

## CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

### Hearings Office

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## DECISION OF THE HEARINGS OFFICER

### I. GENERAL INFORMATION

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

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

**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)

**Public Hearing:** The hearing was opened at 9:02 a.m. on December 21, 2011, in the 3<sup>rd</sup> floor hearing room, 1900 SW 4<sup>th</sup> Avenue, Portland, Oregon, and was closed at 10:41 a.m. The record was held open until 4:30 p.m. on December 30, 2011, for new evidence; until 4:30 p.m. on January 6, 2012, for responsive comments, no new evidence; and until 4:30 p.m. on January 13, 2012, for applicant's final rebuttal. On January 10, 2012, the applicant's representative submitted a request to close the record. The Hearings Officer granted that request. The record was closed on January 10, 2012.

**Testified at the Hearing:**

Mark Walhood, BDS Staff Representative

Will Rasmussen, Miller Nash, 111 SW 5th Avenue, Suite 3400, Portland, OR 97204

Angela Freeman, 531 NE Prescott Street, Portland, OR 97211

Brian Weaver, 4307 N Commercial Avenue, Portland, OR 97217

Josh Weinstein, 5133 NE Killingsworth Street, Portland, OR 97218

Gabrielle Foulkes, 617 NE Prescott, Portland, OR 97211

Harold Goldstein, 11744 SW Summerville Avenue, Portland, OR 97219

Christie Miles, 722 NE Stafford, Portland, OR 97211

Nikki Weaver, 4307 N Commercial, Portland, OR 97217

**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 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	Participants 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:

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

### HEARINGS OFFICER'S OVERVIEW

A procedural issue arose between the time the staff report was released and the December 21, 2011, public hearing. BDS Staff received new information that a preschool or day care facility was operating within the building. More information was needed to confirm that the use was a day care facility which is an allowed use in the R5 zone. At the hearing, BDS Staff explained that additional information would be needed to determine the type of use occurring and suggested two options for processing the new information: 1) to renote the application for a new hearing, or 2) allow for an open record period in which to gather the information and allow participants to review that information and comment. The Hearings Officer determined that because the substantive code criteria would be the same for considering the day care versus preschool use determination, that renote the application and holding a new hearing would not be necessary, and would not constitute a procedural error. Both the applicant and BDS Staff agreed to a three week open record period. That open record period is discussed in more detail below.

At the December 21, 2011, public hearing, BDS Staff explained the central issue confronting the application which was whether the applicant's theater productions at the subject property constitute a "Retail Sales and Service" use under PCC 33.920.250.C.3, which is prohibited in the R5 zone, or a "Community Service" use which is allowed as a conditional use in the R5 zone. Based primarily on the "Example" uses set forth in PCC 33.920.250.C.3, which identified "theaters" as a retail use, BDS Staff determined that the proposed conditional use is more similar to a Retail Sales and Service use than a Community Service use, and therefore, cannot be approved in the R5 zone.

Angela Freeman, an elementary school principal and resident who lives across the street from the Portland Playhouse, testified in favor of the application. She stated that she was involved in the King Neighborhood Plan and that the plan had incorporated a vision for opportunities for live theater and discussion groups in the neighborhood. She testified that the plays that Portland Playhouse provides are well liked by the neighborhood and are intended to be a catalyst for discussion on relevant and sensitive subjects such as race relations and neighborhood gentrification. Her opinion was that the plays were more educational in nature than a retail venture. Later in the hearing, Gabrielle Foulkes agreed that, as a long time resident of the neighborhood, the Portland Playhouse was a benefit to the neighborhood.

Brian Weaver, who is the artistic director of the Portland Playhouse, explained that the theater activities at the subject property are not for the purpose of producing a profit. He stated that the Portland Playhouse is a nonprofit entity. He emphasized that the tickets for the plays are highly subsidized so that free tickets can be available to those who otherwise may not be able to afford them. He explained that the plays are dependent upon volunteers for all aspects of the productions. He stated that the plays are intended to be forums for important social and diversity topics relevant to the city and the neighborhood specifically. In response to a question from the Hearings Officer, Mr. Weaver explained that tickets are indeed sold for each production, but that all the tickets are subsidized and only about 40 percent of the Portland Playhouse budget relies on ticket sales.

