

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

**IN THE MATTER OF AN APPLICATION  
BY BRIAN WEAVER FOR A  
CONDITIONAL USE REVIEW AT 602 NE PRESCOTT ST  
LU 11-187799 CU – PORTLAND PLAYHOUSE**

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**FINDINGS AND CONCLUSIONS**

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**ADOPTED BY THE CITY COUNCIL ON  
MARCH 14, 2012**

**(APPROVAL of a CONDITIONAL USE REVIEW)**

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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 No.:** LU 11-187799 CU (HO 4110034)

**Applicant:** Brian Weaver  
4307 N Commercial Avenue  
Portland, OR 97217-3061

**Appellant:** Alan Silver, Chair  
King Neighborhood Association  
4815 NE 7<sup>th</sup> Avenue  
Portland, OR 97211

**Applicant's  
Representative:** Will Rasmussen  
Miller Nash LLP  
3400 US Bancorp Tower  
111 SW Fifth Avenue  
Portland, OR 97204

**Property Owners:** David Morrison and Louanne Moldovan  
5546 SE Taylor Street  
Portland, OR 97215-2713

**Hearings Officer:** Kenneth D. Helm

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

**Site Address:** 602 NE Prescott Street  
**Legal Description:** BLOCK 3 LOT 1&2, LINCOLN PK ANX  
**Tax Account No.:** R497300340  
**State ID No.:** 1N1E23CB 03400

**Quarter Section:** 2631

**Neighborhood:** King

**Business District:** North-Northeast Business Association

**District Neighborhood Coalition:** Northeast Coalition of Neighborhoods

**Zoning:** R5a (Single-Dwelling Residential 5,000 base zone with the 'a' or Alternative Design Density overlay zone)

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

## **II. INTRODUCTION AND PROCEDURAL HISTORY**

**Procedural History:** This matter came before the City Council on the King Neighborhood Association's appeal of the City of Portland Hearings Officer's decision denying Brian Weaver's application for a conditional use for a community service use located in a former church (HO 4110034, herein the 'Hearings Officer Decision; Exhibit I.2). The community service use includes numerous activities, including theater performances by the Portland Playhouse. The King Neighborhood Association appealed the Hearings Officer decision on behalf of Brian Weaver, applicant in this case and the Artistic Director of the Portland Playhouse.

The Hearings Officer considered the applicant's Type III Conditional Use application for a Community Service use in a former church building at 602 NE Prescott Street. Following a public hearing and the close of a subsequent open record period, the Hearings Officer approved the application in part, but found that the play performances associated with the Portland Playhouse's activities at the site were an entertainment-oriented Retail Sales and Service use, and therefore prohibited in the R5 zone (PCC 33.920.030.D and 33.920.250.C.3). The Hearings Officer Decision granted approval of the Conditional Use review for the remainder of the proposed functions at the site as a Community Service use, subject to a condition of approval that the applicant shall implement their proposed Transportation Demand Management (TDM) Plan.

On February 2, 2012, the appellant appealed the Hearings Officer Decision to the City Council (Exhibit I.1) on the primary ground that "The entire proposal should have been approved as a community service use (33.920.420). The City miscategorized some of the proposal as Commercial Retail Sales and Services."

On March 1, 2012, the City Council convened to hear the Appeal on the record. Prior to the hearing, 85 letters had been submitted to the City Council Clerk on this appeal hearing, all of which were in support of the appeal and the Portland Playhouse (Exhibits I.7 through I.91). During the hearing on March 1, 2012, the City Council heard testimony of the appellant from the King Neighborhood Association, from Brian Weaver of the Portland Playhouse, and from Will Rasmussen, an attorney and Portland Playhouse representative in this case. Nineteen testifiers, including one testimonial presented by a group of schoolchildren from St. Andrew's Catholic School, expressed support for both the appeal and the Portland Playhouse. No testimony was offered in opposition to the appeal.

At the conclusion of the March 1, 2012 hearing, after a series of questions for the applicant and staff and after further Council deliberation, the City Council adopted a motion to tentatively grant the appeal and overturn the portion of the Hearings Officer's decision concerning the play performances by the Portland Playhouse. The effect of the

Council's decision was to tentatively approve the Conditional Use for all of the proposed uses, including the play performances. City Council directed staff to prepare findings for adoption on March 14, 2012.

On March 14, 2012, the City Council reconvened and adopted Findings and Conclusions sustaining the Appeal, and approving the Conditional Use for a Community Service use to be located at 602 NE Prescott Street, subject to a condition of approval included by the Hearings Officer.

**Original Proposal:** The applicant, the Portland Playhouse, proposes to use the old Highland Congregational/Mt. Sinai Baptist Church building at 602 NE Prescott Street as a community arts center, at which nonprofit classes, workshops, community discussion panels, art exhibits, mentorship programs, plays, and an art camp would take place. These activities have taken place at the site for the past several years. Because the site is located in a residential zone (R5), these uses are not allowed by-right. The site is currently under City enforcement for a zoning violation because the Zoning Code identifies theaters as an example of a commercial Retail Sales and Service Use, which is prohibited in the R5 zone. No exterior alterations or additions to the former church building are proposed to accommodate the proposed uses.

