

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

**IN THE MATTER OF AN APPEAL OF THE HEARINGS  
OFFICER'S DECISION TO DENY A CONDITIONAL USE REVIEW FOR THE EVERETT  
HOUSE COMMUNITY HEALING CENTER, IN THE FORMER HOMES AT 2917 AND 2927 NE  
EVERETT STREET AND 2926 NE FLANDERS STREET.**

**LU 18-190331 CU**

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**FINDINGS AND CONCLUSIONS**

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**ADOPTED BY THE CITY COUNCIL ON  
MAY 1, 2019**

**GRANT THE APPEAL AND OVERTURN THE HEARING OFFICER'S DECISION TO DENY  
THE CONDITIONAL USE REVIEW, APPROVING THE PROPOSAL WITH CONDITIONS OF  
APPROVAL**

IN THE CITY COUNCIL OF THE  
CITY OF  
PORTLAND, OREGON

IN THE MATTER OF AN APPEAL OF THE HEARINGS  
OFFICER'S DECISION TO DENY A CONDITIONAL USE REVIEW FOR THE EVERETT HOUSE  
COMMUNITY HEALING CENTER, IN THE FORMER HOMES AT 2917 AND 2927 NE EVERETT  
STREET AND 2926 NE FLANDERS STREET.

LU 18-190331 CU

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FINDINGS AND CONCLUSIONS

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

**I. GENERAL INFORMATION**

**File Number:** 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 Mantell (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)

**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 CU 26-82 Hearings Officer 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:

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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.”

- 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 10 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 City Council 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 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**.

## **II. PROCEDURAL HISTORY**

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

**Public Hearing before the Hearings Officer:** 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 before the Hearings Officer:**

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

**City Council Hearings:** Notice of a public hearing before the City Council on appeal of a land use decision by the Hearings Officer was mailed on February 1, 2019. As described in the both the original notice of a public hearing dated October 29, 2018 and in the notice of a public hearing before the City Council on appeal, the appeal hearing was an “on-the-record” hearing. Therefore, the City Council was directed to decide the appeal based upon the evidence in the public record that was available to the Hearings Officer and not to consider new evidence.<sup>2</sup> The scope of the City Council’s review is addressed further below.

The City Council held a public hearing on the appeal on Wednesday March 20, 2019 at 2:30 p.m. in the City Council Chambers. Following a presentation by Mark Moffett with the Bureau of Development Services (“BDS”), the applicant team provided testimony, and the applicant is also the appellant in this case. Renee France, legal counsel for the applicant provided testimony in support of the appeal, as did Dr. Elliott Mantell and Michael Ard. Several supporters of the appeal followed, expressing support for the Everett House and objectives of the appeal. Several opponents of the appeal spoke afterwards, followed by final rebuttal by the applicant team.

Following the testimony, the City Council voted 3 to 1 to tentatively grant the appeal and overturn the Hearing Officer’s decision to deny the proposal. The City Council directed staff to prepare findings consistent with their tentative decision, including conditions of approval for numerical limits to the maximum number of members or guests allowed to be at the site at any one time, and restricting chiropractic and acupuncture services.

**Testified at the Hearing Before the City Council:**

Mark Moffett  
Renee France  
Elliot Mantell  
Michael Ard  
Michael Fox

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<sup>2</sup> Mr. King, who testified in opposition to the appeal, offered several exhibits as well as oral testimony that appeared to be new evidence. Those exhibits and the relevant testimony was noted by the City Attorney and staff during the hearing. The City Council was instructed not to consider the new evidence. However, to the extent any new evidence was considered the City Council for the reasons set forth below, the City Council nonetheless found that the requested amendment complies with applicable approval criteria.

Karen Abrams  
Alan Wilson  
Joshua Ryan  
Aaron Cardella  
Lisa Chun  
Lucas Littlefield  
Bob Czimbab  
Jonathan Akers  
Bridget McGrath  
Fred King  
MyLinda King  
Leviticus Cole

The City Council considered the findings at a public meeting on May 1, 2019 at 11:00 a.m. The City Council approved these final findings and conclusions at that time.

### **III. 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. Opponents of the appeal (Fred King, MyLinda King, Leviticus Cole) did not directly challenge the Community Service use category as described at PCC 33.920.420. However, at both the Hearing Officer hearing and the City Council hearing opponents of the appeal argued the Everett House appears to be operating as a business rather than a non-profit or a community center, and Mr. King offered evidence related to the advertising and sale of coupons for services offered at Everett House. However, as staff noted in its presentation to the City Council and as provided in the summary of enforcement activities below, in 2006 a neighbor challenged the non-profit status of the Everett House and the case was closed as “owner abated” when Elliot Mantell provided incorporation papers from the state of Oregon showing that the facility had been reincorporated as a non-profit entity. See 06-132256 CC. Additionally, the record includes multiple examples of activities that are charitable in nature that occur at the facility.<sup>3</sup> For these reasons, and with elimination of the chiropractic and acupuncture medical services, the City Council finds that the Everett House is a Community Service use.

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 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.

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<sup>3</sup> See e.g., Neighbors in Need and Community Room descriptions at Exhibit #H-77b; Testimony of Elliot Mantell and Aaron Cardella at the Hearing Officer hearing on November 26, 2018 and the City Council Hearing on March 20, 2019; Letter from Kristin Jo Siess at Exhibit H-50.

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- 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.

As noted above, Notice of a Public Hearing Before City Council on Appeal of a Land Use Decision by the Land Use Hearings Officer was mailed on February 1, 2019. The City Council received written testimony from the applicant and public comments both in favor of the appeal and in opposition to the appeal both prior to and during the March 20, 2019 hearing.

Where relevant to approval criteria, the City Council addresses 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 City Council agrees with BDS interpretation and 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:** Portland City Code (“PCC”) 33.815.105 A is directed to the “proportion of household living uses” in an area. 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 City Council finds 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, as currently drafted, focuses 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. To demonstrate PCC 33.815.105.A.2 is met an Applicant must provide a clear and detailed description of the scope of activities associated with its proposal. A detailed description of the scope of activities enables the Council 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 interpreted 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 established the scope of uses of the Subject Property in Applicant’s proposal.

The Hearings Officer and the City Council reviewed the CU 26-82 Staff Report and Hearings Officer’s decision (Exhibit G.6). The Hearing Officer found that he could not reverse or otherwise modify the 1982 conditional use permit approval. However, the

Hearings Officer indicated that he could interpret and construe the language in CU 26-82 narrowly. The City Council agrees with the Hearing Officer that it is not permissible to reverse or otherwise modify the 1982 conditional use permit approval. However, the City Council finds that for the reasons set forth below, the Hearings Officer's interpretation of the activities permitted at Everett House under CU 26-82 was too narrow.

The Hearings Officer noted 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 found 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 City Council agrees that the scope of activities allowed should be limited to the quoted activities for purposes of this requested amendment.

The Hearings Officer also took note of CU 26-82 Condition of Approval A which Stated, "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 agreed with BDS staff that Condition A is "vague and unenforceable." City Council also agrees with staff and the Hearings Officer on that point.