Josh Weinstein provided information on a parking survey he conducted for the area around the Portland Playhouse. He explained the study area was slightly larger than the residential area identified in the BDS Staff report. The results for the study showed that approximately 576 parking spaces are available during days when plays are occurring, even assuming that all play patrons are arriving in separate cars. At these peak usage times, the study found that about 300 parking spaces are available for local parking for other uses.

Will Rasmussen, an attorney representing Portland Playhouse for the application, provided testimony on the use classification. He argued that the PCC does not identify a "theater" use, nor does the code define the term "theater." He suggested that BDS Staff had placed too much emphasis on the fact that "theaters" are given as an example of an "Entertainment – oriented" retail use in 33.920.250.C.3. Instead, he argued that the characteristics of the proposed use as a whole should be examined, and if this were done, the applicant's proposed use is more similar to a Community Service use. He testified that the scope of activities that occur in the Portland Playhouse building are significantly broader than just producing plays. Relying on the use description of the "Characteristics" of "Community Services" uses in PCC 33.920.420.A, he described how the various activities of the Portland Playhouse fit that description. Conversely he argued that the "Characteristics" section of 33.920.250.A did not describe the activities of the Portland Playhouse.

Mr. Rasmussen provided examples of other "community centers" such as the Multnomah Arts Center, which he said is a nonprofit 501(C)(3) entity, and also puts on plays. He provided examples of community centers which charged fees for some types of services or activities not dissimilar to those of the Portland Playhouse. He emphasized that the theater performances at Portland

Playhouse are an outgrowth of a larger mission for the organization, and are not aimed primarily at any commercial purpose.

Harold Goldstein, Chair of the Board of Directors for Portland Playhouse, testified that the intent of the organization is not to pursue a retail theater. The mission is much larger than that, he said. He explained that Portland Playhouse staff is paid at very low levels in order to subsidize performances and provide tickets to the public. The Hearings Officer asked whether the organization had By-Laws which identified the mission of Portland Playhouse. He stated affirmatively that an adopted mission statement existed and that the applicant would provide that information for the record.

Christie Miles, volunteer coordinator for the Portland Playhouse, testified that presently there are about 150 active volunteers. She stated that approximately 30-40 volunteers are needed for each production acting as ushers or providing other support, and that they receive a free ticket in return.

Nikki Weaver, one of the founders of Portland Playhouse, explained some of the other activities that occur at the subject property which relate to and feed into the theater productions. For example, she stated that the summer camps held at the building culminate in a performance. Similarly, Portland Playhouse conducts group performance instruction that is mostly led by volunteers, which can also enable participants to be part of a production. She stated that Portland Playhouse sends actors and directors into the local high schools to conduct clinics and to provide outreach.

At the end of the public testimony, the Hearings Officer set an open record period as follows; 1) the public (anyone) was allowed until 4:30 p.m. on December 30, 2011, to provide argument and evidence on all issues, 2) the public (anyone) was allowed to provide responsive argument to information submitted in the first open record period until 4:30 p.m. on January 6, 2012, and 3) the applicant was given until January 13, 2012 to submit a final comment. The applicant submitted a final comment on January 10, 2012.

During the open record period both the applicant and BDS Staff submitted information and argument into the record. Of particular importance is a memorandum dated January 6, 2012, from BDS Staff. Exhibit H.14. The memo has two sections. The first section confirms that the day care use at the subject property is not a preschool and is an allowed use associated with the former religious institution. BDS Staff stated that no further analysis was necessary with respect to the day care use, and that the findings in the staff report were adequate to consider any impacts that the day care use might represent to the neighborhood. The Hearings Officer considers the day care component of the application to be settled as an allowed use and will not address the use further in this decision.

The second section of the memorandum provides additional information disputing the applicant's characterization of the old church as a community center. The applicant requested that the Hearings Officer strike this section of the memo from the record because it purportedly adds argument that should have been made prior to the January 6, 2012, open record deadline. Exhibit H.17. The Hearings Officer agrees with the applicant. However, as the analysis below will explain, neither BDS Staff's information in Exhibit H.14, nor the applicant's rebuttal to it in Exhibit H.17, is

determinative of my decision. The Hearings Officer considers BDS Staff's oversight to be harmless error which the applicant had the opportunity to rebut. There is no apparent prejudice to any party's substantial rights, and therefore, I will allow both the full BDS Staff memorandum and the applicant's rebuttal to remain in the record.

