



Community Development Department / Planning Division
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MEMORANDUM

TO: Planning Commission
FROM: Steve Regner, Senior Planner
DATE: October 9, 2024
SUBJECT: LU2023-00557 Ashcreek Playschool Supplemental Memorandum

This memo is to provide the Planning Commission with additional public testimony received the day of the hearing.

Exhibit 2.23

Staff responds to these comments in the structure is it presented in the testimony.

1. The testimony asserts that the wrong Conditional Use permit is being modified, and that CUP2000-0031 contains the controlling conditions of approval for the school

COA 3 of that approval reads: *"Separate Conditional Use approval shall be required for any future expansion to student enrollment associated with the existing Montessori School or the introduction of any other school program which utilizes church facilities. Enrollment at the existing Montessori School shall not exceed 20 students."*

Staff observes that CUP2000-0031 was for the approval of the church expansion, and the Montessori School childcare facility played no role in the narrative or analysis. Reviewing the record, it is evident that the condition of approval above simply states that Conditional Use approval in 2000 did not affect the Montessori School/childcare facility, and additional Conditional Use approval would be required to deviate from the 20 student limit.

Staff asserts that the current application (CU32023-00555) is the precise "separate Conditional Use approval" process both identified in the 2000 CUP COA, as well as the proper approach to modify the original 1994 CUP per the Development Code.

Regarding whether approval criterion 6 is met, staff cites analysis in Attachment B of the staff report dated October 7, 2024.

2. The testimony asserts procedural arguments about approving the expansion of the play area. Staff and the applicant acknowledge that the previously approved 500 square foot play area was expanded without permits somewhere around 2011. The Design Review Compliance Letter application (DR12024-00090) is present to remedy this unpermitted work. Staff provides

the relevant analysis regarding applicable approval criteria in Attachment C of the Staff report dated October 7, 2024.

As discussed in the staff report and previous supplemental memos, the play area is considered an accessory use to the church, consistent with 60.50. Beaverton Development Code allows for accessory uses to exist on site without separate Conditional Use approval in BDC Section 60.50.05 Accessory Use and Structures. Specifically, BDC 60.50.05.1 reads:

“Structures or uses incidental and subordinate to the uses allowed as Permitted and Conditional Uses in any zone are allowed as accessory uses and structures subject to the provisions of this section.”

BDC 60.50.05.4 continues:

“Non-residential accessory uses. Accessory uses customarily associated with the principal commercial or industrial use shall be permitted where these commercial and industrial use types are authorized.”

Staff contends that the play area qualifies as an accessory use, as they are common features of a place of worship or similar gathering space, with the church itself serving as the primary use on the site.

The expansion of the accessory use play area does not trigger any thresholds for a Conditional Use Permit. The Design Review Compliance Letter is the correct application to approve the site changes.

3. The testimony asserts that DEQ noise regulations must be complied with. Staff observes that DEQ compliance is outside scope of authority held by Planning Commission, as they are not land use requirements. Staff also notes that this testimony does not identify specific violations of the DEQ noise requirements.
4. The testimony asserts that Approval Criteria BDC 40.15.15.4.C.5 has not been met. Staff cites analysis in Attachment B of the staff report as relevant to this topic.
5. The testimony asserts that Approval Criteria BDC 40.15.15.4.C.3 has not been met. Staff cites analysis in Attachment B of the staff report as relevant to this topic.
6. The testimony asserts that citizen rights violations have occurred. Staff cites responses in the staff report (see page 8) as relevant to this topic.

Exhibit 2.24

Testimony cites that the application fails two procedural elements concerning owner authorization. First, the application form reviewed by council does not have the property owner signature. This appears to be a digital error where data in the form was lost. Staff has provided with this memo the original application with physical signatures for the record. (Exhibit 3.8)

The testimony also notes that the signatory for the property owner does not have express written permission by the property owner, per BDC 50.25.1.A.2. The applicant is working to

obtain a signed letter from the church board chair to satisfy this requirement, but has not provided it as the publication of this memo. This letter will be provided to Commission as it is made available to staff.

Exhibit 2.25

The testimony includes a qualitative analysis of the site and proposal with regards to compliance with DEQ noise standards. Staff observes that DEQ compliance is outside scope of authority held by Planning Commission, as they are not land use requirements. Staff also notes that this testimony does not identify specific violations of the DEQ noise requirements.

Conclusion

Staff acknowledges the lack of express written authorization for the property owner signature per BDC 50.25.1.A.2. Staff does anticipate the submittal of this authorization by the time of the hearing. If this authorization letter is not provided by the time of the hearing, staff suggest two options: 1) after holding the hearing, continue the hearing to a later date to allow the letter to be submitted to record, or 2) include a condition of approval requiring this letter be provided to the city prior to the expansion of the student enrollment requested by the Conditional Use Permit.

Otherwise, staff recommends no amendments to the staff report based on the testimony received.

