



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

Ted Wheeler, Mayor
Rebecca Esau, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portlandoregon.gov/bds

**NOTICE OF A PUBLIC HEARING BEFORE THE CITY COUNCIL
ON AN APPEAL OF A LAND USE DECISION BY THE LAND USE
HEARINGS OFFICER**

CASE FILE: **LU 18-190331 CU**
Hearings Office Case # 4180032

WHEN: **Wednesday March 20th, 2019 at 2:00 PM**

WHERE: City Council Chambers
1221 SW Fourth Avenue

Notice mail date: February 1, 2019

To: Interested Person

From: Mark Moffett, City Planner
(503) 823-7806, mark.moffett@portlandoregon.gov

A public hearing will be held to consider an appeal of a land use decision. On January 10, 2019, the Land Use Hearings Officer issued a denial for a Conditional Use Review for the Everett House Community Healing Center at 2917 and 2927 NE Everett Street and 2926 NE Flanders Street. This decision was appealed by the operator and property owner representative for the site, Dr. Elliott Mantell. At the March 20, 2019 public hearing, City Council will consider the appeal. You are invited to testify at the hearing.

This will be an “on-the-record” hearing in which the City Council will decide the appeal based on the evidence in the public record that was available to the Hearings Officer. New evidence cannot be considered by the City Council.

Copies of the zoning map, site plan, and floor plans are attached. I am the staff person handling this case. Please contact me with any questions regarding the proposal, the Council hearing, or how to testify in this matter. The last page of this notice contains a general explanation of the City Council hearing process.

GENERAL INFORMATION

Appellant’s Representative: Renee France | Radler White Parks & Alexander LLP
111 SW Columbia St., Ste. 700 | Portland, OR 97201

Owner’s Representative/ Appellant: Elliott Mantell
Everett House Community Healing Center
2917 NE Everett St. | Portland, OR 97232

Property Owners: Elliott Mantel (owner @ 2917 NE Everett)
2917 NE Everett St. | Portland, OR 97232

E2 Healing Center LLC (owner @ 2927 NE Everett)
2927 NE Everett St. | Portland, OR 97232-3248

Flanders House LLC (owner @ 2926 NE Flanders)
2926 NE Flanders St. | Portland, OR 97232

Site Address: 2917 & 2927 NE EVERETT, 2926 NE FLANDERS ST

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 No.: R367800970, R367801050, R367801060

State ID No.: 1N1E36CA 06400, 1N1E36CA 06900, 1N1E36CA 06800

Quarter Section: 3033

Neighborhood: Kerns, contact Elliott Mantell at commonchiro@yahoo.com

Business District: None

District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010.

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

Case Type: **CU** (Conditional Use Review)

Procedure: **Type III**, with a public hearing before the Hearings Officer. The decision of the Hearings Officer can be appealed to City Council.

Proposal: 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 28th Avenue at a medical clinic site. That former medical clinic and the associated parking have now been demolished, and a redevelopment project with 118 apartments and ground floor retail is now under construction at the former parking lot site (2821 NE Everett). After neighborhood complaints about parking impacts and the loss of the parking lot were made to the city several years ago, the site has been under Code Compliance enforcement efforts due to the loss of the required off-site parking for 30 cars (15-169146 CC).

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

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

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

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

Community Service uses in the R5 zone require a conditional use review. Modification of prior conditions of approval requires re-consideration through the same procedure of land use review that was used to impose the conditions in the first place. Since the original 1982 conditional use approval under CU 26-82 occurred through the Type III procedure, and modifications to resulting conditions of approval are proposed, the applicant has requested this Type III Conditional Use Review.

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

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

HEARINGS OFFICER’S DECISION

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

The full decision is available on the Hearings Office website:
<https://www.portlandoregon.gov/bds/article/709358>

APPEAL OF THE HEARINGS OFFICER’S DECISION

The Hearings Officer’s decision was appealed by Elliott Mantell as an individual and as executive director of the Everett House Community Healing Center (the appellant). The appellant is represented in the appeal by Renee France, attorney with Radler White Parks & Alexander, LLP. The appellant states the proposal does not meet the approval criteria in Zoning Code Sections 33.815.105.A.2, 33.815.105.B, and 33.815.105.D.2, and with regard to Statewide Planning Goal 12 (Transportation). The appellant also provided a two-page written narrative in support of the appeal, which is attached to this notice.