## II. 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:

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.

## USE CLASSIFICATION

BDS Staff correctly states that 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 hearing, and in the open record documents that the proposed use is most similar to Community Service use classification. Exhibit A.1, H.16 and H.17. The applicant specifically argues 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 has reviewed all of those arguments and finds that there is substantial evidence in the record to



support the applicant's statements that these functions were occurring before the notice of zoning violation.

BDS Staff concluded the applicant's narrative and information showed that although many community service activities have taken place at the old church building, the central purpose of Portland Playhouse is the production of plays for viewing and participation by the public. With respect to the theater use of the subject property, BDS Staff found that, "84% of the total of large events, are exclusively for the theater activity." BDS Staff also concluded that, "the proportion of theater activities to other activities at the site, especially when considering the larger-attended events which bring people and vehicles to the area, the theater activity is not an accessory use." BDS Staff was also strongly influenced by the fact that PCC 33.920.250.C cites "theaters" as an example of a Retail Sales and Service use. For this reason, and that the Portland Playhouse is dependent on ticket sales to the plays for a significant amount of its operative budget (approximately 40 percent), BDS Staff concluded that the proposed use must be categorized as a Retail Sales and Service use.

BDS Staff correctly identifies the relevant sections of the City's use classification system in PCC 33.920. Those code sections are useful to this analysis and are set forth below.

#### **33.920.030 Classification of Uses**

##### **A. Considerations.**

1. Uses are assigned to the category whose description most closely describes the nature of the primary use. The "Characteristics" subsection of each use category describes the characteristics of each use category. Developments may have more than one primary use. Developments may also have one or more accessory uses. Developments with more than one primary use are addressed in Subsection B. below. Accessory uses are addressed in Subsection C. below.
2. The following items are considered to determine what use category the use is in, and whether the activities constitute primary uses or accessory uses:
  - The description of the activity(ies) in relationship to the characteristics of each use category;
  - The relative amount of site or floor space and equipment devoted to the activity;
  - Relative amounts of sales from each activity;
  - The customer type for each activity;
  - The relative number of employees in each activity;
  - Hours of operation;
  - Building and site arrangement;
  - Vehicles used with the activity;
  - The relative number of vehicle trips generated by the activity;
  - Signs;
  - How the use advertises itself; and
  - Whether the activity would be likely to be found independent of the other activities on the site.

**B. Developments with multiple primary uses.** When all the primary uses of a development fall within one use category, then the development is assigned to

that use category. For example, a development that contains a retail bakery and a café would be classified in the Retail Sales And Service category because all the primary uses are in that category. When the primary uses of a development fall within different use categories, each primary use is classified in the applicable category and is subject to the regulations for that category.

**C. Accessory uses.** Accessory uses are allowed by right in conjunction with the use unless stated otherwise in the regulations. Also, unless otherwise stated, they are subject to the same regulations as the primary use. Common accessory uses are listed as examples with the categories.

**D. Use of examples.** The "Examples" subsection of each use category provides a list of examples of uses that are included in the use category. The names of uses on the lists are generic. They are based on the common meaning of the terms and not on what a specific use may call itself. For example, a use whose business name is "Wholesale Liquidation" but that sells mostly to consumers, would be included in the Retail Sales And Service category rather than the Wholesale Sales category. This is because the actual activity on the site matches the description of the Retail Sales And Service category.

### **33.920.250 Retail Sales And Service**

**A. Characteristics.** Retail Sales and Service firms are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods.

**B. Accessory uses.** Accessory uses may include offices, storage of goods, manufacture or repackaging of goods for on-site sale, and parking.

