual is signed and attached
  - ☐ Fee waiver request letter for Unincorporated Multnomah County recognized organizations is signed and attached

The City must receive the appeal by 4:30 pm on the deadline listed in the Decision in order for the appeal to be valid. To file the appeal, submit the completed appeal application and fee (or fee waiver request as applicable) at the Reception Desk on the 5th Floor of 1900 SW 4th Ave, Portland, Oregon, between 8:00 am and 4:30 pm Monday through Friday.

The Portland City Council will hold a hearing on this appeal. The land use review applicant, those who testified and everyone who received notice of the initial hearing will receive notice of the appeal hearing date.



## Type III Appeal Hearing Procedure

A Type III Decision may be appealed only by the applicant, the owner, or those who have testified in writing or orally at the hearing, provided that the testimony was directed to a specific approval criterion, or procedural error made. It must be filed with the accompanying fee by the deadline listed in the decision. The appeal request must be submitted on the Type III Appeal Form provided by the City and it must include a statement indicating which of the applicable approval criteria the decision violated (33.730.030) or what procedural errors were made. If the decision was to deny the proposal, the appeal must use the same form and address how the proposal meets all the approval criteria. There is no local Type III Appeal for cases in unincorporated Multnomah County.

Appeal Hearings for Type III Decisions are scheduled by the City Auditor at least 21 days after the appeal is filed and the public notice of the appeal has been mailed.

Appellants should be prepared to make a presentation to the City Council at the hearing. In addition, all interested persons will be able to testify orally, or in writing. The City Council may choose to limit the length of the testimony. Prior to the appeal hearing, the City Council will receive the written case record, including the appeal statement. The City Council may adopt, modify, or overturn the decision of the review body based on the information presented at the hearing or in the case record.

## Appeal Fees

In order for an appeal to be valid, it must be submitted prior to the appeal deadline as stated in the decision and it must be accompanied by the required appeal fee or an approved fee waiver. The fee to appeal a decision is one-half of the original application fee. The fee amount is listed in the decision. The fee may be waived as follows:

### Fee Waivers (33.750.050)

The director may waive required fees for Office of Neighborhood Involvement (ONI) Recognized Organizations and for low-income applicants when certain requirements are met. The decision of the director is final.

#### A. ONI Recognized Organizations Fee Waiver

Neighborhood or business organizations recognized by the City of Portland Office of Neighborhood Involvement (ONI) or Multnomah County are eligible to apply for an appeal fee waiver if they meet certain meeting and voting requirements.

These requirements are listed in the Type III Appeal Fee Waiver Request for Organizations form and instruction sheet available from the Bureau of Development Services Development Services Center, 1<sup>st</sup> floor, 1900 SW 4<sup>th</sup>, Portland, OR 97201. Recognized organizations must complete the Type III Appeal Fee Waiver Request for Organizations form and submit it prior to the appeal deadline to be considered for a fee waiver.

#### B. Low Income Fee Waiver

The appeal fee may be waived for an individual who is an applicant in a land use review for their personal residence, in which they have an ownership interest, and the individual is appealing the decision of their land use review application. In addition, the appeal fee may be waived for an individual residing in a dwelling unit, for at least 60 days, that is located within the required notification area. Low income individuals requesting a fee waiver will be required to certify their annual gross income and household size. The appeal fee will only be waived for households with a gross annual income of less than 50 percent of the area median income as established and adjusted for household size by the federal Department of Housing and Urban Development (HUD). All financial information submitted to request a fee waiver is confidential. Fee waiver requests must be approved prior to appeal deadline to be considered for a fee waiver.

Individual Appeal of Hearing Officers Decision:

8-13-18 LU 18-174083 CU –

kuio100189

1

lu\_type3\_appeal\_form 7/11/16 City of Portland Oregon - Bureau of Development Services

Type III Decision Appeal Form LU Number: FOR INTAKE, STAFF USE ONLY

Date/Time Received \_\_\_\_\_

Received By \_\_\_\_\_

Appeal Deadline Date: September 26, 2018,

☐ Entered in Appeal Log \_\_\_\_\_

☐ Notice to Auditor \_\_\_\_\_

☐ Notice to Dev. Review \_\_\_\_\_

☐ Action Attached \_\_\_\_\_

Fee Amount \_\_\_\_\_ \$0.0

[low income fee waiver approved by Rebecca Esau, Director BDS .

Fee Waived

Bill # \_\_\_\_\_

☐ Unincorporated MC

APPELLANT: Complete all sections below. Please print legibly.

PROPOSAL SITE ADDRESS: Site Address: 1404 SE Ankeny St. Portland OR 97214

DEADLINE OF APPEAL September 26, 2018

Name Deborah A. Byrne

Address: 224 SE 15 Ave.

City: Portland,

State/Zip Code: Oregon 97214

Day Phone (503) 206 5788



Email: Deborah.byrne@comcast.net

Fax: none

Interest in proposal: concerned neighbor.

Identify the specific approval criteria at the source of the appeal:

1. Application written in bad faith –

applicant submitted an application that failed to: A). identify crucial environmental factors present at the proposed site location, and B). excluded relevant information about the purpose and intended use of the project. This lack of required information had a significant result, impeding the ability of the BDS to apply the criterion

in their “official Report”. For these reasons the application should be voided and the applicant should be required to submit a accurate, new application.

2. Procedural Error:

I have given oral objections at the hearing and made a timely written objection, identifying that the land use application does not identify all intended uses for the proposed project. Here, the applicant evades having the criterion, required by law, applied to their proposal by not listing all uses. In the Hearing Officer’s decision, the Officer responds to this objection stating he will not consider use purposes not disclosed in the application because: “Oregon land use law limits review and consideration, ,to matters contained in the application...”. He further adds: “The Hearings Officer is not allowed, by Oregon land use law, to speculate or anticipate matters not directly referenced by the application.” (no supporting citation provided). . This reason is circular and false.

First, the Hearings Officer did not need to “speculate”, as he says, to determine that Imago Dei’s application lacked relevant use information that was legally bound to be reviewed by criterion 33.715 (a e). In my oral argument at the hearing, I identified that applicant may have an intended night time use of allowing homeless people to stay in the proposed parking lot under review. In applicant’s subsequent rebuttal they did not address the issue of the information absent from their application. It was procedural error for the Hearings Officer to not ask them to confirm or deny this controversy during applicant’s oral rebuttal during the hearing.

On June 19, 2018, KOIN TV aired an interview with Ben Sand, one of the “elders” (the men in a supervisory position in the applicant’s church) in which Sand publicly stated that the applicant wanted to convert a parking lot into a night-time space for homeless people to stay. Imago’s application though, only lists day time use for the parking lot. This news interview occurred prior to the public hearing on August 13, 2018. The above interview is evidentiary to the applicant’s true intent. If the Hearings Officer had required the applicant to respond in their rebuttal to my objection to a bad faith



application, they would have had to lie or disclose what they declared in public, -- but failed to disclose to the BDS in their conditional use application.

Secondly, there is an implicit expectation that the applicant will be honest and truthful. Many governmental applications, such as an application to take a bar exam, are voided when they are found to be false. Here we are supposed to believe that all a developer needs to do to evade the land use criterion found in title 33.815 (a - e), is to exclude relevant facts from their application. Allowing this decision to stand, would evisurate the statutory purpose and power of the Bureau of Development Services to review land use applications, based on law.

Applicant's application should be voided and applicant should be required to submit a new "complete" application for review.

3. Criterion (b) (2):

The applicant's proposed parking lot fails to comply with criteria 33.815.105 )B2. -- Physical compatibility. "The proposal will be compatible with adjacent residential developments based on characteristics such as the site size, ... tree preservation and landscaping." The applicant's church is located in the Buckman neighborhood where many of the homes were built in the late eighteen-hundreds and the streets are lined with old trees. Unfortunately, many of the oldest trees are Elms and Dutch Elms Disease has struck our neighborhood. In my square block we have recently lost seven old Elm trees to this disease -- some as large as forty-eight inches in diameter. And we will lose more. The applicant's two city block campus only has one large, mature tree -- a thirty-three-inch, black pine. To build the proposed parking lot, applicant states they will need to cut down the Black pine. This tree has extreme value to the aesthetic of the neighborhood because it cannot be destroyed by Dutch Elms Disease. This is a beautiful tree that, to the best of my knowledge is healthy and vibrant. As neighbors have testified to in the hearing: There are no volume of new small trees that the applicant can plant that would replace it's "physical compatibility" with the aesthetic of the neighborhood --in our life time! Cutting down this valuable tree would not comply with Criterion (b), and it therefore, should not be allowed to be destroyed.

