

STAFF REPORT

Report Date: October 2, 2024

Application/Project Name: LU32023-00557 Ashcreek Playschool

Application Numbers: CU32023-00555 / DR12024-00090

Proposal: The applicant, Ashcreek Playschool, requests approval of a Major Modification of a Conditional Use for the increase of student enrollment from 20 students to 60 students, and approval of a Design Review Compliance Letter to retroactively approve modifications to an outdoor play area.

Proposal Location: The site is located at 15050 SW Weir Road, specifically identified as Tax Lot 00400 on Washington County Tax Assessor's Map 1S132AA.

Applicant: Ashcreek Parent Cooperative Playschool

Recommendation: APPROVAL of LU32023-00557 Ashcreek Playschool CU32023-00555 / DR12024-00090 subject to conditions identified at the end of this report.

Hearing Information: 6:30 p.m. October 9, 2024, at City Hall, 12725 SW Millikan Way

Note: Public Hearings are held remotely and can be viewed at the following link:
<https://beavertonoregon.gov/913/Agendas-Minutes>

Contact Information:

City Staff Representative: Steve Regner, Senior Planner
503-319-4427
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Applicant: Ashcreek Parent Cooperative Playschool
Attn: Jenna Hori
15050 SW Weir
Beaverton, OR 97007

Property Owner: Murray Hills Christian Church
Attn: Sharon Jarmon
15050 SW Weir
Beaverton, OR 97007



Existing Conditions

Zoning: Residential Mixed B (RMB)

Site Conditions: The site is developed as a church with associated amenities, including parking, outdoor play area. Wetland areas are located in the southwest portion of the site.

Site Size: Campus: Approximately 3.8 acres

Location: The site is located at 15050 SW Weir Road, specifically identified as Tax Lot 00400 on Washington County Tax Assessor’s Map 1S132AA.

Neighborhood Association Committee: Neighbors Southwest NAC

Table 1: Surrounding Uses

Direction	Zoning	Uses
North	Residential Mixed B (RMB)	Single Family Residential
South	Residential Mixed B (RMB)	Single Family Residential
East:	Residential Mixed B (RMB)	Single Family Residential
West:	Residential Mixed B (RMB)	Single Family Residential

Application Information

Table 2: Application Summaries

Application	Application Type	Proposal Summary	Approval Criteria Location
CU32023-00555	Major Modification of a Conditional Use Permit	Expansion of childcare facility from 20 students to 60 students	Development Code Sections 40.03.1 40.15.15.4
DR12024-00090	Design Review Compliance Letter	Retroactive approval of playground expansion	Development Code Section 40.20.15.1

Table 3: Key Application Dates

Application	Submittal Date	Deemed Complete	120-Day*	365-Day**
CU2023-0004	August 11, 2023	February 6, 2024	June 5 th , 2024	February 5, 2025
DR2023-0033	February 6, 2024	February 6, 2024	June 5 th , 2024	February 5, 2025

* The applicant has provided continuances to the 120 day limit through February 5, 2024.

** Pursuant to Section 50.25.9 of the Development Code this is the latest date, with a continuance, by which a final written decision on the proposal can be made.

Summary of Public Comment

Substantial public comment was received regarding this proposal. Staff provides summaries of the comments, as well as staff responses to comments, below. These summaries are grouped by theme, and do not include full verbatim language from the public comments. Please see Exhibits 2.1-2.16 of this report for the full list of public comments.

Incompleteness

Staff received multiple pieces of public comment prior to the application being deemed complete, asserting the application was missing required items.

Staff's response: Staff notes that these were early submissions of the applications and did, in fact, have missing required items. Staff finds the subsequent applicant submittals have included all required items to proceed to Planning Commission for consideration.

Voluntary Compliance Agreement

Staff received multiple pieces of public comment discussing the Voluntary Compliance Agreement entered into between the applicant and the City of Beaverton Code Compliance Division.

Staff's response: Staff observes that the Voluntary Compliance Agreement is not a land use action and is outside the purview of both planning staff and the Planning Commission when considering the merits of the land use application.

