



Impact Statement for Requested Council Action

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March 20, 2019 hearing LU 18-190331 CU:  
Record is now **CLOSED**.  
Continued to May 1, 2019 at 11:00am Time Certain.

**Motion**

March 20, 2019

**263 TIME CERTAIN: 2:00 PM** – Appeal of Elliott Mantell against Hearings Officer’s decision of denial for a conditional Use Review for the Everett House Community Healing Center, in the former homes at 2917 and 2927 NE Everett St and 2926 NE Flanders St (Hearing introduced by Mayor Wheeler; LU 18-190331 CU) 3 hours requested

**Motion to tentatively grant the appeal and overturn the Hearings Officer’s recommendation, and grant approval of previously-approved uses from CU 26-82 (sauna, hot tub, massage therapy, relaxation and health counseling, tea house food service), with conditions:** Moved by Fish and seconded by Eudaly. (Y-3 Fish, Eudaly, Wheeler. N-1 Fritz)

**TENTATIVELY GRANT  
THE APPEAL AND  
OVERTURN THE  
HEARINGS OFFICER’S  
DECISION WITH  
CONDITIONS;  
PREPARE FINDINGS  
FOR MAY 1, 2019  
AT 11:00 AM  
TIME CERTAIN**





**City of Portland, Oregon**  
**Bureau of Development Services**  
**Office of the Director**  
FROM CONCEPT TO CONSTRUCTION

Ted Wheeler, Mayor  
Rebecca Esau, Director  
Phone: (503) 823-7300  
Fax: (503) 823-6983  
TTY: (503) 823-6868  
[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**MEMORANDUM**

March 20, 2019

To: Mayor Ted Wheeler  
Commissioner Amanda Fritz  
Commissioner Chloe Eudaly  
Commissioner Nick Fish  
Commissioner Jo Ann Hardesty

From: Rebecca Esau, Director  
Bureau of Development Services

*RE for RE*

RE: City Council hearing on LU 18-190331 CU (Everett House)

The purpose of this memorandum is to provide a summary and brief description of the land use review that will be presented to you in public hearing on Wednesday March 20, 2019 @ 2:00 PM, time certain.

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

**BDS Representative:** Mark Moffett, Senior City Planner, (503) 823-7806

**1. Land Use Reviews Requested:**

Conditional Use Review to modify a parking-related condition of approval from the original 1982 land use approval for the facility (CU 26-82, condition B). The facility was operated as "Common Ground" for many years, but was sold and re-named as the Everett House Community Healing Center (hereinafter "Everett House"). The condition required at least 30 off-street parking spaces within 300 feet of the facility, but the decades-long site of the parking at NE 28<sup>th</sup> and Everett Street is under redevelopment as an apartment building, and the parking is no longer in place. The original request from the applicant was simply to eliminate the condition requiring off-street parking.

**2. Key Elements of Proposal:**

The applicant (Dr. Elliott Mantell, Everett House Community Healing Center) is also the appellant in this case, and has appealed a Denial from the Hearings Officer to City Council. The applicant/appellant is represented by the attorney Renee France, and was previously represented before the Hearings Officer by land use consultant Peter Fry.

The site is located in the Kerns Neighborhood, with three former houses facing NE Everett and Flanders Streets, approximately two blocks east of the "restaurant row" on NE 28<sup>th</sup> Avenue between Burnside and NE Glisan. The main entry is from NE Everett Street, but patrons can also access the site from the former house facing NE Flanders Street. The outdoor hot tubs and other

outbuildings occupy the fenced back and side yards of the three former homes. There is a driveway that mostly functions as a loading space on the Flanders side, but no on-site parking.

The applicant provided a traffic study, including a professional study of on-street parking demands in the vicinity of Everett House. The parking analysis showed that there was sufficient on-street parking in the area, and this determination was eventually supported by staff from Portland Transportation.

The applicant provided a large volume of supporting letters from community members and patrons of the Everett House facility. At the initial hearing before the Hearings Officer, people spoke of the many benefits and advantages they receive from the facility, the support the facility offers to those who arrive by methods other than automobiles, and the many jobs created over the years. Supporters included some people who live nearby, as well as many who travel to the facility from further away.

There were several strong objections made by other nearby residents, most of whom objected to the intensity of activity at the site over the years, noise concerns from late-night activity, and parking and safety concerns related to Everett House patrons in the area. Extensive information was provided to the Hearings Officer during the open record period about the entire range of activities that occur at the site, including the expansion of activities and special events over the years.

The Kerns Neighborhood did not take a formal position on the application before the Hearings Officer. Prior to the upcoming City Council appeal, the Kerns Neighborhood issued the following statement: *"The Kerns Neighborhood Association supports in principal that the Everett House community center should remain in operation in the Kerns Neighborhood - on the conditions that it follows the City of Portland stipulations and that it continues to work with the neighbors in good faith to resolve any disputes, if possible via mediation."*

3. **Staff Recommendation:** The Staff Report to the Hearings Officer recommended conditional approval of the request, as follows:

**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 E) 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 and C.5. The approximately 7-foot high detached structure labeled "storage 5 x 9 foot" 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 condition D of LU 18-190331 CU, above.

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).