**C. Examples.** Examples include uses from the four subgroups listed below:

1. Sales-oriented: Stores selling, leasing, or renting consumer, home, and business goods including art, art supplies, bicycles, clothing, dry goods, electronic equipment, fabric, furniture, garden supplies, gifts, groceries, hardware, home improvements, household products, jewelry, pets, pet food, pharmaceuticals, plants, printed material, stationery, and videos; food sales, and sales or leasing of consumer vehicles including passenger vehicles, motorcycles, light and medium trucks, and other recreational vehicles.
2. Personal service-oriented: Branch banks; urgency medical care; laundromats; photographic studios; photocopy and blueprint services; hair, tanning, and personal care services; business, martial arts, and other trade schools; dance or music classes; taxidermists; mortuaries; veterinarians; kennels limited to boarding, with no breeding; and animal grooming.
3. Entertainment-oriented: Restaurants, cafes, delicatessens, taverns, and bars; indoor or outdoor continuous entertainment activities such as bowling alleys, ice rinks, and game arcades; pool halls; indoor firing ranges; theaters, health clubs, gyms, membership clubs, and lodges; hotels, motels, recreational vehicle parks, and other temporary lodging with an average length of stay of less than 30 days.
4. Repair-oriented: Repair of TVs, bicycles, clocks, watches, shoes, guns, appliances and office equipment; photo or laundry drop off; quick printing; recycling drop-off; tailor; locksmith; and upholsterer.

**D. Exceptions.**

1. Lumber yards and other building material sales that sell primarily to contractors and do not have a retail orientation are classified as Wholesale Sales.
2. Sales of landscape materials, including bark chips and compost, is classified as Industrial Service.
3. Repair and service of consumer motor vehicles, motorcycles, and light and medium trucks is classified as Vehicle Repair. Repair and service of industrial vehicles and equipment, and heavy trucks is classified as Industrial Service.
4. Sales, rental, or leasing of heavy trucks and equipment is classified as Wholesale Sales.
5. Hotels, restaurants, and other services which are part of a truck stop are considered accessory to the truck stop which is classified as Industrial Service.
6. In certain situations, hotels and motels may be classified as a Community Service use, such as short term housing or mass shelter. See Community Services.
7. When kennels are limited to boarding, with no breeding, the applicant may choose to classify the use as Retail Sales And Service or Agriculture.
8. Trade schools where industrial vehicles and equipment, including heavy trucks, are operated are classified as Industrial Service.

### **33.920.420 Community Services**

**A. Characteristics.** Community Services are uses of a public, nonprofit, or charitable nature generally providing a local service to people of the community. Generally, they provide the service on the site or have employees at the site on a regular basis. The service is ongoing, not just for special events. Community centers or facilities that have membership provisions are open to the general public to join at any time, (for instance, any senior citizen could join a senior center). The use may provide mass shelter or short term housing where tenancy may be arranged for periods of less than one month when operated by a public or non-profit agency. The use may also provide special counseling, education, or training of a public, nonprofit or charitable nature.

**B. Accessory uses.** Accessory uses may include offices; meeting areas; food preparation areas; parking, health and therapy areas; daycare uses; and athletic facilities.

**C. Examples.** Examples include libraries, museums, senior centers, community centers, publicly owned swimming pools, youth club facilities, hospices, ambulance stations, drug and alcohol centers, social service facilities, mass shelters or short term housing when operated by a public or non-profit agency, vocational training for the physically or mentally disabled, crematoriums, columbariums, mausoleums, soup kitchens, park-and-ride facilities for mass transit, and surplus food distribution centers.

**D. Exceptions.**

1. Private lodges, clubs, and private or commercial athletic or health clubs are classified as Retail Sales And Service. Commercial museums (such as a wax museum) are in Retail Sales And Service.
2. Parks are in Parks And Open Areas.
3. Uses where tenancy is arranged on a month-to-month basis, or for a longer period are residential, and are classified as Household or Group Living.
4. Public safety facilities are classified as Basic Utilities.

The 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 applicant also makes a good case that the mission of the Portland Playhouse goes well beyond simply functioning as a "theater." The Hearings Officer 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. If the required analysis under PCC 33.920 were only to compare the "Characteristics" sections of the Retail Sales and Service use (33.920.250.A) and the Community Services (33.920.420.A), the applicant would have a strong argument for prevailing in this application. However, the required analysis under PCC 33.920 begins and ends in this case before such a comparison can be made.

The Land Use Board of Appeals (LUBA) has reviewed at least three cases involving PCC 33.920.030 and the City's use classification system. These three cases instruct that the use classification determination is dominated by determining the "nature of the primary use."