Environmental

Wetland Conservation Easement - Public comment identified that there are wetlands on site, as well as a 'Wetland Conservation Easement in the neighborhood.

Staff's response: Staff acknowledges the existence of wetland on the subject site and adjoining neighbors to the west. Staff notes that there is a Wetland Conservation Easement located on the subdivision plat map directly west of the subject site (see Exhibit 1.4), limiting development on certain portions of certain lots in the subdivision. However, staff have researched the subject site to determine if any similar easement was placed on the property and have discovered no evidence of an easement. Typical state, regional and local rules apply regarding development in wetlands, but staff is unaware of any additional regulations applicable to the subject site. The expansion of the playground occurred in an upland area, outside of the designated wetland.

Impacts to sensitive areas - Public comment states that the expansion of the playground occurred in or near sensitive natural areas, and lacks appropriate Clean Water Services approval.

Staff's response: The applicant has received a revised Clean Water Services Service Provider Letter, dated September 10, 2024, stating the project will not significantly impact the existing Sensitive Areas found near the site.

Legal Use of the Play Area

Public comment asserts that the original child care facility conditional use permit (CUP 1994-011) approved activities inside the church only, and use of the existing church playground was not granted under the original CUP.

Staff's response: Staff disagrees with the above assertion. An outdoor play area was included in the application, which was approved. The commenter asserts that because the play area was not mentioned in the conditions of approval, the play area was not approved. That assertion is incorrect. The absence of a condition on the play area does not mean that the play area wasn't approved, but rather that the play area was approved as requested. If the Planning Commission did not approve of the play area or wanted to limit the play area in some manner, then it would have included a condition to prohibit or limit the play area.

Staff notes the full language of the condition of approval reads as follows:

"This permit will allow no more than 20 pre-school students, 2 employees, and no greater 700 square feet of building area to be used for the school within the existing church building. Future school expansions, if proposed, maybe be processed administratively." (Exhibit 1.4, pg 1)

Staff agrees that use of the play area is not specifically identified in the condition of approval. However, references to use of the play area are included in the applicant's statement, and analysis regarding impacts cause by the use of the play area are included in the record.

The applicant's statement includes the following language:

"These classes will only occupy one room inside the church building, and the children will use the church owned play equipment outdoors for their short periods of recreation." (Exhibit 1.3, pg 4)

Staff analysis includes positive findings regarding the impact of the play area use by the school:

"h. Noise Generated. Although the school will use the small outdoor play area at the church, the play equipment already exists for occasional use by children in the neighborhood. Therefore, little change is expected. The play area is located close to the building, and is not near adjoining properties or the church parking lot. The applicant will meet the fencing and play area requirements of Section 76.6 of the Code. Staff finds that noise will be of a negligible impact to surrounding areas.." (Exhibit 1.3, pg 16)

Based on the record, which includes the application, findings and conclusions, use of the play area by the conditionally permitted Montessori school was approved.

Applicability of Noise Ordinance

Public comment asserts that the applicant's child care facility is not in conformance with the Noise Ordinance.

Staff's response: Staff provides the additional analysis of the Noise Ordinance. Municipal Code 5.15.030.C states that:

"Yelling, Shouting, and Similar Activities. Yelling, shouting, hooting, whistling, or singing in a residential area or in a public place, between the hours of 10:00 p.m. and 7:00 a.m., or at any time or place so as to unreasonably disturb the quiet, comfort, or repose of reasonable individuals of ordinary sensitivities."

Staff notes that this does not prohibit yelling, shouting and similar activities at any time, as asserted by public comment. Staff agrees that these activities are prohibited between 10:00 p.m. and 7:00 a.m. Staff is unaware of any complaints of these activities during the specified time window. The restrictions on noises made "at any time or place" are qualified as noises that "unreasonably disturb the quiet"

The municipal code does not define unreasonable noises *per se*, however, Section 5.15.30 does specify that "Unreasonable noises" are prohibited. That section includes the provision:

"The ordinary and usual sounds, noises, commotion, or vibration incidental to the operation of these places when conducted in accordance with the usual standards of practice and in a manner which will not unreasonably disturb the peace and comfort of adjacent noise-sensitive areas or which will not detrimentally affect the operators of adjacent places of business are exempted from this provision."