The City Council agrees with the Hearings Officer that the activities at the site should be limited to those activities identified in the 1982 staff report. The City Council finds that the CU 26-82 decision expressly permitted the specific activities of sauna, hot-tub, massage therapy, and "tea house" food service. The City Council also finds that the CU 26-82 decision also approved the more general relaxation and health counseling

as a catch-all category for other activities taking place at the Everett House. Therefore, to the extent that the current proposal includes the use of the Subject Property for the activities expressly or generally identified there is no increase in the intensity in Applicant's current proposal compared to the 1982 conditional use permit approval. In both written and oral testimony, the Applicant agreed to a condition of approval prohibiting any activity that the City Council determined was not approved by a reasonable reading of CU 26-82. For the reasons provided below, Condition F, assures that the activities at the site are limited to the activities approved through CU 26-82 under a reasonable interpretation of that decision.

The Applicant also agreed to a condition of approval limiting the total number of members and guests allowed at the site at any one time to 65 people and limiting the number of members and guests in any one class, seminar, workshop or event to 20 people. The Applicant pointed out in testimony that CU 26-82 contemplated a similar intensity and scale of people at the site because CU 26-82 required 30 off-site parking spaces and 10 bicycle spaces. Considering multiple occupancy vehicles and alternative forms of transportation to the site, such as walking or transit, CU 26-82 had conditions that contemplated a similar number of people at the site. Therefore, the Council finds that the condition limiting the overall number of people at the facility and limiting the number of size of classes and similar events, Condition G, ensures that the overall scale and intensity of the Everett House is similar to the scale and intensity contemplated in the 1982 conditional use approval and ensures that the use will not significantly lessen the overall residential appearance and function of the area.

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 City Council 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, mediation, 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 evaluated each of the identified activities in the Hearings Officer decision. The City Council concludes that the Hearings Officer's interpretation of the listed activities was too narrow. As discussed below, the City Council finds that with the proposed conditions of approval, the permitted activities at the Everett House shall be limited to those identified in CU 26-82.

The Hearings Officer, based upon Exhibit H.77b, found that the Applicant requested 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 noted that Special Events were not specifically listed/included in the CU 26-82 conditional use permit approval. The Hearings Officer found the Applicant's request for up to 12 Special Events per year with a maximum attendance of 95 was 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 found 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. At the City Council hearing the Applicant clarified that it is no longer proposing Special Events with up to 95 members at the site. To ensure that such events do not occur at the Subject Property, the Applicant agreed to a condition of approval limiting the total number of members and guests at the Subject Site to 65. The Applicant further agreed to a condition that would cap the number of people participating in any class, workshop or event at the site to 20 members and guests. The City Council finds that pursuant to Condition G, which implements the Applicant's recommend condition, Special Events with up to 95 people cannot occur at the site under the amended CUP.

The Hearings Officer found 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. Elliott 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

found that the provision of chiropractic services is not limited to massage therapy and relaxation or 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 found chiropractic is more closely aligned to the provision of general medical services such as provided in a medical clinic. The Hearings Officer considered the offering of chiropractic services to be a traditional office use (See PCC 33.920.240 A.1). Based upon the limited evidence in the record related to the type of chiropractic services offered at Everett House, the City Council agrees with the Hearings Officer. The Hearings Officer found 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 City Council agrees with the Hearings Officer that chiropractic services were not included in the list of activities permitted at the Subject Property in CU 26-82. At the City Council hearing the Applicant agreed to a condition of approval prohibiting chiropractic services at the Subject Property if the City

Council found that chiropractic services were not permitted by CU 26-82. Therefore, the City Council imposes Condition F, expressly prohibiting chiropractic services at the site.

The Hearings Officer found 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 Hearings Officer found 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 found the provision of acupuncture services expands the scope, scale, and uses allowed at the Subject Property under the CU 26-82 approval, and the City Council agrees. The Hearings Officer found the Applicant provided no evidence in the record addressing the impacts of including acupuncture services at the Subject Property and that there was 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 City Council agrees with the Hearings Officer that acupuncture services were not included in the list of activities permitted at the Subject Property in CU 26-82. At the City Council hearing the Applicant agreed to a condition of approval prohibiting acupuncture services at the Subject Property if the City Council found that acupuncture services were not permitted by CU 26-82. Therefore, the City Council imposes Condition F, expressly prohibiting acupuncture services at the site.

The Applicant indicated, in the Neighbors in Need section of Exhibit H.77b, that yoga services were proposed to be offered, at the Subject Property. The Hearings Officer found that the Applicant did not describe, in the record, any details related to the offering of yoga services at the Subject Property. The Hearings Officer further found the Applicant did not explain why yoga services should be considered as included in the CU 26-82 conditional use permit approval, and noted that the CU 26-82 conditional use permit approval did not expressly reference yoga services being offered at the Subject Property. The Hearings Officer found 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 also found that 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. In written testimony submitted into the record prior to the City Council Hearing, the Applicant argued that yoga is consistent with the general description in the CU 26-82 of relaxation and health counseling under a reasonable interpretation of the CU 26-82 staff report language. (Exhibit J.14) The Applicant specifically noted that yoga promotes relaxation and contributes to health and well-being. The City Council finds that yoga falls within the general description of relaxation and health counseling permitted by the CU 26-82 under a reasonable interpretation of that approval. The City Council further finds that the overall maximum of 65 members and guests at the facility and the maximum class or seminar size of 20 will effectively limit the intensity and scale of any yoga offerings so that the overall residential appearance and function of the area will not be significantly lessened.

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 Hearings Officer found that the Applicant did not provide a detailed description of the hydrotherapy services at the Subject Property. The Hearings Officer found the Applicant did not explain why hydrotherapy services should be considered as included in the CU 26-82 conditional use permit approval. The Hearings Officer found the CU 26-82 conditional use approval did not reference hydrotherapy services being offered at the Subject Property. The Hearings Officer found 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 also found 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. In written testimony submitted into the record prior to the City Council Hearing, the Applicant stated that use of hot tubs is hydrotherapy and contributes to relaxation and health. (Exhibit J.14) The City Council finds that hydrotherapy is allowed under the hot tub category and falls within the general description of relaxation permitted by CU 26-82 under a reasonable interpretation of that approval. The City Council further finds that the overall maximum of 65 members and guests at the facility and the maximum class or seminar size of 20 will effectively limit the intensity and scale of any hydrotherapy offerings so that the overall residential appearance and function of the area will not be significantly lessened.

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 Hearings Officer found that the Applicant did not provide a detailed description of the flotation tank services at the Subject Property. The Hearings Officer found that the Applicant did not explain 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 found that offering 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 also found 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. In written testimony submitted into the record prior to the City Council Hearing, the Applicant stated that flotation tanks are modern hot tubs that contribute to relaxation and health. (Exhibit J.14) The City Council finds that floatation tanks are allowed under the hot tub category and falls within the general description of relaxation permitted by CU 26-82 under a reasonable interpretation of that approval. The City Council further finds that the overall maximum of 65 members and guests at the facility and the maximum class or seminar size of 20 will effectively limit the intensity and scale of any floatation tank use so that the overall residential appearance and function of the area will not be significantly lessened.

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. The Hearings Officer found that it was not 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 found 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 further found it was 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). However, the City Council finds that there is no support in either the CU 26-82 decision or staff report or in the record of this amendment for the Hearing Officer's interpretation that CU 26-82 strictly limited class or counseling session size. Therefore, the City Council finds that relaxation and health counseling services, including related classes, seminars, workshops and events are activities generally permitted without reference to the number of participants by CU 26-82 under a reasonable interpretation of that decision. The City Council further finds that the overall maximum of 65 members and guests at the facility and limiting the maximum number of members and guests at any one class,

seminar, workshop or event will effectively limit the intensity and scale of those activities so that the overall residential appearance and function of the area will not be significantly lessened.

