



Portland City Auditor

Hearings Office

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www.portlandoregon.gov/hearings fax: 503.823.4347



## DECISION OF THE HEARINGS OFFICER

### I. GENERAL INFORMATION

**File Number:** 18-190331 CU (Hearings Office 4180032)

**Applicant:** Peter Finley Fry  
303 NW Upton Terrace #1B  
Portland, OR 97210

**Owner's Agent:** Elliott Mantell  
Everett House Community Healing Center  
2927 NE Everett Street  
Portland, OR 97232

**Property Owners:** Elliott Mantel (owner at 2917 NE Everett)  
2917 NE Everett Street  
Portland, OR 97232

E2 Healing Center LLC (owner at 2927 NE Everett)  
2927 NE Everett Street  
Portland, OR 97232-3248

Flanders House LLC (owner at 2926 NE Flanders)  
2926 NE Flanders Street  
Portland, OR 97232

**Hearings Officer:** Gregory J. Frank

**Bureau of Development Services (BDS) Staff Representative:** Mark Moffett

**Site Address:** 2917 and 2927 NE Everett, 2926 NE Flanders Street

**Legal Description:** BLOCK 10 E 10' OF LOT 2 LOT 3, HAWTHORNES 1ST ADD; BLOCK 10 LOT 10, HAWTHORNES 1ST ADD; BLOCK 10 LOT 11, HAWTHORNES 1ST ADD

**Tax Account Numbers:** R367800970, R367801050, R367801060

**State ID Numbers:** 1N1E36CA 06400, 1N1E36CA 06900, 1N1E36CA 06800

**Quarter Section:** 3033

**Neighborhood:** Kerns

**Business District:** None

**District Coalition:** Southeast Uplift

**Zoning:** R5 (Single-Dwelling Residential 5,000 base zone)

**Land Use Review:** Type III, CU (Conditional Use Review)

**BDS Staff Recommendation to Hearings Officer:** Approval with conditions.

**Public Hearing:** The hearing was opened at 1:30 p.m. on November 26, 2018, in the third floor hearing room, 1900 SW 4<sup>th</sup> Avenue, Portland, Oregon, and was closed at 5:16 p.m. The record was held open until 4:00 p.m. on December 10, 2018 for new evidence; until 4:00 p.m. on December 21, 2018 for rebuttal to the new evidence; and until 4:00 p.m. on December 28, 2018 for the Applicant's final rebuttal. The record was closed at 4:01 p.m. on December 28, 2018.

**Testified at the Hearing:**

Mark Moffett  
Peter Finley Fry  
Elliott Mantell  
Michael Ard  
Robert Jordan  
Kori Rush  
Karen Abrams  
Christopher Cournoyer  
John Bradley  
Daniella Kramer  
Bob Czimbab  
Kim Manze  
Bob Blaze  
Alan Wilson  
Michelle Tuffiaf (Shelzey)  
Shannon (Six) Hotchkiss  
Merissa Dorry  
Aaron Cardella  
Lucas Littlefield  
Anne Pernichele  
John Hauben  
Greg Russinger

Dane Esethu  
Herschel Colbert  
Jonathan Akers  
Judith Harrison  
Bret Carlos  
Leviticus Cole  
Fred King  
MyLinda King  
Patricia Neighbor

**Brief History of 2917 and 2927 NE Everett and 2926 NE Flanders ("Subject Property"):** David J. Slawson ("Slawson"), as early as 1980 and/or 1981, provided "massage therapy and the use of his sauna and hot-tub[e] as permitted by his home occupation permit" (See Exhibit G.6, page 2). The history section of Exhibit G.6 (page 2) goes on to say that "increased clientele, however, necessitated an increase in staff and the applicant found he was thus operating beyond the limits of his home occupation permit. Therefore, he [Slawson] initiated a conditional-use request in February, 1981." This permit request (CU 32-81) was approved, subject to "a list of conditions." The conditions included, among others, a one-year term and a limit of 15 non-staff people could use the facilities at any one time (included all three houses at the Subject Property), operating hours, a requirement of 20 off-street parking spaces, 10 bicycle parking spaces at the Subject Property, adherence to City noise standards and [Slawson] payment of half the cost of monthly bus passes for employees and "no new construction shall take place."

Slawson, in approximately 1982, submitted another request for conditional use approval at the Subject Property. Slawson requested a "permanent conditional use approval to continue sauna, hot-tub and massage therapy services" and also "relaxation and health counseling and a 'tea house' food service" (Exhibit H.6, page 1 of the Staff Report). Slawson also requested that "limitations to the number of people servable per hour be omitted."

The City of Portland Planning Bureau, Land Use Section, provided comments related to Slawson's request for approval of a variance to the off-street parking standards (Exhibit G.6, page 11 of the Staff Report). The author of the CU 26-82 staff report stated that the City of Portland Bureau of Planning Land Use Section:

"recommends denial, stating that what began as a local community service is increasing in scale to provide service on a metropolitan-wide basis. They [Bureau of Planning Land Use Section] state that this poses a threat to the neighborhood. They [Bureau of Planning Land Use Section] believe that the center's own success dictates that it relocate to allow expansion rather than intensifying activity in an R5 neighborhood." (Exhibit G.6, page 11 of the Staff Report.)

The CU 26-82 Hearings Officer, despite the above-quoted Bureau of Planning Land Use Section comments and without explanation, granted/approved Slawson's CU 26-82 request for a

conditional use<sup>1</sup> and variances (including off-street parking located up to 300 feet from the Subject Property) subject to a number of conditions. The CU-26-82 conditions included the following:

- "A. No more people may use this facility (including all activities in all 3 houses) than can be accommodated without creating undue noise or disturbance to surrounding residences.
- B. A total of at least 30 off-street parking spaces shall be provided within 300 feet of the site for the exclusive use of this club, as evidenced by a written lease or another document in a form acceptable to the City Attorney's Office.
- C. Hours of operation shall be limited to 8:00 a.m. through 11:00 p.m.
- D. All property shall remain in a residential character at all times so that it may revert to complete residential use without major remodeling.
- E. All applicable City and State Codes shall be met at all times.
- F. Applicant's shall pay one-half the cost of monthly bus passes for all employees who take the bus to or from this facility on a regular basis. Transit and parking information shall be provided all users at the reception area.
- G. All massage therapists shall have active State licenses.
- H. At least 20 secure bicycle parking spaces shall be provided on site.
- I. No new exterior construction shall take place.
- J. A Building Permit or an Occupancy Permit must be obtained from the Bureau of Buildings, Room 111, City Hall, 1220 S.W. 5<sup>th</sup> Avenue, 248-4241, before carrying out this project in order to assure that all conditions imposed here and all requirements of the pertinent Building Codes are met."

**BDS Staff Description of the Applicant's Current Proposal:** The Hearings Officer quotes the BDS Staff Report (Exhibit H.2, pages 2 and 3) titled "Proposal" in its entirety below:

*The Everett House Community Healing Center ("Everett House") operates in three converted homes in the Kerns Neighborhood of Northeast Portland, and has operated under the same conditional use permit since 1982. A non-profit Community Service use, Everett House requires a conditional use to operate in the single-dwelling R5 base zone. Among other conditions of approval, the 1982*

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<sup>1</sup> Staff Report (Exhibit G.6) states Applicant's request, in CU 26-82, as follows:

"Applicant requests permanent condition use approval to continue sauna, hot-tub and massage therapy services. The community club will also include relaxation and health counseling and a 'tea house' food service. They also request that limitations to the number of people servable be omitted. Variances will be necessary from off-street parking requirements, maximum lot coverage and yard requirements of the zoning code as follows to increase the permitted lot coverage from the allowable 30% to 68%; to reduce the front yard on Everett Street from the required 15 feet to 10-1/2 feet; and to reduce the side yards east from the required 13 feet to 7-1/2 feet for the Flanders Street building and 9-1/2 feet for the astern Everett Street building; and to increase the allowed distance from a conditional use to off-site parking from 100 feet to 300 feet."

*conditional use review (case file CU 26-82) imposed a requirement in condition B that reads "a total of at least 30 off-street parking spaces shall be provided within 300 feet of the site for the exclusive use of this club, as evidenced by a written lease or another document in a form acceptable to the City Attorney's office".*

*Until recent years, although the applicant suggests it was rarely used, the site maintained access via lease to a 30-space parking lot nearby on NE 28<sup>th</sup> Avenue at a medical clinic site. That former medical clinic and the associated parking have now been demolished, and a redevelopment project with 118 apartments and ground floor retail is now under construction at the former parking lot site (2821 NE Everett). After neighborhood complaints about parking impacts and the loss of the parking lot were made to the city several years ago, the site has been under Code Compliance enforcement efforts due to the loss of the required off-site parking for 30 cars (15-169146 CC).*

*To remedy the violation created by the loss of off-site parking spaces, the applicant has proposed elimination of condition B from CU 26-82, eliminating any vehicle parking requirements for this use. No changes to the hours of operation, community services, or staffing and guest levels are proposed at this time. No on-site parking is proposed, but the site does maintain a single residential driveway that is approximately 8'-0" wide by 80'-0" deep for the former house at 2926 NE Flanders, as shown on the submitted site plan.*

*The applicant has also requested changes to condition I regarding on-site construction. Existing and proposed construction language is as follows:*

- (Existing) I. No new exterior construction shall take place; and*
- (Proposed) I. No new exterior construction shall take place that would require a commercial building permit or increase the footprint of our buildings for commercial purposes.*

*Staff suggested during the Pre-Application Conference that the applicant also consider changes to condition of approval A which has no clear or enforceable limit on the number of guests and employees at the facility. Staff also suggested the applicant request deletion of condition G which requires State licenses for massage therapists, as this condition is redundant of state-level requirements and is not properly regulated or policed via City of Portland land use procedures. The applicant has not proposed any changes to conditions A or G, but these and other items may be considered by staff during the analysis as "clean-up" measures.*

*Community Service uses in the R5 zone require a conditional use review. Modification of prior conditions of approval requires re-consideration through the same procedure of land use review that was used to impose the conditions in the first place. Since the original 1982 conditional use approval under CU 26-82*

*occurred through the Type III procedure, and modifications to resulting conditions of approval are proposed, the applicant has requested this Type III Conditional Use Review.*

**Approval Criteria:** In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are:

- **33.815.105.A-E**, Conditional Use approval criteria for Institutional and Other Uses in Residential and Campus Institutional Zones; and
- Because the criteria listed above include unacknowledged land use regulations, this proposal must comply with applicable **Statewide Planning Goals**. The Statewide Planning Goals may be viewed at [http://www.oregon.gov/LCD/pages/goals.aspx#Statewide\\_Planning\\_Goals](http://www.oregon.gov/LCD/pages/goals.aspx#Statewide_Planning_Goals).

## II. ANALYSIS

**Site and Vicinity:** The Subject Property includes three adjacent former single-family residences in the Kerns neighborhood, located on both NE Everett and Flanders Streets between NE 29<sup>th</sup> and 30<sup>th</sup> Avenues. Two of the former homes, both originally built in 1906, face south towards NE Everett Street. The other home faces north towards Flanders Street, originally built in 1904, and is slightly larger than the other two properties with 6,000 square feet of land area (versus the 5,000 square feet each for 2917 and 2927 NE Everett). Altogether the Subject Property is 16,000 square feet in size.

The two-story Edwardian-era structures on the Subject Property all have basements and are similar to much of the older single-family housing stock in the surrounding neighborhood. These older residences are typical for the neighborhood, which also includes small apartments and plex buildings, institutional uses, and commercial structures. The rear yards of the former residences are all connected to each other but divided into individual courtyard-like spaces. The area behind the building at 2917 NE Everett is largely open space and grass with plantings, although a temporary gazebo structure has been placed atop the grass, and a tarp-covered carport-like structure has been placed within a fenced area immediately east of the house. The area behind 2927 NE Everett is fenced and enclosed as a separate space and includes the primary outdoor hot tubs and a meditation courtyard. Fencing and the teahouse structure separate the rear yard behind the former home at 2926 NE Flanders from the rest of the Subject Property and this area is generally open and landscaped, without the continuous fenced or private character of the yard areas behind the homes facing NE Everett: the yard behind the Flanders building is generally open to and has direct access from the street, unlike the more enclosed and fenced areas behind the Everett-facing buildings. Immediately east of the Subject Property are located two side-by-side duplexes built in the 1970's and a vacant lot is located directly south across the street from 2927 NE Everett Street.

All the immediately-abutting sites are exclusively in residential use, as is most of the remainder of the neighborhood when the sites are located off the busy commercial streets of Burnside, 28<sup>th</sup>,

and Glisan. A church campus, built in 1960, is located on the block just west of the Subject Property (Alongsider Church). A mixed-use development project is under construction on a large parcel at the corner of NE 28<sup>th</sup> Avenue and Everett Street on the site where off-street parking for this use was previously located.

The abutting right-of-way in both NE Everett and Flanders Streets is improved with a paved two-way roadway, on-street parking, and planting strips with street trees between the curbed roadway and paved public sidewalks on both sides of the street. Mature street trees are located in the parking strips. The parking strip in front of the former home at 2927 NE Everett Street includes an abandoned curb cut which does not provide access to any on-site parking or vehicle area. Both abutting streets are classified as Local Service Streets for Bicycle, Pedestrian, Transit, and Traffic designations in the Transportation Element of the Comprehensive Plan.