Review of the Case File: The Hearings Officer's decision and all evidence on this case are available for review (by appointment) at the Bureau of Development Services, 1900 SW Fourth Avenue, 4th Floor, Portland OR 97201. Please contact support staff at 503-823-7617 to schedule a time to review the file. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost for such services. You may also find additional information about the City of Portland and City bureaus as well as a digital copy of the Portland Zoning Code, by visiting the City's home page on the Internet at www.portlandoregon.gov.

We are seeking your comments on the proposal. The hearing will be held before the City Council. To comment, you may write or testify at the hearing. In your comments, you should address the approval criteria, which are identified above. Please refer to the case file number when seeking information or submitting testimony. Written comments **must be received by the end of the public testimony of the hearing**, and should include the case file number and name and address of the submitter. Written comments must be given to the Council Clerk in person, mailed to 1221 SW Fourth Avenue, Room 130, Portland, OR 97204, or e-mailed to cctestimony@portlandoregon.gov.

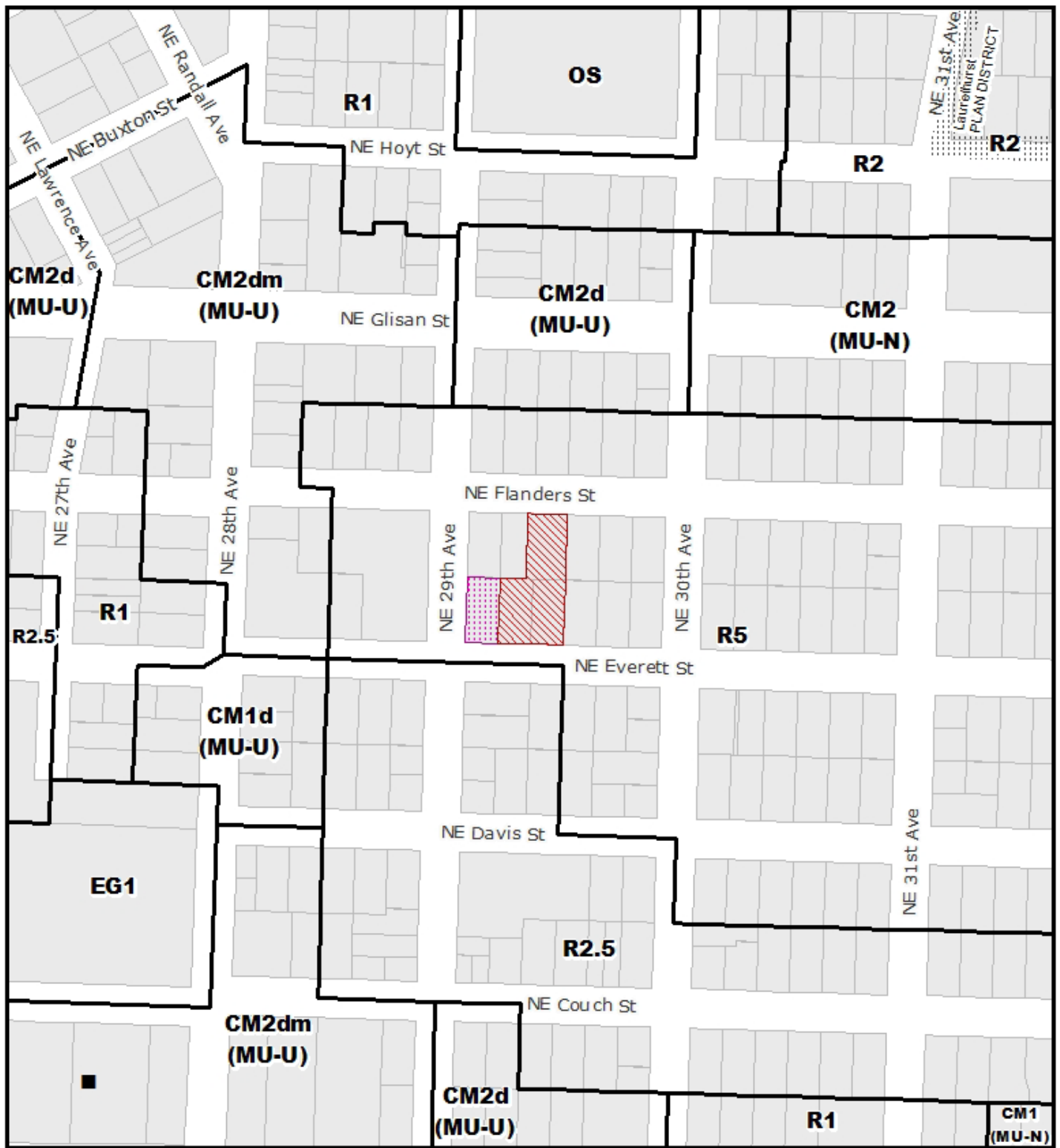
Appeal of the City Council's decision: The decision of the City Council may be appealed to the Oregon Land Use Board of Appeals (LUBA) at 775 Summer Street NE, Suite 330, Salem, OR 97310. The phone number for LUBA is (503) 373-1265. Failure to raise an issue in person or in writing by the close of the record at or following the final evidentiary hearing before the City Council on this case may preclude an appeal to LUBA on that issue. Also, if you do not provide enough detailed information to the review body, they may not be able to respond to the issue you are trying to raise. In such a situation an appeal to LUBA based on that issue may not be allowed.