5. Criterion (c)(1) -- Livability:

This land use proposal fails to comply with 33.815.105 (c (1). "The proposal will not have significant adverse impacts on the livability of nearby residential zoned lands due to: 1. Noise, glare from lights, late-night operations, odors, and litter ..."

Reader's Note: Appellant will address this criterion in an addendum.

6. 6Criterion (c (2) -- Livability:

This land use proposal fails to comply with 33.815.105 (c (2) "The proposal will not have significant adverse impacts on the livability of nearby residential zoned lands due to: ... 2. Privacy and safety issues."

Reader's Note: Appellant will address this criterion in an addendum.

Describe how the proposal does or does not meet the specific approval criteria identified above or how the City erred procedurally:

Appellant's Signature

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Deborah A. Byrne JD



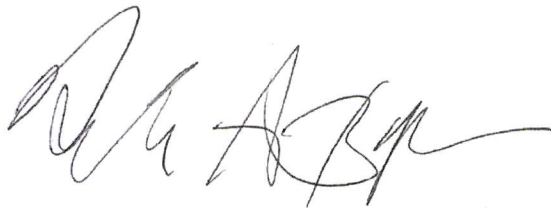
6. 6Criterion (c (2) -- Livability:

This land use proposal fails to comply with 33.815.105 (c (2) "The proposal will not have significant adverse impacts on the livability of nearby residential zoned lands due to: ... 2. Privacy and safety issues."

Reader's Note: Appellant will address this criterion in an addendum.

Describe how the proposal does or does not meet the specific approval criteria identified above or how the City erred procedurally:

Appellant's Signature

A handwritten signature in black ink, appearing to read "Deborah A. Byrne", written over a horizontal line.

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Deborah A. Byrne JD





Ou					Portland City Auditor	
SIM					Hearings Office	
					1900 SW 4th Avenue, Room 3100, Portland, OR 97201 phone: 503.823.7307	
					www.portlandoregon.gov/hearings fax: 503.823.4347	

## DECISION OF THE HEARINGS OFFICER

### 1. GENERAL INFORMATION

**File Number:** LU 18-174083 CU

Hearings Office 4180018

**Applicant's**

**Representative:** Renee France

Radler White Parks & Alexander  
111 SW Columbia Street, Suite 700  
Portland, OR 97201

**Applicant/Owner:** Imago Dei Ministries

Attn: Joel Paul

1302 SE Ankeny Street  
Portland, OR 97214

**Hearings Officer:** Gregory J. Frank

**Bureau of Development Services (BDS) Representative:** Andrew Gulizia

**Site Address:** 1404 SE Ankeny Street

**Legal Description:** BLOCK 278W 60' OF LOT 3&4, AIKENS; BLOCK 278  
LOT 1&2 E 40' OF LOT 3&4 INC PT VAC ST LOT 5-8, AIKENS; BLOCK  
305 INC PT VAC ST, AIKENS

**Tax Account Number:** R005100500, R005100510, R005100990

**State ID Number:** 1N1E35CD 05200, 1N1E35CD 05100, 1N1E35DC 05300

**Quarter Section:** 3031, 3032

**Neighborhood:** Buckman

**Business District:** None

**District Neighborhood Coalition:** Southeast Uplift

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Decision of the Hearings Officer  
LU 18-174083 CU (4180018)  
Page 2

Zoning: R1 (Multi-Dwelling Residential 1,000), R2.5 (Single-Dwelling Residential 2,500)

Land Use Review: Type III, CU - Conditional Use Review

BDS Staff Recommendation **to the Hearings Officer:** Approval with one condition.

Public Hearing: The hearing was opened at 1:29 p.m. on August 13, 2018, in the third floor hearing room, 1900 4th Avenue, Portland, Oregon, and was closed at 3:01 p.m. The record was held open until 4:00 p.m. on August 20, 2018 for new written evidence, and until 4:00 p.m. on August 27, 2018 for Applicant's rebuttal with no new evidence. The record closed at 4:01 p.m. on August 27, 2018.

Testified at the Hearing:

Andy Gulizia  
Renee France  
Jane Hansen  
Julia Kuhn  
Neil Howard  
Debra Ann Byrne  
Karla Zimmerman  
Christopher Wirgler  
Bob Haley

Proposal: The real property described above (hereafter the "Subject Property") is developed with a church, which is a Conditional Use in the R1 and R2.5 residential zones. The Applicant requests Conditional Use review approval for a new 8-space parking lot in the northeast corner of the Subject Property. There is already a 12-space parking lot in the southwest corner of the Subject Property, so the proposal would increase the number of parking spaces on the Subject Property from 12 to 20. Type III Conditional Use review is required for the additional parking spaces per Zoning Code Section 33.815.040.6.2.

**Relevant Approval Criteria:** To be approved, this proposal must comply with the criteria of Title 33. The relevant criteria are in Zoning Code Section 33.815.105.A-E.

## II. ANALYSIS

**Site and Vicinity:** The Subject Property is 2.1 acres and occupies the entire block bounded by SE Ankeny Street, SE Ash Street, SE 13<sup>111</sup> Avenue, and SE 1.5th Avenue. The Subject Property is developed with a church campus containing two buildings, a 12-space parking lot in the southwest corner of the Subject Property, and landscaped areas. The Subject Property is fairly flat. A paved walkway between the two buildings on the Subject Property connects SE Ankeny Street to SE Ash Street. Neighboring properties are developed with a mix of commercial and

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Decision of the Hearings Officer  
LU 18-174083 CU (4180018)  
Page 3



multi-dwelling residential uses, including several fairly new buildings. A four-story apartment building is under construction immediately west of the Subject Property on the southwest corner of SE 13th Avenue and SE Ankeny Street. East Burnside Street is one block north of the Subject Property, and south of the Subject Property are mostly older, single-dwelling houses.

**Zoning:** The R1 zone is one of the City's multi-dwelling residential zones and is intended to preserve land for urban housing and to provide opportunities for multi-dwelling housing. The development standards work together to create desirable residential areas by promoting aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

The R2.5 zone is one of the City's single-dwelling residential zones and is intended to preserve land for housing and to promote housing opportunities for individual households. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

In both the R1 and R2.5 zones, institutional uses such as churches may be allowed through Conditional Use review.

**Land Use History:** City records indicate that prior land use reviews include the following:

CU 064-78: 1978 Conditional Use review for a private school. The application was withdrawn prior to any decision on the proposal.

CU 029-84: 1984 approval of a Conditional Use review for an office and classroom addition to the church.

LU 08-102988 CU: 2008 approval of a Conditional Use review to remove property on Block 265 (across SE 13<sup>th</sup> Avenue from the main church campus) from the Subject Property.

LU 10-161634 CU AD: 2011 approval of a Conditional Use review for a new residential building on church-owned property on Block 266 (on the northwest corner of SE 13<sup>th</sup> Avenue and SE Ankeny Street). An Adjustment was approved to increase the maximum height of this new building. LU 10-161634 CU AD re-attached an existing parking lot on Block 265 (on the southwest corner of SE 13<sup>th</sup> Avenue and SE Ankeny Street) to the Subject Property.

LU 17-187153 CU AD: 2017 approval of a Conditional Use review to detach the existing parking lot on the southwest corner of SE 13th Avenue and SE Ankeny Street from the Subject Property. An Adjustment was approved to waive the on-site loading space requirement for a new apartment building on that property.

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Agency Review: A "Request for Response" was sent to City agencies on July 2, 2018. The following bureaus have responded:

The Bureau of Environmental Services ("BES") evaluated the approval criterion related to sanitary waste and stormwater disposal. The response is referenced in the findings for Zoning Code Section 33.815.105.D.3, below (Exhibit E.1).

The Portland Bureau of Transportation ("PBOT") evaluated the approval criteria related to the transportation system. The response is referenced in the findings for Zoning Code Section 33.815.105.D.1-2, below (Exhibit E.2).