**Zoning:** The R5 zone is intended to provide land for single-dwelling housing and to provide housing opportunities for individual households. Use regulations for the R5 zone allow for some non-household living uses but not to such an extent as to sacrifice the overall image and character of the single-dwelling neighborhood. Community Service uses are of a public, nonprofit, or charitable nature and offer a local service to people of the community. Community Service uses fall within the Institutional Use category and new uses require prior conditional use approval to locate on a site in the R5 zone. Different development standards apply to institutional uses versus single-family homes and the institutional standards are intended to maintain compatibility with, and limit, the negative impacts on surrounding residential areas.

**Land Use History:** City records indicate two prior land use reviews at the Subject Property. These prior cases include the following:

- *CU 32-81* - Original (1981) conditional use approval that was conditioned to expire after one year, with the original applicant responsible to seek renewal prior to that time, limiting club attendance to 15 non-staff persons at any one time, limiting hours of operation to 8:00 a.m. through 11:00 p.m., and requiring 20 off-street parking spaces, among other requirements (decision language and conditions included as Exhibit G.7). Variances to lot coverage, setbacks, and distance to off-site parking were also approved but expired with the conditional use; and
- *CU 26-82* - The most recent (1982) conditional use review for the site, granting the conditional use subject to conditions. Variances were also granted.

**Agency Review:** A "Request for Response" was mailed on October 26, 2018. The following bureaus have responded:

- The *Bureau of Environmental Services* ("BES") reviewed the proposal and responded with information on sanitary sewer service and stormwater disposal. Exhibit E.1 contains staff contact and additional information.

- The *Development Review Section of Portland Transportation* ("PBOT") reviewed the proposal and responded with findings for Conditional Use approval criterion D.1-2. Exhibit E.2 contains staff contact and additional information.
- The *Water Bureau* reviewed the proposal and responded without comment or concern (Exhibit E.3).
- The *Fire Bureau* reviewed the proposal and responded without comment or concern regarding the availability of public services for fire protection, etc. (Exhibit E.4).
- The *Police Bureau* has reviewed the proposal and responded that police can continue to provide adequate public safety services to the Subject Property. Exhibit E.5 contains staff contact and additional information.
- The *Site Development Section of BDS* reviewed the proposal and responded with no comments or concerns regarding the proposal (Exhibit E.6).
- The *Life Safety Review Section of BDS* reviewed the proposal and responded without comment or concern (Exhibit E.7).

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on October 29, 2018. Neighborhood comments were received by BDS staff prior to the November 26, 2018 hearing and by the Hearings Officer at the hearing and during the open-record period. Comments received included many in support of the application and also many in opposition. Where relevant to approval criteria, the Hearings Officer will address the neighborhood comments in the findings below.

## ZONING CODE APPROVAL CRITERIA

### 33.815.105 Institutional and Other Uses in Residential and Campus Institutional Zones

These approval criteria apply to all conditional uses in R and campus institutional zones except those specifically listed in sections below. The approval criteria allow institutions and other non-Household Living uses in residential and campus institutional zones that maintain or do not significantly conflict with the appearance and function of residential or campus areas. Criteria A through E apply to institutions and other non-Household Living uses in residential zones. Criteria B through E apply to all other conditional uses in campus institutional zones. 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

**Findings:** BDS staff defined the surrounding “residential area,” per this approval criterion, to include the residentially-zoned properties within approximately two to three blocks of the Subject Property. BDS staff concluded that for this application the “residential area” included residentially-zoned properties bound by 27<sup>th</sup> Avenue to the west, NE Hoyt Street to the north, NE 31<sup>st</sup> Avenue to the east, and NE Couch Street to the south. The Hearings Officer finds that the majority of the land immediately-abutting both NE Glisan and NE 28<sup>th</sup> Avenues inside these boundaries is commercially-zoned and may not be considered in this analysis (see Exhibit B, Zoning Map). The Hearings Officer could not find, in the record of this case, any opposition to the BDS map description of the surrounding “residential area.”

The only other non-residential uses in the BDS described “residential area” are the church building located one block to the west of the Subject Property on the west side of NE 29<sup>th</sup> Avenue between Everett and Flanders Street (Alongsider Church), as well as a charter school one block south of the site at the southeast corner of NE 29<sup>th</sup> and Davis (Pacific Crest Community School).

The proposal does not propose to alter the number, size or location of “other non-residential uses in this area.” The Hearings Officer finds this approval criterion is met.

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

**Findings:** The Hearings Officer found the interpretation and application of this approval criterion, in this case, to be challenging. Portland City Code (“PCC”) 33.815.105 A is directed to the “proportion of household living uses” in an area. Theoretically, this approval criterion protects residential areas from an oversaturation of non-residential uses. This approval criterion asks whether or not the proposed use(s), along with other non-household uses in the area, significantly lessens the appearance and function of the residential area. PCC 33.815.105 A.1 is clearly directed to the number, size, and location of the proposed non-household use and other non-household uses in the area. As noted above, the Hearings Officer found the number, size, and location of the proposed non-household use and other non-household uses in the area will be the same irrespective of the decision in this case. However, PCC 33.815.105 A.2 is, as currently drafted, focused on the “intensity and scale of the proposed use” and the “intensity and scale” of other non-household uses in the area.

The analysis of PCC 33.815.105.A.1 requires the simple counting of non-household living uses in the area, including the Applicant’s proposal, and based upon that count,

determining whether or not the quantity of non-household uses (including the proposal) significantly lessens the appearance and function of the area. The Hearings Officer finds that to demonstrate PCC 33.815.105.A.2 is met requires an Applicant must first provide a clear and detailed description of the scope of activities associated with its proposal. Without a detailed description of the scope of activities being proposed by an applicant, a decision maker, such as the Hearings Officer, would not be able to determine the intensity and scale of the proposed use and other (existing) non-household living uses in the area.

BDS staff stated, in the Staff Report (Exhibit H.2, page 6), that “no changes are proposed to the intensity and scale of the proposed use, which continues to fall under the Community Service use category as originally approved in 1982.” (See also Exhibit H.40 – Staff PowerPoint presentation.) The Hearings Officer interprets BDS Staff’s factual and legal argument, with respect to what uses Applicant is proposing in this case, to be that the 1982 conditional (CU 26-82) use permit approval establishes the scope of uses of the Subject Property in Applicant’s current proposal.

The Hearings Officer reviewed the CU 26-82 Staff Report and Hearings Officer’s decision (Exhibit G.6). Over a 16 plus year career as a hearings officer, this Hearings Officer has never criticized another hearings officer decision. However, in this instance, this Hearings Officer cannot remain silent with respect to the written decision issued in CU 26-82. Exhibit G.6, a copy of the Staff Report and Hearings Officer decision in CU 26-82, included a Bureau of Planning Land Use Section staff comment recommending denial because the non-household use of the Subject Property, in 1982, was “increasing in scale” by providing services “on a metropolitan-wide basis.” Planning Staff, in the CU 26-82 Staff Report, went on to say that the increasing scale of non-household use at the Subject Property “poses a threat to the neighborhood” and the non-household use of the Subject Property’s “own success dictates that it relocate to allow expansion rather than intensifying activity in an R5 neighborhood.” The Hearings Officer finds no findings, in Exhibit G.6, to explain why the Planning Staff comments regarding the “threat to the neighborhood” arising from “increasing intensity” at the Subject Property were ignored. This Hearings Officer cannot reverse or otherwise modify the 1982 conditional use permit approval. However, this Hearings Officer can interpret and construe the language in CU 26-82 narrowly.

The Hearings Officer notes that the 1982 applicant sought conditional use permit approval to “**continue sauna, hot-tub and massage therapy services**” and “**the club will also include relaxation and health counseling and a ‘tea house’ food service**” (bolding emphasis added by the Hearings Officer). The Hearings Officer finds that the scope of activities allowed by the 1982 conditional use permit approval should be strictly interpreted and limited by the 1982 applicant’s request as quoted (in bold typeface) in the previous sentence.

The Hearings Officer also takes note of CU 26-82 Condition of Approval A which States, "No more people may use this facility (including all activities in all 3 houses) than can be accommodated without creating undue noise or disturbance to surrounding residences." BDS Staff indicated that Condition A "is vague and unenforceable." The Hearings Officer agrees with BDS staff that Condition A is "vague and unenforceable."

The Hearings Officer agrees with BDS Staff (Exhibit H.2, page 6) that Condition A is not supported by any CU 26-82 findings and that there is no discussion how Condition A would be enforced. The Hearings Officer finds CU 26-82 Condition A does not expand the 1982 applicant's list of uses sought to be allowed at the Subject Property. The Hearings Officer finds CU 26-82 approved the non-household use of the Property to be limited to sauna, hot-tub, message therapy, relaxation and health counseling services, and 'tea house' food service.

The Hearings Officer finds, to the extent that the current proposal includes the use of the Subject Property for sauna, hot-tub, message therapy, relaxation and health counseling services, and "tea house" food service, there is no increase in the intensity in Applicant's current proposal compared to the 1982 conditional use permit approval.

BDS staff stated, in a July 12, 2018 letter to Applicant (the "Incomplete Letter" – Exhibit G.3, page 4), the following:

"The intensity and scale of the use, including an overall description of the times and varieties/intensity of activity at the site, is necessary to review the application. There should be records or information to rely on in providing these details. Our goal is not to tamp down or restrict the use, but only to scope what activity is occurring at the site which requires no parking."

The Applicant, supporters of the application, opponents of the application, and BDS staff all provided descriptions of the current uses of the Subject Property. There appears no dispute, in the record, that the Everett House provides a wide variety of socially relevant services at the Subject Property. The Hearings Officer next addresses the current and/or proposed scope of uses at the Subject Property.

The Applicant provided building site drawings showing the number of rooms/spaces available for conducting services at the Subject Property. The Applicant also provided a listing of services/programs offered at the Subject Property (Exhibit H.77b). The Applicant, in its final evidentiary submission, stated that if the Hearings Officer approved its proposed conditional use request, "the center will have a definitive program, site plan and floor plan." Applicant's services/program listing, as summarized by the Hearings Officer, included the following (the typical use and peak use numbers listed below represent the use of Everett House "at any given time"):

- **Occupancy** (all three buildings) – typical use equals eight to 38 members and peak use equals 65 members

#### **Everett House Buildings**

- **Special Events** (limited to 12 events per year) peak use equals 95 members
- **Neighborhood Outreach** (self-directed relaxation time) – typical use equals zero to two members with a peak use of 15 members
- **Neighbors in Need** (charitable in nature). Including mental health counseling, education, nutrition counseling, yoga, energy chiropractic, hydrotherapies, short and long part-time employment – typical use equals three to six members, peak use equals 15 members
- **Whole Body** (message, chiropractic, acupuncture, counseling, to support healing mission of the center and clear barriers to social engagement) – typical use equals 10 members, peak use equals 20 members
- **Spa** – typical use equals four to six members, peak use equals 12 members
- **Holistic Health Facilities** (steam room, sauna, flotation tank cold plunges, lockers and showers) - typical use equals four to six members, peak use equals 18 members
- **Wellness Education Series** (practitioners donate time/knowledge with neighbors related to strategies for better health and wellness, about nutrition, meditation, mindfulness, energy therapies, sleep, and stress management) – typical use equals zero to two members, peak use equals eight members

#### **Flanders House Building**

- **Community Room** (classes, support groups, workshops and seminars related to learning about healing and self-care) – typical use equals zero to four members, peak use equals 15 to 18 members
- **Tea House** – typical use equals zero to two members, peak use equals six to eight members.

The Hearings Officer, based upon Exhibit H.77b, finds that the Applicant is requesting the Hearings Officer to approve as part of this application, to hold up to 12 Special Events, with a maximum attendance of 95 members, at the Subject Property. The Hearings Officer notes that Special Events were not specifically listed/included in the CU 26-82 conditional use permit approval. The Hearings Officer finds the Applicant's request for up to 12 Special Events per year with a maximum attendance of 95 is a significant expansion of the scope of use at the Subject Property as compared to the specific uses approved by CU 26-82. The Hearings Officer finds the Applicant provided no evidence in the record addressing how the addition of special events at the Subject Property would impact the overall residential function of the residential area.

The Hearings Officer finds the Applicant referenced, in the Whole Body and Neighbors in Need sections of Exhibit H.77, that chiropractic services have been and are planned to be offered at the Subject Property. The CU 26-82 approval permitted sauna, hot-tub, and massage therapy services as relaxation and health counseling. Mantell represented, at the November 26, 2018 hearing, as being a chiropractor who offered chiropractic services at the Subject Property. Testimony was offered by numerous persons, in support of the application, that they visited one of the chiropractic physicians at the Subject Property.

The Hearings Officer takes judicial notice of a definition of "chiropractic." The World Federation of Chiropractic, in 2001, defined "chiropractic" as:

"A health care profession concerned with the diagnosis, treatment and prevention of disorders of the neuromusculoskeletal system and effects of these disorders on general health. There is an emphasis on manual techniques, including joint adjustment and/or manipulation with a particular focus on subluxations."

The Hearings Officer finds that the provision of chiropractic services is not limited to massage therapy and relaxation/health counseling (See also, Exhibit H.53, pages 3 and 4, Exhibit C3 diagram, and H.53c [12/9/87 letter from City to Applicant and 4/15/97 memorandum from Bureau of Buildings to Commissioner Hales' office]). The Hearings Officer finds chiropractic is more closely aligned to the provision of general medical services such as provided in a medical clinic. The Hearings Officer considers the offering of chiropractic services to be a traditional office use (See PCC 33.920.240 A.1). The Hearings Officer finds that to include chiropractic services, when chiropractic services were not clearly and definitively included in the CU 26-82 approval, would be akin to allowing a dentist office, osteopath (DO), or medical doctor (MD) to conduct business at the Subject Property. The Hearings Officer finds the Applicant did not provide substantial evidence in the record addressing the impacts of including multiple chiropractic physicians practicing at the Subject Property upon the overall residential function of the area.