The applicant has requested conditional use approval for Community Service uses at the site, and that all activities at the site, including the plays, be considered Community Service uses, and not Retail Sales and Service uses. The specific activities proposed for the site are as follows:

Activity	Frequency	Participant s per Day	Time of Activity
Outreach/Planning/Maintenance	Daily, Year-round	2 to 8	Mon. – Sat., 8 a.m. – 6 p.m.
Classes	Daily, Year-Round	10 to 15	Mon. - Sat., 1 p.m. – 6 p.m.
Workshops/Training	Daily, Year-round	10 to 25	Mon. – Sat., 1 p.m. – 6 p.m.
Community Discussion Panels	Monthly, Year-Round	20 to 90	Mon. – Sat., 7 p.m. – 9 p.m.
Art Exhibition	Continuous, Year-Round	0 to 50	Ongoing
Membership Activities	Intermittent	0 to 10	Mon. – Sat., 1 p.m. – 5 p.m.
Three of Four Plays per Year	12 to 24 performances per play	40 to 90	Thu. – Sat., 7:30 p.m. – 9:30 p.m. + Sat. & Sun, 2 p.m. – 4 p.m.
Community-Oriented Events	Four to six per year	50 to 90	Thu. – Sat., 7:30 p.m. – 9:30 p.m.
Summer Art Camp	15 to 25 days in the summer	12 to 24	Mon. – Fri., 10 a.m. – 2 p.m.

**Relevant Approval Criteria:** The relevant approval criteria from Title 33 are:

- **33.815.105.A-E**, Conditional Use Approval Criteria for Institutional and Other Uses in R zones
- **(33.920)** Descriptions of the Use Categories.

### III. ANALYSIS

**Site and Vicinity:** The site is a 10,000 square foot corner parcel at the southeast corner of the intersection of NE Prescott Street and NE 6<sup>th</sup> Avenue. The site is occupied by a former church building, originally built in 1904 as Highland Congregational, but which also functioned for other congregations over the years, including the Mt. Sinai Community and Interracial Church. The building is located predominantly on the western half of the site, within approximately 5 feet of the lot line on NE 6<sup>th</sup> Avenue. The main entry doors and entry walkway face north towards NE Prescott Street, but with a greater setback (approximately 25 feet) from the lot line. The easterly portion of the site is an open garden area with grass, shrubs, and several small trees. There is no on-site vehicle parking.

The surrounding area within one block on all sides is exclusively residential in character. Most nearby structures are single-family homes, ranging from 1 to 3-story Victorian era homes to new infill townhomes and smaller detached houses. Two blocks to the west is the Martin Luther King, Jr. Boulevard (MLK Jr. Blvd.) commercial corridor, with a variety of retail, social service, and other non-residential uses in commercial structures, as well as several multi-story apartment and other mixed-use buildings. Two blocks to the north along NE 6<sup>th</sup> Avenue is the King School Park, the King School, and the NE Coalition of Neighborhoods Offices, all on a large contiguous site. Beyond the King School site and the MLK Jr. Blvd. corridor, the next closest commercial area is four blocks north of the site along NE Alberta Street. The remainder of the nearby area is generally residential in character, with smaller apartment buildings and other small churches and institutional uses interspersed among the homes.

Both surrounding streets are improved with paved public roadways, on-street parking, curbing, and paved public sidewalks.

**Zoning:** The site is zoned R5a (Single-Dwelling Residential 5,000 base zone with the Alternative Design Density overlay zone). The R5 zone is intended to preserve land for housing and to provide housing opportunities for individual households. The single-dwelling zones implement the comprehensive plan policies and designations for single-dwelling housing. The use regulations are intended to create, maintain and promote single-dwelling neighborhoods. They 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 allowed in the R5 zone through a Conditional Use Review process. Retail Sales and Service uses are prohibited in the R5 zone.

The 'a' overlay zone provides opportunities for greater residential density in some situations, provided that additional design compatibility requirements are met with the project. The 'a' overlay zone has no bearing on this proposal.

**Land Use History:** City records indicate no prior land use reviews for this site.

**Agency Review:** BDS Staff mailed a "Request for Response" on November 18, 2011. The following Bureaus responded to the proposal, after having reviewed all of the activities and uses proposed by the applicant:

The *Life Safety Section of BDS* has reviewed the proposal and offered Life Safety-related comments and information, but no objections to the requested Conditional Use Review. A separate building permit may be required, depending on the current legal occupancy

classification of the building under applicable building codes and ordinances. It is recommended that the applicant visit the Development Services Center to research the current occupancy classification and building code requirements associated with a possible change of occupancy, including but not limited to: seismic upgrades and system development fees. Specifically, it is recommended that the applicant contact the plan review section at (503) 823-7301 to request a preliminary Life Safety Meeting to verify building code requirements. Exhibit E.1 contains staff contact and additional information.