Exhibits

Exhibit 2.23 Letter from David Golder, dated October 9, 2024

Exhibit 2.24 Letter from David Golder, dated October 9, 2024

Exhibit 2.25 Letter from David Golder, dated October 9, 2024

Exhibit 3.8 Signed Land Use Application

10175 SW 149th Terrace
Beaverton, OR 97007

October 9, 2024

SENT VIA ELECTRONIC DELIVERY

Ms. Chelsea McCann
Planning Commission Chair
City of Beaverton
12725 SW Millikan Way
Beaverton, OR 97005-1678

RE: Project LU32023-00557 Ashcreek Playschool
Case File No. CU32023-00555 / DR12024-00090

Dear Ms. McCann:

We are writing in regard to the above referenced Application titled Exhibit 3.1 in today's Beaverton Planning Commission agenda. This letter supplements our written testimony that was received by the City on August 17, 2025. We respectfully request this letter be provided to all Beaverton Planning Commission members and incorporated into the record for the public hearing that will be held on October 9, 2024.

As stated in our prior written testimony, both of us reside at 10175 SW 149th Terrace, Beaverton, Oregon and have owned our property for over 25 years. Murray Hills Christian Church ("Church") is our next-door neighbor and our home is located within 100 feet of school facilities at the Church.

We will summarize the main points of our supplemental testimony in order to assist the Planning Commission with reviewing our concerns. The Application cannot be approved or approved with conditions as a matter of law due to the following reasons:

1. The Application seeks to modify the wrong CUP, and the Planning Commission does not have legal authority to cure this error by the applicant.
2. Approval criteria number six (6) is not satisfied. The Application does not provide sufficient factual information demonstrating that it does a better job of protecting residential livability and use than the original conditions in CUP 2000 – 0031 and CUP 9411/819.

3. The Application and the modified conditions it propose violate multiple policies stated in the City's Comprehensive Plan. As a result, it fails to satisfy Approval Criteria number three (3) as required in BDC 40.15.15.4.C.3.
4. Ashcreek's current activities, let alone the modified conditions proposed in the Application, have a significant impact on livability and the appropriate use of nearby residential homes. As a result, it fails to satisfy Approval Criteria five (5) as required BDC 40.15.15.4.C.5.

Application Seeks to Modify the Wrong CUP

CUP 2000 – 0031 is the controlling legal authority on the use of Church property by a school. This is because the Planning Commission and City Council superseded the legal authority authorized in CUP 94011/819 for any school other than the Montessori School to use Church facilities. They did so when CUP 2000 – 0031 was issued with condition of approval number three (3), which states the following (emphasis added):

"Separate Conditional Use approval shall be required for any future expansion to student enrollment associated with the existing Montessori School or the introduction of any other school program which utilizes church facilities. Enrollment at the existing Montessori School shall not exceed 20 students."

As one can see from reading the plain language in condition of approval number three (3), the introduction of any school program utilizing Church facilities requires new CUP approval. Even an analysis of the CUP language using the mandated methodology stated in BDC 10.20 leads one to the same conclusion. As a result, CUP 9411/819 no longer provides legal authority for any school to use Church facilities. No other conclusion can be reached as a matter of law.

Any school, other than the now closed Montessori school, that seeks to obtain authorization to use Church facilities must modify condition of approval number three (3) in CUP 2000 – 0031. City staff admitted this fact in writing on page 46 of the Staff Report dated October 2, 2024, which is restated on the next page for your review:

"All preceding conditions of approval remain in effect, except for Condition of Approval 3 from land use approval CUP 1994-011, which shall be superseded by this decision. (Planning / SR)"

The Application submitted by Ashcreek and the Church seeks to modify the conditions of approval in CUP 94011/819 and not CUP 2000 – 0031. Ashcreek admits this fact in its letter to neighbors dated March 20, 2023, as the letter references modifying the CUP issued in 1994 (City Exh. 3.7, Neighborhood Meeting Notes). The City also admits this fact on page two of the Pre-Application Meeting Notes, as it only lists CUP 94-011 (City Exh. 3.4)

The Planning Commission has broad legal authority to approve, approve with conditions, or disapprove the Application. However, the Planning Commission does not have legal authority to cure the Application in Exhibit 3.1 by modifying the Application or interpreting it in a manner that does not comply with BDC 10.20. There is no evidence of such legal authority in the City Charter, City Code, City Development Code or Planning Commission Bylaws.

The only decision that can be reached as a matter of law is to disapprove the Application. The applicant is welcome to reapply to modify CUP 2000 – 0031 as it should have in the first place.

Modifications of Conditions of Approval in CUP 2000 – 0031: Approval Criteria Six (6)

Even if one were to somehow make a legal argument that the Application seeks to modify CUP 2000 – 0031, the Application itself fails to satisfy Approval Criteria six (6) in BDC 40.15.15.C.6. Please see the section titled “Modification of Conditions of Approval in CUP 2000 – 0031 Not Allowed” in our written testimony dated August 16, 2024, for additional information.

Modification of Conditions of Approval in CUP 94011/819: Approval Criteria Six (6)

Even if one were to advance a legal argument that CUP 2000 – 0031 is not the controlling legal authority in this case, it is clear the Application also fails to satisfy the Approval Criteria to modify the conditions in CUP 94011/819.

One must examine the record of CUP 94011/819 to determine the purpose of the conditions of approval in CUP 94011/819. It is clear from reading the written record the purpose of the conditions of approval are as follows:

- A. Approving a Montessori pre-school to use Church indoor facilities
- B. Ensure that Montessori pre-school activities have no more than a minimal impact on the livability and use of nearby residential homes
- C. Satisfy Beaverton Development Code requirements

In order to modify a condition of approval for a prior conditional use, one must examine BDC 50.95.7 to see if the Application satisfies the criteria stated in it.