The Hearings Officer finds the Applicant indicated, in the Whole Body use section (Exhibit H.77b), that acupuncture services were proposed to be offered at the Subject Property in the future (See also, Exhibit H.37). The CU 26-82 approval permitted sauna, hot-tub, and massage therapy services as relaxation and health counseling. The Hearings Officer finds the Applicant provided no explanation why acupuncture services should be considered as included in the CU 26-82 conditional use permit approval. The Hearings Officer finds the provision of acupuncture services expands the scope, scale, and uses allowed at the Subject Property under the CU 26-82 approval. The Hearings Officer finds the Applicant provided no evidence in the record addressing the impacts of including acupuncture services at the Subject Property. The Hearings Officer finds there is no evidence in the record to allow the Hearings Officer to assess the impacts of acupuncture services at the Subject property upon the overall residential function of the area.

The Applicant indicated, in the Neighbors in Need section of Exhibit H.77b, that yoga services were proposed to be offered, in the future, at the Subject Property. The Applicant did not describe, in the record, any details related to the offering of yoga services at the Subject Property. The Hearings Officer finds the Applicant provided no explanation why yoga services should be considered as included in the CU 26-82 conditional use permit approval. The Hearings Officer finds the CU 26-82 conditional use permit approval did not reference yoga services being offered at the Subject Property. The Hearings Officer finds the offering of yoga services at the Subject Property expands the scope, scale, and uses allowed at the Subject Property under the CU 26-82 approval. The Hearings Officer finds there is no evidence in the record to allow the Hearings Officer to assess the impacts of yoga offerings at the Subject Property upon the overall residential function of the area.

The Applicant indicated, in the Neighbors in Need section of Exhibit H.77b, that hydrotherapy services are proposed to be offered at the Subject Property. The Applicant did not describe, in the record, any details related to the hydrotherapy services at the Subject Property. The Hearings Officer finds the Applicant provided no explanation why hydrotherapy services should be considered as included in the CU 26-82 conditional use permit approval. The Hearings Officer finds the CU 26-82 conditional use approval did not reference hydrotherapy services being offered at the Subject Property. The Hearings Officer finds the offering of hydrotherapy services at the Subject Property expands the scope, scale, and uses allowed at the Subject Property under the CU 26-82 approval. The Hearings Officer finds there is no evidence in the record to allow the Hearings Officer to assess the impacts of offering hydrotherapy services at the Subject Property upon the overall residential function of the area.

The Applicant indicated, in the Holistic Health Services section of Exhibit H.77b, that flotation tank services are proposed to be offered at the Subject Property (See also Exhibit C.2 basement diagram). The Applicant did not describe, in the record, any details related to the flotation tank services at the Subject Property. The Hearings Officer finds the Applicant provided no explanation why flotation tank services should be considered as included in the CU 26-82 conditional use permit approval. The Hearings Officer finds the CU 26-82 conditional use approval did not reference flotation tank services being offered at the Subject Property. The Hearings Officer finds the offering of flotation tank services at the Subject Property expands the scope, scale, and uses allowed at the Subject Property under the CU 26-82 approval. The Hearings Officer finds there is no evidence in the record to allow the Hearings Officer to assess the impacts of offering of flotation tank services at the Subject Property upon the overall residential function of the area.

The Applicant indicated, in the Wellness Education Series and Community Room sections of Exhibit H.77b, that classes, support groups, workshops, and seminars are proposed to be offered at the Subject Property. It is not clear to the Hearings Officer whether the offering space for classes, support groups, workshops, and seminars for general subjects

is not included in the CU 26-82 approval sauna, hot-tub, or massage therapy uses. The Hearings Officer finds it is less clear whether the offering space for classes, support groups, workshops, and seminars are included within the CU 26-82 approval if the classes relate to relaxation and health counseling. The Hearings Officer finds a reasonable interpretation of CU 26-82 would be that the relaxation and health counseling approval was directed at one-on-one interactions or small group interactions (support groups). The Hearings Officer finds it reasonable to interpret the CU 26-82 approval did not anticipate the regular offering of classes, seminars, and workshops involving 15 to 18 persons (as noted in the Applicant's program description summarized above).

The Applicant and many persons testifying in support of the Applicant's proposal in this case described "new" or "newer" programs being offered at the Subject Property. Aaron Cardella described the offering of space at the Subject Property for the purposes of supporting recovering substance addicts. Herschel Colbert described the Applicant's offering of space at the Subject Property for Jewish support groups. Opponent Fred King described how the Everett House offered "online coupons" for services and that over 5,000 coupons were sold.

The Hearings Officer finds many of the uses listed by the Applicant, in its description of the Everett House program, are allowed by CU 26-82. Offering sauna, hot-tub, and massage therapy services were clearly included as approved uses under CU 26-82. Operating the "tea house" is allowed under CU 26-82. Providing relaxation and health counseling services were also clearly included as approved uses under CU 26-82. Providing space at the Subject Property for Special Events, chiropractic, acupuncture, yoga, hydrotherapy, flotation tank services, and general classes/workshops/seminars not directly related to relaxation and health counseling services are not, in the opinion of the Hearings Officer, uses allowed under CU 26-82.

The Hearings Officer finds it is informative to consider the 1981 conditional use approval (CU 32-81). In that approval (Exhibit G.6, page 2 of the Staff Report), Condition B states that "No more than 15 non-staff people may use the facilities at any one time; this includes all club facilities in all three houses." The Hearings Officer acknowledges that the 1982 approval (CU 26-82), which is most relevant to this decision, intentionally and consciously dropped CU 32-81 Condition B (15 non-staff limitation) in favor of a scale/scope restriction based upon noise impacts (the Hearings Officer found the noise related condition – CU 26-82 Condition A – to be invalid and unenforceable).

The Hearings Officer raises the 15 non-staff limitation, contained in CU 32-81, to give context to the Applicant's program description found in Exhibit H.77b. The Applicant's program description (Exhibit H.77b) states that 65 persons may be at the Subject Property "at any given time." The Applicant's described scale is over four times as many persons as allowed under the CU 32-81 conditional use approval. The Applicant's described request for Special Events attendance (95 persons for 12 special events per

year) is over six times the number of persons allowed at the Subject Property in the CU 32-81 approval. It is worth recalling, at this point, the Bureau of Planning Land Use Section comment (Exhibit G.6, Staff Report page 11) that the Applicant's "own success dictates that it relocate to allow expansion rather than intensifying activity in an R5 neighborhood."

This approval criterion requires analysis of the intensity and scale of the proposed use(s) and of exiting household uses and other uses to determine if the Applicant's proposal significantly lessens the appearance and function of the residential area. The Hearings Officer agrees with BDS Staff that *if* the program and uses permitted by the CU 26-82 conditional use permit are continued unaltered, under the current proposal there would be no additional intensity/scale impacts upon the residential area. However, the Hearings Officer determined that the Applicant's proposal, in this case, does increase the uses, scale of uses, and intensity of uses at the Subject Property as compared to what was approved in CU 26-82. The Hearings Officer finds that neither the Applicant nor BDS Staff provided substantial evidence or analysis in the record describing the impacts of the increased uses, scale of uses, and intensity of uses upon the appearance and function of the residential area. The Hearings Officer agrees with the following BDS recommendation to the Applicant:

"Describe the intensity and scale of the use in tangible ways, specifically the maximum number of staff and guests at the facility at any one time, hours of greater or lesser use, a full description of activities at the site (not on the site plan – in a narrative), etc. We cannot evaluate what the activity is for which no parking is requested without information on the intensity/scale of the activity" (Exhibit G.3, page 2).

The Hearings Officer finds that the Applicant provided a site plan and a general program description (Exhibit H.77b). The Hearings Officer finds there is general evidence in the record describing of a wide variety of programs offered at the Subject Property. The Hearings Officer finds the Applicant provided "typical" and "peak" attendance for various proposed programs to be offered at the Subject Property. The Hearings Officer finds the Applicant did not provide a narrative discussion related to "hours of greater or lesser use" or the "number of staff" present at the Subject Property for various times of day. The Hearings Officer finds the Applicant did not fully respond to BDS Staff's Exhibit G.3 request for use and scale of use programmatic information. The Hearings Officer finds the Applicant provided no discussion or analysis of how the "new" or "expanded" uses (as described by the Hearings Officer above – i.e. special events, chiropractic and acupuncture services, hydrotherapy, and float tank services) can be expected to impact the appearance and function of the residential area.



The Hearings Officer finds the Applicant failed to provide adequate evidence, in the record, to allow for the analysis required by this approval criterion. The Hearings Officer finds, based upon the evidence in the record, that this approval criterion is not met.

**B. Physical compatibility.**

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

**Findings:** There are no identified City-designated scenic resources on the site, as indicated by the absence of any "s" or Scenic Resource Protection overlay zoning on the Official Zoning Maps. Therefore, this criterion does not apply.

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:** This approval criterion requires a proposed facility to remain compatible with the surrounding development in terms of the noted factors, and to mitigate differences in appearance or scale with various mitigation measures. In the original 1982 approval, this approval criterion was addressed through condition D which required the Subject Property to remain "in a residential character at all times so that it may revert to residential use without major remodeling," as well as through condition I which prevented any new "exterior construction" (Exhibit G.6).

The Staff Report findings for this earlier decision (Exhibit G.6) noted a concern about limiting the size and location of the buildings associated with the use to the three houses and two outbuildings that were in place at the time, including the tea house structure at the rear of the 2926 NE Flanders parcel, and a former detached garage behind 2927 NE Everett which is no longer in place. New exterior construction occurred at the Subject Property by creating new "porch" spaces along the south edge of the former tea house building, constructing a small "pump house" structure between the two Everett-facing homes near the therapy pool, and by adding structures on the 2917 NE Everett Street property. The new structures on the 2917 NE Everett Street property include a temporary tarp-covered carport-like structure over the "maintenance storage" area just west of the house, the adjacent "storage" building along the west property line, and a detached temporary summer garden structure identified on the plans as "meditation area." These features appear to have been added to the Subject Property despite the existing condition language of condition I. BDS staff noted, in the Staff Report (Exhibit H.2, pages 7 and 8) that condition I has created serious enforcement challenges in the past. There have been a variety of complaints and enforcement efforts made against the Subject Property over the years since the original approval of the facility in 1982. BDS Staff noted, in Exhibit H.2, that prior enforcement activities include the following:

- *95-002791 CC* – neighbor complaints about office uses and unpermitted construction activity. Case was closed by the City in 1998, after owner documented use remained within Community Service versus Office use category, and after City determined fencing as constructed did not violate condition I of CU 26-82;
- *99-000952 CC and 99-000954 CC* – neighbor complaints about not meeting prior conditions of approval. Cases cancelled with no staff notes soon after creation in July 1999;
- *05-130267 CC* – neighbor complaints about commercial use and lack of required parking. Case was closed as “unfounded” after city investigation showed the use was still Community Service as approved, and because the required off-street parking per condition G of CU 26-32 was still in place and identified in customer materials at the facility;
- *06-132256 CC* – neighbor complaint that Subject Property was operating as a for-profit commercial business, and no longer non-profit in nature as required by the definition of Community Service uses. Case was closed as “owner abated” after Dr. Elliot Mantell provided incorporation papers from the State of Oregon showing that the facility had been re-incorporated as a non-profit entity;
- *07-131083 CC* – neighbor complaint that external construction for fencing and a retaining wall was underway at the Subject Property in violation of condition I of CU 26-82. Case was closed after owner documented with photographic evidence that the retaining wall and fence in question were replacement structures and therefore not considered by City staff as “new exterior construction” per condition I of CU 26-82;
- *11-145403 VI* – structural violation for building a new kiosk in front of the house facing Flanders, as well as a kiln and fire pit in the back of the building. Kiosk structure in front of Flanders house was removed, fire pit was never constructed, and the kiln was determined to be “permit exempt” and therefore not “new exterior construction” per condition I of CU 26-82. Case was closed in December 2012 after kiosk structure was removed from the front yard of the Flanders house and taken off-site;
- *11-197222 VI and 11-197438 CC* – neighbor complaint about unpermitted construction of a new pool. Project turned out to be hot tub replacement, but the project included new mechanical equipment, gas lines, and a drain trap which required construction activity on the Subject Property. After determining that the project was indeed a replacement for an existing hot tub at the Subject Property, the various exterior construction activity associated with the hot tub replacement was deemed by City staff not to be in violation of the language in condition I of CU 26-82, and the violation case was closed; and
- *15-169146 CC* – current, still-active violation case for failing to provide the required off-street parking for the facility per condition B of CU 26-32. Begun after a neighbor complaint in May 2015, this case will remain open until the off-site

parking issue is resolved either through this application or by providing off-street parking elsewhere in the neighborhood per condition B of CU 26-32.

BDS Staff expressed concern with the “no new exterior construction” language in condition of approval I of CU 26-82. BDS Staff concluded, in the Staff Report, that Condition I needed to be changed (Exhibit H.2, page 8). Various construction projects over the years at the facility, including fencing, retaining walls, and hot tub replacement projects, have led to confusion both for neighbors, the Applicant, and City staff in addressing maintenance and construction projects at the site. Under Zoning Code definitions, new “exterior construction” is not defined and could lead to almost any repair or replacement project falling within the definition, depending on the perspective of the person asking the question. The original concern in 1982 was to prevent additional building footprint or floor area expansions to contain the size of the use on the Subject Property, and to ensure that construction at the Subject Property remained in keeping with the overall residential character.