Transportation to City Hall: Public transportation to City Hall is available. See www.trimet.org or call TriMet at (503) 238-7433 for routes and times. Parking garages are available in the vicinity.

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).


Enclosures:

1. Zoning map
2. Site plan
3. 2917 NE Everett Floor Plans
4. 2927 NE Everett Floor Plans
5. 2926 NE Everett Floor Plans
6. Two-page appellant narrative in support of the appeal
7. City Council Appeal Hearing Process for "on the record" land use appeals



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

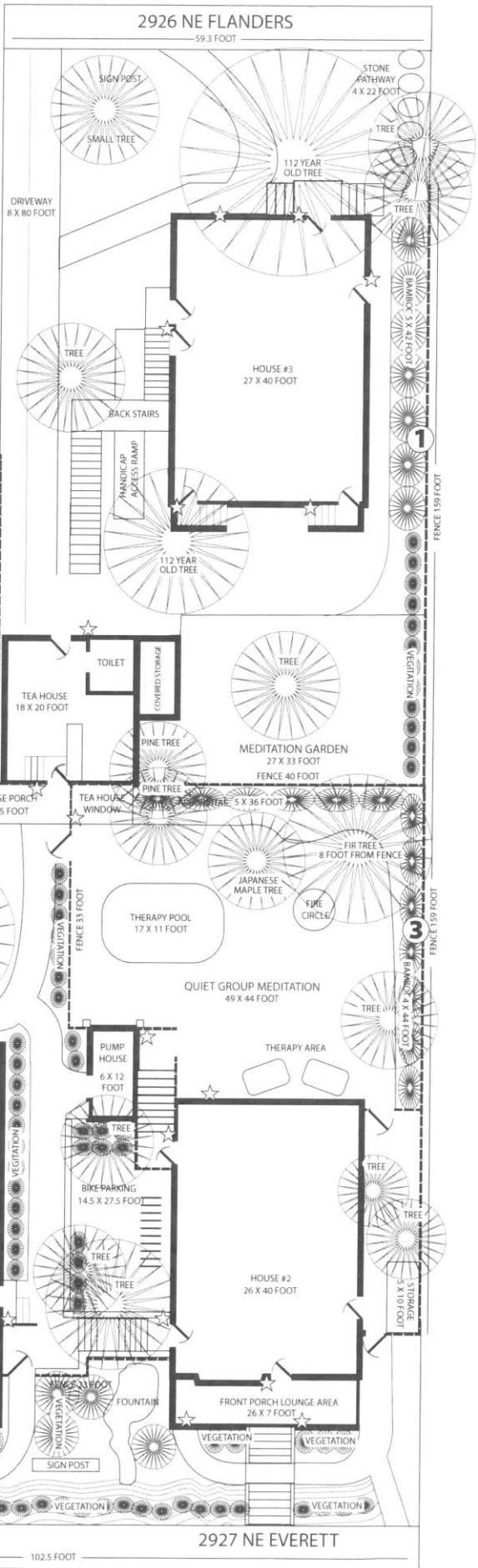
The Everett House Community Healing Center