The Application does not provide any factual evidence demonstrating any of the requirements stated in BDC 50.95.7 are satisfied. This evidence for this conclusion is as follows:

- BDC 50.95.7.A and 50.95.7.B do not apply since the Application does not assert a mistake of law occurred or that the conditions could not be implemented.

- BDC 50.95.7.C does not apply as the circumstances have not changed to the extent that the conditions are no longer needed or warranted. The City has received numerous noise complaints and petitions from nearby residents documenting Ashcreek's operations and use of the Public Playground are impacting the livability of residential homes.
- BDC 50.95.7.D is not satisfied. The Application does not contain any factual evidence demonstrating that the increase in school enrollment and construction or use of the Public Playground better accomplishes the conditions' purpose of minimizing the impact to livability of nearby residential homes.

In this case, the Application fails to satisfy BDC 40.15.15.C.6 as it seeks to modify the previously established conditions of approval for the prior Conditional Use (a pre-school) in a manner that is not consistent with BDC Section 50.95.7. As a result, it cannot be approved per the express terms of BDC 40.15.15.C.

Public Playground Construction

The record for CUP Orders issued to the Church property do not contain any evidence that the Church or any duly authorized agent applied for and received approval to build a playground let alone one for public or school use. The four (4) CUPs issued to the Church property do not request the construction of a playground. There is also no discussion about constructing a playground in the written records for the CUPs nor did any staff report recommend approving the construction of one. Finally, the CUP Orders themselves do not contain any information pertaining to a playground.

The 500 square foot play area ("Play Area") that previously existed on Church property was built by the Church sometime between 1988 and 1994. It contained a small play structure and one small swing. The Play Area did not require CUP approval because its use was incidental to the property being used as a Church. Any use of it by the public was also incidental and did not have any impact on neighboring residential homes due to the Play Area's small size.

The Play Area equipment was temporarily removed when the Church building expansion was constructed and reinstalled in the same location afterwards. The amount of bark chips was slightly expanded underneath the Play Area equipment; however, the size of the equipment stayed roughly the same. We should know as we lived next door to the Church before, during, and after the building construction.

The record for CUP 2000 – 0031 does not contain a request or authorization to construct or expand the Play Area. The Play Area is only noted in select reports, architectural plans, and landscape drawings for reference purposes. Mr. Regner's assertion that the Play Area was

somehow approved because it was shown in an architectural or landscape drawing is not supported by the written record. There is no discussion, decision, or approval of the Play Area in the written record other than simply noting that it already existed and would not change.

Construction of the Play Area did not require approval in CUP 2000 – 0031 or CUP 94011/819 as it was already built, and its use was incidental to the property being used as a Church. In addition, any grandfathered status that may have pertained to the Play Area ceased when it was removed in 2010, and the new Public Playground was built in its place.

What is the definition of a playground and does the 8,500 square foot area designated by the Church qualify as one? Beaverton Development Code Chapter 90 Definitions does not provide a definition of “playground” nor is it defined in other areas of the Code. This requires one to seek out a definition in Webster’s Third New International Dictionary per the express language contained in BDC 10.20.6. Following is Webster’s definition:

“Playground: a piece of land used for and usually equipped with facilities for recreation especially by children.”

Clearly the land and facilities designated by the Church for public and school use satisfy this definition. Furthermore, the Church itself has advertised the land and facilities as a playground that is open to the public.

Land uses in Beaverton are classified in BDC 20.05.20. In this section Table 20.05.20.A states that the following three (3) uses are separate land uses that require conditional use approval in a Residential RMB Zone:

- Commercial childcare facilities (BDC 20.05.20.A.3.C)
- Places of worship (BDC 20.05.20.A.10)
- Playgrounds (BDC 20.05.20.A.12.A)

It is clear when examining BDC 20.05.20 using the Code interpretation and application methodology mandated in BDC 10.20 that the 8,500 square foot Public Playground requires CUP approval under the Code. It is also clear from reviewing the record for the CUPs issued to the Church property that no request was ever submitted, discussed, or approved to build a playground on Church property.

The Planning Commission does not have legal authority to approve or approve with conditions the Public Playground by modifying either CUP 2000 – 0031 or 94011/819. Neither CUP approved the construction of a playground.

Finally, the Design Review process is not intended to be used as an application for or to receive CUP approval for new or modified land uses. The purpose of Design Review as stated in BDC 40.20.05 is as follows:

“The purpose of Design Review is to promote Beaverton's commitment to the community's appearance, quality pedestrian environment, and aesthetic quality. It is intended that monotonous, drab, unsightly, dreary and inharmonious development will be discouraged. Design Review is also intended to conserve the City's natural amenities and visual character by ensuring that proposals are properly related to their sites and to their surroundings by encouraging compatible and complementary development.”

The land use process mandated by the City Council in BDC 40.15.05 that must be used to review the construction and use of the 8,500 square foot public playground is the conditional use process. Following is the purpose of the Conditional Use process as stated in BDC 40.15.05:

“The purpose of a Conditional Use application is to review uses that may be compatible in the underlying zoning district but because of their size, operation, or other characteristics require review on a case-by-case basis. These uses are subject to the regulations in this Section because they may, but do not necessarily, result in significant adverse effects upon the environment, overburden public services, alter the character of the surrounding area or create nuisances.”