The Water Bureau responded with no concerns (Exhibit E.3).

The Fire Bureau responded with no concerns (Exhibit E.4).

The Police Bureau stated that police services are adequate for the proposed development (Exhibit E-5).

The Site Development Review Section ("Site Development") of BDS responded with no concerns (Exhibit E.6).

The Life Safety Review Section of BDS responded with information on building permit requirements and raised no objections to the proposal (Exhibit E.7).

The Urban Forestry Division of Portland Parks & Recreation responded with no concerns (Exhibit E.8).

Neighborhood Review: A "Notice of a Public Hearing" was mailed on July 19, 2018. Prior to the issuance of the BDS Staff Report (Exhibit H.3), BDS staff received two e-mails with comments on the proposal from notified neighbors. The first response (Exhibit F.1) asked that the new parking lot be hidden by greenery and paved with a permeable material that absorbs rain water. The second response (Exhibit F.2) stated the new parking lot would be on a quiet residential street and that it was unfair the church had sold its former parking areas for development. BDS responded, in the BDS Staff Report (Exhibit H.3), as follows:

"As discussed in the findings for Zoning Code Section 33.815.105.B, below, the

parking lot would be screened by rows of new trees and shrubs at its perimeter,

and additional landscaping would be planted in the interior of the parking lot. Staff finds the landscaping would enhance the proposal's compatibility with the

adjacent residential area. While the proposed paving material is not permeable, stormwater planters adjacent to the parking lot are proposed. As discussed in the findings for Zoning Code Section 33.815.105.D.3, below, BES found the proposal for on-site stormwater infiltration was acceptable. As detailed in the 'Land Use



History' section above, development on former church parking lots was approved by previous land use reviews. Staff finds previously-approved development is not relevant to the approval criteria for this review."

A number of written comments, in opposition to the application, were received either just prior to the August 13, 2018 hearing (the "Hearing") or during the open-record period. (See, for example, Exhibits H.4, KS, H.6, H.7, H.8, H.9, H.15, H.16, H.17, H.18, and H.19). Neighborhood residents Neil Howard ("Howard"), Deborah Ann Byrne ("Byrne"), Karla Zimmerman ("Zimmerman"), and Christopher Wirgler ("Wirgler") testified at the Hearing in opposition to the application.

Opposition testimony, in the opinion of the Hearings Officer, was focused on (1) tree removal and tree replacement, (2) traffic issues (on-street parking and traffic safety related to the entry/exit of the proposed parking lot), (3) need for a parking lot at the proposed location, (4) landscaping of the proposed parking lot, (5) livability issues related to area resident safety, (6) noise impacts, (7) the possibility that the proposed parking lot would be used by the Applicant as a homeless encampment, (8) the desire for public use of the proposed parking lot, and (9) the possibility that the parking lot be relocated to a different location on the Subject Property.

The Hearings Officer shall address issues that are related to relevant approval criteria in the findings below. However, the Hearings Officer notes that not all of the issues raised by opponents, and summarized above, are related to relevant approval criteria. The Hearings Officer finds there is no relevant approval criterion that requires an applicant, in the conditional use process, to demonstrate "need" (Hearings Officer item (3) in the preceding paragraph). Oregon land use law limits review and consideration, in this quasi-judicial case, to matters contained in the application and laws/rules applicable at the time of the application. The Hearings Officer is not allowed, by Oregon land use law, to speculate or anticipate matters not directly referenced by the application. The Hearings Officer finds that there is no reference in the Applicant's proposal related to a possible homeless encampment. Therefore, the Hearings Officer will not consider opposition testimony and argument related to the possible impacts from a possible homeless encampment (Hearings Officer item (7) in the preceding paragraph). Applicant did not propose general public use of the parking lot located on the Applicant's private property. The Hearings Officer has no authority to impose a public use requirement upon the Applicant's private property (Hearings Officer item (8) in the preceding paragraph). Finally, the Hearings Officer is required to review the proposal as submitted by the Applicant and cannot consider alternative locations of the parking lot (Hearings Officer item (9) in the preceding paragraph).

#### **ZONING CODE APPROVAL CRITERIA**

##### **33.815.105 Institutional and Other Uses in R Zones**

These approval criteria apply to all conditional uses in R zones except those specifically listed in sections below. The approval criteria allow institutions and other non-Household Living uses in a

residential zone that maintain or do not significantly conflict with the appearance and function of residential areas.

The approval criteria are:

A. Proportion of Household Living uses. The overall residential appearance and function of the area will not be significantly lessened due to the increased proportion of uses not in the Household Living category in the residential area. Consideration includes the proposal by itself and in combination with other uses in the area not in the Household Living category and is specifically based on:

The number, size, and location of other uses not in the Household Living category in the residential area; and

The intensity and scale of the proposed use and of existing Household Living uses and other uses.

Findings: For purposes of this approval criterion, the Hearings Officer agreed with BDS staff's conclusion that the "residential area" is the area that is residentially-zoned and within two blocks of the Subject Property. The Subject Property is at the northwest corner of the residential area, since properties north and west of the Subject Property have commercial rather than residential zoning designations. Besides the church on the Subject Property, nonresidential uses in the residential area include the Buckman Elementary School and four nonconforming, single-story commercial buildings near SE 16th Avenue. Of the 109 lots within the defined residential area, only six lots (5.5 percent) are developed with nonresidential uses, thereby preserving residential development as the predominant use in the area.

In this case, the Subject Property is already developed with a nonresidential use (a church). The Hearings Officer finds that the proposal for a new parking lot on the church property would not increase the number of nonresidential uses in the residential area. The parking lot would be constructed within the church's existing property and the existing Conditional Use boundaries for the church would not expand to accommodate the new parking lot. The Hearings Officer finds that the addition of a parking lot with 8 spaces would not increase the intensity of the Conditional Use within the existing Conditional Use boundaries, but instead would serve the existing church membership.

For the reasons stated above, the Hearings Officer finds the proposal would not lessen the residential appearance and function of the neighborhood by increasing the proportion of nonresidential uses. The Hearings Officer finds this approval criterion is met.

**B. Physical compatibility.**

1. The proposal will preserve any City-designated scenic resources; and

Findings: City-designated scenic resources are identified on the official zoning maps with a lower case "s." There are no City-designated scenic resources on the site. Therefore, the Hearings Officer finds approval criterion B.1 is not applicable.

The proposal will be compatible with adjacent residential developments based on characteristics such as the site size, building scale and style, setbacks, tree preservation, and landscaping; or



The proposal will mitigate differences in appearance or scale through such means as setbacks, screening, landscaping, tree preservation, and other design features.

Findings: The Subject Property is larger in site area than neighboring residential lots and the church buildings are larger than neighboring homes. The proposed parking lot would not affect the Subject Property site area or building areas. However, a surface parking lot near a public street is not a typical development pattern in the residential area near the Subject Property.

The Zoning Code requires the new parking lot to be set back from the lot lines behind five-foot-wide L2 landscaping buffers containing rows of trees, three-foot-high evergreen shrubs, and ground cover plants (Zoning Code Sections 33.266.130.G.2 and 33.248.020.13). In addition to this perimeter landscaping, new trees and shrubs are also required to meet the P1 interior parking lot landscaping requirement (Zoning Code Sections

33.266.130.G.3 and 33.248.020.H). In this proposal, the parking lot would be set back at least, and in some locations further, than the required five feet from the lot lines (Exhibit C.1). In addition, the Applicant proposed landscaping that exceeds the minimum

required (Exhibit C.2).

The Applicant identified the trees, by species, proposed for removal. Included in the trees to be removed were Vine maples. Zimmerman, in Exhibit H.9, disputed that three of the trees were Vine maples. The Applicant, in its final argument (Exhibit H.20), acknowledged the species of the three-inch trees was not Vine maple but rather *prunus* as represented by Zimmerman. The Hearings Officer notes that the three-inch *prunus* are not regulated as "trees" in the City's Tree Code (Portland City Code Title 11) and therefore could be removed at any time without the need for permits.

Three of the trees, as identified by the Applicant, to be removed are a 12-inch Black pine, a 16-inch Ash, and a 33-inch Black pine. BDS, in Exhibit H.3 (page 5), expressed the opinion that the loss of these three larger trees would affect the aesthetics of the Subject Property. However, BDS staff also acknowledged that the Applicant proposed to plant 10 new trees around the new parking lot to meet Zoning Code requirements for parking lot landscaping (Exhibit C.2). BDS noted, in Exhibit H.3 (page 5), that as these new trees mature they would replace benefits currently provided by the Ash tree and the two pines, including shade and aesthetic appeal.