It is worth noting that the Beaverton Development Code allows schools and playgrounds as conditional uses in all residential zones. Many schools with outdoor playgrounds currently exist in residential neighborhoods throughout the city. The sounds of children playing outside are common in residential areas and nothing in the record indicates that the sounds from the applicant's playground is different from any typical playground. Therefore, activities that are conducted in play area that conform to the typical activities expected to occur in a play area are not to be considered unreasonable noises. Staff is unaware of any activities occurring in the play area that are outside of the usual standards and practice.

Noise Impacts on Neighbors

Public comment asserts that noise generated by users of the play area, including the child care facility, cause substantial negative impacts to livability.

Staff's response: Staff cites findings in approval criteria related to the Major Modification of the Conditional Use Permit in Attachment B as relevant to this complaint.

Staff reminds Planning Commission that as the decision-making authority on this land use request, the Commission may add conditions of approval to mitigate any noise concerns related to the use of the play area.

Neighborhood Meeting Compliance

Public comment asserts that the required neighborhood meeting was insufficient, citing lack of time to answer every question, not including the retroactive permitting in the meeting notice and presentation.

Staff's response: Staff observes that all statutory requirements regarding the neighborhood meeting were met. Staff notes that the neighborhood meeting was held during a local Neighborhood Association Committee (NAC) meeting, which is permitted. Staff also notes that NAC meetings typically have multiple agenda items, and limited time is available for each agenda item. Running out of time due to other agenda items, or not answering an attendee's question to the satisfaction of the questioner does not invalidate the Neighborhood Meeting. Staff also observes that the presentation included information regarding use of the play area. At the time, the applicant was unaware the play area had been expanded without permits. This was brought to the attention of staff and the applicant in early 2024. In response, the applicant submitted a Design Review Compliance Letter (DRCL) to address the expansion. The DRCL application was identified in all city generated public notices, and responses to applicable approval criteria are located in Attachment C of this report. Staff notes that a DRCL application is not subject to neighborhood meeting requirements.

Inadequate Traffic Memo

Public comment asserts that the traffic memo is inadequate, and should include other activities on the site, such as AA meetings, boy scout gatherings, etc.

Staff's response: Staff disagrees with the assertion, noting that the requirements of a traffic analysis are limited to the changes created by the proposal. Analysis provided includes project trips generated by the maximum student enrollment number. The activities identified by the public comment fall under the church's permit as ancillary uses, and are not the responsibility of the child care facility. Despite this, the applicant did include a list of uses occurring at the church and their general times of operation. See Exhibit 3.2, which summarizes other users of the church. Church users during classroom time are limited to one regular staff member in the mornings, intermittent church staff or volunteers with no set schedule, two volunteers for a food pantry, also with no set schedule, and occasional use by Beaverton Police as a rest stop. All other uses occur outside of school hours. The highest demand users identified by public comment occur outside of school hours and present no conflict with parking or queuing on-site.

Claims of Tree Removal

Public comment asserts that two trees were removed a few years ago.

Staff response: Staff is unaware of this removal, but notes that it is possible a permit should have been acquired for the tree removal, depending on the category of the tree. Aside from being on the same site, it is unclear to staff how this issue is germane to the proposed land use application. With no additional information, staff cannot provide further comment on this claim.

Operation of a Business

Public comment asserts that operation of a business with outdated state registration cannot operate at the location.

Staff response: The City of Beaverton does not consider tax status when evaluating a land use application, and the applicable approval criteria does not include a requirement for active registration documents. Beaverton Code does not prohibit such activities. City staff recommend the applicant maintain all relevant state licensing and financial documents, but cannot take such statuses into consideration for land use applications.

