



City of Portland Bureau of Development Services

Staff Presentation to the
City Council

Appeal of LU 11-187799 CU
Portland Playhouse

Summary of the Proposal

- **Conditional Use Review for Community Service Uses (approval criteria are 33.815.105.A-E, Institutional and Other Uses in R Zones);**
- **Establish ‘community arts center’ in former church building at 602 NE Prescott St., address code enforcement case for theater (prohibited) use;**
- **No exterior alterations to the site are proposed; and**
- **Activities to include various ongoing and periodic/special event activities, as indicated in the applicant’s narrative:**



Summary of the Proposal, cont'd.

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

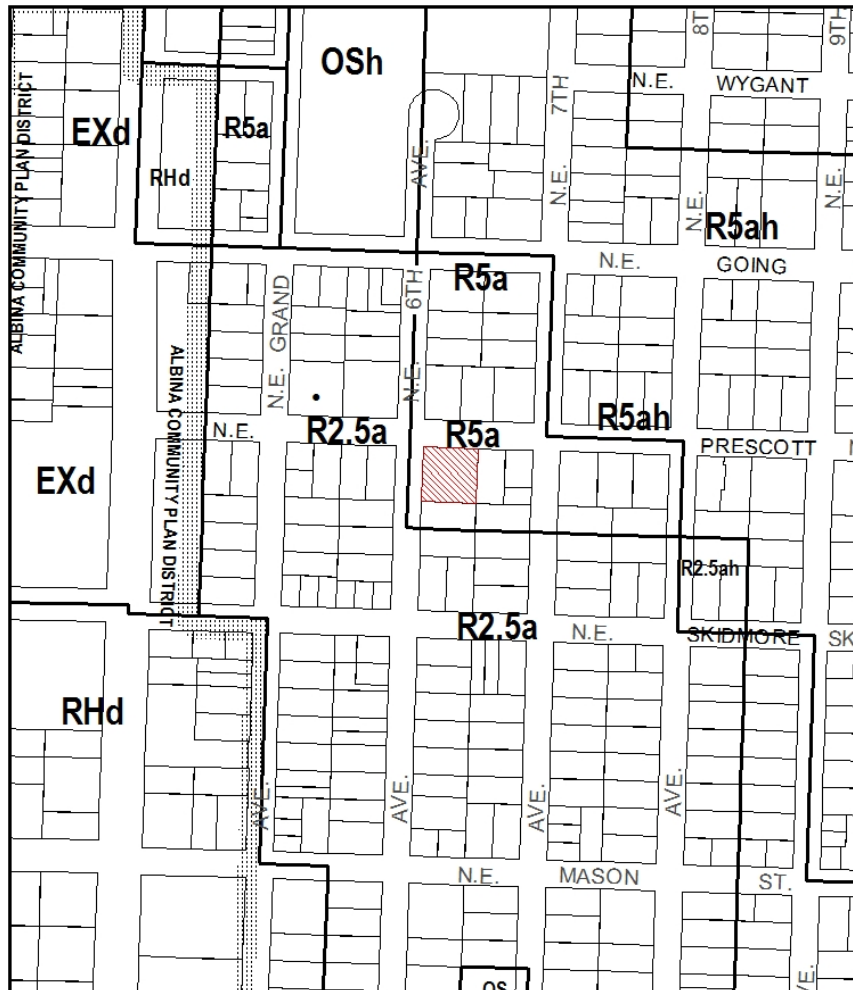


Procedural Background

- **May 17, 2011: Playhouse cited for Zoning Code violations**
- **August 10, 2011: Pre-Application Conference**
- **October 24, 2011: Conditional Use submitted**
- **January 27, 2012: Hearings Officer Decision**
- **March 1, 2012: City Council Appeal**
- **120-day expires March 9, 2012: unless applicant signs an extension, we must return next week to adopt findings.**



Zoning Map



ZONING

Site
Historic Landmark



NORTH

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

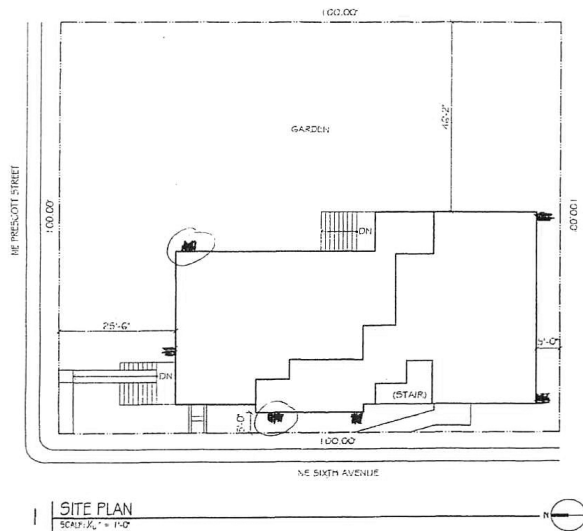
- **Single-Dwelling Residential 5,000 base zone (R5)**
- **Alternative Design Density overlay zone ('a')**
- **Community Service Uses allowed through conditional use process**
- **Retail Sales and Service Uses prohibited**
- **Daycare uses allowed by-right in former church buildings**



Site Map

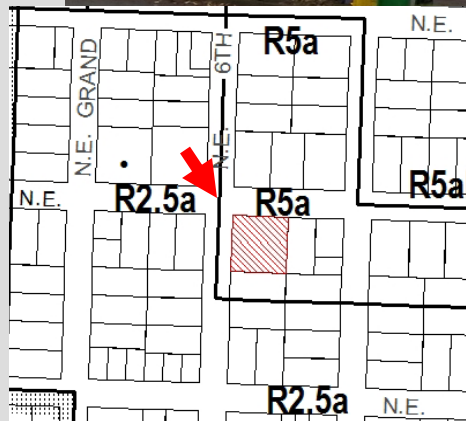
Exhibit 4
Portland Playhouse Downspout Survey