Howard and Zimmerman testified, at the Hearing, in opposition to the Applicant's proposal. Both Howard and Zimmerman objected to the Applicant removing the 33-inch Black pine tree. Others in opposition submitted documents during the open-record period (Exhibits H.5, H.6, H.9, H.15, H.18, and H.19) expressing concern related to the proposed removal of the 33-inch Black pine tree. Opponents argued that



removal of the mature 33-inch Black pine tree would eliminate shade and would create significant negative impacts upon the immediate neighborhood. Opponents (Exhibit H.18 and Zimmerman Hearing testimony) stated that the Applicant's replacement trees would not grow large enough, in their lifetime, to duplicate the trees to be removed. One suggestion, by opponents, was to replace all trees proposed to be removed with trees of like-size; i.e. replace the 33-inch Black pine tree with another tree of 33-inches.

The Hearings Officer interpreted the preceding opposition comments as an argument that the Applicant's proposed parking lot would not be physically compatible with the adjacent residential area. The Hearings Officer also finds that opponents argued that the 33-inch Black pine tree could be saved by moving the parking lot to another location.

As noted in the Neighborhood Comments section, the Hearings Officer is legally required to consider the application as submitted by the Applicant and not consider alternatives suggested by opponents or other third persons. While not relevant to an approval criterion, the Hearings Officer finds that the Applicant offered persuasive evidence related to the necessity of removing the 33-inch Black pine (Exhibit H.20, page 2- first paragraph in the Tree Preservation/removal section). The Hearings Officer adopts the first paragraph in the Tree preservation section (Exhibit H.20, page 2) as additional findings for this approval criterion.

Both BDS staff and the Applicant responded to opponents' claim that the Applicant should be required to plant trees similar in size to trees removed.

BDS staff noted, at the Hearing, that the Portland Tree Code does not require trees removed to be replaced by trees of the same size. BDS staff, however, stated that this approval criterion does require the proposal to be compatible with adjacent residential developments based upon characteristics such as tree preservation. BDS staff noted that this approval criterion requires mitigation for differences in appearance and scale through tree preservation. The Hearings Officer interpreted these BDS staff comments to provide a legal nexus between this approval criterion and the opposition argument that the Applicant should be required to plant larger trees than those included in its proposal in order to compensate for differences in appearance and scale.

BDS staff, at the Hearing, concluded that requiring the Applicant to plant larger trees is not necessary because the Applicant's landscaping proposal exceeded City requirements and would, in the future, fully compensate for any tree removal at the Subject Property.

The Applicant addressed opponents' claim that it should be required to plant large trees to replace the removal of large trees, in part, as follows (Exhibit H.20, pages 2 and 3):

"The parking and driveway project requires the removal of a total of seven trees, six on-site trees and one street tree. Of the trees to be removed, three of the trees are 3-inches in diameter, one of the trees is 4-inches in diameter, one of the trees is 12-inches in diameter, and one of the trees is 33-inches in diameter [footnote omitted]. As provided in the Tree

Protection Plan and Tree Removal Schedule, attached as Exhibit J to the original application, there are a total of 40 on-site trees and seven of the on-site trees are equal to or exceed 12 inches in diameter. Additionally,

there are 31 street trees surrounding the site. Therefore, Applicant is preserving 85% of the on-site trees and 97% of the street trees surrounding the site. Applicant is also preserving 71% of on-site trees at or exceeding 12-inches in diameter. Therefore, not only does the tree removal satisfy the Title 11 tree protection requirements for development as detailed in the

application [footnote omitted], but the significant tree preservation contributes to the proposal's compatibility with adjacent residential uses."

Applicant goes on to say that

"The code does not require that a tree that is remove[d] be replaced with a like size tree. As discussed above, the vast majority of trees on and surrounding the site will be preserved, including several large, mature trees. Those trees that must be removed will be replaced at a ratio greater than 1 to 1. The combination of tree preservation, tree replacement, and the overall landscaping plan ensures that the proposed parking lot will be compatible with the surrounding residential uses despite the removal of the large black pine."

The Hearings Officer finds that there is no Portland City Code ("PCC") requirement that trees removed must be replaced by trees of similar size. The Hearings Officer carefully reviewed Exhibits A.8, A.9, and C.2 (tree removal and tree protection plan, landscape details and landscape plan, and Urban Forestry review). The Hearings Officer finds that the Applicant's landscape plan, including the removal of trees and planting of new trees, meets Title 11 requirements. The Hearings Officer finds the Applicant's landscaping plan exceeds PCC requirements. The Hearings Officer finds that the quantity of trees/shrubs proposed to be planted is adequate to keep the Subject Property compatible with the adjacent residential developments. The Hearings Officer finds, based upon the evidence in the record, that despite the proposed removal of trees, the Applicant's landscape plan will create an environment that is compatible to the adjacent residential area. Therefore, the Hearings Officer finds criterion B.2 met. The Hearings Officer also found that the

Applicant's landscape plan mitigated differences, if any, in appearance through extensive planting of shrubs and trees. Therefore, the Hearings Officer finds criterion 8.3 is met.

C. Livability. The proposal will not have significant adverse impacts on the livability of nearby residential zoned lands due to:

1. Noise, glare from lights, late-night operations, odors, and litter; and



Findings: The Hearings Officer reviewed the record and found no relevant evidence that this approval criterion is not met. The Hearings Officer quotes the BDS staff, in Exhibit H.3, pages 5 and 6, as follows:

'The components of criterion C.1 are addressed separately as follows:

Noise

There would be some noise from vehicles using the parking lot, but since the parking lot would only have Sparking spaces, the number of vehicles entering, maneuvering through, or exiting the lot at any one time would be minimal. Also, the parking lot would be separated from neighboring properties by streets, and vehicle traffic on these streets generates much more noise for neighboring residences than the new parking lot would.

Glare from lights

The parking lot would be small enough to be adequately illuminated by existing street lights and building lights. No new exterior lighting is proposed. Glare impacts from headlights in the parking lot would be minimal, since only 8 parking spaces are proposed, and the perimeter of the parking lot would be screened by new trees and 3-foot-high evergreen shrubs.

Late-night operations

No late-night operations would be associated with this proposal. The new parking lot would absorb some of the parking demand generated by existing church activities, and no new activities are proposed in this application. The applicant states the church's activities typically end by 10:00pm (Exhibit A-1).

Odors

No aspects of the parking lot proposal would generate unusual or significant odor impacts on neighboring residential lots. The parking lot would be separated from neighboring residences by landscaping and streets, and vehicle traffic on these streets generates more odor from vehicle exhaust than the new parking lot would.

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Litter

No litter-producing activities are proposed in this application. The new parking lot would serve the existing church activities, which are mostly indoors.

For the reasons discussed above, staff does not anticipate any significant impacts related to noise, glare from lights, late-night operations, odors, or litter from this proposal. Therefore, staff finds criterion C.1 is met."

Opponents argued that noise, late-night operations, odor, and litter impacts may be created by a homeless encampment located on or near the parking lot (See Exhibits H.15



and H.17). The Hearings Officer finds that the Applicant's proposal does not mention a homeless encampment. As noted previously, the Hearings Officer cannot consider the "possibility" of a homeless encampment on the Subject Property. The issue of a homeless encampment is beyond the scope of this case (see also Hearings Officer comments in the *Neighborhood Review* section above).

The Hearings Officer finds the BDS staff comments, as quoted above, to be credible and accurately reflect the possible impacts created by noise, late-night operations, odors, and litter. The Hearings Officer finds, based upon the evidence in the record, that the Applicant's proposal for an eight-space parking lot in conjunction with its landscape plan, will not have significant adverse impacts on the livability of nearby residential zone land due to noise, glare from lights, late-night operations, odors, and litter. The Hearings Officer finds approval criterion C.1 is met.