Expanded Footprint of Play Area

Public comment provides map depicting area of expansion of play area. Staff observes this map is inaccurate, and cites the applicant's site plan demonstrating the actual expanse of the current play area (Exhibit 3.5).

Modification of Conditions of Approval

Public comment identified 1994 condition of approval limiting enrollment.

Staff response: Staff agrees with the public comment and cites the findings in Attachment B, providing responses to the approval criteria in BDC 50.95 Modification of a Decision.

Public comment asserts that a condition of approval from a 2000 church expansion prohibits the expansion of school enrollment.

Staff response: Staff notes the condition of approval reads as follows:

“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 the conditional use permit connected to this condition of approval is related to the expansion of the church, and there was no request from the applicant to expand the existing Montessori School. Therefore no findings were provided at the time regarding the Montessori School expansion. The condition of approval provides direction for how the Montessori School or successor could expand enrollment, which is through a Conditional Use approval. Staff cites the findings in Attachment B as relevant in demonstrating that the applicant is requesting approval through a separate Conditional Use process, thereby complying with this condition of approval. Furthermore, staff cites the findings in Attachment B as relevant to why the 20 student cap is warranted to be changed.

Citizen Rights Violations

Public comment asserts that citizen rights were violated during the land use process, citing provisions in BDC 50.30, ORS 197.797, and the 14th Amendment of the U.S. Constitution.

Staff response: Staff notes that BDC 50.30 sets out the requirements for a Neighborhood Meeting. As a Type 3 application, a Neighborhood Meeting was required. According to applicant materials, the meeting was held on April 18, 2023. The provided notice described the request as an increase in student enrollment. The presentation included discussion of utilizing the existing play area, continuing past practice of previous child care facilities, including the original Montessori School. Staff notes that the language of BDC 50.30.3.B requires the notice to include certain information, and to *“...briefly discuss the nature and location of the proposal.”* The code does not require an exhaustive description or itemized land use applications in the notice. BDC Section BDC 50.30.3.D states: *“At the Neighborhood Review Meeting, the applicant shall describe the proposed application to persons in attendance.”* Meeting minutes indicate the applicant discussed both expansion of school enrollment and use of the play area in its current state. Staff identifies no conflicts with local code regarding the noticing and carrying out of the neighborhood meeting.

Staff notes that the provision of ORS 197.797 cited by public comment, namely ORS 197.797 (3) (a) reads in full:

“(3) The notice provided by the jurisdiction shall:

(a) Explain the nature of the application and the proposed use or uses which could be authorized; “

Staff observes that the public comment is incorrectly applying this provision. This provision is plainly applicable only to notices provided by the jurisdiction and is not applicable to neighborhood meeting notices provided by the applicant. Staff notes that the public notices mailed to neighboring property owners and published in the Beaverton Valley Times included references to the Design Review Compliance Letter and applicable approval criteria, consistent with ORS 197.797 (3) (a).

Finally, public comment asserts that due process under the 14th amendment has not been observed because the play area was not indicated to be part of the proposal at the neighborhood meeting. The applicant asserts that these protections include “notice, an opportunity to be heard, and an impartial tribunal.” Staff observes that public notice provided by the City of Beaverton, identifying the hearing, applicable approval criteria and opportunity and methods for public input, consistent with applicable ORS and local requirements. Members of the public have not been deprived an opportunity to be heard, as evidenced by the written testimony conveyed to the city to date, as well as the forthcoming opportunity to provide oral testimony at the hearing. Finally, the public has not been deprived of an impartial testimony, as the proposal will be considered before the Planning Commission, the city’s designated deliberative body responsible for Quai-Judicial land use applications.

Assertion of Need for Conditional Use Permit for Public Playground

Public comment asserts that the expanded play area should be reviewed under a separate, new Conditional Use Permit for a Public Playground, a specific and separate land use in Chapter 20 – Land Uses

Staff response: Staff disagrees with this assertion. 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. Similar to a public school campus, a playground is customarily an accessory use on the site, and are often times open to the public outside of school hours. Much like the redesign or expansion of a play area at a school is subject to Design Review but not a Conditional Use for a Public Playground, the play area on the subject site is regarded as an accessory use to the church, subject to Design Review but not a new Conditional Use for a Public Playground.