- ★ GROUND FACING EXTERIOR LIGHTING
- ① BAMBOO PLANTS - 5 FEET THICK FROM THE FENCE
- ② ARBOPRIVATAE - 5 FEET THICK FROM THE FENCE
- ③ BAMBOO PLANTS - 5 FEET THICK FROM THE FENCE
- ④ ARBOPRIVATAE - 5 FEET THICK FROM THE FENCE
- I HOUSE WALLS
- | PROPERTY, STAIRS, PATHS, INNER BOUNDARY LINES
- FENCING LINES
- ⌋ EXTERIOR DOORS

NOTES:

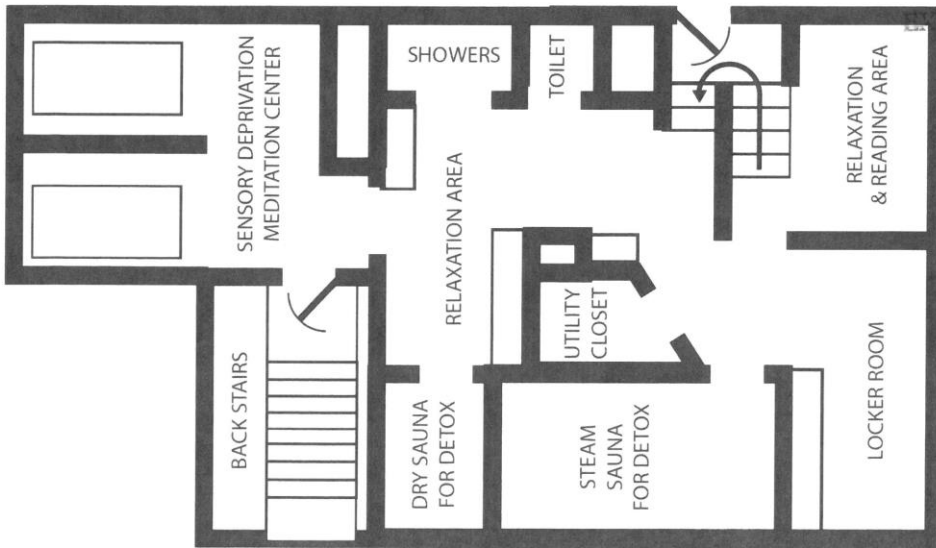
- ALL FENCING IS 7 FEET TALL
- BAMBOO IS 5 FOOT THICK, RUNNING ALONG THE EAST FLANDERS HOUSE #3 FENCE LINE
- BAMBOO IS 5 FOOT THICK, RUNNING ALONG THE NORTH AND EAST EVERETT HOUSE #2 FENCE LINE
- ARBOPRIVATAE IS 5 FOOT THICK, RUNNING ALONG THE NORTH AND WEST FENCE LINE OF EVERETT HOUSE #1
- PROPERTY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