In *Wilson Park Neighborhood Association v. City of Portland*, \_\_Or LUBA\_\_, LUBA No. 92-042, (May 16, 1992), the city approved a conditional use permit to allow development of transitional short term housing as an "Essential Service Provider" use under PCC 33.920.440. Here, LUBA found that the City had properly looked to the primary purpose of the use which was to provide "on-site food or shelter beds, for free or at significantly below market rates" which met the characteristics of the use identified in PCC 33.920.440. *Slip op.* at 15. LUBA also noted that, "PCC 33.920.030.D provides that uses listed in the 'examples' subsection of a use category are uses that 'are included in the use category.' Therefore, the uses listed as examples in PCC 33.930.440(C) are by definition ESPs, without further consideration of their characteristics." *Slip op.* at 16, n.10.

In *Glisan Street Associates, Ltd. v. City of Portland*, \_\_Or LUBA\_\_, LUBA No. 92-154 (March 26, 1993), the petitioners argued that because the applicant, the Boys and Girls Aid Society, was a "Welfare Institution" under a prior version of the code, or a "Community Service" use under the more recent version of the code, that the City improperly implemented PCC 33.920.030 to find that the primary use of the building in question was for "Office Use." LUBA again found that the City must identify the primary use of the proposed development. The Board held that "[t]he [BGAS] used this site as their state headquarters; with approximately 100 employees, all administrative functions occurred here, along with some services. A description of the functions and purpose of the site could fall under either the Office category or the Community Services category. However, because the primary function of this site was for headquarter's office use, with services provided both on-site and off-site, the Office category appears more appropriate." *Slip op.* at 9.

Most recently in *Waverly Landing Condominiums v. City of Portland*, \_\_Or LUBA\_\_, LUBA No. 2010-026 (July 12, 2010), LUBA affirmed the Hearings Officer's conclusion that found that the primary purpose of a proposed sewer pump station fit the definition of "Basic Utility" rather than a "Utility Corridor." In doing so, LUBA rejected petitioners' claim that at least some components of the proposal fit the definition of Utility Corridor and should, therefore, be categorized under that classification. LUBA rejected this argument in part because, PCC 33.920.030(B) states:

**"Developments with multiple primary uses.** When all the primary uses of a development fall

within one use category, then the development is assigned to that use category. \* \* \* When the primary uses of a development fall within different use categories, each primary use is classified in the applicable category and is subject to the regulations for that category." *Slip op.* at 10, n.6.

These cases mandate that before looking to the "Characteristics" of the use classifications, an initial determination of the "primary use" must be established in order to compare the proposed use to those "Characteristics." PCC 33.920.020 defines a "Primary Use" as "an activity or combination of activities of chief importance on the site. One of the main purposes for which the land or structures are intended, designed, or ordinarily used. A site may have more than one primary use." If the proposed use reasonably represents more than one primary use, then all those primary uses must be considered. Under PCC 33.920.030.B, if more than one primary use is identified, "each use is classified in the applicable category and is subject to regulations for that category."

By any measure, the substantial evidence in this record shows that a primary use of the old church will be as a theater. The assembly hall is set up to facilitate the viewing of plays. This meets the definition of a theater building as set forth in Webster's Third New International Dictionary, which is "a building for dramatic performances in modern times usu. including a stage with side wings and flies and with dressing rooms for actors and an auditorium often with balconies and boxes." The evidence in the record also strongly suggests that nearly all of the activities that occur in relation to the Portland Playhouse are to support, facilitate, or feed into the production process culminating in public performances of plays. At the December 21, 2011, public hearing, the Hearings Officer inquired about the Mission Statement for Portland Playhouse. The applicant submitted the Bylaws for the Portland Playhouse into the record. Exhibit H.12. Section 1.03 - Mission states:

"This corporation's primary purpose shall be the following: Portland Playhouse is dedicated to producing quality, intimate, live performances in which the interaction between artists and audience is paramount. We hold theater to be a space in which people of all social, economic, racial, and political backgrounds can come together to celebrate the complexity of our shared human experience."

This Mission is of course a noble and admirable goal for the organization, and is certainly consistent with the testimony presented at the public hearing. The Hearings Officer is persuaded that the larger goal of Portland Playhouse includes many aspects of neighborhood and community involvement that go well beyond the functions of producing plays. The Hearings Officer also acknowledges that the record shows that profit is not the objective of Portland Playhouse, and that ticket sales are subsidized, as are staff salaries, and most other aspects of the company by donations. Nevertheless, the preponderance of substantial evidence in this record shows that at least one of the "primary uses" of the subject property is as a "theater." The other aspects of the proposed use such as classes, workshops and training, discussion panels, events and the summer art camp constitute a Community Service use and the Hearings Officer agrees with BDS Staff that those uses can be allowed subject to conditional use approval.