## 2. Privacy and safety issues.

Findings: Opponents raised, in the context of this approval criterion, the possibility that the Applicant intended to, at some time in the future, allow a homeless encampment to exist on the new parking lot. As noted in the findings for C.1 above and the *Neighborhood Review* section, the Hearings Officer cannot legally consider the possibility that, some day in the future, the Applicant would permit a homeless encampment to exist on the new parking lot. The Applicant did not propose, in this application, a homeless encampment and the Hearings Officer is bound by what the Applicant did propose and not what might be done in the future.

The Hearings Officer finds that the new parking lot would not have any significant impacts on neighbors' privacy. Again, the parking lot is intended to accommodate some of the parking demand generated by the existing church activities, rather than to expand or intensify the church use on the Subject Property. Views between the parking lot and neighboring homes would be screened by rows of new trees and shrubs around the proposed parking lot, with the intervening public streets providing a horizontal separation of 60 feet.

The Applicant, in its final argument, addressed safety issues raised related to the proposed location of the parking lot driveway and landscaping (Exhibit H.20, pages 4 and 5). The Hearings Officer finds the Applicant's "Traffic Safety" (Exhibit H.20, pages 4 and 5) and "Landscaping Safety" comments include a reasonable review of the Applicant's proposal and the impacts to safety. The Hearings Officer incorporates the "Traffic Safety" and "Landscaping Safety" sections of Exhibit H.20 as additional findings for this approval criterion.

The Hearings Officer found no substantial evidence in the record that approval of the application would create adverse safety impacts. The Fire Bureau and the Police Bureau reviewed the proposal, and neither raised any concerns about approval (Exhibits E.4 and E.5). PBOT reviewed the proposal for potential safety impacts to the transportation system and found none (Exhibit E.2).

For the reasons stated above, the Hearings Officer finds approval criterion C.2 is met.  
D. Public services.

The proposal is supportive of the street designations of the Transportation Element of the Comprehensive Plan;

The transportation system is capable of supporting the proposal in addition to the existing uses in the area. Evaluation factors include street capacity, level of service, and other performance measures; access to arterials; connectivity; transit availability; on-street parking impacts; access restrictions; neighborhood impacts; impacts on pedestrian, bicycle, and transit circulation; safety for all modes; and adequate transportation demand management strategies;

Findings: Opponents argued that approval of the application would result in traffic safety issues (primarily caused by entry/exit of vehicles from the parking lot) and a reduction in on-street parking availability for neighbors and visitors to the neighborhood (Exhibits H.5, H.7, H.9, H.15, H.17, H.18, and H.19 and hearing testimony by Howard, Byrne, and Wirgler).

Opponents, the Applicant, BDS staff, and PBOT staff all agree that the proposed parking lot would have eight spaces (eight more than currently exist) but because of the necessary curb-cut there would be a reduction of two on-street parking spaces (resulting in a net gain of six parking spaces). The Applicant, BDS staff, and PBOT staff, relying upon the Applicant's Transportation Impact Study (MS"), concluded that approval of the proposal would not negatively impact on-street parking and would not result in any negative traffic safety impacts. Opponents argue that the loss of two on-street parking spaces would cause substantial negative impacts upon the neighborhood.

Opponents indicated that on-street parking in the general area was tight and/or problematic. One opponent stated the following (Exhibit H.15):

"The strain on the neighborhood due to lack of parking is

immense... Previously, my younger sister.. used to visit me and provide me with in home assistance. She is no longer able to because she can't find a



parking close enough to my home to be able to walk here..."

Another opponent (See Exhibit H.17) stated that:

"Parking is very full around our area, and with the construction of 3 new apartment buildings, I only anticipate it to get more congested. Taking away 2 public parking spaces to add 6 private spaces is a[n] over-exaggeration of the need of the church vs the neighborhood."

(See also Exhibit H.19).

The Applicant provided a TIS (Exhibit A.2). The TIS was prepared by a professional licensed traffic engineer. The Development Review section of PBOT, the City bureau tasked with dealing with transportation issues, reviewed the TIS (Exhibit E.2). The Hearings Officer reviewed, in detail, the TIS (Exhibit A.2) and PBOT's analysis (Exhibit E.2). The Hearings Officer also reviewed the traffic engineer's final argument submission (Exhibit H.20).

The Hearings Officer found the PBOT analysis clearly addressed the relevant transportation issues raised by the application and the TIS. The Hearings Officer quotes, in part, sections of the PBOT analysis below:

"Consistency with the Street Designations

*Table I provides a summary of the City's street designations near the proposed parking and Table 2 reflects the street characteristics. As shown, all streets have a local traffic street designation and have two travel lanes for vehicles. The provision of eight additional spaces on-site to serve the church is consistent with the local street designation and roadway cross-sections; therefore, this criterion is met.*

*Table I. Existing City of Portland Transportation System Plan (TSP)  
Roadway Designations*

Roadway	Traffic Local Service Traffic Street	Transit Local Service Transit Street	Bicycle	Pedestrian	freight Local Service Truck Street	Design
SE Ankeny Street			City Bikeway	Local Service Walkway		Local Street
SE Ash Street	Local Service Traffic Street	Local Service Transit Street	Local Service Bikeway	Local Service Walkway	Local Service Truck Street	Local Street



<i>SE 13th Avenue</i>	<i>Local Service Traffic Street</i>	<i>Local Service Transit Street</i>	<i>Local Service Bikeway</i>	<i>Local Service Walkway</i>	<i>Local Service Truck Street</i>	<i>Local Street</i>
<i>SE 14th Avenue</i>	<i>Local Service Traffic Street</i>	<i>Local Service Transit Street</i>	<i>Local Service Bikeway</i>	<i>Local Service Walkway</i>	<i>Local Service Truck Street</i>	<i>Local Street</i>
<i>SE 15th Avenue</i>	<i>Local Service Traffic Street</i>	<i>Local Service Transit Street</i>	<i>Local Service Bikeway</i>	<i>Local Service Walkway</i>	<i>Local Service Truck Street</i>	<i>Local Street</i>

*Table 2. Existing Street Characteristics*

<i>--I---r:</i>						
<i>Posted</i>						
<i>Cross Speed</i>			<i>Bike On-Street</i>			
<i>Roadway Section (mph)</i>			<i>Sidewalk? Lanes? Median? Parking?</i>			
<i>SE Ankeny Street</i>	<i>2-lanes</i>	<i>25</i>	<i>Yes</i>	<i>Striped with Sharrows</i>	<i>No</i>	<i>Yes</i>
<i>SE Ash Street</i>	<i>2-lanes</i>	<i>25</i>	<i>Yes</i>	<i>No</i>	<i>No</i>	<i>Yes</i>
<i>SE 13<sup>th</sup> Avenue</i>	<i>2-lanes</i>	<i>25</i>	<i>Yes</i>	<i>No</i>	<i>No</i>	<i>Yes</i>
<i>SE 14<sup>th</sup> Avenue</i>	<i>2-lanes</i>	<i>25</i>	<i>Yes</i>	<i>No</i>	<i>No</i>	<i>Yes</i>
<i>SE 15<sup>th</sup> Avenue</i>	<i>2-lanes</i>	<i>25</i>	<i>Yes</i>	<i>No</i>	<i>No</i>	<i>Yes</i>

### *City of Portland Transportation Capacity Implications*

*The City of Portland Administrative Rule TRN 10.27- Administrative Rules for Traffic Capacity Analysis in Land Use Review Cases provides standards for traffic impact studies required in the course of land use review or development. A summary of TRN 10.27.3 is provided below.*

*10.27.3. An amendment or other land use application that requires analysis of traffic capacity and allows development that either (1) may cause a transportation facility to perform below the standards established in sections 1 and 2, or (2) adds vehicle trips to a facility that is already performing below*

*the standards established in sections 1 and 2 may be approved if:*

*a. Development resulting from the amendment or other land use application will mitigate the impacts of the amendment or other land use application in a manner that avoids further degradation to the performance of the facility by the time of development through one or more of the following:*

*the development is limited to result in no net increase in vehicle trips over what is allowed by the existing zoning; OR*

*one or more combination of transportation improvements or measures are imposed to mitigate the transportation impacts of the amendment or other land use application in a manner that avoids further degradation to the performance of the facility by the time of any development*