The *Water Bureau* has reviewed the proposal and provided information regarding available water service at the site, but no objections or concerns regarding the requested Conditional Use Review. A metered water service is provided to the site from a water main in NE 6<sup>th</sup> Avenue. Exhibit E.2 contains staff contact and additional information.

The *Bureau of Environmental Services* (BES) has reviewed the proposal and offered informational comments, but no objections or concerns regarding the requested Conditional Use Review. There is a public combination sewer in NE Prescott that serves the sanitary and stormwater needs of the building. The applicant submitted a sewer scope report for this review to BES indicating that there are some sags in the sewer line, mostly near the building. This line is considered a nonconforming sewer and a conforming connection will likely be required at time of repair or redevelopment of the site. The sewer scope did indicate to BES that the proposed uses do not appear to be a significant increase in load to the sewer over what the original system was designed for. With regards to stormwater management, all development and redevelopment proposals will be subject to the requirements of the City of Portland Stormwater Management Manual at the time of building permit review. The applicant has provided a site plan showing the location of the existing downspouts and has differentiated between those discharging onsite and to the City's combined sewer. Based on the current description, there are no changes to the stormwater system and there is no redevelopment proposed. BES has no recommended conditions of approval. Exhibit E.3 contains staff contact and additional information.

The *Urban Forestry Division of Portland Parks and Recreation* has reviewed the proposal and responded with "no concerns" but also a note saying to "protect existing street trees." The Urban Forestry Division is available at 503-823-4489. An electronic copy of the Urban Forestry response is included in the case file as Exhibit E.4.

The *Development Review Section of the Portland Bureau of Transportation* (PBOT) has reviewed the proposal for potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, potential impacts upon transportation services, and relevant issues in Titles 17 and 33. Detailed findings from PBOT for the transportation-related approval criteria are found later in this decision. PBOT has no objection to the proposal provided a condition is imposed requiring the applicant to implement their submitted Transportation Demand Management (TDM) Plan. Exhibit E.5 contains staff contact and additional information.

The *Fire Bureau* has reviewed the proposal and offered informational comments, but no objections to the requested Conditional Use Review. All current Fire Code requirements apply and are required to be met. If the requirements cannot be met, an appeal providing an alternative method is an option for the applicant. Any required building permits at the site must demonstrate conformance with applicable Fire Code requirements. Exhibit E.6 contains staff contact and additional information.

The *Site Development Section of BDS* has responded to the proposal with no objections, comments or concerns. Exhibit E.7 contains staff contact information.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on December 1, 2011. No written responses were received from either the Neighborhood Association or notified property owners in response to the proposal prior to the publication of the original staff report on Dec. 9, 2011.

Prior to and during the hearing before the Hearings Officer on December 21, 2011, ten additional letters were presented in this case. Nine of the letters at this time offered strong support for the Playhouse organization, and one letter voiced concerns about traffic and parking problems associated with the plays. Six individuals testified in support of the proposal before the Hearings Officer, in addition to the testimony provided by the applicant and the applicant's attorney.

Prior to the City Council hearing, 85 letters were received by the Council Clerk in this appeal, all of which expressed strong support for the appeal. A total of 6 additional letters were provided to the Council Clerk during and after the appeal hearing, also all in support of the appeal.

#### **IV. ZONING CODE APPROVAL CRITERIA AND FINDINGS**

##### **USE CLASSIFICATION**

This application was submitted in part to address an outstanding zoning violation case at the site (11-134353 CC), because of a complaint about plays taking place at the site and the impact of the plays on on-street parking in the neighborhood.

The applicant submitted an application and burden of proof narrative discussing their specific proposal in terms of both the Retail Sales and Service and Community Service use categories. The applicant argued in the narrative, at the initial hearing before the Hearings Officer, and in the open record documents that the proposed use is most similar to the Community Service use classification. Exhibit A.1, H.16 and H.17. The applicant specifically argued that the Portland Playhouse, based on its stated motives to engage the community in dialog on specific social issues, using theater as a forum and catalyst, and the ancillary functions of the old church building as described above, is a Community Service use "of a public, nonprofit, or charitable nature" as described in PCC 33.920.420.A.

The Hearings Officer found that applicant makes a persuasive argument that if the activities of Portland Playhouse as proposed are taken as a whole, the use appears to better fit the Community Service use category. The Hearings Officer found that the applicant also makes a good case that the mission of the Portland Playhouse goes well beyond simply functioning as a "theater." The City Council agrees with the applicant

that the term “theater” as used in PCC 33.920.250.C is so generic as to potentially include cinemas, movie houses, and traditional theaters.