Currently, the Public Playground that now exists on Church property is having a significant impact on the livability of nearby residential homes. The noise generated from its use by the public and Ashcreek interferes with residents' ability to have conversations with other people, sleep in their homes, or enjoy the peace and tranquility of the residential neighborhood. This is no surprise as decision-making authorities in 2001 foresaw this impact because the Church property was never designed for this use

The location, size, and limited use of the Play Area that was removed naturally mitigated any noise from having more than a limited impact on the livability of the nearby residential homes. The Play Area's small size precluded more than a small number of children from using it at any given time. Any issues that did arise from its use could be easily resolved as Church leadership and the Montessori School were willing participants in working with concern neighbors. The same cannot be said about the Public Playground and Ashcreek as they have refused to work with neighbors to address our concerns.

Ms. Chelsea McCann

October 9, 2024

Page 7

The Church property was never designed to mitigate the impacts from public or school use of an 8,500 square foot playground to be used by the public or a school. The Public Playground's location, size, and 24-hour access does not naturally mitigate the impact from its use as did the former Play Area. The Public Playground is over 17 times the size of the prior Play Area, which allows a significantly larger number of people to use the Public Playground at any given time. In addition, its size, location, and elevation also contribute to loud and raucous noise being projected into the residential areas to the West and South.

City staff clearly erred in allowing Ashcreek and the Church to apply for retroactive approval of the Public Playground through a Design Review application. This is not legally permissible per the City Development Code and it violates our due process rights. As a matter of law, the Planning Commission is precluded from acting on the Design Review Application for the Public Playground and must disapprove it.

Noise

The City is required to comply with and enforce its noise ordinances in accordance Department of Environmental Quality (DEQ) noise regulations per ORS 467.020 as stated below:

“467.020 Prohibition on emission of noise in excess of prescribed levels.

Except as provided in ORS 467.131 and 467.133, no person may emit, cause the emission of, or permit the emission of noise in excess of the levels fixed therefore by the Environmental Quality Commission pursuant to ORS 467.030. [1971 c.452 §3; 1995 s.s. c.3 §40c; 1996 c.8 §2]”

While the City may adopt regulations that are more stringent than state requirements, its Code and Code enforcement of local noise ordinances must satisfy the requirements of DEQ regulations.

What are DEQ noise regulations that pertain to Ashcreek? This is defined in OAR 340-035-0035 as stated below:

“340-035-0035

Noise Control Regulations for Industry and Commerce

(1) Standards and Regulations:

(a) Existing Noise Sources. No person owning or controlling an existing industrial or commercial noise source shall cause or permit the operation of that noise source if the statistical noise levels generated by that source and measured at an appropriate measurement point, specified in subsection (3)(b) of this rule, exceed the levels specified in Table 7, except as otherwise provided in these rules.

(b) New Noise Sources:

(A) New Sources Located on Previously Used Sites. No person owning or controlling a new industrial or commercial noise source located on a previously used industrial or commercial site shall cause or permit the operation of that noise source if the statistical noise levels generated by that new source and measured at an appropriate measurement point, specified in subsection (3)(b) of this rule, exceed the levels specified in Table 8, except as otherwise provided in these rules. For noise levels generated by a wind energy facility including wind turbines of any size and any associated equipment or machinery, subparagraph (1)(b)(B)(iii) applies.

(A) New Sources Located on Previously Used Sites. No person owning or controlling a new industrial or commercial noise source located on a previously used industrial or commercial site shall cause or permit the operation of that noise source if the statistical noise levels generated by that new source and measured at an appropriate measurement point, specified in subsection (3)(b) of this rule, exceed the levels specified in Table 8, except as otherwise provided in these rules. For noise levels generated by a wind energy facility including wind turbines of any size and any associated equipment or machinery, subparagraph (1)(b)(B)(iii) applies.”

Is Ashcreek a Commercial Noise Source as defined in DEQ regulations? The answer can be found in OAR 340-035-0015(23), which defines this term as follows:

“(23) “Industrial or Commercial Noise Source” means that source of noise which generates industrial or commercial noise levels.”

Unfortunately, the DEQ does not define “commercial” in OAR 340-035-0015: Definitions. We must therefore determine if Ashcreek is a non-profit that is engaging in commercial activities.

Clearly Ashcreek is using a fee-for-service model that charges consumers for the child-care services it provides. It is also organized as a corporation with the State of Oregon and employs teachers in a W-2 capacity. Ashcreek also competes with other for-profit commercial enterprises with the services it provides to consumers. It certainly meets many of the qualities that are prescribed to commercial enterprises.

Can a non-profit such as Ashcreek engage in commercial activities? Internal Revenue Service regulations state in Reg. § 1.501(c)(3)-1(e):

“An organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes.”

The regulation is clear that non-profit organizations can operate a trade or business and still qualify for 501(c)(3) status. Ashcreek’s activities certainly pass the test of a trade or business and also satisfy the requirements of this regulation to retain their 501(c)(3) status.

It is clear that Ashcreek’s operations meet the DEQ’s definition of a commercial noise source. It is also clear from reviewing ORS 467.020 that the City must comply with DEQ noise regulations when making land use decisions.

