



Community Development Department / Planning Division
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Beaverton, OR 97076
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MEMORANDUM

TO: Planning Commission
FROM: Steve Regner, Senior Planner
DATE: October 23, 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 2.28

Testimony asserts that the play area should be not be considered an accessory use, and should require the need for a separate conditional use permit. Staff has provided analysis in response to these claims in the October 2nd staff report, October 8th supplemental memo, and October 9th supplemental memo.

Additionally, the testimony asserts that the application has not provided sufficient analysis demonstrating ADA compliance in response to BDC 40.03.1.K. Staff notes that the playground expansion is being reviewed through a Design Review Compliance Letter, which is not subject to Facilities Review (BDC 40.03.1.A-L). As such, analysis for the play area's compliance with ADA requirements is not required for this land use approval.

Exhibit 2.29

Testimony requests a continuance of the hearing to review and respond to the acoustical study provided by the applicant. Staff reminds the Planning Commission that they are not obligated to grant a continuance, as the first evidentiary hearing has already been held.

Conclusion

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

Exhibits

Exhibit 2.28 Letter from David Golder, dated October 23, 2024

Exhibit 2.29 Letter from Douglas Gordon, dated October 23, 2024

10175 SW 149th Terrace
Beaverton, OR 97007

October 23, 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 (“Ashcreek”)
Case File No. CU32023-00555 / DR12024-00090 (“Application”)

Dear Ms. McCann:

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

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 the preschool facilities at the Church.

The following is a summary of our written testimony that is being provided to refute factually incorrect information City staff provided at the October 9, 2024, hearing:

- Playground located on Church property (“Public Playground”) does not qualify as an accessory structure or use per BDC Section Chapter 90 Definitions
- Design Review application process is legally insufficient to apply for or approve the construction and use of the Public Playground
- Public Playground is a new use and requires an application for a new conditional use permit (“CUP”) per BDC Section 20.20.20.A., Subsection 27.A
- City staff findings that the proposal meets the criteria of BDC Section 40.03.1.K are incorrect, as no findings were made on whether the Public Playground is ADA compliant

Playground Does Not Qualify as an Accessory Structure or Use

According to BDC Section 10.20, one must review BDC Section Chapter 90 Definitions in order to determine if the Public Playground is an accessory structure or use. The following are definitions of these terms from Chapter 90:

“Accessory Structure: A structure incidental, appropriate and subordinate to the main structure or use detached from the primary structure.”

“Accessory Use: A use or activity which is a subordinate part of a primary use and which is clearly incidental to a primary use on a site.”

Does the Public Playground meet the Chapter 90 definition of an accessory structure or use? The subject property has two main land uses that are authorized in CUP Orders. One use is for a Church, which was approved in 1988. The other use is for a childcare facility, which was authorized in 1994.

It is clear the play structures are subordinate to the main structure and use of the property as a Church. The Public Playground though is not incidental or subordinate to the main structure or use of the subject property as a childcare facility.

As stated on page 19 of the Staff Report dated October 2, 2024 (“Staff Report”), childcare facilities are required to have 100 square feet of outdoor play area per child for 1/3 of the total licensed capacity of the facility. Use of the Public Playground is not incidental or subordinate to the childcare facility. It is required per BDC Section 60.50.25.7, and the childcare facility cannot operate without it.

Mr. Regner’s assertion that the Public Playground is an accessory structure and use is not supported by the definition of these terms in BDC Section Chapter 90 Definitions or by BDC Section 60.50.25.7. A prudent person can reach no other conclusion based on a plain reading of the Code following the required methodology in BDC 10.20.

Design Review Application is Legally Insufficient

Land uses in Beaverton are outlined in BDC Section 20.05.20. In this Code Section, Table 20.05.20.A states that childcare facilities, places of worship, and playgrounds are all separate land uses in Residential RMB Zones as demonstrated as follows:

- 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)

The Public Playground was constructed for public use according to oral statements from Church leadership. Its primary use was not to provide recreation for children who are parishioners. This assertion is further supported by the small number of children who attend Church services, as well as signs posted by the Church that are exhibited on page 37 of Exhibit Ashcreek PC Supplemental Memo 10-2-24 w Exhibits. As a result, the Public Playground is a separate land use per BDC Section 20.05.20.A.12.A.

Furthermore, the Public Playground is not an accessory structure or use for Ashcreek. It is legally required and an integral part of their operations. The construction of the Public Playground is legally required to be disclosed in the Application and neighborhood meeting. The construction of the Public Playground was not discussed at the neighborhood meeting as Mr. Regner asserts. Nor is it listed even today in the Application in Exhibit 3.1, which states “no site modification proposed”.