The Hearings Officer found it informative to consider the 1981 conditional use approval (CU 32-81), and noted that approval (Exhibit G.6, page 2 of the Staff Report), 1981 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 acknowledged 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 City Council finds that the 1981 conditional use approval has not been in effect since 1982 and has little to no relevance for this decision. Furthermore, the Council does not find that it is necessary to strictly limit the number of people at the site at any given time to the exact number of people contemplated in 1982. While vague and unenforceable, CU 26-82 Condition A was specifically selected to provide flexibility rather than a specific numerical cap. (See Exhibit G-6, page 12) Nonetheless, the City Council finds that limiting the total number of members and guests at the facility at any one time effectively limits the scale and intensity of the use to a level relatively similar to the level contemplated in the 1982 approval because CU 26-82 required 30 off-site parking spaces and 10 bicycle spaces. Taking into consideration multiple occupancy vehicles as well as members and guests that arrive by foot or alternative transportation, the City Council concludes that the anticipated intensity was near 65 people.

This approval criterion requires analysis of the intensity and scale of the proposed use(s) and of existing 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 agreed 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, increased the uses, scale of uses, and intensity of uses at the Subject Property as compared to what was approved in CU 26-82. The City Council also agrees with BDS staff, and concludes that Condition F effectively limits the uses or activities at the site to those approved in CU 26-82 under a reasonable interpretation of that decision. City Council further concludes that Condition G, limiting the maximum number of members and guests at the facility at any one time to 65 people and limiting the size of any one class, seminar, workshop or event to 20 people limits the scope and intensity of the identified activities and the overall scope and intensity of the use. The City Council finds that these two conditions working together ensure that the intensity and scale of the proposed use will not be significantly increased over the 1982 approval and the continuation of the activities under the restricted intensity and scope will not significantly lessen the overall residential appearance and function of the area.

For these reasons, the City Council finds that this approval criterion is 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 originally 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. At the hearing before City Council the Applicant agreed to the staff’s recommended language and withdrew its request for alternative condition language.

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 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). At the City Council hearing, the Applicant agreed to remove this structure and removal is required by Condition B.

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 City Council finds that this structure is compatible with adjacent residential developments and has few impacts. Therefore, pursuant to Condition B it may remain in place provided it does not increase in size or height and remains detached from the main building.

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 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, City Council adopts BDS Staff recommended Condition C which allows 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. Condition C also triggers 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 approved

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 Condition B addressing the removal and retention of the three structures identified behind the house at 2917 NE Everett Street, and the modified language for condition I regarding maintenance and repair versus building expansions included in Condition C, the City Council finds this approval criterion is 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 City Council agrees with the BDS Staff recommendation to consolidate the language contained in prior conditions and has provided conditions consistent with that approach.

**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 believed 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 City Council agrees. 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 and the Hearings Officer believed that the noise-related aspects of this criterion are met. The City Council agrees with the BDS approach to the noise issue and imposes Condition D. The City Council further finds that the overall limit on the number of people at the facility and the limited hours of operation will reduce the impacts of noise on livability. The City Council finds that with Conditions D, E(C) and G the noise aspects of this approval criterion are 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 City Council 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 City Council finds that with Conditions D and G and the continued application of Condition E(C), this criterion is 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.

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 Applicant provided 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 Applicant’s licensed transportation engineer, Michael Ard, also testified at both the initial hearing and the hearing before the City Council in support of the findings included in the referenced transportation analysis submittals. The City Council finds these Applicant’s traffic analyses and reviews followed professionally recognized standards.

**Approval Criterion D.1.**

The City Council finds , 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.**

Existing Uses

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 original 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 argued 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 agreed 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 opposition testimony at the City Council hearing did not directly challenge the Hearing Officer’s conclusion. The City Council agrees with the Hearing Officer’s conclusions on the plain language of PCC 33.815.105.D.1, and 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.

#### *Evaluation Factors*

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 found 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 found 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, was 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 neither 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). The opponents of the application and the appeal offered personal observations about the difficult parking conditions in the neighborhood in both written and oral testimony. However, the opponents did not offer expert testimony to contradict the conclusion of the Applicant's traffic engineer and PBOT's concurrence that a maximum parking rate of 81% was observed and is accurate. (See, Exhibit H-73)

The Hearings Officer agreed 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 City Council also agrees with the conclusion and is further convinced that the Ard Engineering traffic study evaluation of on-street parking was valid because it relied on actual parking counts while the Everett House was in operation rather than modeled projections based upon a proposed use.

The Hearings Officer could not 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 found that this approval criterion, as related to "on-street parking impacts," was not satisfied solely because of the reference to Special Events in the Applicant's program. However, the Applicant clarified through both written and oral testimony at the City Council hearing that it would agree not to hold Special Events of up to 95 people. Based upon that clarification and the imposition of Condition G limiting the total number of visitors at the Subject Property to 65 and limiting the size of any class, seminar, workshop or event to 20 people, the City Council finds transportation system is capable of supporting the proposed use in addition to the existing uses in the area taking into consideration on-street parking.

The Hearings Officer did not make findings related to the other evaluation factors because of his conclusion on Special Events. However, the Staff Report includes PBOT's findings related to all of the evaluation factors. The City Council agrees with PBOT's and staff conclusions and provides the following findings for the remaining factors.

### *Safety*

To evaluate motor vehicle safety, crash data was obtained from the Oregon Department of Transportation's Crash Analysis and Reporting Unit. The data obtained was for the most recent three years available, from January 2014 through December 2016. Crash data was examined for the intersections of NE 29th Avenue at NE Glisan Street, NE 30th Avenue at NE Glisan Street, NE 28th Avenue at NE Flanders Street, and NE 28th Avenue at NE Everett Street, which are the intersections most likely to be used by site trips to access the major streets in the site vicinity. Crash data was also examined for the nearby signalized intersections of NE 28th Avenue at NE Glisan Street and NE 32nd Avenue at NE Glisan Street.

The intersection of NE 28th Avenue at NE Glisan Street had 6 reported crashes during the three-year analysis period. These included five turning-movement collisions and one rear-end collision. Two crashes resulted a report of a "possible injury/complaint of pain". The other crashes resulted in property damage only.

The intersection of NE 29th Avenue at NE Glisan Street had 4 reported crashes during the three-year analysis period. These included two rear-end collisions and two angle collisions. The crashes resulted in one non-incapacitating injury and five reports of a "possible injury/complaint of pain".

The intersection of NE 30th Avenue at NE Glisan Street had 2 reported crashes during the three-year analysis period. These included one rear-end collision and one sideswipe-overtaking collision. The crashes resulted in property damage only.

The intersection of NE 32nd Avenue at NE Glisan Street had 3 reported crashes during the three-year analysis period. These included two rear-end collisions and one angle collision. The crashes resulted in property damage only.

The intersection of NE 28th Avenue at NE Flanders Street had one reported crash during the three-year analysis period. It was a non-collision in which a motorcycle overturned while traveling at high speed, resulting in incapacitating injuries to the rider.

The intersection of NE 28th Avenue at NE Everett Street had two reported crashes during the three-year analysis period. These included one turning-movement collision and one angle collision. The crashes resulted in one report of a “possible injury/complaint of pain”.