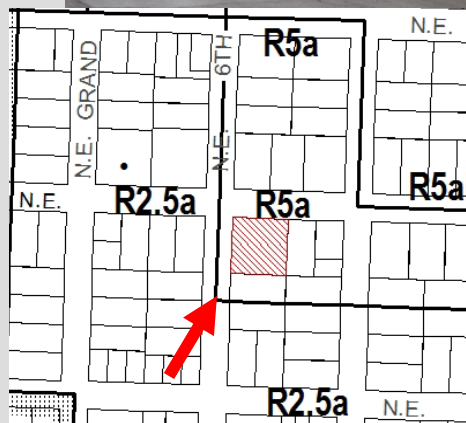
- ⊙ - Downspouts into city sewer
- ⊠ - Downspouts onsite

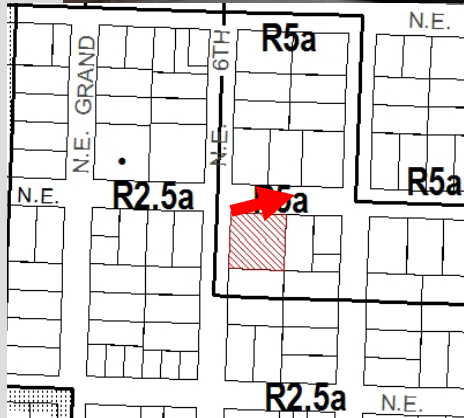


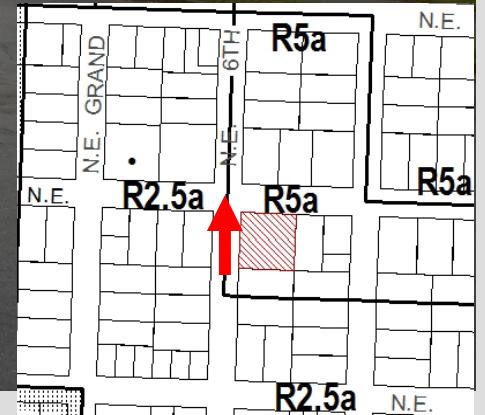
W111-187799CU

- No exterior alterations are proposed
- Fencing and any other recent site alterations are not part of this review
- Accessible ramp allowed without conditional use review
- Easterly garden area is enclosed with fencing and used as outdoor area with picnic tables, etc.









Hearings Officer Decision

The play performances are an entertainment-oriented Retail Sales and Service use, and are prohibited in the R5 zone.

Approval of a Conditional Use Review for Community Service Uses at the site, including all the individual activities and events at the site, excluding the play performances, 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)



Appeal Summary

Entire proposal should have been classified as a Community Service use. The City miscategorized some of the proposal as Commercial Retail Sales and Services. *(King NA letter was in the record and acknowledged by the Hearings Officer)*

Issues

No conditional use ‘approvability’ issues in meeting criteria, even considering primary theater use

- ***No net increase in non-residential uses, no exterior changes proposed to site, no significantly adverse livability impacts, on-street parking is adequate for all proposed uses, therefore 33.815.105.A-E are met***

Use classification: Are the play performances a theater use (prohibited Retail) or a community center (Community Service allowed through conditional use)



Issues, cont'd.

Applicant compared their activity to the ‘characteristics’ descriptions for Community Service versus Retail Sales and Service uses in the Use Chapter (33.920)

- *Applicant made a persuasive case based on this comparative analysis, but “the required analysis under PCC 33.920 begins and ends in this case before such a comparison can be made” (H.O. Decision, p. 12)*

Citing LUBA case law involving PCC 33.920.030, the H.O. notes that the ‘use classification determination is dominated by determining the “nature of the primary use”’ (H.O. Decision, p. 12)

- *“By any measure, the substantial evidence in this record shows that a primary use of the old church will be as a theater” (H.O. Decision, p. 13)*

Issues, cont'd.

The play performances are a primary use because:

- Assembly hall is set up to facilitate the viewing of plays (meets dictionary definition of theater);
- Most other activities at the site ‘support, facilitate, or feed into the production process culminating in public performances of plays’ (H.O. Decision, p. 13);
- 84% of large events are for theater activity; and
- Code precludes comparison of ‘Characteristics’ because theater uses are listed as an ‘example’ of Retail Sales and Service Uses.

H.O. acknowledged a ‘noble and admirable’ mission, community involvement, and non-profit status of the Playhouse. However H.O. claims his ‘hands are tied’ and the theater must be classified as retail (H.O. Decision, pp. 12-13).

Primary uses are subject to the regulations for that category (theater = Retail = prohibited).



Playhouse Facts

- **Conditional Use is required for all non-residential uses at the site**
 - **The approval criteria can be met for all uses including the plays**
 - **Site has long history as neighborhood institution (church)**
 - **Playhouse is a non-profit organization**
 - **Playhouse has extensive connections to neighborhood organizations, local schools, and churches**
 - **Large number of volunteers and subscribers support the activity**
 - **Provides arts-based programming and performances to neighborhood residents and the City as a whole**
 - **All the uses at the site are tied together by a clear focus on theatrical and arts-related activities**
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- **Condition of Approval?: Maintain office hours with an information board on upcoming activities from 1-6pm, Mon. – Sat.**
 - **CONTENT: We cannot regulate or consider (OR Constitution)**

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