

**IN THE CITY COUNCIL OF THE  
CITY OF  
PORTLAND OREGON**

**IN THE MATTER OF AN APPEAL OF THE HEARINGS  
OFFICER'S DECISION TO APPROVE A CONDITIONAL  
USE REVIEW FOR A NEW EIGHT-SPACE PARKING LOT  
ON IMAGO DEI MINISTRIES PROPERTY AT 1404 SE ANKENY ST.**

**LU 18-174083 CU**

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**FINDINGS AND CONCLUSIONS**

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**ADOPTED BY THE CITY COUNCIL ON  
NOVEMBER 7, 2018**

**DENY THE APPEAL AND UPHOLD THE HEARING OFFICER'S DECISION TO APPROVE THE  
CONDITIONAL USE REVIEW**

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ANKENY ST.

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FINDINGS AND CONCLUSIONS

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The findings and conclusions of the City Council in this matter are set forth below.

**I. 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 278 W 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

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

**Land Use Review:** Type III, CU – Conditional Use Review

**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.B.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. PROCEDURAL HISTORY**

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

**Public Hearing with Hearings Officer:** The Hearings Officer hearing was opened at 1:29 p.m. on August 13, 2018, in the third-floor hearing room, 1900 4<sup>th</sup> 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.

The following individuals testified at the Hearing’s Officer hearing:  
Andy Gulizia

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

A Decision of the Hearings Officer was signed and mailed on September 12, 2018. The Hearings Officer approved the Conditional Use Review for a new eight-space parking lot on the Imago Dei church property subject to one condition.

**Appeal:** The last date to appeal the Hearing Officer's decision was September 26, 2018 by 4:30 p.m. Deborah A. Byrne timely appealed by submitting a Type III Decision Appeal Form at 2:00 p.m. on September 26, 2018. The appeal form included a written narrative identifying 5 reasons for the appeal and providing a description of the basis for the appeal for 3 of the 5 reasons ("Appeal Statement"). Ms. Byrne submitted an Addendum to Appeal on October 22, 2018 ("Appeal Addendum"). The addendum addressed the remaining 2 reasons and added a 6<sup>th</sup> basis for the appeal.

**City Council Hearings:** Notice of a public hearing before the City Council on appeal of a land use decision by the Hearings Officer was mailed on October 4, 2018. As described in the both the original notice of a public hearing dated July 19, 2018 and in the notice of a public hearing before the City Council on appeal, the appeal hearing was an "on-the-record" hearing. Therefore, the City Council was directed to decide the appeal based upon the evidence in the public record that was available to the Hearings Officer and not to consider new evidence. The scope of the City Council's review is addressed further below.

The City Council held a public hearing on the appeal on October 25, 2018 at 2:30 p.m. in the City Council Chambers. Following a presentation by Andy Gulizia with the Bureau of Development Services ("BDS"), Ms. Byrne provided testimony as the Appellant. Ms. Byrne also provided rebuttal testimony. There was no other testimony provided in support of the appeal. Renee France and Chris Brehmer provided testimony on behalf of the applicant, the principal opponent of the appeal. Ms. France also submitted written testimony prior to the hearing on behalf of the Applicant. There was no other testimony in opposition to the appeal. Bob Haley, a representative of the Portland Bureau of Transportation ("PBOT") answered a question posed by a Commissioner following testimony from the appellant and the applicant's representatives. Following the testimony, the City Council voted 4 to 0 to tentatively deny the appeal and uphold the Hearing Officer's decision to approve the proposal. The

City Council directed staff to prepare findings consistent with their tentative decision.

The City Council considered the findings at a public meeting on November 7, 2018 at 10:50 a.m. The City Council approved these final findings and conclusions at that time.

**New Evidence:** As noted above, the hearing before the City Council was noticed as an on-the-record hearing. However, both the Appeal Statement and the Appeal Addendum contained evidentiary statements that were not included in the record of the Hearing Officer. The Appellant also provided testimony during the City Council Hearing that constituted new evidence. The Applicant provided written testimony to the City Council that identified the new evidence in the Appeal Statement and Appeal Addendum through highlighted sections and requested that the City Council not consider the new evidence pursuant to the on-the-record review. During oral testimony at the City Council hearing, the Applicant's representative also identified new evidence included in the Appellant's oral testimony, and asked that it not be considered or that the Applicant be provided for rebuttal evidence if it were considered.