Based on the crash data, the study area intersections are currently operating acceptably with respect to safety. No significant crash hazards were identified, and no specific safety mitigation is recommended.

As is detailed on page 9 of Exhibit A.7 under “Availability of Pedestrian and Bicycle Networks”, the surrounding street system has a well-connected network that is capable of safely serving pedestrians and people on bicycles both in the immediate site vicinity and for connections to the larger surrounding transportation system.

In testimony to the Hearings officer and the City Council Leviticus Cole raised concerns about traffic related to the conditional use creating a hazard to children living on Flanders Street. However, Mr. Cole offered no evidentiary support for the claim that those visiting the Everett House create an unsafe condition for children in the neighborhood or other pedestrians. While safety is a high priority, the Council finds that the detailed safety analysis provided by the Applicant’s traffic engineer and agreed to by PBOT addresses the safety concerns raised by Mr. Cole. Additionally, the City Council finds that limiting the number of people at the Subject Property in combination with other transportation demand management conditions, such as the continuation of the required bicycle parking and payment of half of the cost of bus passes for employees will continue to limit the number of cars visiting the Subject Property.

Based on the analysis and the evidence in the record, the City Council finds the transportation system in the site vicinity can safely accommodate all modes of transportation and is adequate for the conditional use in addition to the other uses in the vicinity.

#### *Street Capacity and Level of Service*

In order to evaluate the operation of area streets and intersections, observations were conducted during the weekday morning and evening peak hours. The area evaluated extends from NE 28th Avenue to NE 32nd Avenue and from E Burnside Street to NE Glisan Street.

For purposes of evaluation, the four higher-volume streets that form the limits of the evaluated area were considered individually, while the lower-volume local streets internal to the study area which operate similarly were considered collectively. The four signalized intersections within the study area were also evaluated individually.

The local streets internal to the described area (NE 29th Avenue, NE 30th Avenue, NE 31st Avenue, NE Couch Street, NE Davis Street, NE Everett Street and NE Flanders Street) generally operate well within capacity and with high levels of service (ranging from LOS A to LOS B). On-street parking is generally permitted on both sides of the streets, resulting in a narrow effective travel way that provides for traffic calming, ensuring low travel speeds while safely accommodating through traffic. In many

instances, vehicles must pull to the side in order to allow traffic traveling in the opposite direction to pass. Operation of such “queuing streets” serves both to reduce through travel speeds and volumes, since vehicles without a destination in the neighborhood typically will not utilize the local streets for cut-through travel. Speeds limits on these streets vary from 20 mph to 25 mph.

Local street intersections within the aforementioned study area operate under a mix of two-way stop control and four-way stop control. Based on the low volume of entering traffic, these intersections operate at level of service A during the peak hours, with the primary source of delay being the need to stop at stop signs. Even when multiple vehicles arrive at intersections simultaneously, delays are very brief and typically consist of waiting for no more than 1-2 vehicles to pass through the intersection prior to entering.

NE 28th Avenue accommodates moderate traffic volumes in each direction, with traffic generally traveling slowly both due to the posted 20 mph speed limit and occasional conflicts with pedestrians crossing the street, bicycles in the roadway, and motor vehicles maneuvering in and out of parking spaces. Despite these brief interruptions, the roadway operates with little overall delay and well within capacity. Unsignalized intersections between NE Glisan Street and E Burnside Street operate with relatively low delays during the peak hours, although side-street vehicles occasionally need to wait for through queues to pass before entering the intersections. These unsignalized intersections operate at level of service C or better during the morning and evening peak hours.

NE 32nd Avenue operates with somewhat higher traffic volumes than most local streets in the site vicinity due to the presence of traffic signals at both NE Glisan Street and E Burnside Street. However, the volumes of traffic are still very low along this corridor, with the stop-controlled intersections between NE Glisan Street and E Burnside Street operating at level of service B or better during the peak hours.

NE Glisan Street carries moderate traffic volumes, with the highest volumes of traffic traveling westbound during the morning peak hour and eastbound during the evening peak hour. The observed traffic volumes remain well within the carrying capacity of a single travel lane in each direction. The unsignalized intersections along NE Glisan Street between NE 28th Avenue and NE 32nd Avenue operate well within capacity, and at level of service C or better.

E Burnside Street carries moderately high directional traffic volumes, with the majority of traffic again traveling westbound during the morning peak hour and eastbound during the evening peak hour. In order to more efficiently serve these directional traffic peaks, a second eastbound travel lane is provided, and the westbound right-turn lane at NE 28th Avenue which accommodates on-street parking during the majority of the day is restricted during the morning peak hours to better accommodate the higher volume of westbound traffic during this time. The unsignalized intersections along E Burnside Street between NE 28th Avenue and NE 32nd Avenue operate within capacity and with low to moderate delays for the stop-controlled movements, at level of service D or better during the peak hours.

The intersection of NE 28th Avenue at NE Glisan Street is controlled by a traffic signal. The northbound and southbound approaches each have a single, shared lane for all turning movements. The eastbound and westbound approaches each have a left-turn lane and a shared through/right lane. During the morning and evening peak hours, the intersection was observed to operate within capacity and at level of service D or better.

The signalized intersection of NE 32nd Avenue at NE Glisan Street has a single, shared travel lane for all turning movements on each of the four intersection approaches. During the morning and evening peak hours the intersection was observed to operate well within capacity and at level of service B/C.

The intersection of NE 28th Avenue at E Burnside Street is also controlled by a traffic signal. The northbound and southbound approaches each have single shared travel lane for all turning movements. The westbound approach has a left-turn lane, a through lane, and a right-turn lane. The eastbound approach has a left-turn lane, a dedicated through lane and a shared through/right lane. During the morning and evening peak hours, the intersection operates within capacity and at level of service D or better.

The signalized intersection of NE 32nd Avenue at E Burnside Street has a single, shared travel lane for all turning movements on the northbound and southbound approaches. The westbound approach has a left-turn lane and a shared through/right lane. The eastbound approach has a left-turn lane, a dedicated through lane, and a shared through/right lane. During the morning and evening peak hours, the intersection was observed to operate well within capacity and at level of service C or better.

Based on the operational observations, PBOT agreed with the Applicant's traffic consultant that all study streets and intersections are currently operating within capacity and with acceptable levels of service. Since the subject use was in operation during the observations, no additional traffic is anticipated upon renewal of the conditional-use permit. Accordingly, PBOT concluded that the study area streets and intersections are projected to continue to operate acceptably upon renewal of the conditional-use permit. PBOT further concluded that no operational mitigations are necessary or recommended. The City Council agrees with PBOT's conclusions.

#### *Connectivity*

The street grid in the immediate site vicinity is complete, with direct connections to major streets traveling both north/south and east/west.

Sidewalks are provided on both sides of all area streets, and marked crosswalks are available crossing higher-volume streets in the site vicinity.

Most area streets accommodate low traffic speeds and volumes and can be safely shared between motor vehicles and bicycles. Several vicinity streets have sharrow markings to reinforce the message that bikes may share the roadway, and bike lanes are provided in both directions along NE Glisan Street.

Based on the analysis, PBOT concluded connectivity is favorable for all travel modes. The City Council agrees with PBOT's conclusion.

#### *Transit Availability*

Tri-Met Routes 19 and 20 operate in the site vicinity on NE Glisan Street and E Burnside Street, respectively. These bus lines provide service to Downtown Portland as well as the Gateway Transit Center and beyond 7 days per week. The nearest bus stops are located on NE Glisan Street immediately east of NE 30th Avenue and on E Burnside Street west of NE 28th Avenue.

