



MEMORANDUM

COMMISSIONERS' ASSISTANTS BRIEFING ON QUASI-JUDICIAL CASE

Date: August 28, 2024

To: Commissioners' Assistants and City Attorney

From: Andy Gulizia, City Planner, PP&D Land Use Services Division
Andrew.Gulizia@portlandoregon.gov | 503-865-6714

Re: LU 23-111784 CU AD – Conditional Use Review and Adjustment Review for a new concert venue in the Central Eastside

Hearing Date: September 19, 2024 at 2:00 pm

Briefing Date: September 9, 2024 at 1:00 pm

1. Land Use Review Proposal

This application for a Type III Conditional Use Review and Adjustment Review was submitted on December 22, 2023. The applicant proposes to construct a new, 62,000-square-foot building on this site to be used as a concert venue with 1,280 seats and a maximum spectator capacity of 3,500. The applicant requests Conditional Use Review approval for a new Major Event Entertainment use in the IG1 zone. The applicant also requests approval of two Adjustments to Zoning Code requirements for this project:

- To reduce the minimum number of on-site, Standard A truck loading spaces from 2 to zero. The applicant proposes to create 2 truck loading spaces which are primarily in the public right-of-way adjacent to the site. However, loading areas in the public right-of-way do not count toward the Zoning Code requirement.
- To reduce the amount of ecoroof area required from 14,617 square feet (total roof area minus allowable exemptions for roof slope greater than 25%, mechanical equipment, and the elevator overrun) to 4,670 square feet.

2. Applicant

The applicant is Beam Development.

3. Appellant

The appellant is Music Portland, a trade organization.

4. Approval Criteria

The applicable approval criteria for the Conditional Use Review are in Zoning Code Section 33.815.215.A-D. The applicable approval criteria for the Adjustment Review are in Zoning Code Section 33.805.040.A-F.

5. Staff Recommendation

The staff report to the Hearings Officer recommended approval of the Conditional Use Review and Adjustment Review with conditions.

6. Hearings Officer Findings and Decision

Hearings Officer William Guzman held a public hearing on this application on July 10, 2024, and issued his written decision on August 14, 2024. The Hearings Officer approved the proposal and found the applicant had adequately demonstrated the applicable approval criteria were met. The Hearings Officer's decision included the following conditions of approval:

- A. As part of the building permit application submittal, each of the required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C-1 through C-4. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 23-111784 CU AD." <https://efiles.portlandoregon.gov/record/16920849>
- B. Prior to issuance of a building permit for this development, the applicant must receive 30 percent public works concept approval and make any required bond payment for required frontage improvements abutting the site.
- C. Prior to issuance of a building permit for this development, the applicant must obtain approval of the appropriate permit as determined by PBOT for the proposed truck loading in SE Main Street. The applicant must adhere to all the conditions and stipulations of said permit for the life of the proposed use. If any conditions are found to be in violation, the applicant may be fined and/or any applicable permits may be revoked.
- D. The applicant must continually implement the transportation demand management (TDM) measures identified in the TDM plan in Exhibit A-10 that are within their control.
- E. The applicant must assess the bike parking capacity on an annual basis for the first 3 years after the concert venue begins operation and then every other year after that ending with year 11. That assessment must include bike count averages for events throughout the year. The applicant must send their assessment to PBOT Development Review and PBOT Active Transportation and Safety. If demand consistently exceeds the provided bike parking, the applicant must work with PBOT on remedies, including but not limited to adding additional bike racks or a contract for offering temporary bike racks during events.

7. Appeal

Music Portland appealed the Hearings Officer's decision on August 27, 2024. The appellant asserts the Hearings Officer's decision erred by not adequately responding to transportation issues such as truck movements in the street and conflicts with train crossings, by not adequately protecting the industrial character of the area, by not adequately considering the benefits intended to be provided by full ecoroof coverage, and by not considering negative impacts from the business practices of the intended operator of the concert venue (Live Nation).

8. Legal Parameters

State law requires the City to issue a final decision on a land use review application within 120 days of the date the application was deemed complete. This 120-day deadline can be extended only at the request of the applicant. In this case, the applicant has extended the 120-day review period by a total of 14 days, and the deadline for the final decision (unless further extended by the applicant) is October 4, 2024.

A City Council appeal is “on the record” unless the applicant signed a waiver form at the beginning of the review. The waiver form allows new evidence to be considered in the event of a City Council appeal and extends the City’s 120-day deadline for a final decision by 245 days. The applicant chose not to sign the waiver form in this case, so the City Council appeal hearing on September 19th will be “on the record.”

An “on the record” hearing is one in which the City Council must decide an appeal based only on the evidence in the public record that was available to the Hearings Officer. **New evidence cannot be considered in an “on the record” hearing.**

9. Alternatives Facing Council

- Deny the appeal and uphold the Hearings Officer’s findings and conditions of approval.
- Deny the appeal and uphold the Hearings Officer’s decision, but with modified findings or conditions.
- Grant the appeal and overturn the Hearings Officer’s approval of the Conditional Use Review and Adjustment Review.