After reviewing the Hearings Officer’s Decision, other information in the record, and considering the testimony and information presented at the March 1, 2012 appeal hearing, the City Council disagrees with the Hearings Officer’s Use Classification conclusion regarding the play performances. Specifically, City Council finds that the entirety of the functions and activities of the Portland Playhouse are best classified as a Neighborhood Arts Center, akin to the ‘Community Center’ example within the Community Service use category (33.920.420.C) for the following reasons:

- The Portland Playhouse is a non-profit organization;
- The site of the proposed activity, a former church building, has an established history as a community gathering place since the building was originally constructed in 1904 and continues to serve the surrounding neighborhoods on an ongoing basis;
- The Portland Playhouse has extensive partnerships and functional interaction on a regular basis with local public schools, parochial schools, and City-recognized neighborhood associations from the nearby area;
- The Portland Playhouse is supported by an extensive network of volunteers and subscribers, who donate the funds and time necessary to sustain the operation over time;
- All of the uses at the site, including the play performances, are tied together by a clear focus on theatrical and arts-related activities, including their educational programming, neighborhood outreach efforts, partnerships with schools, community discussion panels, and other activities as proposed; and
- No physical or exterior alterations are proposed to the church building, and the City service bureaus have determined that public services, including but not limited to transportation system capacity and the availability of on-street parking, are capable of serving the intensity of the Portland Playhouse operation.

Based on these facts and the information presented by the applicant and their supporters, City Council finds that the Portland Playhouse is most appropriately identified as an example of an arts-focused Community Center. Therefore, the entire operation, including the play performances, can be reviewed and considered as a Community Service use through the Conditional Use process in the R5 zone.

## **ZONING CODE APPROVAL CRITERIA**

### **33.815.010 Purpose of Conditional Use Regulations**

Certain uses are conditional uses instead of being allowed outright, although they may have beneficial effects and serve important public interests. They are subject to the conditional use regulations because they may, but do not necessarily, have significant adverse effects on the environment, overburden public services, change the desired character of an area, or create major nuisances. A review of these uses is necessary due to the potential individual or cumulative impacts they may have on the surrounding area or neighborhood. The conditional use review provides an opportunity to allow the use when there are minimal impacts, to allow the use but impose mitigation measures to address identified concerns, or to deny the use if the concerns cannot be resolved.

### **33.815.105 Institutional and Other Uses in R Zones**



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

**Findings:** The site is at the location of a prior Church use, with the original church building constructed at the site in 1904. Within two blocks in each direction, stopping just shy of the King School site to the north, there is only one other non-residential use in this residential zone. This other use is another church (Allen Temple Christian) at the corner of NE 8<sup>th</sup> Avenue and NE Skidmore Streets. The proposed use would replace the former church use at the site, without increasing the number and location of other uses not in the Household Living category.

The size, intensity and scale of the proposed Community Service uses at the site are not dissimilar to the scale and intensity of a typical church use, with somewhat greater weekday and evening activities and fewer weekend activities than is commonly found at a church. The extent and frequency of special events with large numbers of attendees, and the limited frequency and attendance for the other activities, will not significantly lessen the appearance and function of the residential area beyond that experienced with the former church uses at the site. These criteria are met.

**B. Physical compatibility.**

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

**Findings:** There are no City-designated scenic resources at the site, as indicated by the absence of any 's' or Scenic Resource Protection overlay zoning at the site, as indicated on the zoning map. 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, and landscaping; or
3. The proposal will mitigate differences in appearance or scale through such means as setbacks, screening, landscaping, and other design features.

**Findings:** There are no physical changes to the site proposed, and the existing church building will remain in place as it has existed within this residential neighborhood since 1904. Because no physical changes to the exterior of the building or site improvements are proposed, there are no changes to the physical compatibility of the site with the surrounding area. These criteria are met.

**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

**Findings:** The proposed uses occur almost exclusively indoors, thereby avoiding potential noise impacts. The applicant states that the classes, workshops, and panel discussions are rarely audible outside. No new lights are proposed on the outside of the building, and the nature of the uses is unlikely to generate odors. Because food products or other consumer items with disposable packaging are not sold at the site, litter is also unlikely to be a problem with the proposed uses. Although the use does include evening events that go as late as 9:30 p.m., the majority of ongoing events are concluded by 6:00 p.m. After operating at the site for at least two years, no noise complaints have resulted from activity at the site. This criterion is met.

2. Privacy and safety issues.

**Findings:** The nature of the use, and because activity occurs inside an existing church building, there are no potential identified privacy or safety issues that could impact nearby residentially-zoned lands. This criterion is met.

**D. Public services.**

1. The proposed use is in conformance with the street designations of the Transportation Element of the Comprehensive Plan;
2. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity, level of service, and other performance measures; access to arterials; connectivity; transit availability; on-street parking impacts; access restrictions; neighborhood impacts; impacts on pedestrian, bicycle, and transit circulation; safety for all modes; and adequate transportation demand management strategies;

**Findings:** The following findings for these criteria are taken directly from PBOT's response (Exhibit E.5):

"Street Classifications

At this location, NE Prescott Street is classified as a Neighborhood Collector, Transit Access Street, City Walkway, and Local Service street for all other transportation modes in the City's Transportation System Plan. According to City database sources, the street is improved with 28-ft of paving in a 50-ft right-of-way (r.o.w.). The site's frontage is improved with a 4-6-1 sidewalk configuration.

NE 6<sup>th</sup> Avenue is classified as a Local Service street for all transportation modes in the City's Transportation System Plan. According to City database sources, the street is improved with 30-ft of paving in a 50-ft right-of-way (r.o.w.). The site's frontage is improved with a 3-6-1 sidewalk configuration.