PBOT concluded that adequate transit service is available for both patrons and employees of the subject site, as well as the other uses in the site vicinity. The City Council agrees with PBOT's conclusion.

#### *Availability of Pedestrian and Bicycle Networks*

Continuous sidewalks are provided on both sides of the roadways within the study area. The low-volume local intersections and streets can be safely crossed without the need for marked crosswalks or pedestrian signals. The signalized intersections that form the four boundary corners of the study area each have pedestrian signals and marked crosswalks for all four legs of the intersections. Additionally, enhanced pedestrian crossing treatments are provided on NE Glisan Street at NE 30th Avenue and on E Burnside Street at NE 30th Avenue. The existing pedestrian facilities are capable of safely accommodating pedestrians traveling throughout the study area, as well as transit and motor-vehicle users as they walk between bus stops or parking spaces and their ultimate destinations.

The local streets within the study area consist of low-speed roadways accommodating very low to moderately low traffic volumes. Bicycles can safely share these roadways with motorized traffic. Bike lanes are in place along both side of NE Glisan Street in the site vicinity, providing east/west connectivity. An additional east/west connection is provided one block south of E Burnside Street along SE Ankeny Street, which is a Neighborhood Greenway with sharrows markings and speed humps for traffic calming. NE 32nd Avenue is designated as a Shared Roadway, with low volumes of low-speed traffic. NE 30th Avenue also provides a usable north/south connection for bicycles due to the enhanced crossing treatments provided at NE Glisan Street and at E Burnside Street. These streets provide connections to the surrounding city's bicycle network.

Based on the analysis, PBOT concluded that adequate pedestrian and bicycle networks are available within the site vicinity, and concluded that no mitigations are necessary or recommended. The City Council agrees with PBOT's conclusions.

#### *Access Restrictions*

There are currently no restrictions on access in the site vicinity, and none are needed to maintain safe operation with continued approval of the subject use.

#### *Neighborhood Impacts*

The Everett House has operated under a conditional-use permit since 1981. Renewal of the conditional-use permit for the site will maintain conditions similar to those experienced over the past few decades. The opponents of the appeal offered significant testimony on the perceived impacts of vehicle trips to the Everett House on the neighborhood. However, based upon the expert testimony from the Applicant's transportation engineer about available off-street parking, the City Council concludes that the neighborhood impacts are limited. Additionally, the City Council is imposing a cap on the number of members and guests that can be at the Subject Property at any given time to ensure that the intensity of the use does not expand. The City Council is also continuing conditions that require 10 bicycle spaces and require the Everett House to pay for half of the cost of employee bus passes. For these collective reasons, the City Council finds the requested amendment to the existing conditional use will not result in significant transportation related impacts to the surrounding neighborhood. To the extent that there is an unavoidable impact on the neighborhood created by vehicle trips to the area generally, the City Council finds that on balance, the conditions described above ensure that any impact created by the Everett House is mitigated.

### *Impacts of Bicycle, Pedestrian and Transit Circulation*

As described previously, the existing transportation network in the site vicinity provides safe connections for transit users, pedestrians, bicycles, and motor vehicles. The City Council agrees with PBOT's conclusion that the continued use of the of subject property will not impact circulation for any travel mode.

Considering all evaluation factors, the City Council finds that the transportation system is capable of supporting the proposed uses in addition to the existing uses in the area, and finds that with the imposition of Conditions E(F), E(H) and G, this criterion is met.

The Hearings Officer did not make findings related to PCC 33.815.105.D.2 b. and c. because he found the proposal must be denied for lack of evidence related to Special Events programming. The City Council finds that both subsection b and c are met. First, as described above, the City Council finds that the transportation system is capable of supporting the proposed uses in addition to the existing uses after consideration of all of the evaluation factors without mitigation that exceeds the transportation related conditions identified above. Therefore, additional mitigation is not necessary to satisfy the criterion. Nonetheless, the Applicant provided Transportation Demand Management measures to reduce the impact of site trips on both traffic demand and parking demand in the site vicinity.

As described in the Transportation Demand Management plan provided by the Applicant at Exhibit A.5, the Everett House uses information, facilities and incentives to minimize transportation and parking impacts on the surrounding community. These include:

- Making transit schedules and Bike + Walk Maps available at the site;
- Providing information regarding discount/incentive policies as well as relevant links for alternative travel mode resources within the Everett House email newsletters and website.
- Providing secure bicycle parking is available within the site (10 total spaces);
- Providing a \$50/month credit is offered for employee bus passes; and
- Providing a 15% discount to members and patrons that walk, bike, use public transit, or use ridesharing when visiting the site.

Item 3 and 4 are required as conditions of approval and the City Council encourages continued application of the other incentives to minimize vehicle trips.

Finally, no off-site transportation improvements are required to satisfy criterion D.2. Therefore, the timing provisions of subsection c are not applicable.

For the collective reasons set forth above, the City Council finds that transportation system criterion at 33.815.105.D.2 is met.

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

**Findings:** The Water Bureau reviewed the proposal 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 City Council 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 City Council 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 Ix 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 City Council 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 City Council 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 City Council 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 City Council 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 City Council 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 City Council 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 City Council 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 City Council 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 found this Goal was not met solely because of the inclusion of special events. As discussed above, the Applicant clarified at the City Council hearing that it would not hold special events at the Subject Property. Based upon that clarification and based upon Condition G that limits the size of any class or event to 20 members and guests and limits the overall number of members and guests at the Subject Property to a maximum of 65, and for the reasons set forth under 33.815.105.D above, the City Council finds the proposal is consistent with Goal 12.

### **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 City Council 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 City Council 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 City Council 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 City Council finds Goals 16-19 do not apply.

## **DEVELOPMENT STANDARDS**

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

## **IV. CONCLUSIONS**

The Subject Property has operated as a Community Service use 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 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 denied the Applicant's application for failure to meet the required approval criteria.

For the reasons set forth above, the City Council finds that as conditioned, the proposed conditional use permit amendment satisfies all applicable approval criteria and the City Council overturns the Hearing Officer's denial. The conditions imposed by the City Council were requested by the Applicant and specifically address the Hearing Officer's basis for denial. The City Council finds that pursuant to Condition F, the activities at the Everett House will be limited to those approved through CU 26-82 under a reasonable interpretation of that decision. Condition F prohibits chiropractic and acupuncture services at the Subject Property. Condition F also provides additional clarity on the permitted activities. The City Council further finds that Condition G eliminates the possibility of Special Events with up to 95 persons at a single time and limits the overall scope and intensity of the use by limiting the number of total guests and members at the site at any one time to 65 people and limiting the number of members and guests in any given class, seminar, workshop or event to 20 people. Once again, with these and the other identified conditions provided below, the City Council finds that the requested amendment to the Everett House conditional use satisfies all applicable criteria.

## **V. DECISION**

*City Council grants the appeal, overturning the Hearings Officer Decision with the following approval language and conditions:*

**Approval of a Conditional Use Review** to allow continued operation of a Community Service use in the R5 zone, more specifically for the Everett House Community Healing Center (hereinafter "Everett House") in the former homes at 2917 & 2927 NE Everett Street and 2926 NE Flanders Street.