*The church is submitting the conditional use application to provide eight vehicular parking spaces within the campus to serve the existing church membership and to reduce church-related parking on the adjacent public streets. No new building space is proposed at the existing church. As shown in Trip Generation (9th Edition, Institute of Transportation Engineers), vehicular trip generation for a church (Land Use 560) is based [on] 1,000 square feet of building size. As such, no additional vehicle trips are anticipated because of the eight parking spaces.*

*Further, the church is not proposing to change its operations, the type/size of events held at the church and/or small amphitheater space, the number of staff employed, nor the daycare operations as part of the additional eight parking spaces.*

*With no commensurate increase in building size or change in operations or events, no additional vehicular trips are anticipated as part of the conditional use, thereby satisfying the requirements of TRN 10.273. For these reasons, this criterion is met*

#### *Access to Arterials*

*As part of the conditional use application, access to the new eight-space parking lot is proposed via SE 15th Street, which is classified as a local street. As such, no new access to any arterial streets is proposed and this*

*criterion is met*

#### Connectivity

*The church is located within a grid network of streets, serving pedestrians, cyclists, transit and motorists. No changes to the existing connectivity are proposed. As such, this criterion is met*

#### Transit Availability

*The nearest transit service is provided by Tr-Met Route 20, with a stop at SE 16th Avenue/SE Burnside Street, approximately 2 blocks north and east of the parking lot. Route 20 is classified by Tr-Met as a "high frequency bus line," providing service at headways of 15 minutes or less, seven days a week. In addition, Route 70 has stops near the SE 11th Avenue/SE Ash Street intersection, approximately 4 blocks west of the parking lot. No new trips are anticipated as part of the proposed parking lot so no impacts to the transit service are anticipated. As such, this criterion is met*

#### On-Street Parking Impacts

*The objective of the conditional use application is to provide eight additional parking spaces to serve the existing church uses, thereby reducing the impact of parking on the adjacent public streets. To inform the conditional use application, we measured the existing parking demand along the following streets:*

*SE 15th Avenue between SE Burnside and SE Pine Street;*

*SE 14th Avenue between SE Burnside and SE Ankeny Street and between SE Ash and SE Pine Streets;*

*NE 13th Avenue between SE Burnside and SE Pine Street;*

*SE Ash Street between SE 13th and SE 16th Avenues; and,*

*SE Ankeny Street between SE 13th and SE 16th Avenues.*

*During the parking surveys, we also measured the demand in the small parking lot located on-site in the southwest portion of the campus.*

*Based on the list of church-related activities identified above [included*



in Exhibit E-2], the parking surveys were conducted over the course of three days in February 2018 when no inclement weather conditions were present that would affect typical activities. These days and the time periods are outlined below.

*Sunday, February 25th - to account for typical church services (regularly scheduled between 7 AM and 5 PM), parking demand was measured at the following times: SAM (prior to any church-related activities), 8 AM, 11 AM, 2 PM, and 8 PM (after typical activities commence).*

*Monday, February 26th - to account for Young Life Chapter meetings (typically scheduled from 5 PM -8 PM), parking demand was measured on an hourly basis between 4 PM and 10 PM.*

*Wednesday, February 28th - to account for typical neighborhood parking when no activities are occurring at the church or nearby commercial uses, parking demand was measured at 4 AM.*

*A summary of the overall parking supply, demand, and utilization during each of the three peak periods, is provided in Table 3. Note that while the total peak demand recorded on Sunday and Monday coincidentally was identical, the locations of parked vehicles at those two times was different.*

*Table 3. Peak Parking Demand*

<i>Location</i>	<i>Supply</i>	<i>Mid-week Overnight Demand (4 AM)</i>	<i>Peak Sunday Demand (11 AM)</i>	<i>Peak Monday Demand (8 PM)</i>	<i>Difference between Sunday Peak and Mid-week</i>	<i>Difference between Monday Peak and Mid-week</i>
<i>Total On-Street</i>	254	207	237	237	+30	+30
<i>Church Parking Lot</i>	12	0	12	12	+12	+12
<i>Total All Parkin</i>	266	207	249	249	+42	+42
<i>On-Street Utilization (excluding church lot)</i>		81%	93%	93%		

*As shown in the table, the on-street parking system has a h'gh utilization (81 percent) during the middle of the night due to the relat'vely limited on-site parking available for nearby residents. At 4 AM on Wednesday of the survey, there were 47 unoccupied on-street parking spaces within*

*blocks surveyed (Le., 207 spaces occupied vs 254 spaces supplied). Also shown is that the overall peak utilization on both Sunday and Monday recorded an increase of on-street parking demand of 30 vehicles relative to Wednesday 4 AM parking, leaving 17 unoccupied spaces. This increase is reflective of increased activity by nearby residents and commercial areas as well as activities at the church.*

*The addition of eight parking spaces proposed as part of the conditional use application would help provide additional parking supply during peak periods, thereby reducing overall neighborhood impacts. Further, the added church parking would allow persons using the church facilities to park on-site, reducing on-street church parking demand and freeing up parking spaces for nearby residents.*

*In addition to an overall summary, the measured parking demand on each block-face and in the church parking lot during each of the survey periods is included in Appendix A. The appendix also provides a comparison for the following:*

*Sunday, February 25th - changes in parking demand measured at 8 AM, 11 AM, 2 PM and 8 PM relative to the SAM condition on Sunday;*

*Sunday, February 25th - changes in parking demand measured during the peak 11 AM period relative to the Wednesday 4 AM condition;*

*Monday, February 26th - changes in parking demand measured at 4 PM, 5 PM, 6 PM, 7 PM, 8 PM, and 9 PM relative to the 10 PM condition on Monday; and,*

*Monday, February 26th - changes in parking demand measured during the peak 8 PM period relative to the Wednesday 4 AM condition.*

*Figure 1 [included in Exhibit A-2] illustrates the change in parking demand on Sunday at 11 AM relative to the Wednesday 4 AM overnight condition whereas Figure 2 [included in Exhibit A-2] illustrates the change in parking demand on Monday night at 8 PM relative to the Wednesday 4 AM overnight condition. As shown in the figures, the key findings of the on-street parking demand studies, by location, are outlined below.*



*During the peak Sunday period, 26 of the 28 block faces measured experienced an increase in parking relative to the overnight condition by two vehicles or less. The two exceptions were:*

- o On the southside of SE Ankeny Street between SE 15th and SE 16th Avenues (increase of 3 vehicles); and,*

*On the northside of SE Ash Street between SE 15th and SE 16th Avenues (increase of 4 vehicles).*

*During the peak Monday period, 24 of the 28 block faces measured experienced an increase in parking relative to the overnight condition by two vehicles or less. The four exceptions were:*

*On the westside of SE 13th Avenue between of SE Ash and SE Pine Streets (increase of 3 vehicles);*

*On the southside of SE Ankeny Street between SE 15th and SE 16th Avenues (increase of 5 vehicles);*

*On the westside of SE 15th Avenue between of SE Ankeny and SE Ash Streets (increase of 3 vehicles); and,*

*On the northside of SE Ash Street between SE 15th and SE 16th Avenues (increase of 3 vehicles).*

*As proposed, the additional eight parking spaces would be located in the southwest quadrant of the SE 15th Avenue/SE Ankeny Street intersection. Per the on-street parking demand studies, this new parking lot would be adjacent to the block faces experiencing the largest changes relative to the overnight condition. These findings support the need for and location of the additional parking supply. Given that the net result of the conditional use application would be an increase in supply of approximately six spaces (based on the loss of approximately two spaces of on-street parking on SE 15th Avenue where the access to the parking lot will be constructed), the parking condition would be improved within the vicinity of the church. Therefore, this criterion is met*

#### *Access Restrictions*

*No access restrictions are proposed as part of this conditional use;*

*therefore, this criterion is met*

### Neighborhood Impacts

*Per the parking demand analysis, the proposed increase in parking supply will help alleviate existing on-street parking during peak periods. Therefore, the neighborhood impacts are reduced, and this criterion is met*

### Impacts on the Pedestrian System

*As shown in Tables 1 and 2, all study streets near the proposed church parking lot are local service walkways and have sidewalks. No changes to the existing sidewalk facilities or street designations are needed as part of the additional parking spaces. Therefore, there are no anticipated pedestrian impacts and this criterion is met.*

*The applicant will be improving curb ramps per Americans with Disabilities Act (ADA) standards at several locations along the church frontage. These improvements will, in part, improve the pedestrian environment near the proposed parking lot, thereby further demonstrating that this criterion is met.*