During the City Council Hearing the Appellant testified that she is visually impaired and that she did not have access to land use files before the deadline of August 20, 2018, for new written evidence following the Hearings Officer Hearing. However, the Appellant testified orally at the Hearings Officer Hearing and submitted written argument and evidence to the Hearings Officer in a document dated August 20, 2018. (Exhibit H-15). The Appellant did not file a request for an extension of the deadline for the close of the evidentiary record. Therefore, the City Council finds that the Appellant was provided necessary notice of the hearing and deadlines, and effectively participated in the public process.

The City Council finds that the new evidence submitted into the record of the City Council Hearing was not allowed. However, as discussed below, the City Council finds that even considering the improperly submitted new evidence included in the Appeal Statement, the Appeal Addendum, and in the Appellant's oral testimony, the Applicant's proposal satisfies all relevant approval criteria.

### **III. 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>th</sup> Avenue, and SE 15<sup>th</sup> 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 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 13<sup>th</sup> 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 13<sup>th</sup> 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.

**Agency Review:** A “Request for Response” was sent to City agencies on July 2, 2018. The following bureaus 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).
- 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, H.5, 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 Hearings Officer Hearing in opposition to the application. Ms. Byrne, the Appellant, also testified at the appeal hearing in opposition to the application and in support of the appeal.

The Hearings Officer determined that testimony during the initial hearing 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 City Council concludes that the Appellant raised items 1, 2, 4, 5, and 7 from the list above and three new issues in the Appeal Statement and Appeal Addendum. The first two are related claims of procedural error and bad faith in relation to the possibility of the parking area being used by the homeless. The third new claim was a general claim of intrinsic discrimination due to a lack of a conditional use criterion specific to the land use needs of the elderly and people with disabilities. The City Council finds that new issues may not be considered in an on-the-record hearing. In the alternative, the City Council finds that the first two issues are sufficiently related to item 7 in the Hearing Officer’s list and are therefore addressed below. The City Council further finds that even if it were to consider the third new issue, it is not related to a relevant approval criterion.



The City Council addresses issues that are related to relevant approval criteria in the findings below. However, the City Council agrees with the Hearings Officer that not all of the issues raised by opponents, and summarized above, were related to relevant approval criteria. The Hearings Officer found that there is no relevant approval criterion that requires an applicant, in the conditional use process, to demonstrate “need”. The City Council agrees with that conclusion.

The Hearings Officer decision states that 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 City Council agrees and finds that it is not allowed, by Oregon land use law, to speculate or anticipate matters not directly referenced by the application. The Hearings Officer further found that there was no reference in the Applicant’s proposal related to a possible homeless encampment. Therefore, the Hearings Officer did not consider opposition testimony and argument related to the possible impacts from a possible homeless encampment. The Appellant argued in the appeal that the applicant acted in bad faith by failing to disclose an intent to use the new parking lot for camping by the homeless, and the Appellant submitted new evidence related to a news story where a representative of the Applicant discussed use of church parking for overnight camping by those experiencing homelessness. As discussed above, the details of the news interview constitute impressive new evidence. However, even if the City Council considered the evidence presented on the news report, it is not evidence that the Applicant acted in bad faith or that the findings of the Hearings Officer were flawed. Instead, as pointed out during the City Council hearing by Commissioner Amanda Fritz, car camping would currently be permitted on the existing parking lot on the church campus. Furthermore, the Applicant’s representative clarified at the City Council Hearing that the purpose of the application for the new parking lot was to provide parking for church employee’s and visitors. The Applicant requested a condition of approval that would prohibit overnight camping on the new lot as an accessory use. However, the City Council found that the condition was not necessary in order to find that the proposed parking lot satisfies all applicable approval criteria and declined to impose the requested condition.

Applicant did not propose general public use of the parking lot located on the Applicant’s private property. The Hearings Officer found that he has no authority to impose a public use requirement upon the Applicant’s private property, and the City Council concurs.

While some of the public comments to the Hearings Officer requested that alternative locations for the parking lot be considered, the Hearing Officer and City Council are required to review the proposal as submitted by the Applicant rather than consider alternative parking lot proposals.

Finally, the third new issue identified by the Appellant in the Appeal Addendum is not a claim that the application does not comply with an applicable standard or a claim of procedural error. Instead it is a complaint about the text of the Zoning Code – specifically, that the Conditional Use approval criteria in Zoning Code Section 33.815.105 do not specifically reference the needs of the elderly and people with disabilities. The City Council finds that a challenge to the code language is not relevant in the context of this quasi-judicial land use decision. Therefore, the City Council finds that the third new item raised by Ms. Byrne is not relevant to its decision in this appeal.