The applicant has applied for and received approval of a public works Design Exception to leave the existing sidewalk corridors in their current configuration instead of having to dedicate 1-ft on each frontage widen the planting strip by 0.5-ft on NE Prescott and 1.5-ft on NE 6<sup>th</sup> Avenue.

Street Capacity/Level of Service

The applicant has provided daily vehicle counts from PBOT traffic data that shows NE Prescott Street carries approximately 3,000 daily vehicles eastbound and 3,500 vehicles westbound on a typical weekday. For a

street classified as a Neighborhood Collector, this is not an excessive amount of vehicles. Vehicle counts were not available for NE 6<sup>th</sup> Avenue. There are counts for NE Going Street and NE 7<sup>th</sup> Avenue, one block north and one block east of the site. Both streets are Local Service Streets for all modes and likely are representative to traffic levels experienced on NE 6<sup>th</sup> Avenue which is also classified as a Local Service Street for all modes. NE Going carries approximately 255 vehicles eastbound and 232 vehicles westbound. These levels are not excessive for a Local Service Street. With larger activities proposed in the afternoon or evenings, impacts to the Level of Service at intersections during AM and PM Peak Hours will be minimal.

#### Access to Arterial

The site has direct frontage on NE Prescott Street which is classified as an arterial street (Neighborhood Collector).

#### Connectivity

The site is a corner lot in an older part of the City with an established grid street system. There is no need for additional public through streets at this location.

#### Transit Availability

The site is two blocks from MLK Blvd. which is classified as a Major Transit Priority Street. Also, NE Alberta Street, a Major Transit Priority Street, is four blocks north of the site.

#### On-Street Parking Impacts

The applicant has provided an on-street parking survey with data collected by volunteers that documents the total number of on-street parking spaces within two blocks in each direction of the site. The survey also documents how many on-street parking spaces are being used by residents and guests during afternoon and evening hours on a Friday and Saturday (11/18/11 & 11/19/11). An earlier survey done over Labor Day weekend was not considered a typical weekend to determine resident and guest needs since school was not yet in session and some residents may have been away.

The survey found that there are approximately 576 on-street parking spaces within the two-blocks of the site. The survey days and times were done when there were no activities occurring on the site so that typical neighborhood demand for on-street parking could be determined. The number of vehicles parking on the street ranged from a low of 173 (30% of available spaces) on Friday afternoon 11/18/11, to a high of 253 (44% of available spaces) on Saturday afternoon 11/19/11. These numbers are only slightly higher than those counted over the Labor Day weekend. The average of the four survey times found that neighborhood residents and guests generate a demand for 35% of the available on-street parking.

For the purposes of determining the potential impacts to on-street parking, transportation staff will be very conservative by assuming that 44% (highest documented count) of the on-street parking supply (253 spaces) is needed for residents and guests. This would leave 323 on-street parking spaces for non-resident/guest needs. If half of those remaining spaces were used by the Portland Playhouse, there would still

be 161 (28%) on-street parking spaces available for residents and their guests.

Since the proposal will not be providing any on-site parking, all cars coming to the Playhouse for activities will use on-street parking. To determine the worst case scenario, it's assumed that that all 99 people (max occupancy limit) coming to an activity drive there alone. This would represent a demand for approximately 31% of the total number of parking spaces within two blocks not used by residents and their guests.

A less conservative scenario would be to assume that only one third of attendees to events drove alone and the remainder came to the site with another person in their car. This would translate to the Playhouse generating a demand for 21% (66) of the on-street parking supply not needed by residents or their guests. When factoring in the number of persons coming to the site by transit, bike, or walking, the impacts to the availability of the on-street parking supply are even less.

The activity that would occur most frequently is the Plays. The applicant states that they anticipate up to 96 performances per year. The other activities that could have up to 99 attendees are the Community Discussions (12 per year), and Community Oriented Events (6 per year). The Plays themselves represent 84% of the activities that could have up to 99 attendees coming to the site.

Based on the parking survey provided by the applicant the proposed activities will not have any significant impact on the availability of on-street parking for neighborhood residents and guests. With implementation of the Transportation Demand Management Plan (TDM), the impacts will be reduced further.

#### Access Restrictions

There are no access restrictions on either NE Prescott Street or NE 6<sup>th</sup> Avenue.

#### Neighborhood Impacts

There is sufficient on-street parking in the neighborhood to serve the proposed use in addition to the existing uses in the area (see On-Street Parking Impacts discussed above). The number of vehicle traffic associated with the proposed use is not expected to create any significant impact on area residents.

#### Impacts on Pedestrians, Bicycle, and Transit Circulation

The location of the site is served by a well developed transportation system. All area streets have sidewalks on both sides, transit is available close by, and NE Skidmore one block south of the site is a City Bikeway. Approval of the proposed use will have minimal impact on pedestrian, bicycle, or transit circulation

#### Safety for All Modes

No negative impacts are expected with this proposal on the safety of any mode of the transportation system.