This approval is granted based on the approved site plan and floor plans for the facility, Exhibits C.1 through C.8, and is subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related conditions (B through G) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 18-190331 CU."
- B. Two temporary structures located beside and behind the former home at 2917 NE Everett Street must be removed, including the tarp-covered, carport-like structure identified as "maintenance/storage" and a garden gazebo structure identified as "meditation area" on the site plan (Exhibits C.1 & C.5). The approximately 7-foot high detached structure labeled "storage 5 x 9 foot" on the site plan (Exhibits C.1 & C.5) may remain in place, provided it does not increase in size or height and remains detached from the main building.

- C. Maintenance and repair of existing structures on the site is allowed, except those two structures identified for removal in condition B, above. Instead of the floor area and exterior improvement triggers in Chapter 33.815, Conditional Uses, new floor area or expansions of exterior improvements in the future must receive prior approval through a Type II conditional use review if the increase in either is equal to or less than a 10% increase over existing amounts of each element. Increases in floor area or exterior improvements that exceed 10% of existing amounts of each element require a Type III conditional use review.
- D. Everett House may not create noise impacts in violation of City of Portland Title 18, Noise Control. Noise complaints during weekday office hours may be directed to the City of Portland Noise Control hotline at (503) 823-7350, and at other times to the non-emergency Portland Police hotline at (503) 823-3333. Title 18 prohibits 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.
- E. Prior conditions of approval from CU 26-82 are deleted, replaced, or still in effect as noted specifically below:
- A. **Deleted** and replaced by conditions D and G of LU 18-190331 CU.
  - B. **Deleted**
  - C. **Still in effect:** Hours of operation shall be limited to 8:00 a.m. through 11:00 p.m.
  - D. **Still in effect:** All property shall remain in a residential character at all times so that it may revert to complete residential use without major remodeling.
  - E. **Deleted** (city and state codes apply regardless of this decision).
  - F. **Still in effect:** 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 to all users at the reception area.
  - G. **Deleted** (state requirements for massage therapist licensure apply regardless of this decision).
  - H. **Still in effect:** At least 10 secure bicycle parking spaces shall be provided on site.
  - I. **Deleted** and replaced by conditions B and C of LU 18-190331 CU, above.
  - J. **Deleted** (occupancy permits to change structures from residential to community service were obtained following 1982 decision, this condition previously met).
- F. Chiropractic services and acupuncture services are prohibited at the site. Allowed activities at the site include sauna and hot tub services, including hydrotherapy and flotation tank services. Allowed activities also include massage therapy services, a "tea house" food service, and relaxation and health counseling services, including related classes, seminars and workshops and yoga offerings.
- G. The maximum number of members and guests allowed at the site at any one time is 65 people. The maximum number of members and guests that are allowed at any one class, seminar, workshop, or event is 20 people. This condition does not permit occupancy in any one building at the site to exceed the maximum occupancy established by the fire code or any other applicable federal, state, or local building code.

## **VI. APPEAL INFORMATION**

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

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

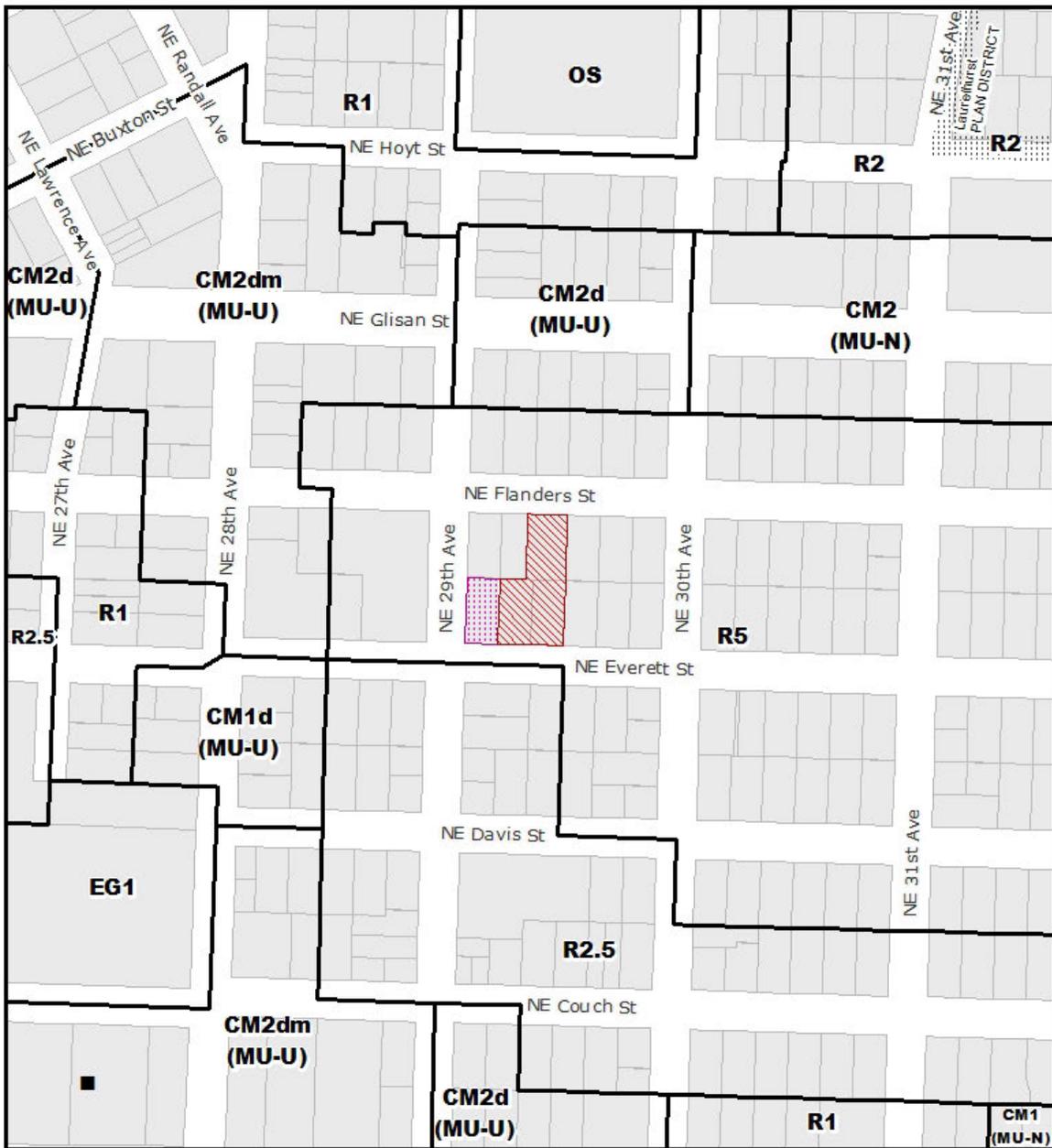
### **EXHIBITS - NOT ATTACHED UNLESS INDICATED**