## **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:

1. The number, size, and location of other uses not in the Household Living category in the residential area; and
2. 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 City Council agrees 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 16<sup>th</sup> 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 City Council 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 City Council 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 City Council finds the proposal would not lessen the residential appearance and function of the neighborhood by increasing the proportion of nonresidential uses. The City Council 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 City Council finds approval criterion B.1 is not applicable.
2. 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
3. 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.B). 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 interior 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. In written testimony Zimmerman, in Exhibit H.9, disputed that three of the trees were Vine maples. The Applicant, in its final argument to the Hearings Officer (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 noted 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. The City Council concurs.

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 of the Hearing Officer hearing (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. The Appellant also identified removal of the 33-inch Black pine as a basis for the appeal in the Appeal Statement. Opponents argued that removal of the mature 33-inch Black pine tree would eliminate shade and the aesthetic benefits of the tree and would create significant negative impacts upon the immediate neighborhood. Opponents (Exhibit H.18, Zimmerman Hearing testimony, and Appeal Statement) 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 City Council concurs with the Hearings Officer's interpretation of 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 Appellant also specifically cited 33.815.105.B.2 in section of the Appeal Statement that addresses tree removal. The City Council 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 City Council is 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 City Council 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 City Council 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.

At the Hearing Officer Hearing, BDS staff noted that the Portland Tree Code at Title 11 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.

At the Hearing Officer Hearing BDS staff concluded that requiring the Applicant to plant larger trees is not necessary because the Applicant's landscaping proposal exceeds 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."

At the City Council Hearing the Appellant raised questions about what constitutes the site for purposes of the tree preservation percentages. The City Council notes that "site" is generally defined at PCC 33.910.030 as an ownership. Therefore, in this case, the entire Imago Dei campus meets the definition of a site.

The City Council finds that there is no Portland City Code ("PCC") requirement that trees removed must be replaced by trees of similar size. Exhibits A.8, A.9, and C.2 provide the tree removal and tree protection plan, landscape details and landscape plan, and Urban Forestry review. Based upon those exhibits, the City Council finds that the Applicant's landscape plan, including the removal of trees and planting of new trees, meets Title 11 requirements. The City Council finds the Applicant's landscaping plan exceeds PCC requirements. The City Council 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 City Council 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 City Council finds criterion B.2 met. The City Council also finds that the Applicant's landscape plan mitigates differences, if any, in appearance through extensive planting of shrubs and trees. Therefore, the City Council finds criterion B.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:** Based upon the application and the evidence in the record, the City Council finds that the proposed parking area will not have a significant impact on the livability of nearby residential zoned lands due to the factors identified in C.1. The City Council quotes and adopts the BDS staff findings, 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 8 parking 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.

#### 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, H.17, Appeal Statement and Appeal Addendum). The City Council finds that the Applicant's proposal does not mention a homeless encampment, and the Applicant's representative testified that the purpose of the application is for parking for church staff and visitors. As noted previously, the City Council 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 comments in the *Neighborhood Review* section above).

The City Council 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 City Council 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 City Council 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 City Council cannot 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. The Applicant further clarified that the purpose of the parking lot is for parking for church employees and visitors in testimony before the City Council.

The City Council 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.

Project opponents and the Appellant generally identified two distinct safety issues under this criterion. The first was that perimeter landscaping could provide a place for people to hide and would limit visibility of activities within the parking area. However, as noted by the Applicant, the number and size of the perimeter landscaping 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. In other words, the shrubs will not be so tall, dense, or continuous to create a safety concern for the pedestrians walking on the other side. Therefore, the City Council agrees with the Applicant that the landscaping plan strikes an appropriate balance between visual buffering and safety considerations. The City Council finds that perimeter landscaping is required and will not have significant adverse impacts on nearby residentially zoned lands due to safety issues.

Project opponents and the Appellant also raised safety concerns related to the location of the driveway and claimed that the driveway serving the new parking lot will create unsafe condition for cars and bicycles traveling on 15<sup>th</sup> Avenue. The Appellant specifically argued that the traffic safety situation is impacted by a traffic diverter located at the intersection of SE Ankeny and SE 15<sup>th</sup> Avenue, and argued that a separate traffic safety study should be required. However, as the Applicant explained, the driveway location for the parking area exceeds the minimum separation standards and will be required to satisfy City sight distance requirements prior to permit issuance. Specifically, the Applicant's traffic consultant pointed out that the scaled site plans included in the application show that the distance between the corner of