4. **Staff and Hearings Officer Recommendation:** The Hearings Officer's recommendation to City Council completely overturned the staff recommendation noted above, and denied the proposal in its' entirety. After review of the extensive information submitted during the open record period, the Hearings Officer made the following findings:

*"Providing space at the Subject Property for Special Events, chiropractic, acupuncture, yoga, hydrotherapy, flotation tank services, and general classes/workshops/seminars not directly related to relaxation and health counseling services are not, in the opinion of the Hearings Officer, uses allowed under CU 26-82." – Decision of the Hearings Officer, p. 15*

*"The Hearings Officer agrees with BDS Staff that **if** the program and uses permitted by the CU 26-82 conditional use permit are continued unaltered, under the current proposal there would be no additional intensity/scale impacts upon the residential area. However, the Hearings Officer determined that the Applicant's proposal, in this case, does increase the uses, scale of uses, and intensity of uses at the Subject Property as compared to what was approved in CU 26-82. The Hearings Officer finds that neither the Applicant nor BDS Staff provided substantial evidence or analysis in the record describing the impacts of the increased uses, scale of uses, and intensity of uses upon the appearance and function of the residential area." – Decision of the Hearings Officer, p. 16*

*"The Hearings Officer found that the on-street parking impacts resulting from the Applicant's proposed uses of the Subject Property, primarily for up to 12 Special Events serving up to 95 persons at a single time, was not adequately investigated and analyzed.*

*"The Hearings Officer found that had the Applicant restricted its proposed uses to those approved by CU 26-82, then the application likely would have been approved. In the alternative, the Hearings Officer found that approval of the proposal may have resulted had the Applicant provided the necessary evidence and analysis, in the record, related to the relevant approval criteria. The Hearings Officer found the Applicant did neither; the Applicant requested approval to use the Subject Property for uses not included in the CU 26-82 approval and did not provide evidence in the record to support a proper analysis of the added impacts that could be reasonably expected to occur if the additional uses were approved.*

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

*"If this case is appealed and the review body reverses the Hearings Officer decision, the Hearings Officer suggests that the review body approval include the BDS Staff conditions and not the Applicant's requested conditions." – Decision of the Hearings Officer, pp. 34-35*

## **5. Alternatives Facing Council**

- (Deny Appeal) Accept the Hearings Officer's recommendation, with no changes. This would deny the application, requiring the applicant to provide 30 off-street parking spaces and/or return through a subsequent land use review; OR
- (Grant Appeal) Overturn the Hearings Officer's recommendation, and grant approval of the more limited spectrum of previously-approved uses from CU 26-82 (sauna, hot tub, massage therapy, relaxation and health counseling, tea house food service), removing the requirement for off-street parking spaces and imposing earlier staff-recommended conditions of approval; OR
- (Grant Appeal, modify findings) Overturn the Hearings Officer's recommendation, and grant approval of the more limited spectrum of previously-approved uses from CU 26-82, removing the off-street parking condition and changing staff-recommended conditions of approval (e.g. allowing retention of the two buildings required to be removed per staff condition B); OR
- (Grant Appeal, modify findings) Disregard the Hearings Officer's findings about lack of evidence for expanded uses in the application, special events activity in the traffic study, etc. and approve the request to eliminate off-street parking, with or without changes to the staff recommendation and conditions of approval.

## **6. Legal Issues**

- This is an on-the-record or evidentiary appeal. No new information or arguments not presented to the Hearings Officer are allowed in the appeal to City Council.
- The 120-day period was extended by the applicant, expires on October 17, 2019

## Moore-Love, Karla

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**From:** Moffett, Mark  
**Sent:** Tuesday, April 30, 2019 1:56 PM  
**To:** Fred King; Kerns Neighborhood Association; Kerns Communications; molly@seuplift.org; Mireaya Medina; Leah Fisher; mylindakings@gmail.com; Dr. Elliott Mantell; COMMONCHIRO@YAHOO.COM; Renee France; Montalvo, Teresa; Hardy, Douglas; BDS Hearings Clerk; King, Lauren; Moore-Love, Karla  
**Subject:** Courtesy notice: Everett House Findings adoption date moved from 5/1 to 5/15  
**Importance:** High

Hello,

The applicant has requested that the final adoption vote for findings be moved, as Commissioner Eudaly will be absent tomorrow. The Mayor's Office has agreed to the request and asked the Council Clerk to **move the adoption of findings in the appeal of LU 18-190331 CU to Wednesday May 15<sup>th</sup>, 2019 @ 10:45am**. All five council members are expected to be present on the 15<sup>th</sup>.

A verbal announcement will be made in Council tomorrow that this agenda item has been moved to May 15<sup>th</sup> at 10:45am, but BDS staff will not be present. Legal requirements for notification will be met when the Council Clerk announces the reschedule of the findings adoption on the record in Council Chambers tomorrow.

This is a courtesy e-mail in an attempt to hopefully prevent people from traveling all the way downtown tomorrow for an adoption vote that will not happen until the 15<sup>th</sup>. I have only notified the Kings, Kerns contacts, and SE uplift people I could find easily in outlook, as we have no official e-mail distribution list (everybody will get a hard copy of the final decision in the mail). Please feel free to share with others I may have missed!

And as always, please don't hesitate to contact me directly with any questions.

PLEASE DO NOT REPLY-TO-ALL.

Thank you!

**Mark Moffett**  
**Senior Planner, Land Use Services Division**  
City of Portland Bureau of Development Services  
1900 SW 4th Avenue, Suite 5000  
Portland, Oregon 97201  
**503.823.7806**  
[mark.moffett@portlandoregon.gov](mailto:mark.moffett@portlandoregon.gov)

Hours: 7:30am to 4:00pm Monday-Thursday (flex Fridays)