- A. Applicant's 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
  - 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
- J. City Council Exhibits
1. Decision of the Hearings Officer
  2. Mailing list for the Hearings Officer Decision
  3. Appeal submittal
  4. Postmark copy of appeal hearing notice
  5. Mailing list and internal copy of appeal hearing notice
  6. Letter in objection to appeal from Leviticus Cole and Ruth Markee, rec'd. 3/13/19
  7. Letter in support of appeal from Daniella Cramer, rec'd. 3/13/19
  8. Letter in support of appeal from Chris Cournoyer, rec'd. 3/13/19
  9. Petition letters in support of appeal provided by applicant, rec'd. 3/14/19
  10. Letter in support of appeal from Stacey Royce and Adnan Kadir, rec'd. 3/18/19
  11. Letter in support of appeal from Hilary and Ryan Woodard, provided by applicant, rec'd. 3/18/19
  12. Letter in support of appeal from Daniella Kramer, rec'd. 3/18/19
  13. Letter in support of appeal from Stacey Royce and Adnan Kadir, provided by applicant, rec'd. 3/18/19
  14. Letter in support of appeal from Renee France, applicant's legal counsel, rec'd. 3/18/19
  15. Letters and petitions in support of appeal, provided by applicant, rec'd. 3/18/19
  16. Letter in support of appeal from Michael Smolski, rec'd. 3/18/19
  17. Letter in support of appeal from Roxane Auer, rec'd. 3/19/19
  18. Petition in support of appeal, provided by applicant, rec'd. 3/19/19
  19. Letter in support of appeal from Kristin Jo, rec'd. 3/20/19
  20. Letter in support of appeal from Anne Pernichele, rec'd. 3/20/19
  21. Letter in support of appeal from Mike Lindberg, rec'd. 3/20/19
  22. Letter in support of appeal from Kori Rush, rec'd. 3/20/19
  23. Staff PowerPoint presentation for 3/20/19 appeal hearing
  24. Letter in support of appeal from Anne Pernichele, rec'd. 3/20/19
  25. Letter in support of appeal from Anne Pernichele, rec'd. 3/20/19



# ZONING



- Site
- Also Owned Parcels
- Historic Landmark

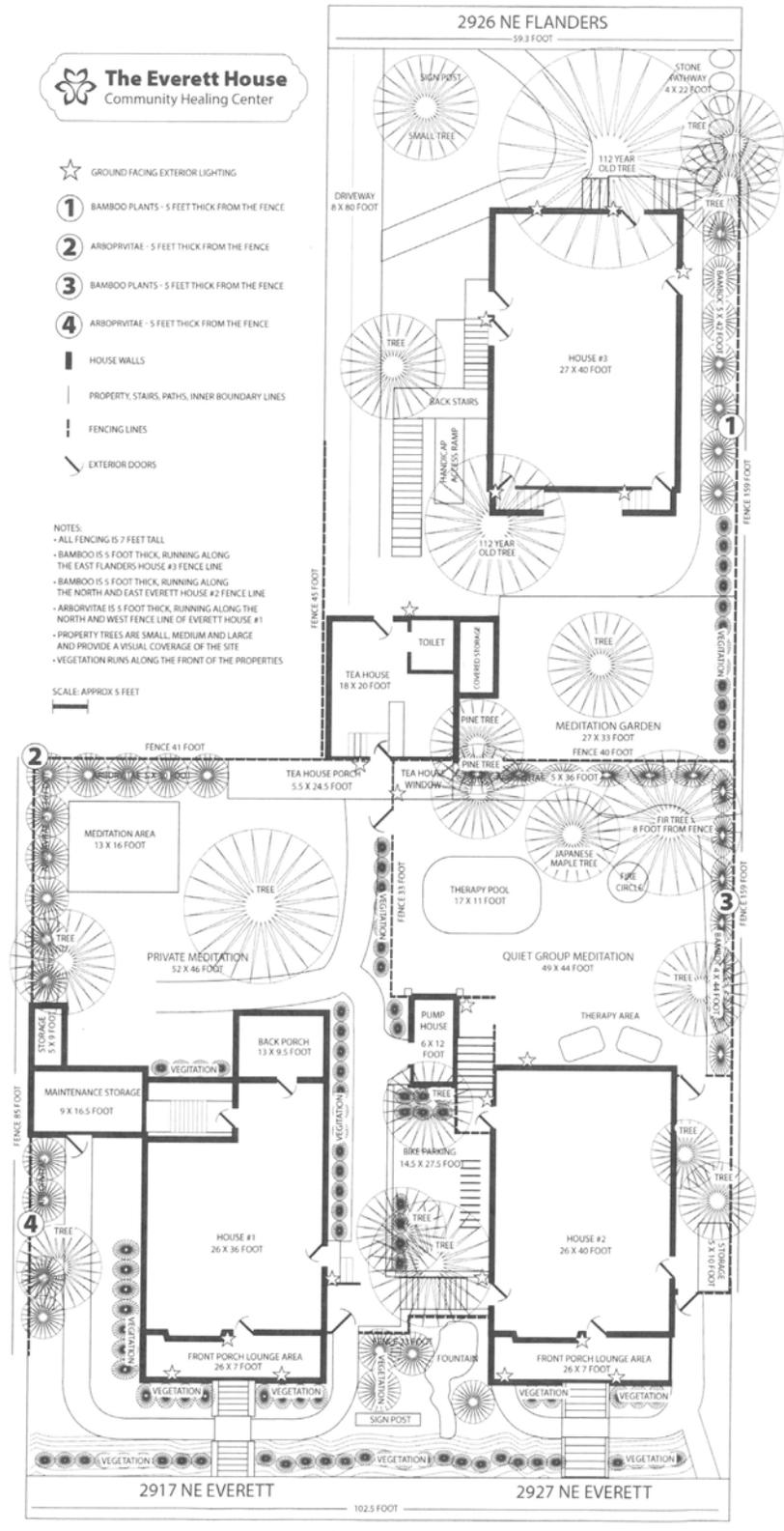
|             |                   |
|-------------|-------------------|
| File No.    | LU 18-190331 CU   |
| 1/4 Section | 3033              |
| Scale       | 1 inch = 200 feet |
| State ID    | 1N1E36CA 6400     |
| Exhibit     | B Jun 25, 2018    |

**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

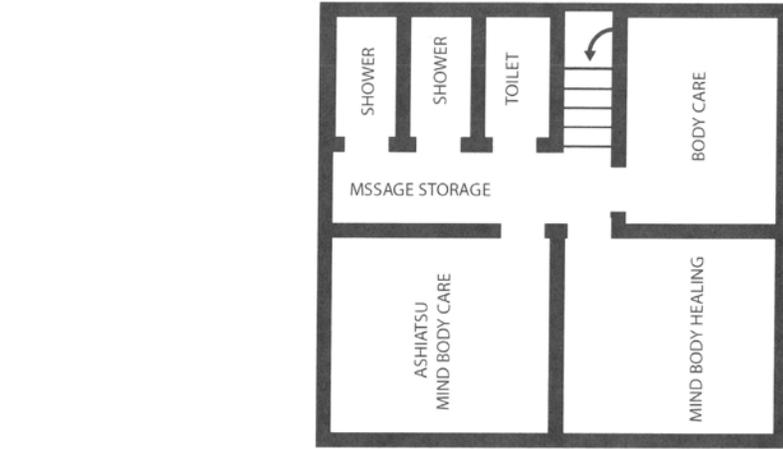
NOTES:  
 - ALL FENCING IS 7 FEET TALL  
 - BAMBOO IS 5 FOOT THICK, RUNNING ALONG THE EAST FLANDERS HOUSE #3 FENCE LINE  
 - BAMBOO IS 5 FOOT THICK, RUNNING ALONG THE NORTH AND EAST EVERETT HOUSE #2 FENCE LINE  
 - ARBORVITAE IS 5 FOOT THICK, RUNNING ALONG THE NORTH AND WEST FENCE LINE OF EVERETT HOUSE #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