SCALE: APPROX 5 FEET



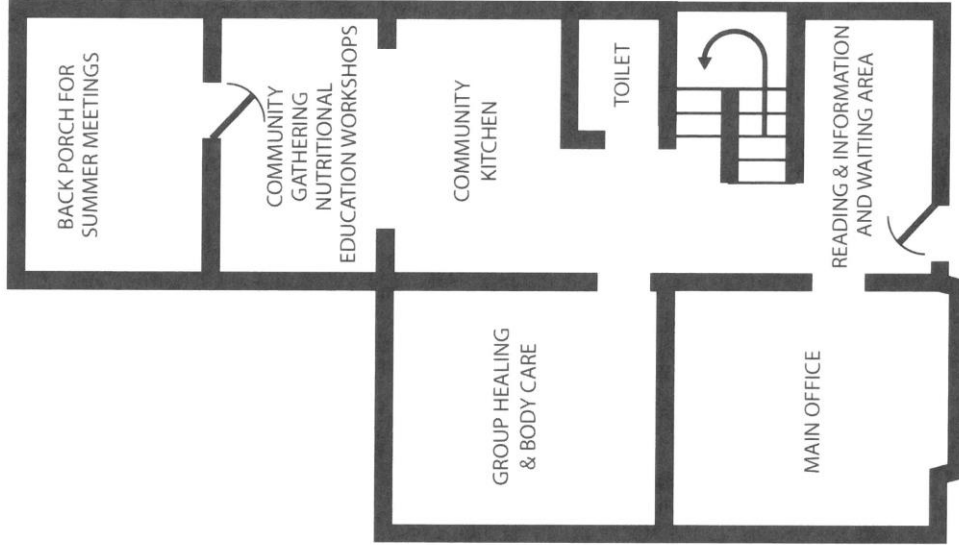
CASE NO. W 18-190331 W
EXHIBIT 6.1

HOUSE 1 • 2917 NE EVERETT

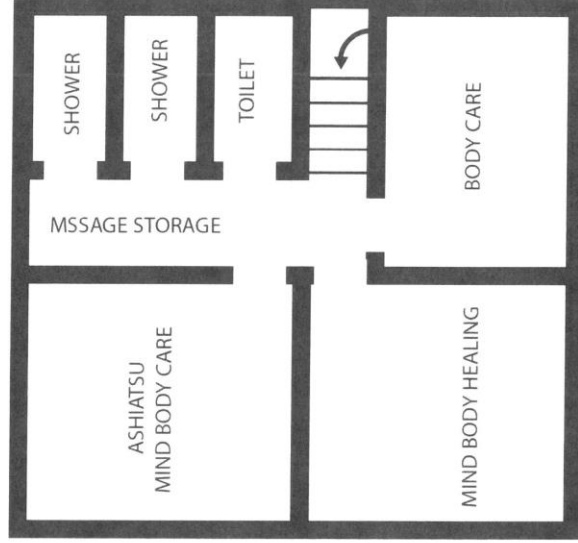


CASE NO. W18-19033100
 EXHIBIT C.2

BASEMENT
ADVANCED MEDITATION & FLOATATION CENTER
 26 X 45.5 FOOT

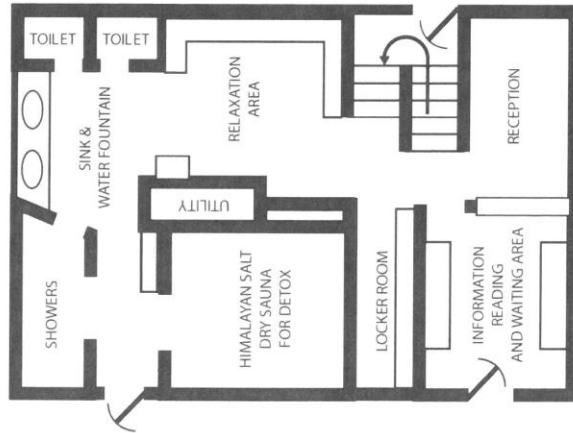


GROUND FLOOR
GROUP HEALING & COMMUNITY GATHERING
 26 X 45.5 FOOT

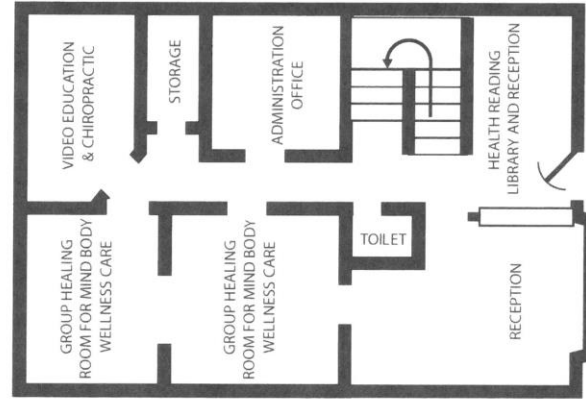


SECOND FLOOR
PERSONAL BODY CARE
 26 X 28 FOOT

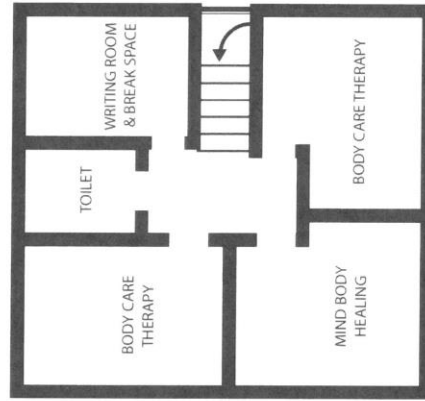
HOUSE 2 • 2927 NE EVERETT



BASEMENT
COMMUNITY SPA & SAUNA
26 X 40 FOOT

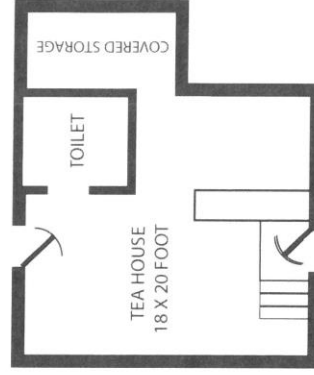


GROUND FLOOR
GROUP HEALTH & HEALING SERVICES
26 X 40 FOOT

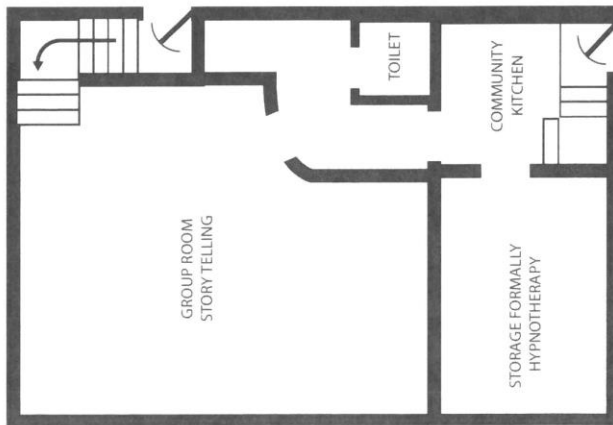


SECOND FLOOR
BODY CARE THERAPY
26 X 28 FOOT

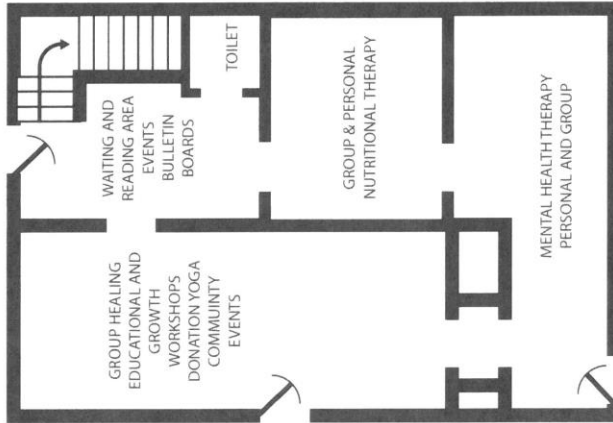
TEA HOUSE



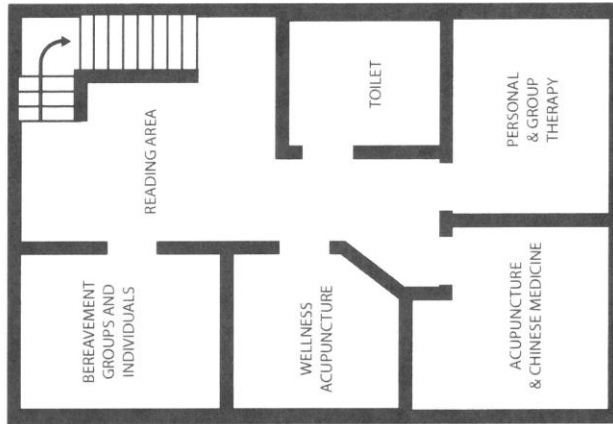
HOUSE 3 • 2926 NE FLANDERS



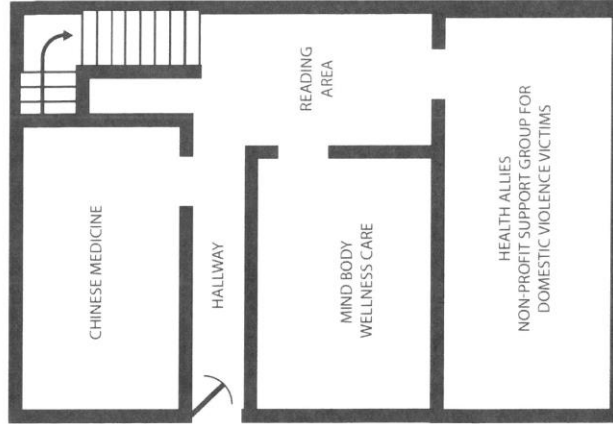
BASEMENT
COMMUNITY USE AREA
27 X 40 FOOT



GROUND FLOOR
GROUP HEALING & THERAPY
27 X 40 FOOT



SECOND FLOOR
GROUP THERAPY
27 X 40 FOOT



THIRD FLOOR
GROUP AND PERSONAL THERAPY
27 X 40 FOOT

Narrative in Support of Appeal of Hearing Officer Denial of Conditional Use Review to Remove a Condition

