

Moore-Love, Karla

From: Mary Jane Ven <mjven@radlerwhite.com>
Sent: Wednesday, October 24, 2018 1:58 PM
To: Council Clerk – Testimony
Cc: Gulizia, Andrew; Renee France
Subject: Applicant Testimony - LU 18-174083 CU
Attachments: City Council Appeal Hearing Brief (00840549xC624A).pdf

Attached please find applicant's testimony in regards to the above-referenced case number. Thank you.



Mary Jane Ven

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Renee M. France
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971-634-0217

October 24, 2018

VIA EMAIL

cctestimony@portlandoregon.gov

Portland City Council
1221 SW 4th Avenue
Portland, OR 97201

Re: Applicant Testimony
LU 18-174083 CU

Dear Mayor Wheeler and Commissioners Eudaly, Fish, Fritz and Saltzman:

This office represents the applicant, Imago Dei Ministries, in the above referenced appeal of the Hearing Officer's approval a conditional use application for a small new parking area for an existing conditional use church. The subject site is a two-block church campus that has served the surrounding community for over 40 years. The church is requesting a small parking area to provide 8 off-street vehicle spaces. The applicant is not proposing to add building area or change any church operations or hours. The new parking area will provide on-site parking for church staff and visitors, and the additional off-street parking will improve the on-street parking conditions surrounding the site.

The following is the applicant's written response to claims made in the narrative submitted with the appeal form and in the addendum document submitted by the appellant on October 22, 2018.

1. The appeal statement includes new evidence that should not be considered in this appeal.

Both the notice for the initial hearing before the Hearings Officer and the notice for the City Council appeal hearing clearly stated that the appeal to City Council would be conducted as an on-the-record review of the Hearing Officer's decision, and further clarified that meant the City Council would not accept or consider new evidence. The appellant, however, has included a substantial amount of evidence in the appeal statement that was not presented on the record of the evidentiary hearing before the Hearings Officer. The attached version of the appeal statement and addendum highlight the new evidence. We do not believe that any of the new evidence, even if true, would support a finding that the applicant has not met its burden of proof that the addition of the proposed parking area to an existing conditional use complies with all applicable approval criteria. Nonetheless, for procedural reasons the applicant requests that the City Council reject and decline to consider the new evidence offered in the initial appeal statement and the addendum. If the City Council were to consider the new evidence, the applicant requests an opportunity and sufficient time to provide rebuttal evidence in response.

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2. **The applicant proposed a parking lot for the sole purpose of providing parking for church staff and community and did not act in bad faith. There is no procedural error in the Hearing Officer's decision.**

In both written submittals and oral testimony during the hearing, the applicant clearly and unambiguously stated that the purpose of the new parking area was to provide off-street parking for church staff and church visitors. The appellant and others during the hearing raised concerns about the potential use of the parking area for overnight camping by homeless individuals. The applicant is not intending to allow overnight camping in the new parking area. In order to provide certainty that is the case, and to avoid claims that additional impacts related to accessory overnight camping should have been considered as part of this conditional use application, the applicant requests the following condition of approval:

Overnight camping as an accessory use shall be prohibited in the new parking lot area.

3. **The proposed parking area is compatible with surrounding residential uses due to the preservation of the majority of trees on the church campus, and any differences caused by necessary tree removal are mitigated through robust landscaping and tree replacement.**

The Hearing officer found that the applicant demonstrated that the proposed parking area will be compatible with adjacent residential developments consistent with PCC 33.815.105.B.2 and .3 through setbacks, extensive landscaping and tree preservation. The appellant contends that that the proposed parking area is not compatible because of the removal of a 33-inch black pine.

The applicant specifically designed the parking area to preserve as many trees as possible while still satisfying the project purpose. However, the location and orientation of existing buildings on the site leaves a limited area on the northeast corner of the church campus for additional on-site parking, and the black pine is located in the middle of the available parking area. A parking design that avoids removal of the black pine is not feasible.

The appellant focuses exclusively on the removal of trees. However, the relevant standards refer to tree preservation, and the applicant is preserving the vast majority of existing trees on the site. Specifically, the applicant is preserving 85% of the on-site trees and 97% of the street trees surrounding the site. The applicant is also preserving 71% of the on-site trees at or exceeding 12-inches in diameter, including four large, mature black pines that are between 22-inches and 28-inches in diameter.

4. **The landscaping surrounding the parking area satisfies the required landscaping standards and strikes an appropriate balance between visual buffering and safety considerations.**

The applicant has proposed increased setbacks in areas and a greater number of interior parking shrubs than is required by the code to mitigate the visual impact of the parking area on surrounding residents. The number and size of the perimeter landscaping, however, is entirely consistent with the L2 standard. Additionally, the applicant's landscape architect testified at the initial hearing that the shrubs would have some visibility between each individual plant based upon spacing.