The Applicant proposed to change the condition I language to read as follows:

“No new exterior construction shall take [place] that would require a commercial building permit or increase the footprint of our buildings for commercial purposes. Any work regarding maintenance or repair of our existing facility while not expanding the commercial footprint or for residential purposes shall be permitted if Portland adopts the residential infill project” (Exhibit A.1, p. 6).

BDS Staff, in the Staff Report, concluded that the Applicant’s proposed language used the same “exterior construction” language which is not defined and has led to confusion in the past. The Applicant’s proposed language also referred to “commercial purposes” when the use is not commercial but Community Service. Finally, the Applicant’s proposed language relied on adoption of a legislative project (the “residential infill project”) which is still in the exploratory stage, and which has no direct relationship or nexus to this application. Based on these considerations, BDS Staff proposed different language be used to amend condition I.

In keeping with the original intent to limit building expansions, BDS Staff recommended revised language for condition I should limit building footprint expansions to maintain a residential appearance at the Site. Alterations to existing development which do not expand the floor area or building footprints should be allowed, as should repair and maintenance or replacement of existing site features and structures. However, as noted above in this finding, there are newer and temporary structures on the Subject Property which have been put in place since 1982 that run afoul of this restriction on new building area, all on the site with the house at 2917 NE Everett Street. These structures include the temporary tarp-covered carport-like structure over the “maintenance storage” area just west of the house, the adjacent “storage” building along the west property line, and a

detached temporary summer garden structure identified on the plans as “meditation area.”

The tarp-covered carport-like structure is constructed of tube-like framing members and a tan-colored waterproof fabric roof and walls and is clearly visible through and above a former gate and fence entry when viewed from the sidewalk on NE Everett Street. This carport-like structure is clearly within the 10-foot minimum setback required for new accessory structures on a site with an institutional use (33.110.245.C.1/Table 110-5). The smaller structure labeled as “storage 5 x 9 foot” is directly along the lot line, but much smaller at approximately 7-feet tall, and is not visible from the street or above the adjacent fence and hedging which separates 2917 NE Everett from the adjacent house to the west. The other structure labeled as “meditation area” is a metal-framed garden gazebo with temporary walls and roof structure atop a grassy open section of yard and is also clearly located within the required 10-foot building setback. While the smaller and more permanent “storage” building has few impacts and should be allowed to remain, the tarp-covered carport-like structure and “meditation area” gazebo create new bulk and footprint on previously open areas of the site, are constructed of low-quality and temporary materials, and do not meet the required setback for accessory buildings on sites with an Institutional use.

In order to allow the small storage building to remain behind the house at 2917 NE Everett Street, while preventing the two temporary structures in the same area from being legalized, a condition of approval will address these three structures and require that the two larger, temporary structures be removed. In order to ensure that no future or additional building expansions take place on the Subject Property, BDS Staff recommended Condition I would need to be modified to allow maintenance and repair of existing buildings and features, but only allow new floor area or exterior improvements through a subsequent Type II conditional use review. The BDS recommended condition would also trigger a Type III conditional use review for more than a 10 percent increase in either floor area or exterior improvement area, consistent with existing triggers for future review in Chapter 33.815, Conditional Uses. In keeping with the existing restrictions on building expansions at the Subject Property, the BDS Staff recommended condition language would eliminate the opportunity to increase either floor area or exterior improvement areas without additional neighborhood and City review.

The Subject Property is generally well-landscaped, with mature trees and shrubs on the property, and good at-grade visual screening with fencing and/or vegetation from adjacent properties. No trees or vegetation are proposed for removal with this application. No new exterior alterations or expansions of exterior improvements or buildings are proposed which would require mitigation, and the existing building sizes and scales will remain the same.

Therefore, with the BDS Staff recommended new condition of approval addressing the removal and retention of three new structures created behind the house at 2917 NE Everett Street since 1982, and with modified language for condition I regarding maintenance and repair versus building expansions, the Hearings Officer finds this approval criterion can be met.

Note: BDS Staff, in its Staff Report and Recommendation to the Hearings Officer, proposed to consolidate all the prior conditions of approval from CU 26-82 into the decision language for this application, allowing review of only one decision in the future when it comes to administering future land use or enforcement actions at the Subject Property. In addition, condition of approval J which required the applicant to obtain occupancy permits for the houses after the original 1982 approval has been satisfied, is therefore no longer required, and will be deleted. The Hearings Officer agrees with the BDS Staff recommendation to consolidate the language contained in prior conditions.

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
2. Privacy and safety issues.

**Findings:** With regards to noise, the existing condition A requires that “No more people may use this facility (including all activities in all 3 houses) than can be accommodated without creating undue noise or disturbance to surrounding residences.” As noted in an earlier finding, the Hearings Officer and BDS Staff believe this language is vague, unclear, and unenforceable, as “undue noise or disturbance” is in the eye or ear of the beholder and no objective or measurable standard is included. The Applicant provided evidence of a public records request for noise complaints at the Subject Property, which turned up one case from 2014 about drums and gongs (14-125178 NC) which appears now to be closed (Exhibit A.3). Opponents (Fred King, MyLinda King, Leviticus Cole), at the November 26, 2018 public hearing, testified that more than one noise complaint had been made regarding the use of the Subject Property. Opponents indicated that they were instructed to keep noise complaint logs, did keep such logs, and when the noise complaint information was submitted to the City, the City did not follow-up.

BDS Staff, at the Hearing and in the Staff Report (Exhibit H.2, page 6), noted that the City of Portland noise standards have and will continue to apply to the Subject Property under Title 18, Noise Control. BDS expressed the opinion that noise regulations (Title 18) do not (and constitutionally cannot) limit unamplified noise created by the human voice, which is subject to enforcement actions under “disturbing the peace” regulations implemented by the Police. Noise regulations (Title 18) prohibit the following:

- Operating or permitting the use or operation of any device designed for sound production or reproduction in such a manner as to cause a noise disturbance; or
- Operating or permitting the operating or use of any such device between the hours of 10 p.m. and 7 a.m. to be plainly audible within any dwelling unit which is not the source of sound.

BDS Staff proposed a new condition of approval, in the Staff Report (Exhibit H.2, page 10), to clarify noise-related restrictions at the Subject Property. The BDS Staff condition states that Title 18 Noise Control regulations apply to the Subject Property and that the facility may not create noise impacts in violation of these regulations, including specific identification of the prohibitions noted in the preceding paragraph of this finding. To clarify for neighbors the appropriate path for noise complaints, the BDS Staff recommended condition refers to the daytime Noise Control hotline (503-823-7350), or to the non-emergency police hotline for after-hours complaints (503-823-3333). With this condition of approval, BDS Staff believed that the noise-related aspects of this criterion are met. The Hearings Officer agrees with the BDS approach to the noise issue and finds that with the BDS Staff proposed condition of approval, the noise aspects of this approval criterion can be met.

With regards to hours of operation and late-night activities, the Subject Property is subject to condition of approval C from CU 26-82 which limits the hours of operation to between 8 a.m. and 11 p.m. The Hearings Officer finds that the proposed hours of operation are unchanged from the CU 26-82 conditional use permit approval.

There is limited exterior lighting at the Subject Property, and individual fixtures are generally residential in scale and low intensity. The Applicant's site plan does indicate the location of all exterior light fixtures, which are not proposed to increase with this application. Odors and litter are not generally anticipated in association with this use, and the Subject Property maintains trash receptacles around the facility in accessible locations for visitors to the Subject Property. With extensive fence and landscape screening around the perimeter of the Subject Property, and with an extensive operating history, no impacts with regards to privacy or safety are anticipated. The Police Bureau has reviewed the proposal and determined they are capable of serving the proposed use (Exhibit E.5).

The Hearings Officer finds that with the new noise-related condition of approval referencing Title 18 and referring neighbors to the appropriate enforcement hotlines for noise complaints as discussed above, this criterion can be met.

**D. Public services.**

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

2. Transportation system:

- a. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include safety, street capacity, level of service, connectivity, transit availability, availability of pedestrian and bicycle networks, on-street parking impacts, access restrictions, neighborhood impacts, impacts on pedestrian, bicycle, and transit circulation. Evaluation factors may be balanced; a finding of failure in one or more factors may be acceptable if the failure is not a result of the proposed development, and any additional impacts on the system from the proposed development are mitigated;
- b. Measures proportional to the impacts of the proposed use are proposed to mitigate on- and off-site transportation impacts. Measures may include transportation improvements to on-site circulation, public street dedication and improvement, private street improvements, intersection improvements, signal or other traffic management improvements, additional transportation and parking demand management actions, street crossing improvements, improvements to the local pedestrian and bicycle networks, and transit improvements;
- c. Transportation improvements adjacent to the development and in the vicinity needed to support the development are available or will be made available when the development is complete or, if the development is phased, will be available as each phase of the development is completed;

**Findings:** This application was precipitated by a neighborhood complaint that CU 26-82 Condition B, requiring the Applicant to maintain a total of at least 30 off-street parking spaces within 300 feet of the Subject Property was, and is currently, being violated. The Applicant submitted the application in this case to delete the Condition B requirement.

As noted earlier in this decision, the current Hearings Officer found that findings contained in the CU 26-82 conditional use permit approval were deficient in many instances. The CU 26-82 findings supporting Condition B lacked evidentiary and legal reasoning. The Hearings Officer, in CU 26-82, stated that because of the "availability of 34 to 52 spaces for the club, parking would not appear to be an issue nor have a negative impact on the area."

The Hearings Officer, in this case, cannot determine why CU 26-82 Condition B contains 30 spaces rather than 34 or 52 or even the 20 spaces required by CU 32-81.

The Hearings Officer reviewed professionally prepared analysis and reviews of transportation issues addressed in this approval criterion (Exhibits A.4, A.5, A.7, E.2, H.70, and H.73). The Hearings Officer finds these Applicant's traffic analyses and reviews followed professionally recognized standards.

**Approval Criterion D.1.**

The Hearings Officer, based upon a review of Exhibits A.4, A.7, E.2, H.70, and H.73, finds the proposal is supportive of the street designations of the Transportation Element of the Comprehensive Plan (see also findings for Statewide Planning Goal 12).

**Approval Criterion D.2.**

The first sentence of this approval criterion is very important and is quoted, once again, below:

*“The transportation system is capable of supporting the proposed use in addition to the existing uses in the area.”*

Opposition testimony, at the hearing, referenced a new apartment complex planned to be constructed within a few blocks of the Subject Property. Opponents argued that the new apartment complex would have either no onsite parking or only a very small amount of onsite parking. Opponents argue that the new apartment complex would result in additional on-street parking demand in the immediate vicinity of the Subject Property. The Hearings Officer asked the Applicant, City Staff, and opponents (at the November 26, 2018 public hearing) to address the following question:

*Does any relevant approval criterion require consideration of the on-street parking impacts potentially created by “new” development in the vicinity of the Subject Property?*

The Applicant’s traffic consultant responded to the Hearings Officer inquiry by stating:

*“The city code requires a finding that ‘the transportation system is capable of supporting the proposed use in addition to the **existing** uses in the area.’ The parking analysis therefore properly accounted for the parking demands of all existing uses in the site vicinity, including the existing use of the Everett House Community Healing Center. Accounting for potential parking impacts of future development would not follow the explicit requirements of city code and could place an undue burden on an applicant to mitigate for potential impacts of a future development that was not required to propose or construct mitigation for its own impacts.” (italics and bolding part of original document)*

PBOT Staff (Exhibit H.70) responded with the following language:

**“The approval criterion addresses proposed and existing uses. The *existing* multi-family apartment is currently not constructed or occupied; the building was not constructed or occupied at the time of the submittal of the limited TIS; based on a site visit conducted on December 10, 2018, the building currently generates no demand for on-street parking. PBOT therefore accepts the information contained in the TIS, which does not consider in-process parking**



demand (parking generated by the building to be constructed at 316 NE 28<sup>th</sup>), to sufficiently address the approval criterion. Further, there is no requirement or assumption that the housing project utilize on-street parking.

PBOT also advises that the evaluation of parking impacts for in-process development requires a significant degree of subjectivity, which may result in inaccuracy if incorporated into the evaluation of parking occupancy; it has not been PBOT's typical practice to analyze 'in-process' parking demand in the evaluation of TISs." (italics and bolding part of original document)

The Hearings Officer agrees with the Applicant's traffic consultant and PBOT that requiring consideration of future construction projects in a TIS is not consistent with the plain language of PCC 33.815.105.D.1. The Hearings Officer finds the Applicant's traffic consultant's consideration of *existing* uses in the area, in Exhibits A.4 and A.7, is consistent with the relevant approval criteria.

The Applicant's traffic consultant, in Exhibits A.4 and A.7, listed services (programs) offered by the Applicant at the Subject Property that were considered in conducting the TIS. The Applicant's traffic consultant (Exhibit A.7, page 1) stated:

"The subject site is the Everett House Community Healing Center, which comprises the three adjacent tax lots and provides community healing and social services in education and wellness programs including services such as healing workshops, neighbors in need programs, teahouse social, relaxation, massage, acupuncture, new thought discussion programs, counselling, domestic violence victims' resources, yoga, chiropractic wellness, spa, and other forms of relaxation and more."