The property owner/applicant appeals the Design Hearing Officer denial of the conditional use review request in LU 18-190331. As indicated in the record, the existing Everett House Community Healing Center (the "Everett House") operates in three converted homes in the Kerns Neighborhood of Northeast Portland under a conditional permit issued in 1982 (CU 26-82). The applicant requested conditional use review to eliminate CU 26-82 condition of approval B, which requires the permit holder to provide at least 30 off-street parking spaces within 300 feet of the site.

The Hearing Officer denied the application because he found that the approval criteria at Portland City Code (PCC) 33.815.105.A.2, 33.815.105.D.2 and Statewide Planning Goal 12 were not met as a result of inadequate evidence related to specific existing or proposed activities at the Everett House to allow the necessary analysis for compliance with the identified criteria. The Hearing Officer found that PCC 33.815.105.B can be met with the imposition of a BDS Staff recommended condition that would require the removal of a temporary gazebo and carport. Contrary to these findings, the proposed removal of CU 26-82 condition B complies with all applicable approval criteria.

PCC 33.815.105.A.2

The Hearing Officer found that the applicant's proposed uses of the subject property exceed the uses allowed/approved in CU 26-82, and that there was insufficient evidence in the record to assess whether or not uses the Hearing Officer identified as not being included in the CU 26-82 approval would increase the intensity of uses at the Everett House to such an extent that the overall residential appearance and function of the area would be significantly lessened. The Hearing Officer acknowledged that he interpreted and construed the language in CU 26-82 narrowly. The appellant believes that the Hearing Officer's interpretation of the permitted activities identified in CU 26-82 was too narrow and was not a reasonable interpretation of the CU 26-82 decision and staff report included in the record. The appellant intends to provide additional evaluation of the Hearing Officer's interpretation of the activities permitted in CU 26-82 in relation to the existing activities at the Everett House as part of the appeal. The appellant will also address the evidence in the record that demonstrates that PCC 33.815.105.A.2 has or can be met.