the sidewalk on the southwest corner of the SE Ankeny and SE 15<sup>th</sup> intersection and the northern edge of the driveway curb cut exceeds 60 feet. As Bob Haley from PBOT explained at the City Council Hearing the minimum distance between a driveway and a corner is 25 feet. Therefore, the distance between the corner and the new driveway is more than double the minimum required by code. Additionally, as pointed out by the Applicant and PBOT, 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. Finally, the Applicant's traffic consultant identified the traffic diverter in the Transportation Impact Study ("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. Bob Haley of PBOT also testified at the City Council Hearing in response to questions from the Council that in his professional opinion no additional safety evaluation is needed given the location of the driveway and the size of the parking lot. Based upon the evidence and testimony in the record as a whole, the City Council finds that the location of the driveway for the proposed parking lot will not have significant adverse impacts on nearby residentially zoned lands due to safety issues.

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 City Council finds approval criterion C.2 is met.

#### **D. Public services.**

1. The proposal is supportive of the street designations of the Transportation Element of the Comprehensive Plan;
2. 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). However, 33.815.105.D was not directly identified as an issue in the Appeal Statement or the Appeal Addendum, and the Appellant's only reference to the loss of parking in the appeal documents was a complaint that the code does not include criterion specific to the land use needs of the elderly and people with disabilities. As a result, there were no new arguments related to on-street parking impacts for the City Council to consider in the appeal.

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 TIS, 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 indicated that he reviewed, in detail, the TIS (Exhibit A.2) and PBOT's analysis (Exhibit E.2). The Hearings Officer also indicated that he 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 City Council agrees. The Hearings Officer quoted, in part, sections of the PBOT analysis below:

*“Consistency with the Street Designations*

*Table 1 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 1. Existing City of Portland Transportation System Plan (TSP) Roadway Designations*

<b>Roadway</b>	<b>Traffic</b>	<b>Transit</b>	<b>Bicycle</b>	<b>Pedestrian</b>	<b>Freight</b>	<b>Design</b>
<i>SE Ankeny Street</i>	<i>Local Service Traffic Street</i>	<i>Local Service Transit Street</i>	<i>City Bikeway</i>	<i>Local Service Walkway</i>	<i>Local Service Truck Street</i>	<i>Local Street</i>
<i>SE Ash Street</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 13<sup>th</sup> 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 14<sup>th</sup> 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 15<sup>th</sup> 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

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

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:

- (i) the development is limited to result in no net increase in vehicle trips over what is allowed by the existing zoning; OR*
- (ii) 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 Tri-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 Tri-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: 5 AM (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

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

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. At 4 AM on Wednesday of the survey, there were 47 unoccupied on-street parking spaces within the 14 blocks surveyed (i.e., 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 5 AM 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:*
  - 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 1 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.*

- *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 TDM 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 found 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, H.18, and Hearing testimony of Howard, Byrne, and Wirgler). The City Council agrees with that conclusion and adopts the Hearings Officer's findings. 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 City Council agrees with the Hearings Officer and 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:

"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<sup>th</sup>* – at 5 AM (prior to any church-related activities), 8A, 11AM, 2PM, and 8 PM (after typical activities commence).
- *Monday, February 26<sup>th</sup>* -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).

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 15<sup>th</sup> 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 “Mid-week Overnight Demand”) on-street parking spaces do remain available. The City Council 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 City Council finds that the church creates demand for on-street parking.

The City Council agrees with the Hearings Officer that 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 City Council 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 City Council 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 City Council 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.

The City Council finds, based upon the TIS and Exhibit H.18, that the traffic diverter at SE Ankeny and SE 15<sup>th</sup> has the effect of reducing vehicular traffic on SE 15<sup>th</sup>. For the reasons set forth in this section and in the section addressing C.2 above, the City Council 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 City Council 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 City Council finds criterion D.3 is met.

**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 City Council 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."

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 City Council 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 City Council 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.

## **IV. 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. One of the opponents who testified before the Hearing Officer appealed the approval to the City Council. Several issues raised below, as well as three new issues, served as the basis for the appeal.

The Hearings Officer found, based upon the evidence in the record of the Hearings Officer hearing, the Applicant's proposal met all relevant approval criteria. The City Council finds that even if it were to consider new evidence that was included in the Appeal Statement, the Appeal Addendum and in Appellant testimony during the hearing in addition to the evidence in the record before the Hearings Officer, the Applicant has shown that all the applicable approval criteria have been met.

## **V. DECISION**

Deny of the appeal and uphold the Hearing Officer's decision to approve 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 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."

## **VI. APPEAL INFORMATION**

### **Appeals to the Land Use Board of Appeals (LUBA)**

This is the City's final decision on this matter. It may be appealed to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of the decision, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period of this land use review. You may call LUBA at 1 (503) 373-1265 for further information on filing an appeal.