The appellant raises concerns about potential safety issues created if pedestrians and residents cannot view activities in the parking lot. As provided above, the applicant is not intending to allow

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overnight camping in the new parking area and has requested a condition of approval to confirm that position. While we believe that the landscaping plan strikes an appropriate balance between visual buffering and safety considerations, the applicant would not oppose a condition limiting the height of the shrubs to 3 feet.

5. The on-street parking study demonstrates that the new off-street parking spaces will improve the surrounding on-street parking availability for all neighboring residents and visitors.

The appellant objects to the loss of two on-street parking spaces to accommodate the driveway. However, the Transportation Impact Study (TIS) prepared by Kittelson and Associates, includes an evaluation of the on-street parking impacts. Kittelson evaluated on-street parking supply and demand at three different time periods and concluded that the on-street parking condition would be improved for all residents and visitors within the vicinity of the church as a result of the net increase of 6 off-street parking spaces.

6. The record indicates that the location of the parking area will not have significant adverse impacts on traffic safety.

The appellant raises concerns about traffic safety as a result of the parking area, especially in relation to a traffic diverter located on SE Ankeny Street at the SE 15th Avenue intersection. However, the driveway location for the parking area exceeds the minimum separation standards and will be required to satisfy City sight distance requirements. Additionally, the small parking lot will result in a relatively low number of trips into/out of the access point and will primarily be used during periods of church activities, such as Sundays, events, and in the evenings. Finally, Kittelson identified the traffic diverter in the TIS and concluded that no changes to the existing crash experience are expected and that there are no anticipated impacts on the bicycle system. Based upon the PBOT staff report in the record, PBOT concurs with those conclusions.

For these collective reasons, we respectfully request that the City Council deny the appeal and uphold the Hearing Officer's decision to approve the proposed parking area.

Sincerely,


Rebecca Zorn
Renee France

Attachment

cc: Andrew.Gulizia@portlandoregon.gov

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.

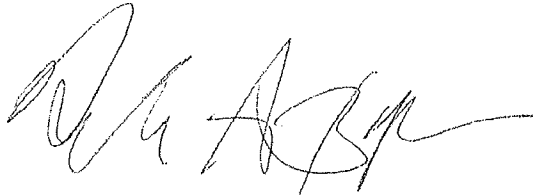
6. 6Criterion (c (2) -- Livability:

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

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

Deborah A. Byrne JD

Land use proposal # 8-13-18 LU 18-174083 CU –

Addendum to Appeal –completes Appeal dated September 26,2018

By Deborah A. Byrne JD

5. This land use proposal fails to comply with the criterion of 33.815.105 (c (1) – 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 ...”

in their application to build the proposed parking lot, Imago Dei Ministries did not disclose, that obscured by tall, thick, shrubs, this specific location has been used by homeless people to sleep outside for years. By building the parking lot and obscuring the view of the lot with new trees and shrubs, the obscured space for outside residence will be enlarged. Given the pre-existing use of this location, it is unlikely that houseless people will stop using the space when it becomes a significantly larger, less visible parking lot. With no outdoor toilet facilities this project will have ‘significant adverse impacts on the livability of nearby residential zoned lands due to: late-night operations/activities, Noise, odors from open defecation and urination, and litter.’

Further Explanation:

the Saint Francis Park –located between Stark and oak, and 12th and 11th, was obscured by berms of dirt that prevented police from looking in to what became a homeless encampment, bicycle theft ring, and protected location for drug sells for decades. As I understand it, the St. Francis Church would not allow the police to go into the park – their private property. Here, this proposal may result in a similar situation – an obscured homeless encampment that cannot be viewed by police and local residents.

The Zoning Code requires the new parking lot to be set back from the lot lines behind 5-foot-wide L2 landscaping buffers containing rows of trees, 3-foot-high evergreen shrubs, and ground cover plants (Zoning Code Sections 33.266.130.G.2 and 33.248.020.B). more landscaped area is proposed than the minimum required (Exhibit C-2). the perimeter of the parking lot would be screened by ten new trees and 3-4-foot-high evergreen shrubs. This location is already dimly lit. The extra screening will impede the ability of police and local residence to view the night-time activity in the lot.

Based on a phone call to the Central Precinct, the Portland police identify approximately thirty-six phone calls to 911 in the last year, for incidence occurring at this East end of applicant’s property. I placed

two of those calls: One was a wellness check for a man having a mental crisis. The other call happened when I was leaving a regular Monday night event at the applicant's church. Walking East on Ash, when I turned South on fifteenth at the exact proposed site, I came upon a woman who was weeping and bloody. She said she had just been beaten by a man she was living with behind the obscured shrubs (mentioned above).

Imago Dei Ministries knows about the homeless activity at this site. As a parishioner of the Church, I have reported it to them on several occasions. One of the neighbors who submitted written objections identifies seeing staff removing feces from the site and has had to negotiate with the Church in regards to a homeless resident who was making racial slurs to her young children.