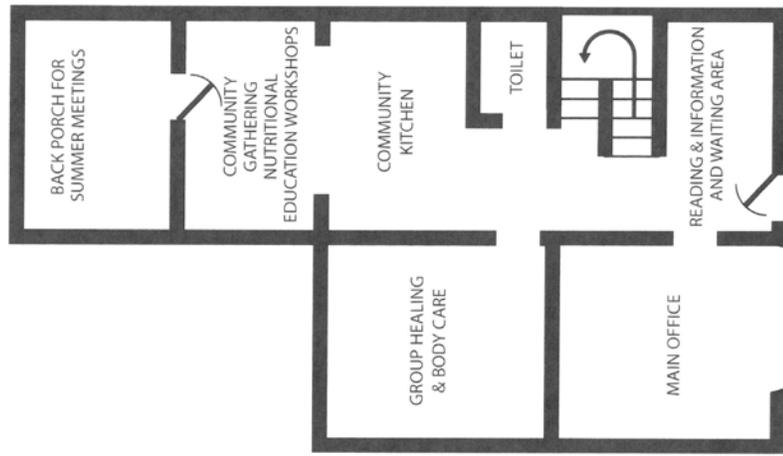


CASE NO. LU 18-190331 CU  
 EXHIBIT C-1

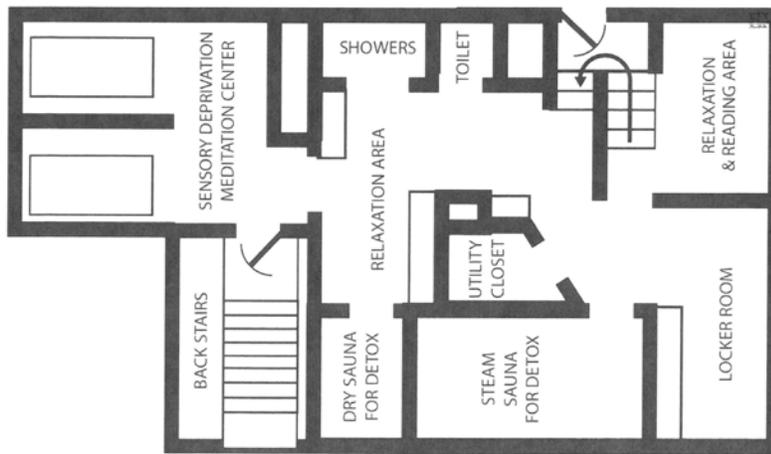
HOUSE 1 • 2917 NE EVERETT



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



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



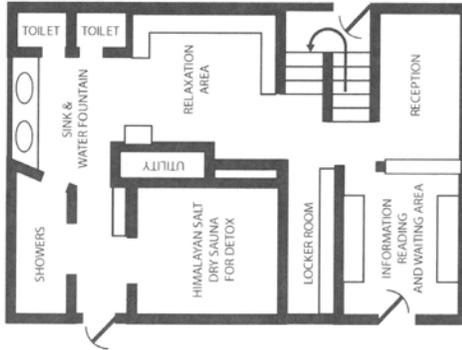
BASEMENT  
**ADVANCED MEDITATION & FLOATATION CENTER**  
 26 X 45.5 FOOT

CASE NO. W18-190331 LU  
 PERMIT C.2

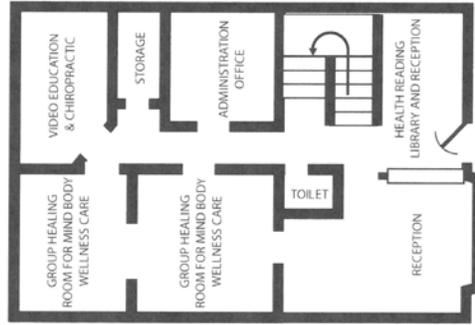
TEA HOUSE



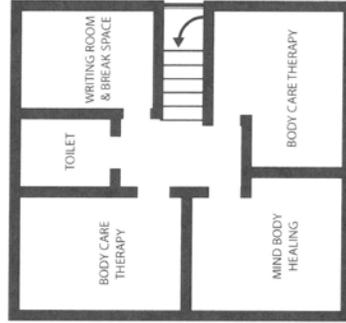
HOUSE 2 • 2927 NE EVERETT



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



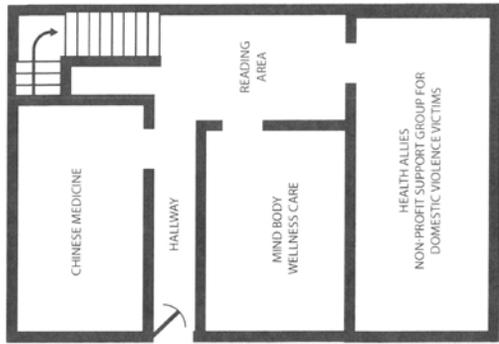
**GROUND FLOOR**  
**GROUP HEALTH & HEALING SERVICES**  
 26 X 40 FOOT



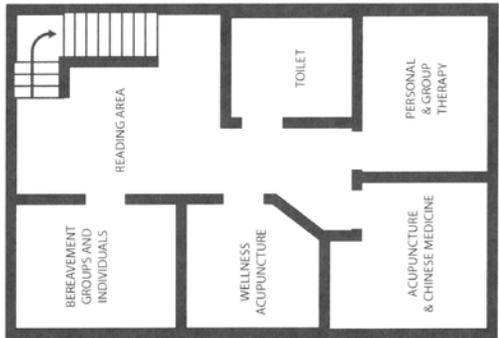
**SECOND FLOOR**  
**BODY CARE THERAPY**  
 26 X 28 FOOT

CASE NO. LU18-190731CU  
 EXHIBIT C.3

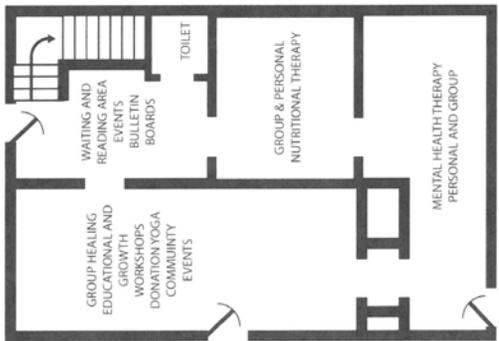
HOUSE 3 • 2926 NE FLANDERS



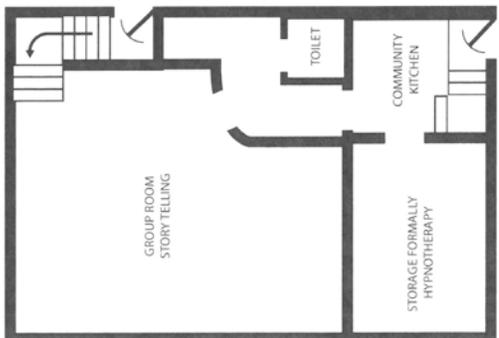
THIRD FLOOR  
GROUP AND PERSONAL THERAPY  
27 X 40 FOOT



SECOND FLOOR  
GROUP THERAPY  
27 X 40 FOOT



GROUND FLOOR  
GROUP HEALING & THERAPY  
27 X 40 FOOT



BASEMENT  
COMMUNITY USE AREA  
27 X 40 FOOT

CASE NO. W18-190331 CU  
EXHIBIT C-4