The Application lacks any factual information demonstrating that the activities it proposes comply with DEQ noise regulations. The Application must therefore be disapproved as it does not satisfy regulatory requirements or Oregon law.

Residential Livability Substantially Impacted: Approval Criteria Five (5)

This Application does not satisfy BDC 40.15.15.C.5. Please see written testimony dated August 16, 2024, for further information.

Proposal Violates City Comprehensive Plan Goals: Approval Criteria Four (3)

The Application does not satisfy BDC 40.15.15.C.3. Please see written testimony dated August 16, 2024, for further information.

Ms. Chelsea McCann
October 9, 2024
Page 10

Citizen Rights Violations

Please see written testimony dated August 16, 2024, for further information.

Conclusion

The Application cannot be approved due to the failure of Ashcreek and the Church to satisfy the approval criteria stated in BDC Section 40.15.15.C. In addition, the Application violates our substantial due process rights as it did not contain information on the Public Playground and as a result, we cannot determine the impact of the proposed use on our lives, property, and livability of our home. Finally, the Application contains a multitude of errors that preclude its consideration and approval by the Beaverton Planning Commission.

We appreciate the Planning Commission's time and consideration of our testimony on Project LU32023-00557 Ashcreek Playschool, Case File No. CU32023-00555 / DR12024-00090 when deciding on it. Thank you.

Sincerely,



David C. Golder



LeeAnn Brewer-Golder

10175 SW 149th Terrace
Beaverton, OR 97007

October 9, 2024

SENT VIA ELECTRONIC DELIVERY

Ms. Chelsea McCann
Planning Commission Chair
City of Beaverton
12725 SW Millikan Way
Beaverton, OR 97005-1678

RE: Project LU32023-00557 Ashcreek Playschool
Case File No. CU32023-00555 / DR12024-00090

Dear Ms. McCann:

I am writing in regard to the above referenced matter that will be reviewed during the Planning Commission hearing scheduled for October 9, 2024 ("Public Hearing"). The Application (Exhibit 3.1) for the above referenced project contains multiple fatal defects that prevent it from being approved or approved with conditions.

I hereby request the Planning Commission decide prior to receiving public testimony at the Public Hearing if the fatal defects in the Application shown in Exhibit 3.1 preclude any further consideration of it. Following are the fatal defects:

1. Applicant (Ashcreek Parent Cooperative Playschool or "Ashcreek") and Property Owner (domestic non-profit corporation or "Church") have not signed the resubmitted Application. This is apparent after examining Exhibit 3.1.
2. The domestic non-profit corporation that owns the subject property operated by Murray Hills Christian Church did not submit a written statement designating Ms. Sharon Jarman or Ashcreek as its agent or representative. This is clear after examining the Exhibits for the Public Hearing.

CUP Application Background

On August 11, 2023, the City of Beaverton ("City") received from Ashcreek the initial Application to modify Conditional Use Permit 94011/819 issued to the subject property owned by the Church. The initial Application was deemed incomplete by the Facilities Review Committee as stated in a letter dated September 1, 2024, addressed to Ashcreek from Mr. Steve Regner, Senior Planner at the City. In this letter it stated that a full resubmittal of all materials is required.

Ms. Chelsea McCann
October 9, 2024
Page 2

The City received a partial resubmittal of the Application and supporting documents on February 3, 2024. The resubmittal was an attempt by Ashcreek to satisfy the full resubmittal requirement stated in Mr. Regner's letter dated September 1, 2024.

The resubmitted Application did not contain signatures from Ashcreek or the Church on page one of the form. It also did not contain a written statement authorizing anyone as an agent or representative of the property owner.

On February 6, 2024, a representative of Ashcreek, Ms. Jana Hori, requested via email that the City deem the resubmitted Application as complete. Mr. Regner did so on behalf of the City on the same date.

The resubmitted Application was then deemed incomplete by the Facilities Review Committee as stated in a letter dated February 13, 2024, from Mr. Regner to Ashcreek. In this letter it stated once again that a full resubmittal of all materials is required.

On July 11, 2024, the City again received a partial resubmittal of the Application and supporting documents. The newly resubmitted Application still did not contain signatures by Ashcreek or the Church on page one of the form. It also did not contain a written statement designating anyone as an agent or representative of the property owner.

There is no evidence on the City's website for this project of any further written communication from the City after February 13, 2024, stating that the resubmitted Application is complete or incomplete.

Ashcreek resubmitted its final Application and supporting documents that were received by the City on September 27, 2024 (Exhibit 3.1). The Application still does not contain signatures from Ashcreek or the Church on page one of the form. The supporting documents submitted with the Application also do not contain a written statement designating anyone as an agent or representative of the property owner.

Fatal Defect Number One (1)

The omission of signatures by the applicant and property owner on page one of the Application shown in Exhibit 3.1 is a fatal defect that prevents it from being approved or approved with conditions by the Planning Commission.

The resubmitted Applications require signatures from representatives of Ashcreek and the Church in order for either party to file for a modification of a Conditional Use Permit (CUP). This requirement is stated in bold letters on page one of the Application. It is also a requirement of Beaverton Development Code Section ("BDC") 40.15.15.4.D titled Submission Requirements, as quoted on the next page for your review:

“The Major Modification of a Conditional Use application shall be accompanied by the information required by the application form, and by Section 50.25. (Application Completeness)...”