The consequence of identifying the proposed theater use as a primary use is that PCC 33.920.030.D requires that it then be classified as a Retail Sales and Service use. Theaters are listed as an example of an "entertainment oriented" Retail Sales and Service use under PCC 33.920.250.C.3. Although apparently contrary to what the word "example" usually connotes, the primary uses listed as examples in PCC 33.920 must be categorized under the related use classification. The binding language of PCC 33.920.030.D states, "[t]he 'Examples' subsection of each use provides a list of examples of uses that are included in the use category." In *Wilson Park Neighborhood Association*, LUBA ruled that this language supersedes any consideration of "Characteristics" of any use category. The Board held, "the uses listed as examples \* \* \* are by definition [the classified use], without further consideration of their characteristics." Thus, the code itself precludes the comparison of the "Characteristics" of Retail Sales and Services uses and Community Service uses that the applicant has argued in this application because at least one of the primary uses, a theater, is listed in the "Examples" section of PCC 33.920.250.

The code's approach to listing examples of primary uses within various use classifications in PCC 33.920 does indeed appear to preclude staff discretion as to the listed "Examples" in what otherwise appears on its face to be a fairly discretionary classification procedure. In this instance, the Hearings Officer agrees with BDS Staff that their hands are tied and PCC 33.920.030.D and 33.920.250.C require that the applicant's proposed theater use be classified as a Retail Sales and Service use. Exhibit H.9a.

## **ZONING CODE APPROVAL CRITERIA**

As to the applicant's proposed uses that fall under the Community Service use classification, BDS Staff found that the applicant meets or can meet all the applicable approval criteria. The Hearings Officer concurs as follows:

### **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. Excluding the play activities, the extent and frequency of special events with large numbers of attendees (up to 18 per year, including 12 Community Discussion Panels and 6 Community-oriented events), 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 once monthly go as late as 9:00 p.m., the

majority of 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 proposed Community Service uses in this application are supportive of these area plans both generally and in the specifics. 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.

### **III. CONCLUSIONS**

The proposed theater use is a primary use of the old church building, and as a result must be classified as a Retail Sales and Service use under PCC 33.920.030.D and 33.920.250.C.3.

With regards to the other activities at the site, they are consistent with the Community Service use category, and have no significant impacts upon the livability or appearance of the surrounding residential area. There are no significant impacts with regards to public services, and the proposal is consistent with policies in the Albina Community Plan and King Neighborhood Plan. With the exception of the theater use, which cannot be under the current residential zoning, the request meets the relevant approval criteria and can be approved.

#### IV. DECISION

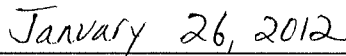
The play performances are an entertainment-oriented Retail Sales and Service use, and are prohibited in the R5 zone.

**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).



Kenneth D. Helm, Hearings Officer



Date

<b>Application Determined Complete:</b>	November 10, 2011
<b>Report to Hearings Officer:</b>	December 9, 2011
<b>Decision Mailed:</b>	January 27, 2012
<b>Last Date to Appeal:</b>	4:30 p.m., February 10, 2012
<b>Effective Date (if no appeal):</b>	February 13, 2012    Decision may be recorded on this date.

**Conditions of Approval.** This project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

**Appeal of the decision.** ANY APPEAL OF THE HEARINGS OFFICER'S DECISION MUST BE FILED AT 1900 SW 4<sup>TH</sup> AVENUE, PORTLAND, OR 97201 (503-823-7526). Until 3:00 p.m., Tuesday through Friday, file the appeal at the Development Services Center on the first floor.

Between 3:00 p.m. and 4:30 p.m., and on Mondays, the appeal must be submitted at the Reception Desk on the 5th Floor. **An appeal fee of \$5,000 will be charged (one-half of the application fee for this case, up to a maximum of \$5,000).** Information and assistance in filing an appeal can be obtained from the Bureau of Development Services at the Development Services Center.