Murray Hills Church Authority to Sign as Property Owner

Public comment asserts that improper procedures were followed during transfer of ownership, and Murray Hills Christian Church does not have the authority to sign the applications as property owner.

Staff response: The purpose of the application signature is to confirm that the property owner consents to the application, not to determine whether the property owner's title is clean. Both the special warranty deed and the tax assessor records from Washington County show Murray Hills Christian Church as the property owner. That is sufficient for the city to verify property owner consent.

Project Background

The applicant, Ashcreek Playschool, began operations at the Murray Hills Christian Church (MHCC) in or around 2015. The MHCC site was granted a Conditional Use Permit for a Child Care Facility in 1994 (CUP1994-011), which granted an enrollment rate of 20 students, 2 teachers, and limited the use of the church building to 700 square feet. Ash Creek Playschool was not the original tenant utilizing the Conditional Use, however, since a Conditional Use Approval "runs with the land", Ash Creek was able to operate under those provisions of CUP1994-011 when established in 2015. However, over time, the enrollment of Ash Creek Playschool expanded beyond the permitted 20 students and 700 square feet of building area without modifying the existing Conditional Use. This expanded enrollment was brought to the attention of the City of Beaverton's Code Compliance Program in 2022. The applicant entered into a Voluntary Compliance Agreement (VCA) with the city of Beaverton, which granted the applicant the ability to continue to operate out of compliance, i.e. with the expanded enrollment numbers, as long as an effort was made to remedy the compliance issue by obtaining a modified Conditional Use Permit. The applicant applied for a Pre-Application Conference with the City of Beaverton, which was held on November 16, 2022.

The applicant submitted for a Major Modification of a Conditional Use permit, for which this staff report analyzes, on August 11, 2023. Based on comments received from the public, staff became aware that the outdoor play area had been expanded without permits or City review as well. Based on this information, city staff advised the applicant to apply for a Design Review Compliance Letter in addition to the already submitted Major Modification of a Conditional Use, in order to request to retroactively permit the play area expansion. The applicant deemed the project complete on February 6, 2024, and provided continuances to the 120-day rule to allow for more time for the applicant to provide the required submittal materials.

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Attachment D: RECOMMENDED CONDITIONS OF APPROVAL.....46

Exhibits

Exhibit 1. Materials submitted by Staff

Exhibit 1.1 Zoning Map (page 5 of this report)

Exhibit 1.2 Aerial Map (page 6 of this report)

Exhibit 1.3 Original Conditional Use Permit Record - Murray Hills Montessori School
(CUP 4-011)

Exhibit 1.4 Land Use Order - Murray Hills Montessori School (CUP 4-011)