#### Transportation Demand Management Strategies

The Portland Playhouse has submitted a TDM plan that includes strategies for supporting alternative modes. The artistic director will serve as the transportation coordinator responsible for implementing the plan. Elements of the plan include providing information about transit availability to all staff and persons attending activities at the site. The Portland Playhouse will provide a ticket price reduction for people who walk, bike, or take public transportation to plays at the Playhouse. They will have volunteers outside the church during high-participation events to coordinate parking and discourage patrons from parking along NE 6<sup>th</sup> Avenue. Other TDM measures include providing two more on-site bicycle spaces than required by Title 33, scheduling events to avoid multiple activities at the same time, and avoid conflict with peak hours of travel whenever possible. They will set up a reporting and tracking with annual reports to PBOT, the King Neighborhood Association, and any interested neighbors. PBOT recommends that the Portland Playhouse be required to implement their TDM plan as a condition of conditional use approval.

Transportation Development Review finds, and the Hearings Officer concurs, that the transportation system is capable of supporting the proposed use in addition to the existing uses on the area. A condition of approval requiring the applicant to implement their TDM Plan will be added to this decision."

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:** Agency staff from the Water Bureau and Fire Bureau reviewed the proposal and responded that public services for water supply and fire protection are adequate for the proposed use. The Police Bureau did not respond with objections to the request, and currently provides Police services to the area. No development is proposed at the site, and therefore, BES voiced no objection to the proposal with regards to sanitary waste disposal and stormwater disposal. Future development or alterations at the site will be required to meet all applicable water, fire, and sanitary/stormwater disposal issues during the required building permit process. 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:** Adopted area plans at the site include the Albina Community Plan and the King Neighborhood Plan. Both plans reference objectives that include providing complete neighborhood services convenient to residents, ensuring access to open space, recreational and cultural activities, and celebrating the unique ethnic diversity and historical character of the area. Specific policies for Arts and Culture in the King Neighborhood Plan seek to promote multicultural art and entertainment options in the neighborhood, as well as supporting opportunities for individual artists to live, work, perform, and market their art in the neighborhood. The Portland Playhouse is supportive of these area plans both generally and specifically. This criterion is met.

## **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 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.

## **V. CONCLUSIONS**

Based on the findings above, the City Council concludes that the Portland Playhouse is best identified as a Neighborhood Arts Center, akin to the 'Community Center' example in the Community Service use category (PCC 33.920.420.C). City Council finds that the Portland Playhouse will have no significant impacts upon the livability or appearance of the surrounding residential area, that there are no significant impacts with regards to public services, and that the proposal is consistent with the policies in the Albina Community Plan and King Neighborhood Plan. With a condition of approval that the applicant implements and maintains their proposed Transportation Demand Management Plan, the request is able to meet the relevant approval criteria and can be approved.

## **VI. DECISION**

It is the decision of Council to grant the appeal of the King Neighborhood Association as filed on behalf of the Portland Playhouse. With this decision, the City Council overturns the portion of the Hearings Officer's Decision that classified the play performances as a prohibited Retail Sales and Service use. City Council hereby classifies the entire Portland Playhouse operation as a Neighborhood Arts Center, allowed through the Conditional Use process as a Community Service use, based on the specific facts in this case. The City Council upholds the portions of the Hearings Officer's Decision which granted Conditional Use approval for the use, and incorporating the play performances into this approval, with one condition. The effect of the Council's decision is:

**Approval of a Conditional Use Review** for Community Service uses at the site, including all of the individual activities and events as proposed, with times, frequencies, and attendees as identified in the proposal description at the beginning of this decision and on page 1 of the applicant's narrative (Exhibit A.1). This approval is subject to the following condition:

- A. The applicant shall implement and maintain their proposed Transportation Demand Management Plan, included in Section/Tab 2 of the narrative (Exhibit A.1).

## **VII. 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 or 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 Statement
  - 1. Original Application Narrative, Tabbed Sections 1-7
  - 2. Supplemental Transportation Information, received 12/5/11