**Who can appeal:** You may appeal the decision only if you wrote a letter which is received before the close of the record on hearing or if you testified at the hearing, or if you are the property owner or applicant. If you or anyone else appeals the decision of the Hearings Officer, only evidence previously presented to the Hearings Officer will be considered by the City Council.

**Appeal Fee Waivers:** Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chair person or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization's bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

#### **Recording the final decision.**

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope; **OR**
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034  
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

**Expiration of this approval.** An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

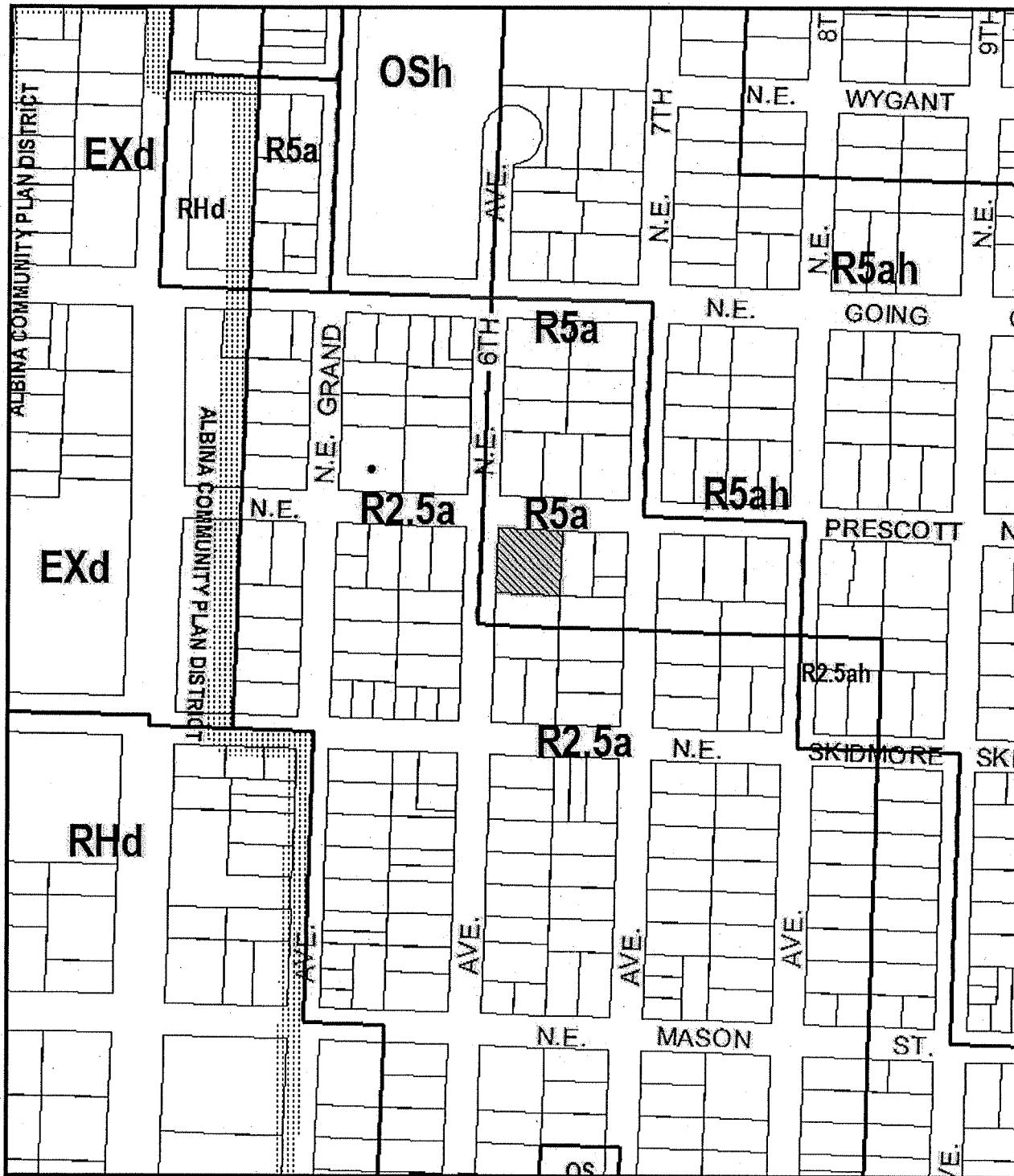
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

**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



# 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)