Exhibit 2. Public Comment

Exhibit 2.1 Letter from David Golder, received August 25, 2023

Exhibit 2.2 Letter from David Golder, received August 29, 2023

Exhibit 2.3 Letter from David Golder, received October 13, 2023

Exhibit 2.4 Letter from David Golder, received February 22, 2024

Exhibit 2.5 Letter from David Golder, received May 13, 2024

Exhibit 2.6 Letter from Douglas Gordon, received June 3, 2024

Exhibit 2.7 Letter from Douglas Gordon, received August 9, 2024

Exhibit 2.8 Email from Heather Gavin, received August 14, 2024

Exhibit 2.9 Email from Mike and Kim Munly, received August 16, 2024

Exhibit 2.10 Petition from David Golder, received August 17, 2024

Exhibit 2.11 Email from Charlie Pontrelli, received August 16, 2024

Exhibit 2.12 Email from Julie Laurin, received August 16, 2024

Exhibit 2.13 Email from Lisa Carpenter, received August 16, 2024

Exhibit 2.14 Letter from Ron Sattler, received August 16, 2024

Exhibit 2.15 Letter from David Golder, received August 16, 2024

Exhibit 2.16 Letter from David Golder, received August 21, 2024

Exhibit 3. Materials submitted by the Applicant

Exhibit 3.1 Application Forms

Exhibit 3.2 Narrative

Exhibit 3.3 Service Provider Letters

Exhibit 3.4 Pre-Application Conference Notes

Exhibit 3.5 Drawing Set

Exhibit 3.6 Transportation Memo

Exhibit 3.7 Neighborhood Review Meeting Materials

Exhibit 1.1 Zoning Map

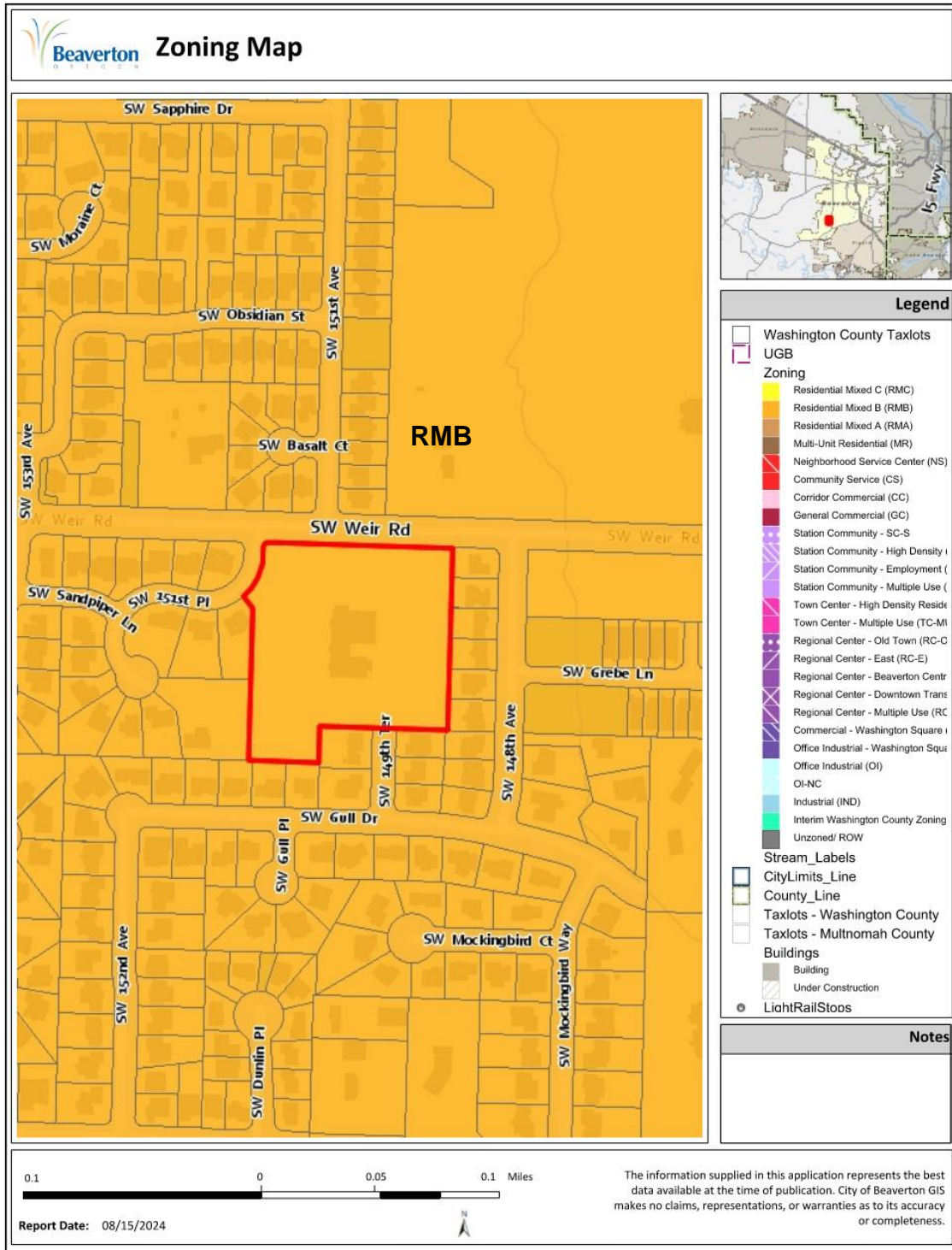
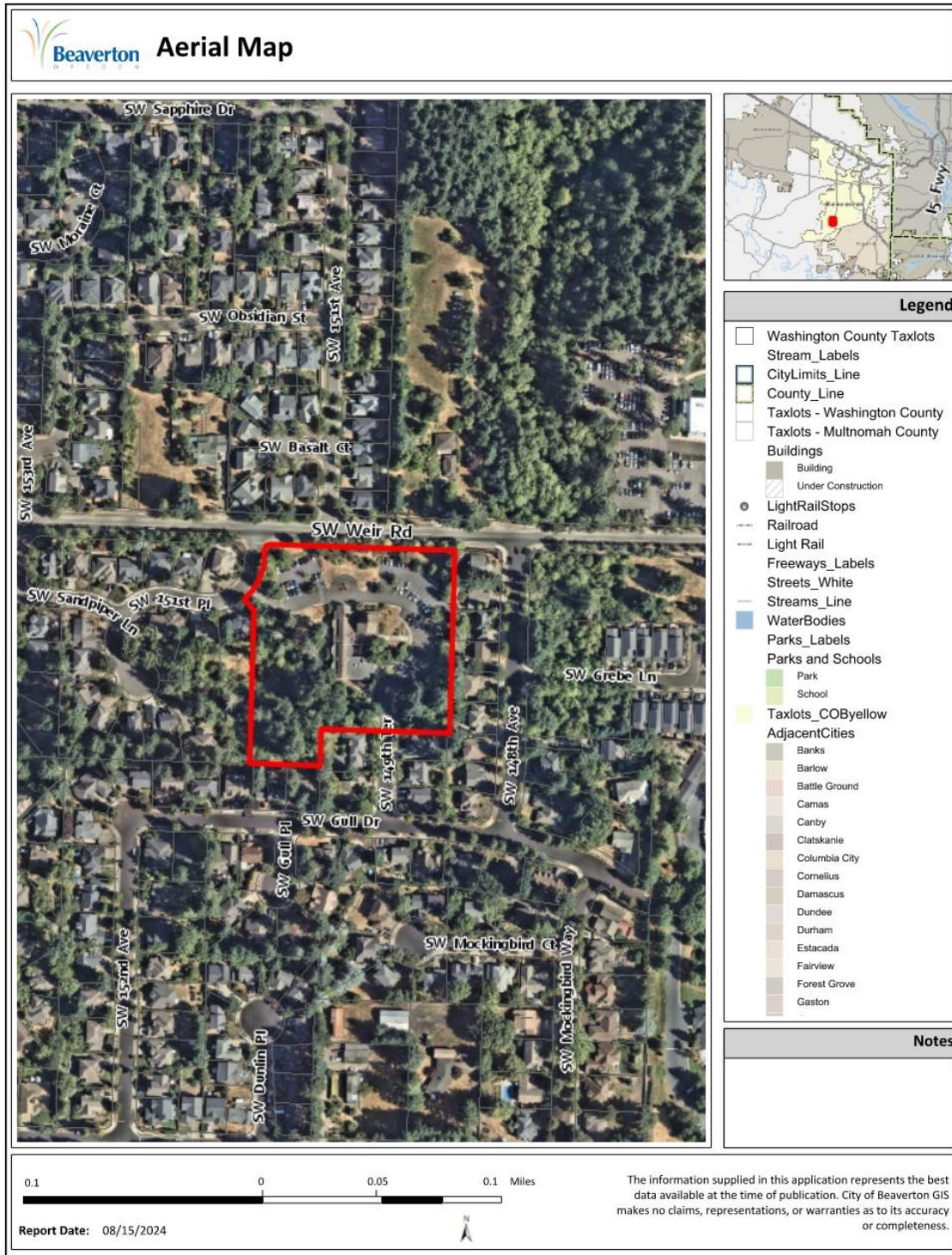