The Hearings Officer finds the Applicant's traffic consultant included the programmatic uses described by the Applicant in Exhibit H.77b excepting Special Events. The Applicant, in Exhibit H.77b, stated the typical occupancy, including all three buildings, at the Subject Property would range from eight to 38 persons with a peak of 65 persons (at any given time of the day). The Applicant then stated that the proposed program for the Subject Property included Special Events. The Applicant's proposed program, for Special Events, was limited to 12 Special Events per year with a peak of 95 persons (at any given time of day).

The Hearings Officer attempted to determine if the Applicant's traffic consultant considered Special Events (with up to 95 persons in attendance, occurring 12 times per year at the Subject Property). The Hearings Officer did not find any reference, by the Applicant's traffic consultant, to Special Events (based upon a review of Exhibits A.4, A.5, A.7, H.70, and the November 26, 2018 hearing testimony of Michael Ard).

As noted in the findings for PCC 33.815.105.A.2, the Hearings Officer found Special Events to be a "new" use at the Subject Property compared to the uses approved under CU 26-82. The Hearings Officer concluded that PCC 33.815.105.A.2 was not met, in part, because the Applicant failed to adequately describe the proposed Special Events in sufficient detail that would facilitate a proper analysis could be undertaken to determine if the addition of Special Events at the Subject Property would significantly lessen the appearance and function of the neighborhood. Similarly, the Hearings Officer finds that the Applicant's proposed Special Events use at the Subject Property has not been adequately considered and described in the Applicant's TIS (Exhibits A.4 and A.7), the Applicant's Transportation Demand Management Plan (Exhibit A.5), and Parking Analysis Update (Exhibit H.70).

The Hearings Officer's concern, regarding on-street parking impacts created by the Applicant's proposal, is heightened because of the Applicant's lack of details related to Special Events. For example, the only limitations related to Special Events is the number per year (12) and the peak number of participants/attendees (Exhibit H.77b). The Applicant did not clearly indicate whether the peak attendance (95) for Special Events was in addition to the peak "typical" attendance. The Applicant did not clearly indicate how many of the Special Events could occur in a month; based upon this lack of specificity it is conceivable that the Applicant could hold 12 Special Events on 12 consecutive days.

The Applicant's traffic consultant, in Exhibits A.4 and A.7 (Appendix, parking generation calculations), included detailed hour by hour analysis, on the study dates, graphic and narrative presentation of on-street parking supply/demand in the vicinity of the Subject Property. In particular, Exhibit A.4, Appendix, Figure 4 pages 4, 5, 7, 8,10,12, 14, 15, 16, 17, 21, and 22 and Exhibit A.7, Appendix, Figure 8, pages 8, 10, 12, 14, 16, and 22, show the block-faces of either Flanders or Everett (in front of the Subject Property) being utilized over 85 percent of capacity (PBOT "considers 85% occupancy to be full" – Exhibit H.2, page 12).

While the Hearings Officer agrees with the Applicant's traffic consultant that its parking occupancy estimates were conservative and that the existing uses (not including Special Events) demonstrated generally that on-street parking utilization meets City requirements, the Hearings Officer cannot ignore the lack of evidence in the record to support the proposition that on-street parking is adequate (without requiring the 30 off-street parking spaces per CU 26-82 Condition B) if the Special Events program is included. The Hearings Officer finds that this approval criterion, as related to "on-street parking impacts," is not satisfied.

The Hearings Officer finds that PCC 33.815.105.D.2 allows a decision maker to balance evaluation factors if adequate mitigation measures are required. The Hearings Officer,

based upon the preceding comments, finds the Applicant failed to provide enough information to allow for the Hearings Officer to impose mitigation requirements. Based upon the Hearings Officer's findings above that the Applicant failed to provide adequate evidence, related to on-street parking, that the transportation system is capable of supporting the proposed use in addition to existing uses in the area. The Hearings Officer does not make findings related to the balance of the evaluation factors. For example, the Hearings Officer does not make findings related to safety, street capacity, and neighborhood impacts, once again, because the Hearings Officer finds the Applicant did not provide adequate evidence in the record describing the Special Events program(s). The Hearings Officer also did not make findings related to PCC 33.815.105.D.2 b. and c. because the proposal must be denied for lack of evidence related to Special Events programming.

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 for water supply issues and responded without comment or concern (Exhibit E.3). The Police Bureau reviewed the proposal and responded that police can adequately serve the Subject Property (Exhibit E.5). The Fire Bureau reviewed the proposal and responded without objections or concerns (Exhibit E.4). BES reviewed the proposal and responded that the Subject Property's sanitary waste and stormwater disposal systems are acceptable (Exhibit E.1).

Therefore, the Hearings Officer finds this criterion 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 only relevant adopted plan for the area is the 1987 *Kerns* Neighborhood Action Plan ("KNAP"). While many neighborhood plans only adopt the goals and policies by ordinance, the KNAP ordinance (#159894) adopted the goals, policies, and objectives into the Comprehensive Plan. The proposal is supportive Objective 1.3 of the KNAP, which promotes the reuse of existing community facilities, of Goal 5 to provide job opportunities in the neighborhood, and of Policy 5 seeking to maintain a healthy and viable environment for existing businesses. Policies regarding upgrading housing and buildings, neighborhood-wide bike paths and transportation networks, historic resources, and land use designations in the KNAP identified by the Applicant in the narrative (Exhibit A.1, pages 8-10) are not directly relevant to the current proposal. It should be noted that the KNAP itself was written in the 1980's during a different era for the neighborhood, when business investment and jobs and housing conditions in the area were significantly different than today. The Hearings Officer finds this approval criterion is met.

## **Oregon Statewide Planning Goals**

### **Goal 1: Citizen Involvement**

Goal 1 calls for “the opportunity for citizens to be involved in all phases of the planning process.” It requires each city and county to have a citizen involvement program containing six components specified in the goal. It also requires local governments to have a Committee for Citizen Involvement (CCI) to monitor and encourage public participation in planning.

**Findings:** The City of Portland maintains an extensive citizen involvement program which complies with all relevant aspects of Goal 1, including specific requirements in Zoning Code Chapter 33.730 for public notice of land use review applications that seek public comment on proposals. There are opportunities for the public to testify at a local hearing on land use proposals for Type III land use review applications, and for Type II and Type IIx land use decisions if appealed. For this application, a written notice seeking comments on the proposal and notifying of the public hearing was mailed to property-owners and tenants within 400 feet of the Subject Property, and to recognized organizations in which the Subject Property is located and recognized organizations within 1,000 of the Subject Property. Additionally, the Subject Property was posted with a notice describing the proposal and announcing the public hearing.

The Hearings Officer finds that the public notice requirements for this application have been and will continue to be met, and nothing about this proposal affects the City’s ongoing compliance with Goal 1. Therefore, the Hearings Officer finds that the proposal is consistent with this goal.

### **Goal 2: Land Use Planning**

Goal 2 outlines the basic procedures of Oregon’s statewide planning program. It states that land use decisions are to be made in accordance with a comprehensive plan, and that suitable “implementation ordinances” to put the plan’s policies into effect must be adopted. It requires that plans be based on “factual information”; that local plans and ordinances be coordinated with those of other jurisdictions and agencies; and that plans be reviewed periodically and amended as needed. Goal 2 also contains standards for taking exceptions to statewide goals. An exception may be taken when a statewide goal cannot or should not be applied to a particular area or situation.

**Findings:** Compliance with Goal 2 is achieved, in part, through the City’s comprehensive planning process and land use regulations. For quasi-judicial proposals, Goal 2 requires that the decision be supported by an adequate factual base, which means it must be supported by substantial evidence in the record. As discussed earlier in the findings that respond to the relevant approval criteria contained in the Portland Zoning Code, the proposal has been measured against the applicable regulations. The Hearings Officer finds the requirements of Goal 2 have been adequately considered and addressed.

### **Goal 3: Agricultural Lands**

Goal 3 defines “agricultural lands,” and requires counties to inventory such lands and to “preserve and maintain” them through farm zoning. Details on the uses allowed in farm zones are found in ORS Chapter 215 and in Oregon Administrative Rules, Chapter 660, Division 33.

### **Goal 4: Forest Lands**

This goal defines forest lands and requires counties to inventory them and adopt policies and ordinances that will “conserve forest lands for forest uses.”

**Findings for Goals 3 and 4:** In 1991, as part of Ordinance No. 164517, the City of Portland took an exception to the agriculture and forestry goals in the manner authorized by state law and Goal 2. Since this review does not change any of the facts or analyses upon which the exception was based, the Hearings Officer finds the Goal exceptions are still valid and Goal 3 and Goal 4 do not apply.

### **Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources**

Goal 5 relates to the protection of natural and cultural resources. It establishes a process for inventorying the quality, quantity, and location of 12 categories of natural resources. Additionally, Goal 5 encourages but does not require local governments to maintain inventories of historic resources, open spaces, and scenic views and sites.

**Findings:** The City complies with Goal 5 by identifying and protecting natural, scenic, and historic resources in the City’s Zoning Map and Zoning Code. Natural and scenic resources are identified by the Environmental Protection (“p”), Environmental Conservation (“c”), and Scenic (“s”) overlay zones on the Zoning Map. The Zoning Code imposes special restrictions on development activities within these overlay zones. Historic resources are identified on the Zoning Map either with landmark designations for individual sites or as Historic Districts or Conservation Districts. This site is not within any environmental or scenic overlay zones and is not part of any designated historic resource. Therefore, Goal 5 is not applicable.

### **Goal 6: Air, Water and Land Resources Quality**

Goal 6 requires local comprehensive plans and implementing measures to be consistent with state and federal regulations on matters such as groundwater pollution.

**Findings:** Compliance with Goal 6 is achieved through the implementation of development regulations such as the City’s Stormwater Management Manual at the time of building permit review, and through the City’s continued compliance with Oregon Department of Environmental Quality (“DEQ”) requirements for cities. BES reviewed the proposal for conformance with sanitary sewer and stormwater management requirements and expressed no objections to approval of the application, as mentioned earlier in this decision. The Hearings Officer finds the proposal is consistent with Goal 6.

### **Goal 7: Areas Subject to Natural Disasters and Hazards**

Goal 7 requires that jurisdictions adopt development restrictions or safeguards to protect people and property from natural hazards. Under Goal 7, natural hazards include floods, landslides, earthquakes, tsunamis, coastal erosion, and wildfires. Goal 7 requires that local governments adopt inventories, policies, and implementing measures to reduce risks from natural hazards to people and property.

**Findings:** The City complies with Goal 7 by mapping natural hazard areas such as floodplains and potential landslide areas, which can be found in the City's MapWorks geographic information system. The City imposes additional requirements for development in those areas through a variety of regulations in the Zoning Code, such as through special plan districts or land division regulations. The Subject Property is not within any mapped floodplain or landslide hazard area. The Hearings Officer finds Goal 7 does not apply.

#### **Goal 8: Recreation Needs**

Goal 8 calls for each community to evaluate its areas and facilities for recreation and develop plans to deal with the projected demand for them. It also sets forth detailed standards for expediting siting of destination resorts.

**Findings:** The City maintains compliance with Goal 8 through its comprehensive planning process, which includes long-range planning for parks and recreational facilities. The Hearings Officer finds the current proposal will not affect existing or proposed parks or recreation facilities in any way that is not anticipated by the zoning for the Subject Property, or by the parks and recreation system development charges that are assessed at time of building permit. Furthermore, nothing about the proposal will undermine planning for future facilities. Therefore, the Hearings Officer finds the proposal is consistent with Goal 8.

#### **Goal 9: Economy of the State**

Goal 9 calls for diversification and improvement of the economy. Goal 9 requires communities to inventory commercial and industrial lands, project future needs for such lands, and plan and zone enough land to meet those needs.

**Findings:** Land needs for a variety of industrial and commercial uses are identified in the adopted and acknowledged Economic Opportunity Analysis ("EOA") (Ordinance 187831). The EOA analyzed adequate growth capacity for a diverse range of employment uses by distinguishing several geographies and conducting a buildable land inventory and capacity analysis in each. In response to the EOA, the City adopted policies and regulations to ensure an adequate supply of sites of suitable size, type, location, and service levels in compliance with Goal 9. The City must consider the EOA and Buildable Lands Inventory when updating the City's Zoning Map and Zoning Code. Because this proposal does not change the supply of industrial or commercial land in the City, the Hearings Officer finds the proposal is consistent with Goal 9.

#### **Goal 10: Housing**

Goal 10 requires local governments to plan for and accommodate needed housing types. The Goal also requires cities to inventory its buildable residential lands, project future needs for such lands, and plan and zone enough buildable land to meet those needs. It also prohibits local plans from discriminating against needed housing types.

**Findings:** The City complies with Goal 10 through its adopted and acknowledged inventory of buildable residential land (Ordinance 187831), which demonstrates that the City has zoned and designated an adequate supply of housing. For needed housing, the Zoning Code includes clear and objective standards. Although this proposal occurs on residentially-zoned land, it has been in non-residential use since at least 1981, and the current proposal does not impact the City's ability to provide for needed housing types and new housing. The City of Portland zoned capacity for housing exceeds the minimum housing supply required by the State of Oregon land use planning laws as implemented under this Goal. Since the proposal has no impact on existing housing or the ability to provide adequate housing of different types as needed, the Hearings Officer finds Goal 10 is not applicable.

#### **Goal 11: Public Facilities and Services**

Goal 11 calls for efficient planning of public services such as sewers, water, law enforcement, and fire protection. The goal's central concept is that public services should be planned in accordance with a community's needs and capacities rather than be forced to respond to development as it occurs.