The relevant section in BDC 50.25 that pertains to Application signatures can be found in BDC 50.25.1, which is quoted below for your review:

“... All other complete applications shall consist of the requisite number of copies of the following: [ORD 4265; October 2003]

A. A completed original application form provided by the Director and application checklist provided by the Director, signed by:

- 1. The applicant.*
- 2. If the applicant is not the owner, the owner of the property, or the authorized agent of the property owner. If an authorized agent, a written statement made by the owner of the property shall be submitted stating that the agent is authorized to sign on the owner's behalf.”*

The plain language contained in the Application form, BDC 40.15.15.4.D, and BDC 50.25.1 clearly demonstrate that signatures are required. As a result, the Application in Exhibit 3.1 does not satisfy the requirements of BDC 50.25; therefore, it does not meet the legal requirements of a submitted application per BDC 40.15.15.4.D.

Furthermore, it is clear that the City would not accept a partial resubmittal of the Application or supporting documents. Mr. Regner's letters to Ashcreek dated September 1, 2023, and February 13, 2024, clearly state that partial resubmittals would not be accepted. The relevant section of the letters is quoted below for your review:

“Please provide a full electronic resubmittal via the City's website to the planning division. A full resubmittal of all materials is required. A partial resubmittal will not be accepted.”

Anyone who is interpreting or applying City Development Code is required to use the methodology mandated in BDC 10.20. A prudent person using this methodology would conclude that an application without signatures does not satisfy the legal requirements in BDC 50.25 and BDC 40.15.15.4.D. The same prudent person using the same required methodology would also conclude that the Application in Exhibit 3.1 is a partial resubmittal. As such, it should not have been accepted by the City as it did not satisfy the requirements stipulated in Mr. Regner's letters or in BDC 40.15.15.4.D.

Why is this fatal flaw in the Application an important issue?

Approving or approving with conditions an unsigned land use Application violates my substantial due process rights, but also of all Beaverton citizens. It establishes a process others may use to fraudulently receive land use decisions on properties where applicants have limited or no legal rights. It also may lead to the taking of property by government, in the form of a CUP that is not wanted nor authorized by the property owner, without proper due process before an impartial body.

If the actions in the preceding paragraph were to occur, the result may lead to substantial economic loss by me or any Beaverton resident. This could be in the form of lost property rights, reduction in property values, or even the loss of taxes paid by citizens to the City due to higher legal expenses.

The violation of citizens' due process rights is a slippery slope that once entered may result in significant unintended consequences that further degrade citizens' rights. This is one of the reasons why due process rights are protected in the Beaverton Development Code and Oregon Revised Statutes. It is also why citizens' due process rights are enumerated in the Fifth and Fourteenth Amendments to the U.S. Constitution.

Fatal Defect Number Two (2)

The domestic non-profit corporation that owns the subject property operated by Murray Hills Christian Church did not file with the City a written statement designating Ms. Jarman or Ashcreek as its agent or representative. This is clearly evident after an examination of the Exhibits before the Planning Commission and the written record of this project. This is a fatal defect in the Application that precludes it from being approved or approved with conditions by the Planning Commission.

It is unknown which domestic non-profit corporation owns the subject property operated by Murray Hills Christian Church. This is due to an administrative dissolution of the initial corporation that owns the property. As a result, it is unknown who has legal authority to request a modification to the CUPs issued to the subject property.

We agree with City staff that it is not the responsibility of the City to determine which domestic non-profit corporation owns the subject property. However, it is the responsibility of the corporation's board of directors or a duly authorized corporate officer to file a written statement with the City stating who is authorized to act on behalf of the corporation.

BDC 50.25 as well as the Application form in Exhibit 3.1 require a form or written statement be submitted with the Application designating someone as an agent or representative of the property

owner. This provides the City with the assurance that the person signing the Application has the legal authority to act on behalf of the property owner.

It is unknown who has legal authority to act on behalf of the domestic non-profit corporation that owns the property operated by Murray Hills Christian Church. This is exactly the type of situation that BDC 50.25 seeks to prevent by requiring the property owner to submit a written statement that designates someone as its agent or representative.

Why is this fatal flaw in the resubmitted Application an important issue?

Approving or approving with conditions a request to modify a CUP when it is unknown who has legal authority to request such a modification exposes the City to potential legal liability. Any legal challenges, settlements, or judgments that result from such actions by the Planning Commission will reduce tax revenues available to support other programs that benefit Beaverton citizens. This directly impacts my life as well as the lives of all Beaverton citizens.

In addition, any action by the Planning Commission to proceed with approving or approving with conditions the Application in Exhibit 3.1 presents identical due process violations as Fatal Flaw Number One (1). It establishes a process others may use to fraudulently receive land use decisions on properties where applicants have limited or no legal rights. It also could lead to the taking of property by government – in the form of a CUP that is not wanted nor authorized by the property owner – without proper notification or a fair hearing before an impartial body.

The modification of due process for a quasi-judicial hearing in Beaverton is the legal responsibility of the City Council. The Planning Commission nor City staff have legal authority to modify the due process outlined in the Beaverton Development Code through their actions or decisions. Any actions taken in such cases are outside the scope of their legal authority and subjects the individuals involved as well as the City to potential legal liability.