PCC 33.815.105.D.2/Statewide Planning Goal 12

The applicant included Special Events in a program description submitted to the Hearings Officer during the open record period after the hearing. The Hearing Officer found that the on-street parking impacts resulting from Special Events at the site was not adequately investigated or analyzed because there was no reference to Special Events in the information submitted by the Applicant's traffic consultant. As a result, the Hearings Officer found that there was insufficient evidence to find compliance with PCC 33.815.105.D.2. The Hearing Officer also found that Statewide Planning Goal 12, Transportation, was not met because the applicant failed to adequately address on-street parking impacts related to Special Events. However, the Hearing Officer agreed with the applicant's traffic consultant that the parking occupancy estimates were conservative and that the existing uses (not including Special Events) demonstrated generally that on-street parking utilization meets City requirements. Based upon the Hearing Officer's decision and the evidence in the record, the appellant agrees to exclude Special Events from the proposed activities at the Everett House. Without Special Events, the evidence in the record and

the Hearing Officer decision supports a finding that both PCC 33.815.105.D.2 and Statewide Planning Goal 12 have been met.

PCC 33.815.105.B

BDS staff recommended a condition that would require removal of a temporary gazebo and a temporary carport on the site. The Hearing Officer found that PCC 33.815.105.B can be met with the imposition of that condition. However, evidence in the record indicates that the gazebo and carport are generally consistent with other temporary structures in residential areas. Therefore, the condition is not necessary to conclude that they are compatible with adjacent residential uses and the City Council can find compliance with PCC 33.815.105.B without a condition requiring removal.

For these collective reasons, the appellant respectfully requests that the City Council reverse the denial and adopt modified findings of consistency with the referenced approval criteria.

**GENERAL EXPLANATION OF CITY COUNCIL APPEAL HEARING PROCESS FOR
ON-THE-RECORD APPEALS**

1. SUBMISSION OF LEGAL ARGUMENT

- a. On-the record appeals are limited to legal argument only. The only evidence that will be considered by the City Council is the evidence that was submitted to the Hearings Officer prior to the date the Hearings Officer closed the evidentiary record. Parties may refer to and criticize or make arguments in support of the validity of evidence received by the Hearings Officer. However, parties may not submit new evidence to supplement or rebut the evidence received by the Hearings Officer.
- b. Written legal argument must be received by the time of the hearing and should include the case file number. Testimony may be submitted via email to CCTestimony@portlandoregon.gov or in writing to the Council Clerk, 1221 SW Fourth Avenue, Room 130, Portland, Oregon 97204.
- c. Legal argument may be submitted orally (see below).

2. COUNCIL REVIEW

- a. The order of appearance and time allotments are generally as follows:

Staff Report	10 minutes
Appellant	10 minutes
Supporters of Appellant	3 minutes each
Principal Opponent of Appeal (Applicant)	15 minutes
Other Opponents of Appeal	3 minutes each
Appellant's Rebuttal	5 minutes
Council Discussion	

- b. The applicant has the burden of proof to show that the evidentiary record compiled by the Hearings Officer demonstrates that each and every element of the approval criteria is satisfied. If the applicant is the appellant, the applicant may also argue the criteria are being incorrectly interpreted, the wrong approval criteria are being applied or additional approval criteria should be applied.
- c. In order to prevail, the opponents of the applicant must persuade the City Council to find that the applicant has not carried the burden of proof to show that the evidentiary record compiled by the Hearings Officer demonstrates that each and every element of the approval criteria is satisfied. The opponents may wish to argue the criteria are being incorrectly applied, the wrong approval criteria are being applied or additional approval criteria should be applied.

3. OTHER INFORMATION

- a. Prior to the hearing, the case file and the Hearings Officer decision are available for review by appointment, at the Bureau of Development Services, 1900 SW 4th Avenue, #5000, Portland, OR 97201. Call 503-823-7617 to make an appoint to review the file.

If you have a disability and need accommodations, please call 503-823-4085 (TDD: 503-823-6868). Persons requiring a sign language interpreter must call at least 48 hours in advance.