**Findings:** The City of Portland maintains an adopted and acknowledged public facilities plan to comply with Goal 11. See Citywide Systems Plan adopted by Ordinance 187831. The public facilities plan is implemented by the City's public services bureaus, and these bureaus review development applications for adequacy of public services. Where existing public services are not adequate for a proposed development, an applicant is required to extend public services at their own expense in a way that conforms to the public facilities plan. In this case, the City's public services bureaus found that existing public services are adequate to serve the proposal, as discussed earlier in this decision.

#### **Goal 12: Transportation**

Goal 12 seeks to provide and encourage "safe, convenient and economic transportation system." Among other things, Goal 12 requires that transportation plans consider all modes of transportation and be based on inventory of transportation needs.

**Findings:** The City of Portland maintains a Transportation System Plan ("TSP") to comply with Goal 12, adopted by Ordinances 187832, 188177, and 188957. The City's TSP aims to "make it more convenient for people to walk, bicycle, use transit, use automobile travel more efficiently, and drive less to meet their daily needs." The extent to which a proposal affects the City's transportation system and the goals of the TSP is evaluated by PBOT. The Hearings Officer reviewed the relevant approval criteria and determined the Applicant failed to adequately address on-street parking impacts (failure to provide substantial evidence in the

record as to how Special Events would impact the appearance and function of the nearby residential area). The Hearings Officer finds this Goal is not met.

### **Goal 13: Energy**

Goal 13 seeks to conserve energy and declares that “land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles.”

**Findings:** With respect to energy use from transportation, as identified above in response to Goal 12, the City maintains a TSP that aims to “make it more convenient for people to walk, bicycle, use transit, use automobile travel more efficiently, and drive less to meet their daily needs.” This is intended to promote energy conservation related to transportation. Additionally, at the time of building permit review and inspection, the City will also implement energy efficiency requirements for the building itself, as required by the current building code. For these reasons, the Hearings Officer finds the proposal is consistent with Goal 13.

### **Goal 14: Urbanization**

This goal requires cities to estimate future growth and needs for land and then plan and zone enough land to meet those needs. It calls for each city to establish an “urban growth boundary” (UGB) to “identify and separate urbanizable land from rural land.” It specifies seven factors that must be considered in drawing up a UGB. It also lists four criteria to be applied when undeveloped land within a UGB is to be converted to urban uses.

**Findings:** In the Portland region, most of the functions required by Goal 14 are administered by the Metro regional government rather than by individual cities. The desired development pattern for the region is articulated in Metro’s Regional 2040 Growth Concept, which emphasizes denser development in designated centers and corridors. The Regional 2040 Growth Concept is carried out by Metro’s Urban Growth Management Functional Plan, and the City of Portland is required to conform its zoning regulations to this functional plan. This land use review proposal does not change the UGB surrounding the Portland region and does not affect the Portland Zoning Code’s compliance with Metro’s Urban Growth Management Functional Plan. Therefore, the Hearings Officer finds Goal 14 is not applicable.

### **Goal 15: Willamette Greenway**

Goal 15 sets forth procedures for administering the 300 miles of greenway that protects the Willamette River.

**Findings:** The City of Portland complies with Goal 15 by applying Greenway overlay zones which impose special requirements on development activities near the Willamette River. The Subject Property is not within a Greenway overlay zone near the Willamette River. The Hearings Officer finds Goal 15 does not apply.



**Goal 16: Estuarine Resources**

This goal requires local governments to classify Oregon's 22 major estuaries in four categories: natural, conservation, shallow-draft development, and deep-draft development. It then describes types of land uses and activities that are permissible in those "management units."

**Goal 17: Coastal Shorelands**

This goal defines a planning area bounded by the ocean beaches on the west and the coast highway (State Route 101) on the east. It specifies how certain types of land and resources there are to be managed: major marshes, for example, are to be protected. Sites best suited for unique coastal land uses (port facilities, for example) are reserved for "water-dependent" or "water-related" uses.

**Goal 18: Beaches and Dunes**

Goal 18 sets planning standards for development on various types of dunes. It prohibits residential development on beaches and active foredunes, but allows some other types of development if they meet key criteria. The goal also deals with dune grading, groundwater drawdown in dunal aquifers, and the breaching of foredunes.

**Goal 19: Ocean Resources**

Goal 19 aims "to conserve the long-term values, benefits, and natural resources of the nearshore ocean and the continental shelf." It deals with matters such as dumping of dredge spoils and discharging of waste products into the open sea. Goal 19's main requirements are for state agencies rather than cities and counties.

**Findings:** Since Portland is not within Oregon's coastal zone, the Hearings Officer finds Goals 16-19 do not apply.

**III. CONCLUSIONS**

The Subject Property has operated as a "healing center" since at least 1981 (per CU 32-81). The Subject Property, since 1982, has operated under the approval/conditions of CU 26-82. Based upon documents submitted into the record and testimony at the November 26, 2018 public hearing, the Subject Property has offered valuable services to the neighborhood residents and others.

The CU 26-82 conditional use permit (Exhibit G.6) granted approval to the following:

"Applicant requests permanent conditional use approval to continue sauna, hot-tub and massage therapy services. The community club will also include relaxation and health counseling and a 'tea house' food service. They also request that limitations to the number of people servable per hour be omitted."

The Hearings Officer's decision (report), in CU 26-82 did not, clearly and with specificity, identify the uses approved. Rather, the decision stated only the following:

"To grant the Conditional Use, subject to the following conditions."

The Hearings Officer, in CU 26-82, then listed conditions A through and including J and granted "variances." Condition B, of CU-26-82, stated the following:

"A total of at least 30 off-street parking spaces shall be provided within 300 feet of the site for the exclusive use of this club, as evidenced by a written lease or another document in a form acceptable to the City Attorney's Office."

The Applicant, in this case, is seeking to eliminate the off-street parking requirements as described in Condition B of the CU 26-82 approval.

The relevant approval criteria are found in PCC 33.815.105. BDS Staff, in the Staff Report and Recommendation to the Hearings Officer (Exhibit H.2), reviewed the relevant approval criteria and recommended approval of the Applicant's request to eliminate Condition B. BDS Staff, in Exhibit H.2, also recommended additional modifications to the CU 26-82 conditions of approval. The Applicant agreed generally with BDS Staff's recommendation excepting that the Applicant suggested its own modifications to the CU 26-82 conditions of approval language (Exhibits H.77 and H.77a).

The Hearings Officer disagreed with the BDS Staff recommendation with respect to two relevant approval criteria; PCC 33.815.105.A.2 and PCC 33.815.105.D.2. The Hearings Officer found that the Applicant's proposed uses of the Subject Property exceeded the uses allowed/approved in CU 26-82. For example, the Hearings Officer found that the CU 26-82 approval of uses at the Subject Property did not include, among other uses, the offering of chiropractic, acupuncture, and the holding of Special Events. The Hearings Officer, in the findings for PCC 33.815.105.A.2, found that there was insufficient/inadequate evidence in the record to assess whether or not the added uses (i.e. chiropractic, acupuncture, and Special Events, among others) would increase the intensity of uses at the Subject Property to such an extent that the overall residential appearance and function of the area would be significantly lessened. The Hearings Officer found that the on-street parking impacts resulting from the Applicant's proposed uses of the Subject Property, primarily for up to 12 Special Events serving up to 95 persons at a single time, was not adequately investigated and analyzed.

The Hearings Officer found that had the Applicant restricted its proposed uses to those approved by CU 26-82, then the application likely would have been approved. In the alternative, the Hearings Officer found that approval of the proposal may have resulted had the Applicant provided the necessary evidence and analysis, in the record, related to the relevant approval criteria. The Hearings Officer found the Applicant did neither; the Applicant requested approval to use the Subject Property for uses not included in the CU 26-82 approval and did not provide

evidence in the record to support a proper analysis of the added impacts that could be reasonably expected to occur if the additional uses were approved.

The Hearings Officer denied the Applicant's application for failure to meet the required approval criteria.

If this case is appealed and the review body reverses the Hearings Officer decision, the Hearings Officer suggests that the review body approval include the BDS Staff conditions and not the Applicant's requested conditions.

#### IV. DECISION

**Denial of a Conditional Use Review** to allow continued operation of a Community Service use, as requested by the Applicant in Exhibit H.77b, in the R5 zone, more specifically for the Everett House Community Healing Center (hereinafter "Everett House") in the former homes at 2917 and 2927 NE Everett Street and 2926 NE Flanders Street.



\_\_\_\_\_  
Greg Frank, Hearings Officer

1.10.2019

\_\_\_\_\_  
Date

Application Determined Complete:	October 18, 2018
Report to Hearings Officer:	November 16, 2018
Decision Mailed:	January 10, 2019
Last Date to Appeal:	4:30 p.m., January 24, 2019
Effective Date (if no appeal):	January 25, 2019

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

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

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

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

**Recording the final decision.**

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

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

EXHIBITS RECEIVED IN THE HEARINGS OFFICE  
Not Attached Unless Indicated

- A. Applicant's Statements:
  - 1. Original narrative statement
  - 2. Original, outdated site plans – 8.5" x 11" and 11" x 17" versions
  - 3. Original submittal regarding public records request for noise and 2014 noise complaint
  - 4. Original traffic study, dated 3/21/18, Ard Engineering
  - 5. Original Transportation Demand Management Memo, dated 3/21/18, Ard Engineering
  - 6. Revised and supplemental narrative statements, received 10/18/18
  - 7. Revised traffic study, dated 9/26/18, Ard Engineering
  - 8. Customer comment forms submitted by the applicant, received 11/8/18
  - 9. Petition submitted by the applicant, received 11/8/18
- B. Zoning Map (**attached**):
- C. Plans & Drawings:
  - 1. Site Plan (**attached**)
  - 2. 2917 NE Everett Floor Plans (**attached**)
  - 3. 2927 NE Everett Floor Plans (**attached**)
  - 4. 2926 NE Flanders Floor Plans (**attached**)
  - 5. Large/scalable site plan
  - 6. Large/scalable 2917 NE Everett floor plans
  - 7. Large/scalable 2927 NE Everett floor plans
  - 8. Large/scalable 2926 NE Flanders floor plans
- D. Notification information:
  - 1. Request for response
  - 2. Posting information and sign as sent to applicant
  - 3. Applicant's statement certifying posting
  - 4. Mailing list and copy of public hearing notice
  - 5. Postmark copy of public hearing notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Development Review Section of Portland Transportation
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Police Bureau
  - 6. Site Development Section of Bureau of Development Services
  - 7. Life Safety Review Section of Bureau of Development Services
- F. Letters:
  - 1. Letter of support from Lisa Chun, rec'd. 11/7/18
  - 2. Letter of support from Kristi Lee, rec'd. 11/8/18
  - 3. Letter of support from Stefanie Kantor, rec'd. 11/9/18

4. Letter of support from William Brault, rec'd 11/14/18

G. Other:

1. Original LU application form and receipt
2. Request for Completeness materials and responses
3. Incomplete letter from staff to applicant, sent 7/12/18
4. Internal routing slip for revised traffic study, sent 10/18/18
5. E-mail discussion between staff and applicant regarding neighborhood contact and correct facility name, 10/26/18 – 10/30/18
6. Full decision with findings from prior conditional use case – CU 26-82
7. Decision from expired conditional use case – CU 32-81
8. E-mail correspondence between PBOT staff and traffic engineer, describing reasons for updated traffic study, etc., received 11/4/18