Application Cure

The Application in Exhibit 3.1 cannot be cured by Ashcreek or the Church. As stated in Mr. Regner's letter dated September 23, 2024, the initial Application was incomplete and a full resubmittal is required of all materials.

The full resubmittal of all materials had to be filed with the City by the 180-day completeness deadline of February 7, 2024. It is not legally permissible to accept a modification to the Application in Exhibit 3.1 to qualify it as a full resubmittal since the 180-day completeness deadline has long since expired. A prudent person can reach no other conclusion using the mandated method in BDC 10.20 when interpreting or applying Beaverton Development Code.

Ms. Chelsea McCann
October 9, 2024
Page 6


Conclusion

City staff's decision to accept Applications that do not satisfy BDC 40.15.15.4.D and BDC 50.25 has created substantial legal issues that the Planning Commission must resolve. The only option available to the Planning Commission to solve these issues is to disapprove the Application.

Furthermore, it is clear the Planning Commission does not have legal authority to approve or approve with conditions the Application due to the fatal defects in it. The only decision that can be made as a matter of law is to disapprove the Application.

I appreciate your consideration of this matter and commitment to following the controlling legal authorities when deciding on the Application.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'D.C. Golder', is written over the typed name.

David C. Golder

Enc. (3)

October 9, 2024

DSA Acoustical Engineers, Inc.

David Golder
10175 SW 149th Avenue
Beaverton, OR 97007

15399 SW Burgundy Street
Tigard, OR 97224

Attn: David Golder

From: Daly-Standlee & Associates, Inc.



Kerrie G. Standlee, P.E.
Principal

Re: Ashcreek Playschool Conditional Use Application Review
Project #: 106231

Introduction

At your request, I reviewed the materials submitted to the City of Beaverton as part of the Ashcreek Parent Cooperative Playschool Conditional Use application (Beaverton Project LU32023-00557 Ashcreek Playschool). In addition, I reviewed the City of Beaverton Planning Division staff report. As you requested, I reviewed the materials to determine if a sufficient amount of information was included to conclude playground noise associated with the daycare operation will meet all applicable noise regulations.

In addition to the review of the written materials in the Ashcreek Playschool application file, I visited residential properties surrounding the Ashcreek Playschool facilities to become familiar with the physical conditions that could influence the transmission of sound from the outdoor playground to the residences.

This letter provides my findings and conclusions based on the written material review and my visit to the surrounding properties.

Findings

1. Beaverton Development Code (BDC) 60.50.25, Uses Requiring Special Regulation states, *"In addition to other standards and requirements by this ordinance, **all uses included in this section** shall comply with the provisions stated herein. Should a conflict arise between the requirements of this section and other requirements of this ordinance, the more restrictive provision shall control"*



2. Child care and day care facilities are included as a use requiring special regulation (BDC 60.50.25 (7)).
3. BDC 60.50.25 (11) states, “*Noise levels shall meet the standards established by the State of Oregon Department of Environmental Quality [ORD 3293: November 1982]*”. Because Ashcreek Playschool is a commercial business operating within the Church facilities, the noise associated with the business will be regulated by the standards in OAR 340-035-0035 (Noise Control Regulations for Industry and Commerce). Those standards are written in terms of the hourly statistical noise levels (L_{01} , L_{10} and L_{50} noise levels, defined as the noise levels equaled or exceeded 1%, 10% and 50% of the time during any consecutive 60-minute period). In addition to those limits, the regulation has an ambient noise degradation limit which would have been applicable to the playschool from day one of its operation. That part of the regulation requires the sound generated by activities on the playground to be compared with the sound that would be present at residences without the sound of the playground. The application does not address this part of the regulation.
4. The *Written Statement for the Type 3 Major Modification of a Conditional Use Permit at 15050 SW Weir Rd* document included as part of the Ashcreek Playschool application material provides no discussion about how the playground noise associated with the current number of children at the playschool or with the requested increased number of children meets or will meet the DEQ noise standards as required by BDC 60.50.25 (11). The material states only that “*noise is mitigated at the property through a newly installed fence and additional signage to designate the playground area is only available during limited hours.*” There is no description of the newly installed fence (such as if it is a noise barrier type fence or just an acoustically transparent fence such as a chain-link fence) and there is no discussion about how the newly installed fence mitigates noise radiating from the playground to residential properties adjacent to the facility. Thus, it is not possible to determine from the application material if the noise radiating from the playground area will comply the DEQ standards.
5. The *Design Review Compliance Letter for Conditional Use Permit at 15050 SW Weir Rd* document included as part of the Ashcreek Playschool application material provides no discussion about how the playground noise associated with the current number of children at the playschool or with the requested increased number of children meets or will meet the DEQ noise standards as required by BDC 60.50.25 (11). It was noted from a review of the materials included in the document that a future sound wall routing was included on the site plan drawing (Drawing C1.1). However, there was no discussion of a sound wall included in the materials. Again, it is not possible to determine from this material if the noise radiating from the playground area will comply with the DEQ standards.
6. The Planning Division staff report shows that staff reviewed the impact of playground noise associated with the proposed application only relative to the City of Beaverton Noise Ordinance (BC 5.15 Noise). There is no mention of the fact that the applicant has to show that noise radiating from the existing and future playground will meet the DEQ noise standards. And, without an evaluation of the playground noise relative to

the DEQ noise standards, staff cannot conclude that all noise-related requirements have been met. Given the fact that the applicants site plan drawing shows a future sound wall routing, it seems reasonable to expect there should be some discussion of why that feature is shown on the drawing and when that feature might come into play.