- B. Zoning Map (**attached**)
- C. Plans and Drawings
  - 1. Site Plan and Downspout Survey
- D. Notification information
  - 1. Request for response
  - 2. Posting information and notice as sent to applicant
  - 3. Applicant's statement certifying posting
  - 4. Mailed hearing notice with mailing list
  - 5. Post-marked copy of hearing notice
  - 6. Mailed notice
- E. Agency Responses
  - 1. Life Safety Section of BDS
  - 2. Water Bureau
  - 3. BES
  - 4. Urban Forestry Division of Portland Parks and Recreation
  - 5. Development Review Section of PBOT
  - 6. Fire Bureau
  - 7. Site Development Section of BDS
- F. Letters
  - 1. *(none received at time of staff report publication on 12/9/11)*
- G. Other
  - 1. Original LUR Application
  - 2. Site History Research
  - 3. Pre-Application Conference Summary Notes – EA 11-153886
- H. Received in the Hearings Office
  - 1. Hearing Notice - Walhood, Mark
  - 2. 12/7/11 Letter - Baker, Etta M.
  - 3. Staff Report - Walhood, Mark
  - 4. 12/21/11 Memo with attachments - Walhood, Mark
    - a. 12/9/11 Just Out article - "Portland Playhouse thrives entering fifth year" - Walhood, Mark
    - b. Portland Playhouse - the America Season 2011-2012 - Walhood, Mark
  - 5. 12/19/11 E-mail, Alan Silver, King NA to Walhood - Walhood, Mark
  - 6. PowerPoint presentation printout - Walhood, Mark
  - 7. 11/3/11 letter from Eloise Darnrosch, Regional Arts & Culture Council – Weaver, Brian
    - a. 10/4/11 letter from Midge Purcell, Urban League of Portland - Weaver, Brian
    - b. 10/31/11 letter from Kimberly Howard, Oregon Cultural Trust - Weaver, Brian
    - c. 10/26/11 letter from Paul Anthony, Humboldt NA - Weaver, Brian
    - d. 10/17/11 letter from Austin Peterson, Sabin Community Association – Weaver, Brian
    - e. 9/29/11 letter from Jessica Jarratt Miller, Creative Advocacy Network – Weaver, Brian
  - 8. Supplemental Information on Portland Fee Based Arts Community Centers - Rasmussen, Will
    - a. Community Music Center - Rasmussen, Will
    - b. Multnomah Arts Center - Rasmussen, Will
  - 9. 12/30/11 Letter from Marsha Johnson - Rasmussen, Will
    - a. 12/27/11 Memo - Walhood, Mark
  - 10. 12/29/11 Letter from Brian Weaver - Rasmussen, Will
  - 11. 12/29/11 Letter from Brian Weaver - Rasmussen, Will
  - 12. Portland Playhouse Bylaws - Rasmussen, Will

13. 1/5/12 letter - Boardman, Charles
14. 1/6/12 Memo - Walhood, Mark
15. 1/6/12 Memo - Haley, Robert
16. 1/6/12 Memo - Rasmussen, Will
17. 1/9/12 Memo - Rasmussen, Will
18. 1/10/12 letter - Rasmussen, Will

I. Appeal Exhibits

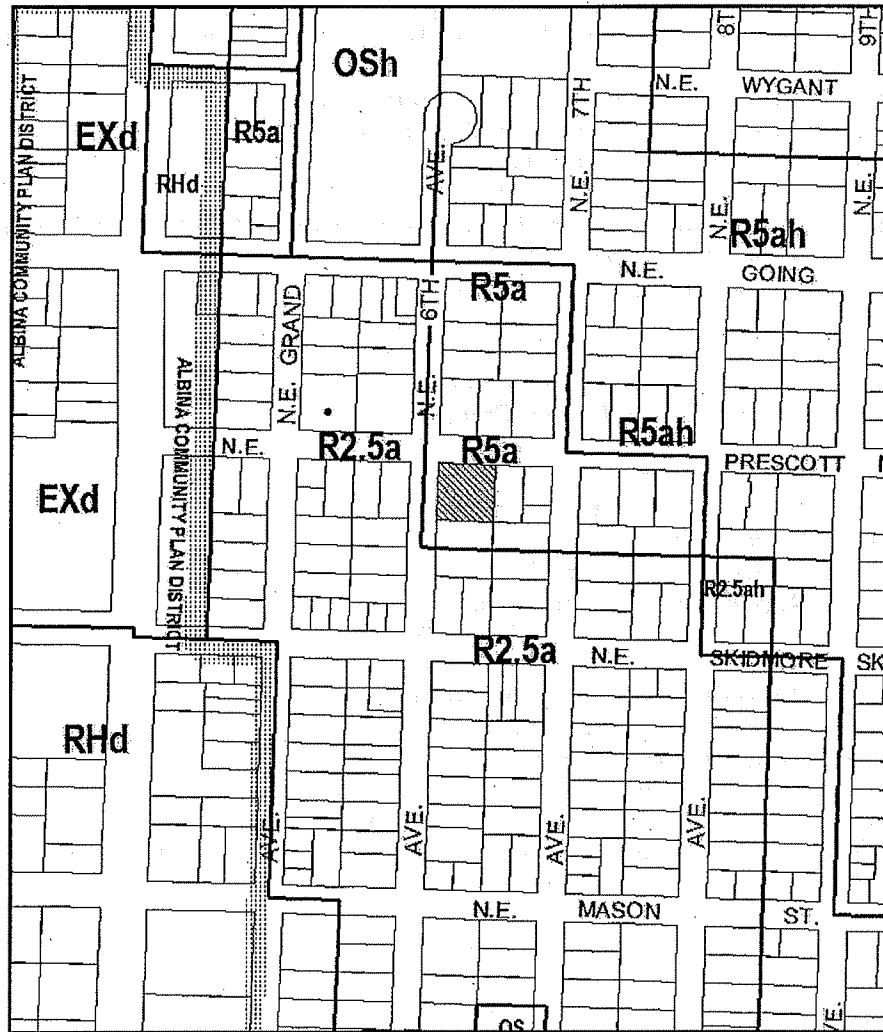
1. Appeal Submittal Form and Neighborhood Association Fee Waiver Request
2. Appealed Decision of the Hearings Officer
3. Mailed Notice of Appeal Hearing
4. Mailing List for Appeal Hearing Notice
5. City Council Appeal Packet Distribution Cover Memo