### Impacts on the Bicycle System

*As shown in Tables 7 and 2, all study streets near the proposed church parking lot are local service bikeways where cyclists "share the road" with motorists, except SE Ankeny Street. SE Ankeny Street is a city bikeway and striped with sharrows. In addition, there is an existing traffic diverter on SE Ankeny Street at the SE 15th Avenue intersection prohibiting through vehicular movements in all directions. No changes to the existing bicycle network, the traffic diverter, or street designations are needed as part of the additional parking spaces. Therefore, there are no anticipated bicycle impacts and this criterion is met*

### Impacts on the Transit System

*As shown in Tables 1 and 2, all study streets near the proposed church parking lot are local service transit streets. In addition, as described above, high frequency transit service via Route 20 is provided approximately two blocks north/east of the proposed parking lot on Burnside Street, and Route*

*70 provides service approximately four blocks to the west. With no*

*anticipated increases in trip-making associated with the proposed parking, no changes to the existing transit service or street designations are needed. Therefore, there are no transit impacts anticipated and this criterion is met.*

### Safety

*No new trips are anticipated as part of the eight-space parking lot;*

*therefore, no changes to the existing crash experience are anticipated. As such, this criterion is met.*



### Transportation Demand Management (TDM)

*As mentioned above, the church employs a small staff that is on-campus during varying work hours Monday - Thursday only. The church is located within a rich multimodal environment for employee travel including:*

*Two bus routes are conveniently located within four blocks of the church.*

*Sidewalks are provided on all streets in the vicinity connecting employees to existing neighborhoods and commercial areas within a short walking distance.*

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*SE Ankeny Street prioritizes through bicycle movements in all directions at SE 15th Street, thereby providing a lower stress environment for cyclists.*

*The church provides both a men's and women's locker room with showers for employees and/or visitors to use.*

*All employees have a compressed four-day work week, reducing the weekday demand to the church.*

*Given the small size of the staff and the limited resources available as well as the fact that none of the buildings are proposed to be modified, no additional TOM measures are needed at this time. The church will continue to assess the need to offer additional measures in the future. Therefore, this criterion is met.*

### Transportation System Development Charges (Chapter 17.15)

*System Development Charges (SDCs) may be assessed for this*

*development. The applicant can receive an estimate of the SDC amount prior to submission of building permits by contacting Rich Eisenhauer at 503-823-6108.*

### Driveways and Curb Cuts (Section 17.28)

*Curb cuts and driveway construction must meet the requirements in Title 17. The Title 17 driveway requirements will be enforced during the review of building permits.*

### Recommendation

*No objection to approval as proposed."*

The Hearings Officer finds comments made by opponents that on-street parking is "tight" in the area surrounding the Subject Property is accurate (Exhibits H.15, H.16, H.17, HIS, and Hearing testimony of Howard, Byrne, and Wirgler). The opponents "tight" on-street parking observations are supported by the TIS (Exhibit A.2, page 6) where it states:

"As shown in the table, the on-street parking system has a high utilization 81 percent) during the middle of the night due to the relatively limited on-site parking available for nearby residents."

The Applicant's traffic engineer, in the open-record final argument time period, provided a summary of the TIS information related to on-street parking. The Hearings Officer finds the summary provides a concise summary of the on-street parking situation existing prior to the application and what may be expected if the application is approved. The

Applicant's traffic engineer, in Exhibit H.20 (memo dated August 24, 2018) stated:

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"As summarized in our March 16, 2018 *Transportation Impact Study* (TIA) for the conditional use application, we measured parking demand during the following periods:

*Sunday, February 25"* - at 5 AM (prior to any church-related activities), 8A, 11AM, 2PM, and 8 PM (after typical activities commence).

*Monday, February 26th* -each hour between 4 PM and 10 PM.

*Wednesday, February 28<sup>th</sup>* - at 4 AM.

The detailed hourly break-down by block face for each of the hours measures is shown in the attachments to the TIA. As reflected in Table 3 of the TIA as well as the attachments, when there are no activities at the church, the total parking demand on the on-street block faces varies from 161 used on Sunday at 2 PM to 207 spaces used on Wednesday at 4 AM. When the church activities are occurring, the maximum demand for on-street parking spaces occurred on Monday at 8 PM. Subtracting two-on-street spaces from the on-street parking supply yields the following utilization:

Sunday at 2 PM = 161 spaces demand/254 -2 spaces on-street supply = 64% utilization

Wednesday at 4 AM = 207 spaces demand/254 -2 spaces on-street supply =82%

Monday at 8 PM = 238 spaces demand/254-2 spaces on-street supply = 94% utilization

As shown, even with the loss in two spaces, the on-street parking utilization during the non-church event times is less than 85%. Further, there is no



measurable change in utilization associated with the peak church time as a result of the loss of the two spaces (94% full on-street both prior to and after the loss of two on-street spaces). As presented at the hearing by Applicant, parking utilization of 90-95 percent full is often used for evaluation effective capacity.

Lastly, as discussed on page 7 of the TIA, the 'additional eight parking spaces would be located in the southwest quadrant of the SE 15<sup>th</sup>/SE Ankeny Street intersection. Per the on-street parking demand studies, this new parking lot would be adjacent to the block faces experiencing the largest changes relative to the overnight condition. These findings support the need for and location of the additional parking supply. Given that the net result of the conditional use application would be an increase in supply of approximately six spaces of on-street (based on the loss of approximately two spaces of on-street parking on SE 15th Avenue where the access to the

parking lot will be constructed), the parking condition would be improved within the vicinity of the church."

While the TIS does indicate that on-street parking utilization is "high," the TIS also indicates that at the lowest demand time (February 28, 2018 at 4 AM - hereafter the "Midweek Overnight Demand") on-street parking spaces do remain available. The Hearings Officer finds that on-street parking utilization for Sunday (church service day/time) and Monday (Young Life Chapter meeting time - 4 PM to 10 PM) is 93 percent. The Hearings Officer finds that the church creates demand for on-street parking.

The Hearings Officer finds it is self-evident that the reduction of two on-street parking spaces will impact the nearby residential area because during all hours of all days there are two fewer on-street parking spaces available for public use. However, the Hearings Officer finds, based on the Applicant's traffic engineer's final argument quoted above, the impact from the reduction of two on-street parking spaces will be negligible. The Hearings Officer finds the additional eight spaces (six net) will positively impact the area surrounding the Subject Property on days and at times when the church creates additional parking demand (i.e. Sunday and Monday). The Hearings Officer finds that creating eight new parking spaces on the Subject Property and reducing the number of on-street parking spaces by two will result in an overall net on-street parking benefit to the area surrounding the Subject Property.

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The Hearings Officer finds, based upon the TIS and Exhibit H.18, that the traffic diverter at SE Ankeny and SE 15th has the effect of reducing vehicular traffic on SE 15th. The Hearings Officer finds there is no credible and/or persuasive evidence in the record that the location of the entrance/exit to the property will create a safety risk.

The Hearings Officer finds, based upon the professionally prepared TIS and PBOT's review (quoted above), that approval criteria D.1 and D.2 are met.

3. Public services for water supply, police and fire protection are capable of serving the proposed use, and proposed sanitary waste disposal and stormwater disposal systems are acceptable to the Bureau of Environmental Services.

Findings: The Water Bureau reviewed the proposal and raised no concerns, indicating that adequate water service is available (Exhibit E.3). City maps indicate there are water mains in each of the public rights-of-way that abut this site.

The Police Bureau stated that adequate police services are available for the proposal (Exhibit E.5), and the Fire Bureau responded with no concerns, indicating that adequate fire protection can be provided (Exhibit E.4).

BES found that the sanitary waste disposal and stormwater disposal aspects of this criterion were met (Exhibit E.1). No new connection to the sanitary sewer system is needed or proposed, and stormwater runoff from the new parking lot would be infiltrated on-site with stormwater planters.

For these reasons, the Hearings Officer finds criterion D.3 is met.

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E. Area plans. The proposal is consistent with any area plans adopted by the City Council as part of the Comprehensive Plan, such as neighborhood or community plans.