7. During a site visit to become familiar with the physical conditions around the playground, I noted that no natural or man-made noise mitigating features were in place around the playground. I also noted that the playground was located against the back of the Church building in a way that would, due to the reflective nature of the building, increase the amount of playground sound radiated toward the residential areas. I would expect to see some discussion of that situation in the application. I would also expect to see how noise mitigation measures could be used to reduce the increase in sound due to the physical features.
8. Ashcreek Playschool is proposing to triple the maximum number of children allowed to be present at the Church during a day (increase from 20 to 60). There is no discussion in the application materials about how the increase in the number of children would not cause an increase in the playground sound. Based on what the staff report shows, due to the increase in the number of children at the facility, Ashcreek Playschool expects the playground will be in use continually between 9:00 a.m. and 1:00 p.m. In addition to the fact that there will be times when there will be more children in the playground area than is currently found, the increased amount of time the playground will be in use will be a major change due to the fact that there currently are times when the playground is vacant between 9:00 a.m. and 1:00 p.m. Without a complete assessment of the noise associated with the playground, it is impossible to draw any conclusions about whether the noise associated with the proposed changes will be in compliance with the DEQ standards.
9. The quantification of the noise effects caused by a change in the number of children in a playground can be difficult due to the fact that not all children produce the same level of noise. Sometimes, the amount of sound radiating from a playground can be dominated by a single child, and sometimes one child can cause other children to become more boisterous. When it comes to playground noise being generated in close proximity to residential receivers, it is often best to expect that some form of noise mitigation should be provided to buffer the sound going to the residences. An example of this approach was used at the Southwest Hills Baptist Church when the church applied to be allowed to increase the number of home-schooled students using their facility, even though the outdoor area where the students would congregate was much further from residences than is found at the Ashcreek Playschool site. No mitigation is being proposed in the application.

Conclusion

The information included in the Ashcreek Playschool conditional use application is insufficient to conclude that all Beaverton codes will be met. More analysis of playground noise is required to ensure compliance with the DEQ standards, and playground noise mitigation needs to be considered to ensure all City subjective standards are met.

Received
Planning Division
08/11/2023



CITY OF BEAVERTON
Community Development
Department
Planning Division
12725 SW Millikan Way
PO Box 4755
Beaverton, OR, 97076
Tel: (503) 526-2420
Fax: (503) 526-2550
BeavertonOregon.gov

OFFICE USE ONLY	
FILE #:	_____
FILE NAME:	_____
TYPE:	RECEIVED BY: _____
FEE PAID:	CHECK/CASH: _____
SUBMITTED:	LWI DESIG: _____
LAND USE DESIG:	NAC: _____

CONDITIONAL USE APPLICATION

PLEASE SELECT THE SPECIFIC TYPE OF CONDITIONAL USE FROM THE FOLLOWING LIST:

<input type="checkbox"/> TYPE 2 MINOR MODIFICATION OF A CONDITIONAL USE	<input type="checkbox"/> TYPE 3 MAJOR MODIFICATION OF A CONDITIONAL USE
<input type="checkbox"/> TYPE 3 PLANNED UNIT DEVELOPMENT	<input type="checkbox"/> TYPE 3 NEW CONDITIONAL USE
<input type="checkbox"/> INTERIM WASHINGTON COUNTY USE TYPE 1	<input type="checkbox"/> NONCONFORMING USE
<input type="checkbox"/> INTERIM WASHINGTON COUNTY USE TYPE 2	

APPLICANT: Use mailing address for meeting notification. Check box if Primary Contact

COMPANY: ASHCREEK PARENT COOPERATIVE PLAYSCHOOL

ADDRESS: 15050 SW WEIR RD

(CITY, STATE, ZIP) BEAVERTON, OR 97007

PHONE: 503-939-7007 FAX: _____ E-MAIL: ASHCREEKPLAYSCHOOL@GM

SIGNATURE: _____ CONTACT: JENNA HORI

(Original Signature Required)

APPLICANT'S REPRESENTATIVE: Check box if Primary Contact

COMPANY: _____

ADDRESS: _____

(CITY, STATE, ZIP) _____

PHONE: _____ FAX: _____ E-MAIL: _____

SIGNATURE: _____ CONTACT: _____

(Original Signature Required)

PROPERTY OWNER(S): Attach separate sheet if needed. Check box if Primary Contact

COMPANY: MURRAY HILLS CHRISTIAN CHURCH

ADDRESS: 15050 SW WEIR RD

(CITY, STATE, ZIP) BEAVERTON, OR 97007

PHONE: 503-524-5230 FAX: _____ E-MAIL: slbjarman@comcast.net

SIGNATURE: Sharon Jarman CONTACT: SHARON JARMAN

Note: A land use application must be signed by the property owner(s) or by someone authorized by the property owner(s) to act as an agent on their behalf. If someone is signing as the agent of the property owner(s), that person must submit a written statement signed by the property owner(s), authorizing the person to sign the application.