*(Items Received Before Hearing)*

6. Staff PowerPoint Presentation
7. Letter of Support from William H. Wilson, M.D.
8. Letter of Support from Louise Magun
9. Letter of Support from Wayne Harrel
10. Letter of Support from Reuben Nisenfeld
11. Letter of Support from Jeff Zurschmeide
12. Letter of Support from Sarah Canterberry
13. Letter of Support from John Kysar and Judith Davis
14. Letter of Support from Michael Ossar
15. Letter of Support from Melissa Chernaik and Jeff Brock
16. Letter of Support from Louisa McCleary
17. Letter of Support from Samantha Petty
18. Letter of Support from Barbara Conable/Sabin Community Association
19. Letter of Support from Sharon Fekety
20. Letter of Support from Lisa Turpel
21. Letter of Support from Lee Ann Gekas
22. Letter of Support from Catherine Fallon
23. Letter of Support from Mike Cino
24. Letter of Support from Chet Skibinski
25. Letter of Support from Eric Behny
26. Letter of Support from Kiley Yuthas
27. Letter of Support from Mary Bothwell
28. Letter of Support from Christine Van Fleet
29. Letter of Support from Clara Weishahn
30. Letter of Support from Julie Chapman
31. Letter of Support from Kathleen Worley
32. Letter of Support from Don Jacobsen
33. Letter of Support from Jeanie Golino
34. Letter of Support from Dawn Kely
35. Letter of Support from Barbara Walden
36. Letter of Support from Michael Toth
37. Letter of Support from Faye Powell
38. Letter of Support from Ann Brayfield
39. Letter of Support from Charlotte Rubin
40. Letter of Support from Kim Morrison
41. Letter of Support from Nick Zagone
42. Letter of Support from Mary Shaw
43. Letter of Support from Darien Pierce
44. Letter of Support from Brenan Dwyer
45. Letter of Support from Lynn Bonner
46. Letter of Support from Aija Kanbergs
47. Letter of Support from Steve Brian



48. Letter of Support from Isabel Sheridan
49. Letter of Support from Barbara Lawson
50. Letter of Support from Eileen Kovac
51. Letter of Support from Bruce Murray and Valerie Ilsley
52. Letter of Support from Patrick Cassidy
53. Letter of Support and Cards from St. Andrew Nativity School, forwarded by Brian Weaver
54. Letter of Support from Rev. Lynne Smouse Lopez
55. Letter of Support from Ernie and Mary Swartz
56. Letter of Support from Mark Oldani
57. Letter of Support from Dave Sutton
58. Letter of Support from George Bruender/Concordia Neighborhood Association
59. Letter of Support from Nancy Sellers
60. Letter of Support from Marjorie Hirsch
61. Letter of Support from Barbara Steinfeld
62. Amended Letter of Support from Louisa McCleary
63. Letter of Support from Stepan Simek
64. Letter of Support from Michael Campbell
65. Letter of Support from Kirke Wolfe
66. Letter of Support from Bruce Cantwell
67. Letter of Support from January Roeschlaub
68. Letter of Support from Byron Rendar
69. Letter of Support from Jenny Waters
70. Letter of Support from George Wright
71. Letter of Support from Paul and Alice Meyer
72. Letter of Support from Joan Grover
73. Letter of Support from Becky and Jim Larson
74. Letter of Support from John Hall
75. Letter of Support from Terry New
76. Letter of Support from Jennifer Lakey
77. Letter of Support from Gloria and Harold Nussbaum
78. Letter of Support from Chris Poole-Jones
79. Letter of Support from Chad Sullivan
80. Letter of Support from Martin Pedersen
81. Letter of Support from John Servilio
82. Letter of Support from Sandra Zickefoose
83. Letter of Support from Jack StockLynn
84. Letter of Support from Theresa Hernandez
85. Letter of Support from Margaret Gunn
86. Letter of Support from Dan Fahrbach
87. Letter of Support from Ralph Baird
88. Letter of Support from Aija Kanbergs
89. Letter of Support from Kathleen Abbott
90. Letter of Support from Janice Woita
91. Letter of Support from Kate Evans  
(Received During Hearing)
92. Request for extension of 120-day review period
93. Letter of Support from Barbara Conable, Sabin Community Association  
(Received After Hearing)
94. Letter of Support from Karen Johnson
95. Letter of Support from Ward Shortridge
96. Letter of Support from Nora Diver, King Neighborhood Association
97. Letter of Support from David Milholland
98. Letter of Support from Linda Wrather



# ZONING

Site

Historic Landmark



File No. LU 11-187799 CU  
 1/4 Section 2631  
 Scale 1 inch = 200 feet  
 State Id 1N1E23CB 3400  
 Exhibit B (Ord. 24, 2011)