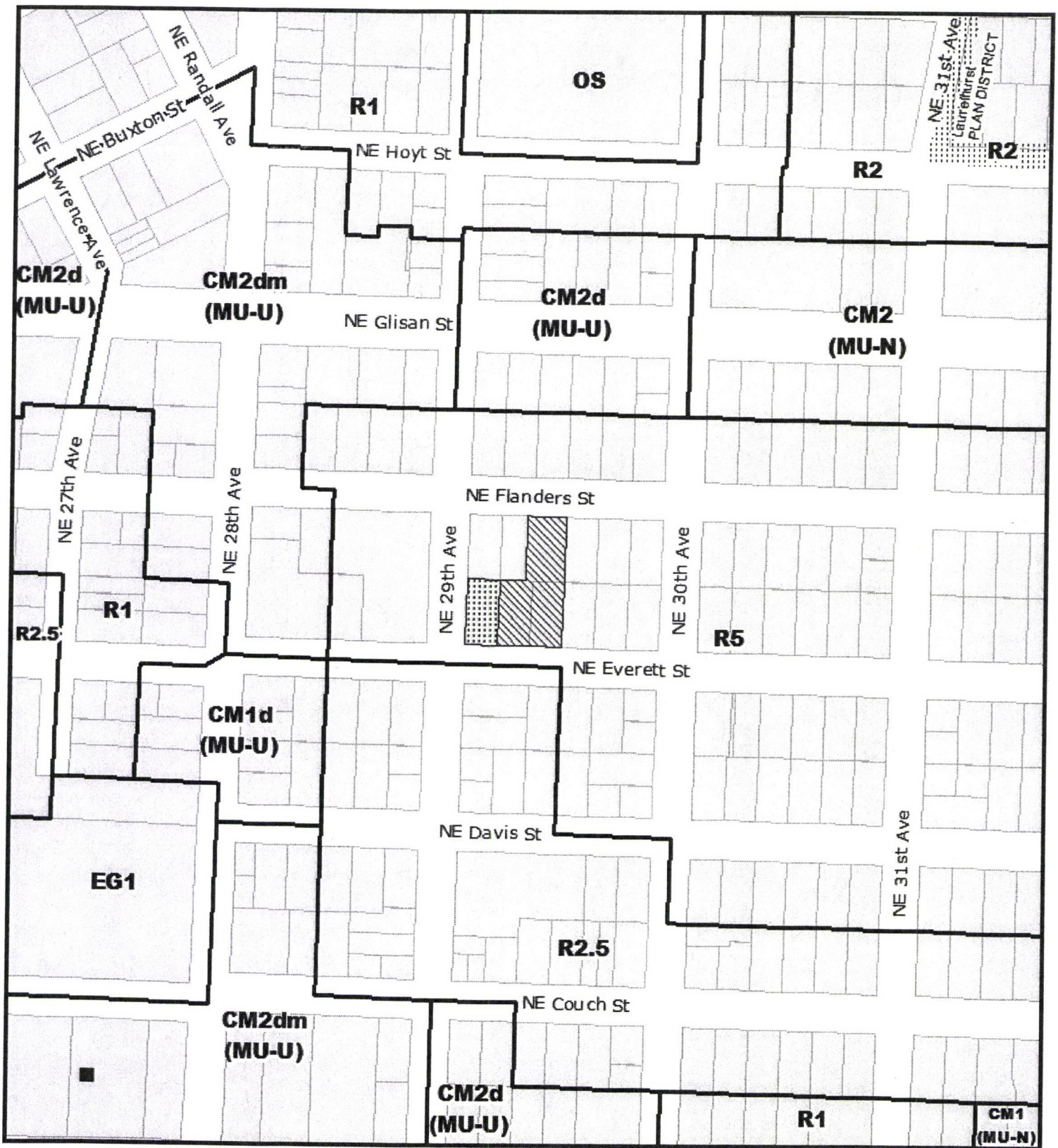
H. Received in the Hearings Office

1. Notice Of A Public Hearing On A Proposal In Your Neighborhood - Moffett, Mark
2. Staff Report - Moffett, Mark
3. Letter - Kirchfeld, David
4. 11/14/18 letter - Robinson, Jessica
5. Letter dated November 1, 2018 - King, Fred
6. Letter - King, Fred
7. Letter dated November 14, 2018 (11 pages) - King, Fred
8. Complaint Log with Photographs Attached (marked attachment 1) - King, Fred
9. Photographs and Diagram (marked Attachments 2 - 5) - King, Fred
10. Transportation Analysis Letter dated March 21, 2018 from ARD Engineering to Dr. Mantell (marked Attachment 6) (Exhibit A.4 - 43 pages) - King, Fred
11. Supplemental Affidavit of Elliott Mantell (marked Attachment 7) (2 pages) - King, Fred
12. Everett House Ads (marked Attachment 8) (5 pages) - King, Fred
13. Ex Parte Plaintiff's Memorandum (marked Attachment 9 (10 pages) - King, Fred
14. Deposition of Elliott J. Mantell, D.C. (marked Attachment 10) (4 pages) - King, Fred
15. Page 8 of Staff Report (marked Attachment 11) - King, Fred
16. Notice of Zoning Violation dated 9/6/11 (marked Attachment 12) (2 pages) - King, Fred
17. Photograph (marked Attachment 13) - King, Fred
18. Copy of WWNews Article (marked Attachment 14) - King, Fred
19. Draft Good Neighbor Agreement With Common Ground (marked Attachment 15) (4 pages) - King, Fred
20. General Judgment of Restitution (marked as Attachment 16) - King, Fred
21. Conditional Use Amendment Request (marked Attachment 17) (Exhibit A.1) - King, Fred
22. Photographs - King, Fred
23. Assessment of Marginal Impact of Urban Amenities on Residential Pricing June 2007 (marked Attachment 19) (52 pages) - King, Fred
24. Photograph (marked Attachment 20) - King, Fred
25. Petition - Kirchfeld, David
26. Memorandum dated 11/26/18 - Agreement to Conditions - Fry, Peter Finley
27. Letter in support - Jordan, Robert

28. Written testimony - Rush, Kori
29. Letter dated 11/2/18 - Hauben, John
30. Binder - Mantel, Elliott
31. Letter dated 11/26/18 - Kramer, Daniella
32. Letter dated 11/18/18 with signatures attached (4 pages) - Flanders Street Community
33. Letter dated 7/17/15 - Kerns Neighborhood Association
34. Letter dated 11/1/18 - Unsigned
35. Photographs (4) - King, Fred
36. Written Statement - Trosper, Meredith
37. Letter - Pater, Sabine
38. Email dated 11/25/18 - Keeber, Ian
39. Email dated 11/26/18 - Fox, Michael
40. Power Point Presentation - Moffett, Mark
41. Record Closing Information - Hearings Office
42. Letter - Kenneth and Barbara,
43. 30 Forms - Unknown
44. Letters - Cramer, Jennifer
45. General Inquiry Contact Form - Carmi, Evan
46. 30 Forms (duplicate of Exh. H-43) - Unknown
47. Everett House Notice - Unknown
48. 8 Letters - Unknown
49. Letter dated 11/30/18 - Harris, Jay
50. Letter to Pastor Greg - Siess, Kristin Jo
51. Letter dated 11/29/18 - Peterson, Mary
52. Letter dated 12/2/18 with attached photographs - King, MyLinda
53. Letter with attachments - King, Fred
  - a. Kerns NA Board Mtg. Agenda - 6/20/18 - King, Fred
  - b. Kerns NA Board Mtg. Agenda - 6/19/18 - King, Fred
  - c. 12/9/87 letter, Doug Warrne to Elliott J. Mantell - King, Fred
  - d. 6/13/06 Notice of Zoning Violation - King, Fred
  - e. 10/31/06 Compliance Request Construction Code Violation - Permit Required - King, Fred
  - f. Photo - King, Fred
  - g. Photo - King, Fred
  - h. 9/6/11 Notice of Zoning Violation - King, Fred
  - i. Photos - King, Fred
  - j. Photos - King, Fred
  - k. Photos - King, Fred
  - l. 12/2/11 Compliance Request - Stop Work and Notice of Zoning Violation - King, Fred
  - m. 3/29/16 Notice of Zoning Violation - King, Fred
  - n. 9/30/16 Notice of Zoning Violation-Update - King, Fred
  - o. Article "Hot Tub Hubbub" - King, Fred
  - p. Photos - King, Fred


54. Letter - King, Fred
55. Letter with attachments - Mantell, Dr. Elliott
  - a. Emails re: Pacific Crest Community School - Mantell, Dr. Elliott
  - b. Email from The Art of Living Sideways - Mantell, Dr. Elliott
  - c. 4/20/17 letter from Resolutions Northwest - Mantell, Dr. Elliott
56. 2904 NE Flanders St. printout - Unknown
57. Cover letter and home occupational permits printouts - Unknown
58. Letter - Kosanke, Matt
59. City Public Records Request (2 pages) - Unknown
60. 12/10/18 letter with attachments - Fry, Peter Finley
  - a. 12/10/18 Everett House Community Healing Center Info. (2 pages) - Fry, Peter Finley
  - b. Request for extension of 120-day review period - Fry, Peter Finley
  - c. Portland Zoning Map 12/5/18 - Fry, Peter Finley
61. 12/10/18 letter - Cardella, Aaron
62. Letter with attachment - Mantell, Dr. Elliott
  - a. Everett Community Healing Newsletter (3 pages) - Mantell, Dr. Elliott
63. Memorandum dated December 10, 2018 - Moffett, Mark
64. Letter received 12/10/18 with attached letters (7 pages) - Mantel, Elliott
65. Letter dated 11/8/18 - Osborne, Jenny
66. Letter to Mark Moffett dated November 7, 2018 - Slawson, David J.
67. Letter dated 12/7/18 - Pernichele, Anne
68. Letter dated 12/7/18 - Pernichele, Anne
69. Letter dated December 7, 2018 - Pernichele, Anne
70. Technical Memorandum dated December 10, 2018 - ARD Engineering,
71. Typed Statement - Unknown
72. Letter dated December 7, 2018 - Pernichele, Anne
73. Memorandum dated 12/10/18 - Neighbor, Patricia
74. Letter dated December 7, 2018 - Pernichele, Anne
75. Letter from Everett House to Hearings Officer (with attachments) dated 12/21/18 (11 pages) - Mantel, Elliott
76. Business that use Flanders House Spreadsheet (10 pages) - King, Fred
77. 12/28/18 letter with attachments - Fry, Peter Finley
  - a. 11/26/18 Memorandum (2 pages) - Fry, Peter Finley
  - b. 12/10/18 Information (2 pages) - Fry, Peter Finley
  - c. Zoning Map - Fry, Peter Finley





# ZONING



-  Site
-  Also Owned Parcels
-  Historic Landmark

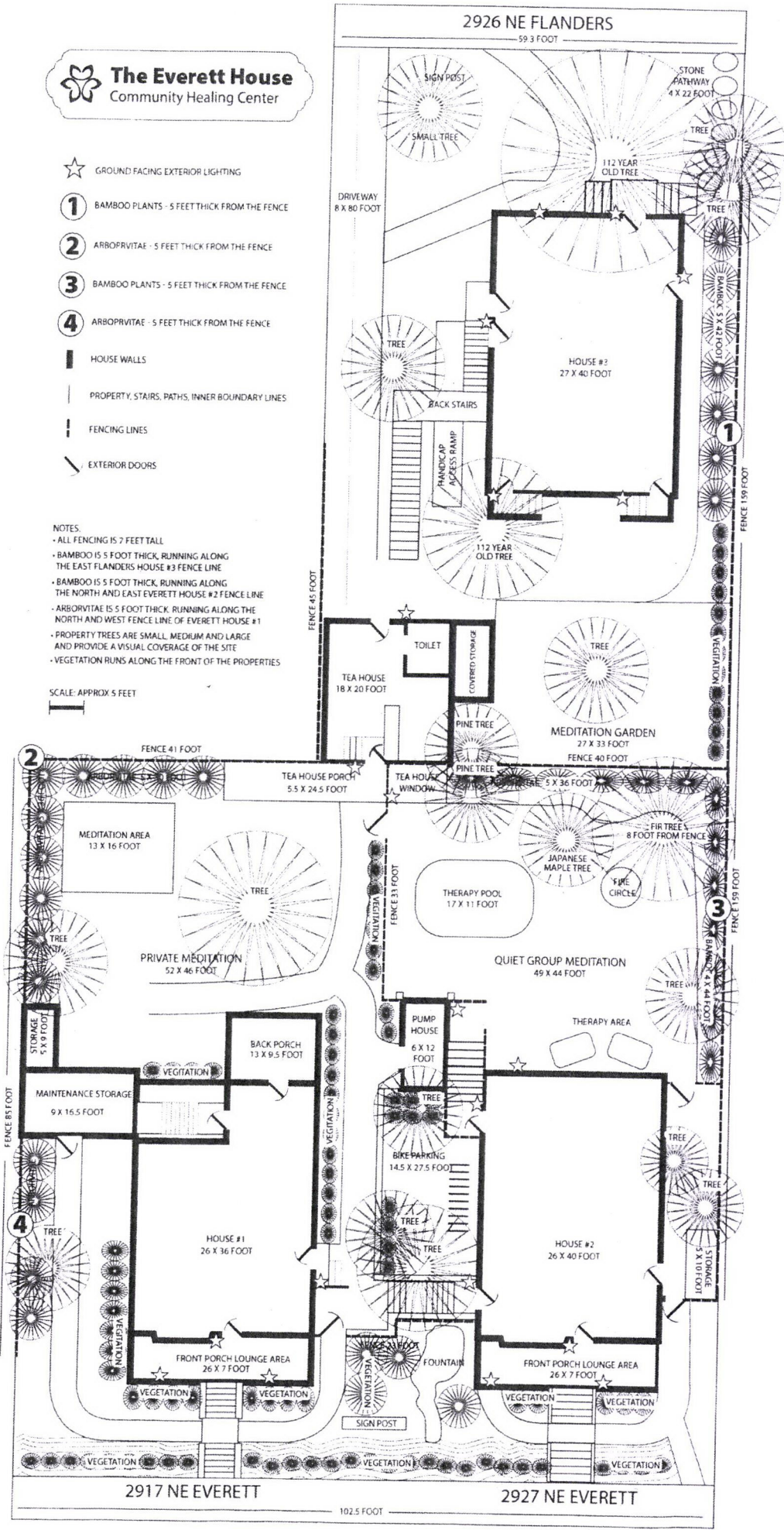
File No.	LU 18-190331 CU
1/4 Section	3033
Scale	1 inch = 200 feet
State ID	1N1E36CA 6400
Exhibit	B Jun 25, 2018

**The Everett House**  
Community Healing Center

- ☆ GROUND FACING EXTERIOR LIGHTING
- ① BAMBOO PLANTS - 5 FEET THICK FROM THE FENCE
- ② ARBORVITAE - 5 FEET THICK FROM THE FENCE
- ③ BAMBOO PLANTS - 5 FEET THICK FROM THE FENCE
- ④ ARBORVITAE - 5 FEET THICK FROM THE FENCE
- ▬ HOUSE WALLS
- ▬ PROPERTY, STAIRS, PATHS, INNER BOUNDARY LINES
- ▬ FENCING LINES
- ↘ EXTERIOR DOORS