The Design Review process is not intended to be used as an application for or to receive CUP approval for new 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 approval process mandated by the City Council in BDC 40.15.05 that is required to be used to apply for, approve, approve with conditions, or deny the construction of the Public Playground is the conditional use process. The 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.”

As one can see from the preceding discussion, the Applicant used the incorrect application process to request approval for the construction and use of the Public Playground. As a result, the Planning Commission has no legal authority to approve the design review application.

American with Disabilities Act Compliance

The Applicant and City staff did not provide any findings or conclusions on whether the Public Playground is ADA compliant. It is mandatory that the Department of Justice's 2010 Standards for Accessible Design be complied with when building a new playground or making an alteration to an existing playground. The Applicant and City staff are legally required to make certain that the Public Playground complies with these standards and is fully ADA compliant.

Evidence that the Applicant and City staff failed to satisfy ADA and City Development Code requirements for physically handicapped people can be found on page 19 of the Staff Report, which is quoted below for your review:

"Section 40.03.1.K

Access and facilities for physically handicapped people are incorporated into the development site and building design, with particular attention to providing continuous, uninterrupted access routes.

FINDING: The applicant states that the building currently has accessible routes to both primary building entrances and accessible facilities within. Staff notes that no physical changes to the building or routes to the building are included with this proposal.

Conclusion: Staff finds that the proposal meets the approval criterion."

The lack of findings and conclusions on this issue for the Public Playground violates Federal, State, and City laws pertaining to site access for physically handicapped people. It also does not satisfy Approval Criteria three (3) as it does not comply with City Comprehensive Plan Goals.

Conclusion

Why do failures follow due process matter for this project? The short answer is it prejudices several of our substantial rights. The first is our substantive due process right to privacy from excessive noise that is significantly impacting our lives and use of our home. The second is our procedural due process rights to protect us from unfair government practices and procedures that result in a significant loss of time (e.g., life).

We have had to endure excessive and unwanted noise, as well as spend considerable time over the last two years to resolve issues with this project. This is a direct result of the City's failure to follow the legally mandated land use due process and enforce existing CUP Orders issued to the Church property.

Ms. Chelsea McCann
October 23, 2024
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We appreciate the Planning Commission's time and consideration of our testimony. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "David C. Golder", with a long horizontal flourish extending to the right.

David C. Golder

A handwritten signature in blue ink, appearing to read "LeeAnn Brewer-Golder", with a long horizontal flourish extending to the right.

LeeAnn Brewer-Golder

Received
Planning Division
10/23/2024

10050 SW 151st Place
Beaverton, OR 97007

October 23, 2024

VIA EMAIL TRANSMISSION

Ms. Jana Fox
Current, Planning Manager
City of Beaverton
12725 SW Millikan Way
Beaverton, OR 97005-1678

Mr. Steve Regner
Senior Planner
City of Beaverton
12725 SW Millikan Way
Beaverton, OR 97005-1678

RE: Murray Hills Christian Church; Ashcreek Playschool LU32023-00557 (CU32023-00555/DR12024-00090); Request for Continuance of Planning Commission Hearing Schedule 10-23-24

Dear Mrs. Fox and Mr. Regner:

I am writing to request a Continuance of the Planning Commission Hearing scheduled to begin today at 6:30 p.m. Both David Golder and Ronald Sattler join in my Request for Continuance.

The reason for this request is that on October 21st the Applicant submitted a 13-page acoustical engineering report authored by ABD Engineering & Design. The Report was not posted to the City's electronic file for this Application until 11:56 p.m. on October 21.

This lengthy report contains detailed factual information, highly technical analysis and complex sound level studies. It is necessary for me to engage an acoustical engineer to read and analyze the ABD Report before the Report can be adequately assessed by a qualified professional engineer, which is a prerequisite to filing my own submission in response, which I intend to do.

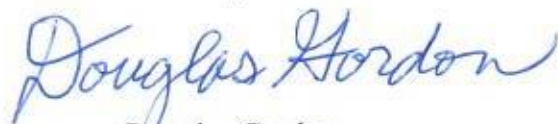
It is evident that Applicant submitted the ABD Report in a last-minute attempt to cure deficiencies in its Application and its failure to address legal and factual issues which the Planning Commission must decide in order to evaluate and make a final determination on the Application. These issues are material and substantive, not procedural. In order to have a reasonable opportunity to prepare and submit my response to the ABD Report, I will need a reasonable amount of time, thereby requiring a continuance.

Page 2
Jana Fox
Steve Regner
10-23-24

My request for a continuance is based upon applicable Oregon Revised Statutes and Beaverton Development Code provisions.

Thank you.

Sincerely,



Douglas Gordon

copy: David Golder

Ronald Sattler