**EXHIBITS - NOT ATTACHED UNLESS INDICATED**

- A. Applicant's Statement
  - 1. Applicant's narrative
  - 2. Transportation impact study
  - 3. Stormwater management report
  - 4. Stormwater infiltration test report
  - 5. Shared parking agreements
  - 6. Applicant's letter in response to incompleteness determination letter, received June 26, 2018
  - 7. Public improvements plan
  - 8. Tree removal and tree protection plan
  - 9. Landscape details
  - 10. Civil plans cover sheet and vicinity map
  - 11. Originally submitted civil site plan and grading plan, superseded by Exhibit A-14
  - 12. Originally submitted stormwater plan, superseded by Exhibit A-15
  - 13. Originally submitted erosion control plan, superseded by Exhibit A-16
  - 14. Revised civil site plan and grading plan, received June 26, 2018
  - 15. Revised stormwater plan, received June 26, 2018
  - 16. Revised erosion control plan, received June 26, 2018
  - 17. Revised stormwater memo, received August 1, 2018
- B. Zoning Map **(attached)**
- C. Plans/Drawings
  - 1. Site plan **(attached)**
  - 2. Landscaping plan **(attached)**
  - 3. Full-sized, scalable site plan
  - 4. Full-sized, scalable landscaping plan
- D. Notification Information
  - 1. Request for Response
  - 2. Posting letter sent to applicant
  - 3. Applicant's statement certifying posting
  - 4. Mailing list for Notice of Public Hearing
  - 5. Mailed Notice of Public Hearing
- E. Agency Responses
  - 1. Bureau of Environmental Services
  - 2. Portland Bureau of Transportation
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Police Bureau
  - 6. Site Development Review Section of BDS
  - 7. Life Safety Review Section of BDS

8. Bureau of Parks, Urban Forestry Division
- F. Correspondence
  1. E-mail from Stacey Royce and Adnan Kadir, received July 22, 2018
  2. E-mail from Lauren Creany, received July 30, 2018
- G. Other
  1. Land use application form and receipt
  2. Incompleteness determination letter, dated June 8, 2018
- H. Received in the Hearings Office
  1. 120-Day Deadline Worksheet - Hearings Office
  2. Notice Of A Public Hearing On A Proposal In Your Neighborhood - Gulizia, Andrew
  3. Staff Report and Recommendation to the Hearings Officer - Gulizia, Andrew
  4. 8/3/18 Email from Adnan Kadir - Gulizia, Andrew
  5. 8/13/18 Email from Mona Schwartz - Gulizia, Andrew
  6. 8/12/18 Email from Loran & Cathy Lamb-Mullin - Gulizia, Andrew
  7. 8/13/18 Email from Neil Howard (2 pages) - Gulizia, Andrew
  8. 8/13/18 Email from William Bourget (3 pages) - Gulizia, Andrew
  9. Written testimony - Zimmerman, Karla
  10. Record Closing Information - Hearings Office
  11. 8/20/18 Email from Karla Zimmerman (4 pages) - Gulizia, Andrew
  12. 8/20/18 Email from Karla Zimmerman (7 pages) - Gulizia, Andrew
  13. 8/20/18 Email from Karla Zimmerman (6 pages) - Gulizia, Andrew
  14. 8/120/18 letter from Eric Robertson - Byrne, Debra Ann
  15. 8/20/18 letter (4 pages) - Byrne, Debra Ann
  16. 8/20/18 letter - Byrne, Debra Ann
  17. Letter (duplicate attached) - Hoffman, Samantha
  18. Photograph with written statement (Fax duplicate attached) - Wirgler, Christopher
  19. Undated Letter to Gulizia and City Counsel from William Bourget - France, Renee
  20. Letter dated 8/27/18 Applicant Final Argument - France, Renee
  21. 9/11/18 letter to Rebecca Esau with attachments - Byrne, Debra Ann
    - **Submitted After the Record Closed**
    - a. 9/11/18 letter (2 pages) - Byrne, Debra Ann - **Submitted After the Record Closed**
    - b. Chase Statements (8 pages) - Byrne, Debra Ann - **Submitted After the Record Closed**
- I. Received After the Hearings Officer Decision
  1. Appeal Submittal
  2. Appealed Hearings Officer Decision
  3. Request for Extension of 120-Day Review Period

4. Notice of Appeal Hearing
5. Addendum to Appeal Submittal, submitted October 22, 2018
6. Letter from Applicant to City Commissioners, submitted October 24, 2018