Findings: The Subject Property is within the boundaries of the Buckman Neighborhood Plan, which was adopted by the City Council as part of the Comprehensive Plan. BDS staff noted, in Exhibit H.3, the following objectives from the Buckman Neighborhood Plan were relevant to this proposal. The Hearings Officer concurs with BDS staff's opinion that the following objectives are relevant to this case:

Policy 5: Transportation Objective 5.1: Control neighborhood traffic and parking to ensure safety and livability for neighborhood residents.

Policy 5: Transportation, Objective 5.2: Encourage alternatives to automobile use.

Policy 5: Transportation Objective 5.9: Encourage shared uses of commercial and institutional off-street parking.

Policy 8: Social Services and Institutional Uses, Objective 8.7: Encourage solutions to parking and traffic problems associated with institutional uses.

The proposal would increase the off-street parking on the subject property by 67 percent, from 12 spaces to 20 spaces. The new parking lot would help to absorb more of the church's parking demand on-site,



reducing some pressure on street parking in the neighborhood.

PBOT's analysis (Exhibit E.2) noted several factors which help to reduce automobile use associated with the church:

"Two bus routes are located within 4 blocks of the site;

Each of the streets in the vicinity has sidewalks which connect church employees to nearby neighborhoods and commercial areas;

SE Ankeny Street prioritizes bicycle traffic;

The church provides locker rooms with showers for bike commuters; and

Church employees have a compressed 4-day work week, reducing the weekday transportation demand for the church."

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The church also manages parking demand with shared parking agreements with neighboring businesses, as illustrated in Exhibit A-5. The Buckman Elementary School property two blocks southeast of the site is used for additional church parking on Sunday mornings.

The Hearings Officer incorporates the findings for PCC 33.815.105.D.1 and D.2 as additional findings for this approval criterion (PCC 33.815.105 E.).

For these reasons, the Hearings Officer finds the proposal is consistent with the Buckman Neighborhood Plan and that criterion E is met.

#### DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all requirements of Title 11 can be met, and that all development standards of Title 33 can be met or have received an Adjustment or Modification via a land use review, prior to the approval of a building or zoning permit.

#### CONCLUSIONS

The Applicant proposed a new eight-space parking lot on the Subject Property. The Applicant's proposal would also eliminate two on-street parking spaces for the driveway curb-cut. The creation of the new parking lot requires the removal of seven trees (six on-site trees and one street tree).

A number of neighbors objected to the proposal. Opposition arguments focused on the Applicant's proposed tree removal and replacement and the failure of the Applicant's proposal to meet approval criteria related to physical compatibility, livability, and traffic/parking. Opponents also raised a number of issues that did not relate to relevant approval criteria.

The Hearings Officer found, based upon the evidence in the record, the Applicant's proposal did meet all relevant approval criteria.

#### DECISION

**Approval** of a Conditional Use Review for a new eight-space parking lot on the Imago Dei church property (Subject Property), per the approved plans in Exhibits C.1 through C.4, and subject to the following condition:

A. As part of the permit application submittal for the new parking lot, each of the required site plans and any additional drawings must reflect the information and design approved by this

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land use review as indicated in Exhibits C.1 through C.4. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 18-174083 CU."

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Gregory J. Frank, Hearings Officer

September 12, 2018  
Date

Application Determined Complete: June 26, 2018

Report to Hearings Officer: August 3, 2018

Decision Mailed: September 12, 2018

Last Date to Appeal: 4:30 p.m., September 26, 2018

Effective Date (if no appeal): September 27, 2018

Conditions of Approval. This project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appeal of the decision. ANY APPEAL OF THE HEARINGS OFFICER'S DECISION MUST BE FILED AT 1900 SW 4TH AVENUE, PORTLAND, OREGON 97201. Appeals can be filed at the 5th floor reception desk, Monday through Friday between 8:00 a.m. and 4:30 p.m. **An appeal fee of \$2,100.00 will be charged (one-half of the application fee for this case, up to a maximum of \$5,000.00).** Information and assistance in filing an appeal can be obtained from the Bureau of Development Services at the Development Services Center.



**Who can appeal:** You may appeal the decision only if you wrote a letter which is received before the close of the record on hearing or if you testified at the hearing, or if you are the property owner or applicant. If you or anyone else appeals the decision of the Hearings Officer, only evidence previously presented to the Hearings Officer will be considered by the City Council.

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**Appeal Fee Waivers:** Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chair person or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization's bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

**Recording the final decision.** If this Land Use Review is approved the final decision will be recorded with the Multnomah County Recorder. The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

**Expiration of this approval.** An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

All conditions imposed herein;

All applicable development standards, unless specifically exempted as part of this land use review;

All requirements of the building code; and

All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

**EXHIBITS**  
NOT ATTACHED UNLESS INDICATED

A. Applicant's Statement

Applicant's narrative

Transportation impact study

Stormwater management report

Stormwater infiltration test report

Shared parking agreements

Applicant's letter in response to incompleteness determination letter, received June 26, 2018

Public improvements plan

Tree removal and tree protection plan

Landscape details

Civil plans cover sheet and vicinity map

Originally submitted civil site plan and grading plan, superseded by Exhibit A-14

Originally submitted stormwater plan, superseded by Exhibit A-15

Originally submitted erosion control plan, superseded by Exhibit A-16

Revised civil site plan and grading plan, received June 26, 2018

Revised stormwater plan, received June 26, 2018



Revised erosion control plan, received June 26, 2018

Revised stormwater memo, received August 1, 2018

**B. Zoning Map (attached)**

**C. Plans/Drawings**

Site plan (attached)

Landscaping plan (attached)

Full-sized, scalable site plan

Full-sized, scalable landscaping plan

**D. Notification Information**

Request for Response

Posting letter sent to applicant

Applicant's statement certifying posting

Mailing list for Notice of Public Hearing

Mailed Notice of Public Hearing

**E. Agency Responses**

Bureau of Environmental Services

Portland Bureau of Transportation

Water Bureau

Fire Bureau

Police Bureau

Site Development Review Section of BDS

Life Safety Review Section of BDS

8. Bureau of Parks, Urban Forestry Division

F. Correspondence

E-mail from Stacey Royce and Adnan Kadir, received July 22, 2018

E-mail from Lauren Creany, received July 30, 2018

G. Other

Land use application form and receipt

Incompleteness determination letter, dated June 8, 2018

H. Received in the Hearings Office

120-Day Deadline Worksheet - Hearings Office

Notice Of A Public Hearing On A Proposal In Your Neighborhood - Gulizia, Andrew

Staff Report and Recommendation to the Hearings Officer - Gulizia, Andrew

8/3/18 Email from Adnan Kadir - Gulizia, Andrew

8/13/18 Email from Mona Schwartz - Gulizia, Andrew

8/12/18 Email from Loran & Cathy Lamb-Mullin - Gulizia, Andrew

8/13/18 Email from Neil Howard (2 pages) - Gulizia, Andrew

8/13/18 Email from William Bourget (3 pages) - Gulizia, Andrew

Written testimony - Zimmerman, Karla

Record Closing Information - Hearings Office

8/20/18 Email from Karla Zimmerman (4 pages) - Gulizia, Andrew

8/20/18 Email from Karla Zimmerman (7 pages) - Gulizia, Andrew

8/20/18 Email from Karla Zimmerman (6 pages) - Gulizia, Andrew

8/120/18 letter from Eric Robertson - Byrne, Debra Ann



8/20/18 letter (4 pages) - Byrne, Debra Ann

8/20/18 letter - Byrne, Debra Ann

Letter (duplicate attached) - Hoffman, Samantha

Photograph with written statement (Fax duplicate attached) - Wirgler, Christopher

Undated Letter to Gulizia and City Counsel from William Bourget - France, Renee

Letter dated 8/27/18 Applicant Final Argument - France, Renee

9/11/18 letter to Rebecca Esau with attachments - Byrne, Debra Ann - **Submitted After the Record Closed**

9/11/18 letter (2 pages) - Byrne, Debra Ann - **Submitted After the Record Closed**

Chase Statements (8 pages) - Byrne, Debra Ann - **Submitted After the Record Closed**

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## ZONING <sup>10</sup>%

NORTH 1 Site File No. LU 18-174083 CU

1/4 Section 3031,3032

II Historic Landmark

Scale 1 inch = 200 feet State  
ID 1N 1E35DC 5300

Exhibit B May 22, 2018

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