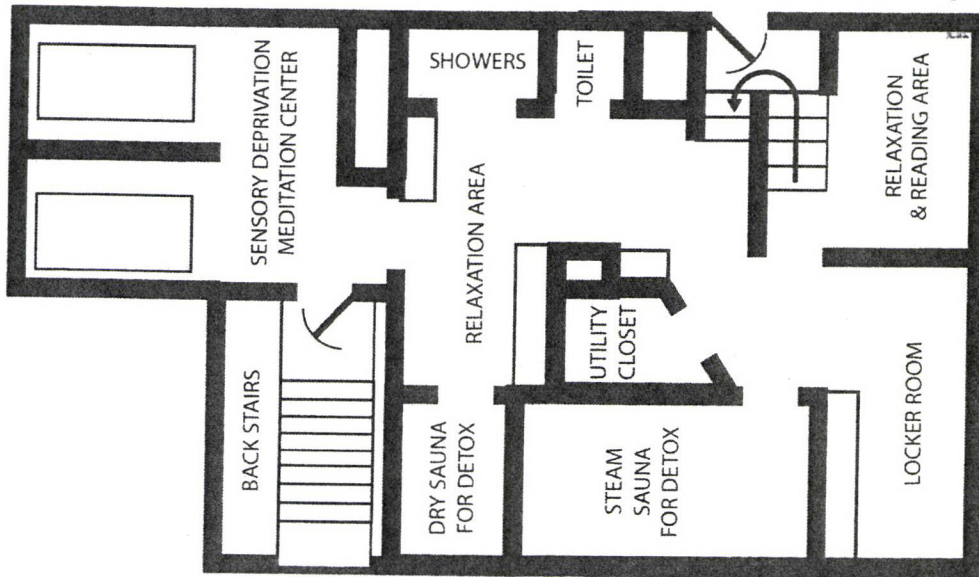
NOTES:  
 - ALL FENCING IS 7 FEET TALL  
 - BAMBOO IS 5 FOOT THICK, RUNNING ALONG THE EAST FLANDERS HOUSE #3 FENCE LINE  
 - BAMBOO IS 5 FOOT THICK, RUNNING ALONG THE NORTH AND EAST EVERETT HOUSE #2 FENCE LINE  
 - ARBORVITAE IS 5 FOOT THICK, RUNNING ALONG THE NORTH AND WEST FENCE LINE OF EVERETT HOUSE #1  
 - PROPERTY TREES ARE SMALL, MEDIUM AND LARGE AND PROVIDE A VISUAL COVERAGE OF THE SITE  
 - VEGETATION RUNS ALONG THE FRONT OF THE PROPERTIES

SCALE: APPROX 5 FEET

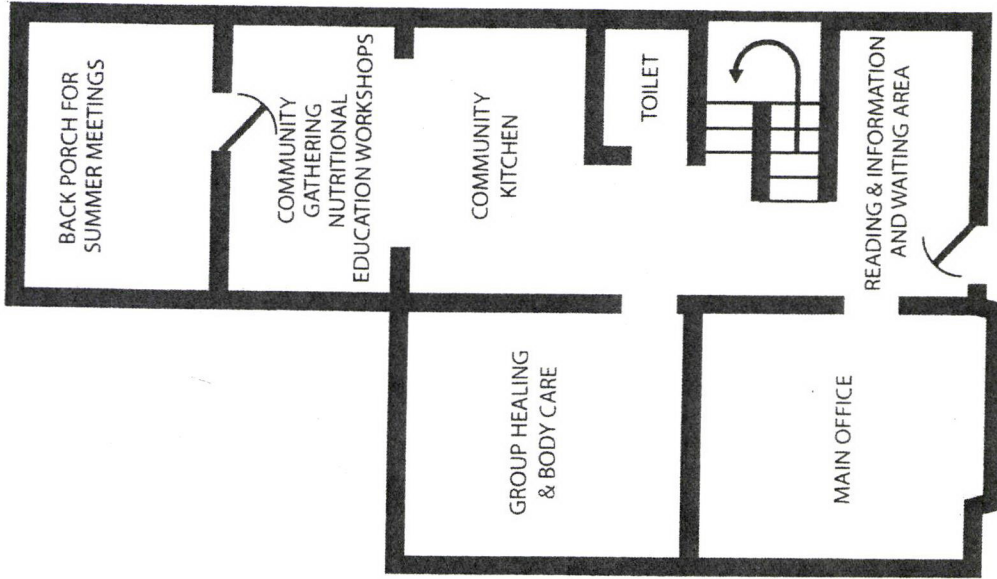


CASE NO. W 18-190331 CU  
EXHIBIT C-1

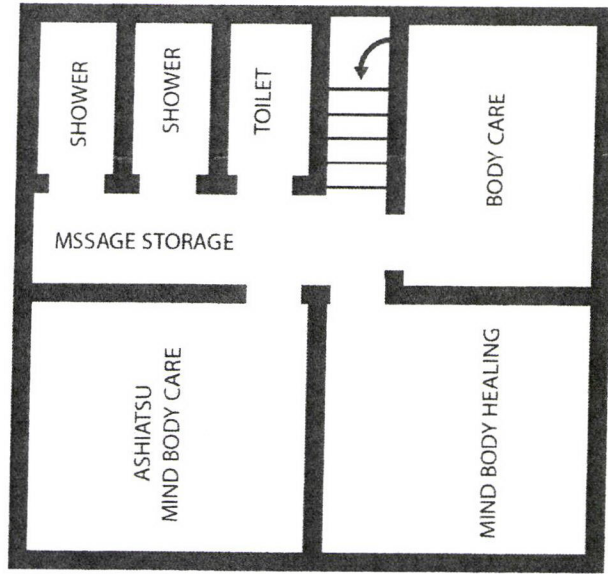
# HOUSE 1 • 2917 NE EVERETT



**BASEMENT**  
**ADVANCED MEDITATION & FLOATATION CENTER**  
 26 X 45.5 FOOT



**GROUND FLOOR**  
**GROUP HEALING & COMMUNITY GATHERING**  
 26 X 45.5 FOOT

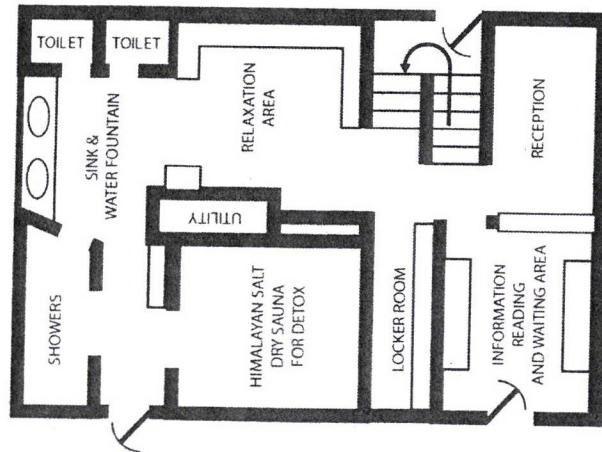


**SECOND FLOOR**  
**PERSONAL BODY CARE**  
 26 X 28 FOOT

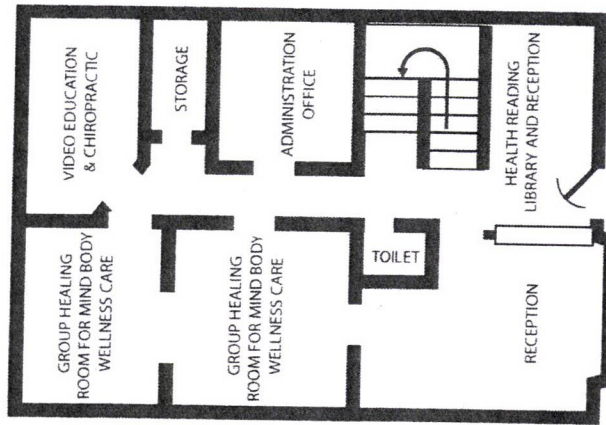
CASE NO. W18-190331  
 EXHIBIT C.2

HOUSE 2 • 2927 NE EVERETT

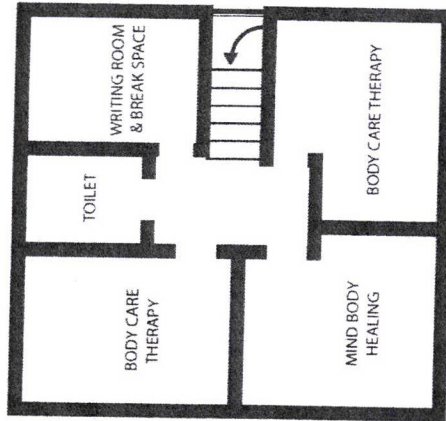
TEA HOUSE



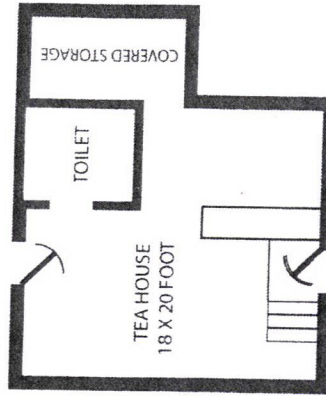
**BASEMENT**  
**COMMUNITY SPA & SAUNA**  
 26 X 40 FOOT



**GROUND FLOOR**  
**GROUP HEALTH & HEALING SERVICES**  
 26 X 40 FOOT

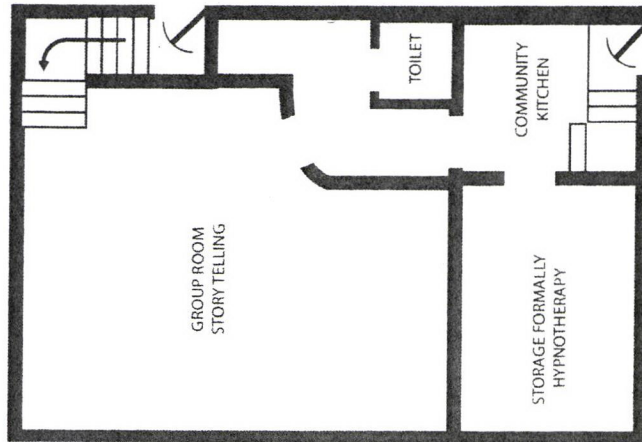


**SECOND FLOOR**  
**BODY CARE THERAPY**  
 26 X 28 FOOT

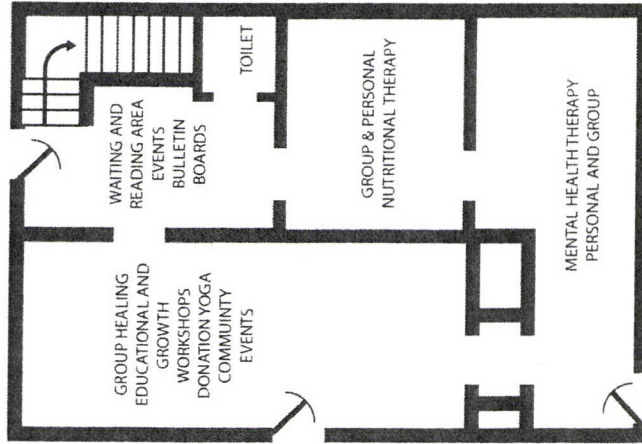


CASE NO. LV18-190731LV  
 EXHIBIT C.3

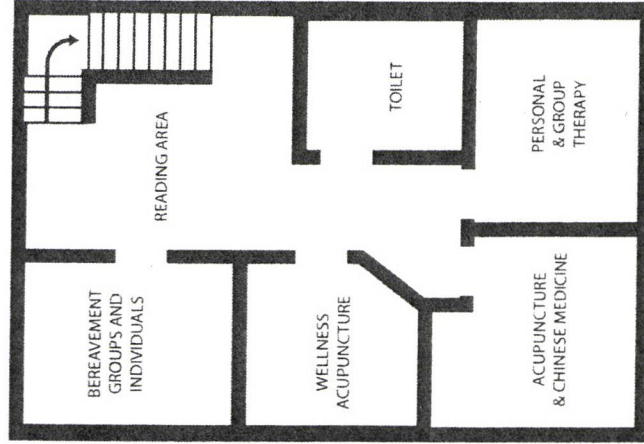
HOUSE 3 • 2926 NE FLANDERS



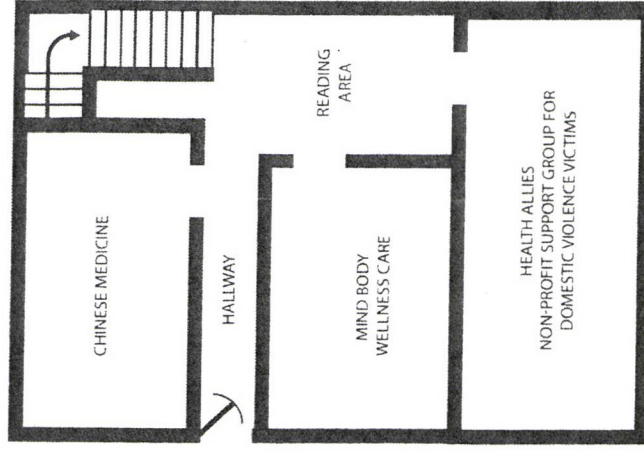
**BASEMENT**  
**COMMUNITY USE AREA**  
 27 X 40 FOOT



**GROUND FLOOR**  
**GROUP HEALING & THERAPY**  
 27 X 40 FOOT



**SECOND FLOOR**  
**GROUP THERAPY**  
 27 X 40 FOOT



**THIRD FLOOR**  
**GROUP AND PERSONAL THERAPY**  
 27 X 40 FOOT