At the hearing I requested that the homeless issue be considered and the any approval of the project contain the condition that the applicant must allow the police to enter the parking lot to check on night time activities. The hearing officer's decision asserts that, by law, he is not allowed to consider land uses not identified the applicant's application. I've requested a citation to this alleged law, but none has been provided. As I understand it, applicant has not agreed to allow police to enter the obscured parking lot.

The night-time use of this project does not meet the criterion of 33.815.105 (c (1))

The Hearing Officer erred when he did not require the applicant to comply to the condition of allowing Police Officers to enter the proposed parking lot on private property.

6. Second failure to comply with criterion 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 ..."

Prior to providing notice of this land-use application, the applicant has publicly announced their involvement in promoting a quote homeless parking Pilate" wherein churches agree to allow homeless people living in cars, to park in church parking lots. In a KO IN news interview, Ben Sands stated the applicant's interest in providing three parking stalls for homeless car parking. The BDS received no documentation of this intended land use.

This land-use fails to meet the criterion of

as mentioned above in item number five. Given that the applicant does not intend to provide nighttime supervision of this location, and they have not agreed to allow police into the private lot, this is a recipe for disaster.

7. Intrinsic discrimination against the elderly and disabled in the criterion of 33.815.105 (A. - E.):

Title 33.815.105 lacks any criterion specific to the land-use needs of the elderly and people with disabilities. I am legally blind and have a spinal cord injury that limits the use of my hands. My sister who has MS used to visit me on a regular basis and assist me with in-home tasks of daily living. Not all parking spaces are created equally! When land-use decisions are made that cannibalize rare public parking spaces for the private use and greed of developers, disabled residents are cut off from the resources they need to maintain their lives. The dismissive statement that the ever-increasing lack of parking in the inner East side is a quote growing pain quote is an insult to the elderly and people with disabilities.

8. Applicant's land use proposal fails to meet the safety criterion of Title 33 815.105 C. 2: "Livability -- Safety"

the location of the proposed driveway in relationship to traffic being redirected by a unique traffic diverter, will create a traffic safety hazard that could result in bodily harm or death. No traffic safety study has been conducted to determine the probability of harm. Acceptance of this proposal by the city commissioners, without a safety study could result in the City of Portland being liable for a tort claim of negligence.

Explanation:

The applicant proposes building a parking lot at the Southwest corner of the intersection of South East Ankeny Street and Fifteenth Ave, with a driveway approximately fifty feet from the intersection. Ankeny Street is a designated "greenway" – a street that is a bicycle Thorofare. due to the conflict between a high level of bicyclist and a high level of car traffic at this location, the City of Portland built a diagonal concrete, traffic diverter at the intersection, in 2016. As I understand it, the unique diverter has just past it's two-year trial period and is about to be built into a permanent structure.

The diagonal diverter prevents all cars on Ash Str and 15 Ave from traveling through the intersection. All cars are redirected and forced to turn here. Cars traveling east on Ankeny Street have no stop sign and the diverter forces them to turn right (South) onto fifteen Ave, reaching the driveway of the proposed parking lot in approximately fifty-feet. When there is a car that has slowed down or stopped in preparation for entering the parking lot, the stopping distance may be as short as forty-feet. This inadequate stopping distance creates a reasonable probability that cars channeled through the traffic diverter will crash into cars that have slowed down to enter the proposed parking lot driveway.

Further complicating this hazard, this proposal does not include any kind of divider/ barricade between the North and South bound lanes on Fifteenth Ave. This means that North bound cars may cross the South bound lane to enter the driveway, entering into on-bound traffic that has low-visibility and a short distance to stop in.

These factors are exacerbated by the prevalence of speeding cars in this area. Fifteenth Ave. is located midway between twentieth Ave and twelfth Ave, the main North/South bound thoroughfare's. Cars avoid going to these streets by cutting through the proposed residential area while speeding. I've lived in the Buckman Neighborhood for more than twenty years. I can't think of a worse intersection to build this parking lot and driveway than the proposed intersection.

The Hearings Officer at the Department of Development Services erred when he approved this project without a "traffic safety Study". This land use proposal also conflicts with Vision 0, Portland's plan for eliminating all traffic deaths and serious injuries by 2025. An unbiased traffic study needs to be performed that takes into consideration all of the above listed factors, including an analysis of the "real" driver in this neighborhood, not an ideal driver.

City Commissioners have a fiduciary responsibility to promote safety and not make decisions that have a reasonable probability of resulting in a negligence law suit against the City for bodily harm. As I understand it, Portland Auditor Mary Hull Caballero presented an audit on the city's risk management division to the city council on approximately August 30, 2017. She identified that between 2012 and 2016, the City of Portland paid out more than \$eighteen-million (18,00,000.) in legal costs. Of that sum, Portland paid almost \$1.3 million from 2012 to 2016 to resolve claims that people were struck or injured on a city road. The audit found the "city of Portland needs to better promote safety." Approving this land use project without conducting a reliable traffic safety study puts lives at risk and opens the door for the City to be hit with a tort claim of negligence.

Sincerely,

Deborah A. Byrne JD

224 SE 15 Ave.