Exhibit 1.2 Vicinity Map



Attachment A: FACILITIES REVIEW COMMITTEE

TECHNICAL REVIEW AND RECOMMENDATIONS

Application: Ashcreek Playschool

Proposal: The applicant, Ashcreek Playschool, requests approval of a Major Modification of a Conditional Use and a Design Review Compliance Letter expanding enrollment to a child care facility and retroactively approve an expanded outdoor playground. The facility is proposed have an enrollment of 60 children and 10 staff. No physical changes are proposed to the site.

Recommendation: APPROVE LU32023-00557 Ashcreek Playschool (CUN32023-00555 / DR12024-00090)

Section 40.03 Facilities Review Committee:

The Facilities Review Committee has conducted a technical review of the application, in accordance with the criteria contained in Section 40.03 of the Development Code. The Committee's findings and recommended conditions of approval are provided to the decision-making authority. As they will appear in the Staff Report, the Facilities Review Conditions may be re-numbered and placed in a different order. The decision-making authority will determine whether the application as presented meets the Facilities Review approval criteria for the subject application and may choose to adopt, not adopt, or modify the Committee's findings.

The Facilities Review Committee Criteria for Approval will be reviewed for all criteria that are applicable to the submitted application(s) as identified below:

- All twelve (12) criteria are applicable to the Major Modification to a Conditional Use (CUN32023-00555) application as submitted.
- The Facilities Review Criteria are not applicable to the associated Design Review Compliance Letter (DR12024-00090) application.

Section 40.03.1.A

Approval Criterion: *All critical facilities and services related to the proposed development have, or can be improved to have, adequate capacity to serve the proposed development at the time of its completion.*

FINDING:

Chapter 90 of the Development Code defines "critical facilities" to be services that include potable and non-potable public water; public sanitary sewer; stormwater drainage, treatment, and retention; transportation; and fire protection.

Potable Water: The subject site is served by City of Beaverton public water service. An existing eight-inch public water main located in SW 149th Terrace will continue to provide

water service to the site. No new fixtures are proposed. Therefore, the Committee finds that adequate potable public water service can be provided to the site to serve the proposed development.

Non-Potable Water: There is no non-potable water network in the development area. Therefore, the proposal is exempt from connecting to a non-potable water network.

Sanitary Sewer: The property is served by City of Beaverton sanitary sewer service. There is an existing eight-inch sanitary sewer line near the southwest corner of the property. No new fixtures are proposed. The Committee finds that adequate sanitary sewer service can be provided to the site to serve the proposed development.

Stormwater Drainage, Treatment, and Retention: The on-site public storm system includes several catch basins served by gravity mains that empty into an open storm drain in the southwest corner of the site. These private storm drains eventually empty to a 30 inch public stormwater line at the southern end of the site. No new physical development is proposed, however the applicant acknowledges unpermitted expansion of the playground has occurred approximately 20 years ago (2004-2007), and has applied for a Design Review Compliance Letter to retroactively permit the expansion. Based on the plans and photos provided, staff observes that the expanded play area is almost entirely made of pervious materials, such as dirt and wood chips, and would not cause a change in sheet flow or create additional stormwater runoff requiring treatment.

Staff has received public comment indicating that local flooding has occurred related to the open storm drain. Based on staff's understanding, this flooding is due to the lack of maintenance of the private on-site storm lines and catch basins. Staff recommends that members of the public affected by or have concerns regarding the local flooding to coordinate with the property owner and the City of Beaverton's Public Works Department for solutions to remedy the maintenance issue.

The applicant has provided a Clean Water Services Service Provider Letter stating that the unpermitted playground expansion will not significantly impact the existing Sensitive Areas found near the site. However, Clean Water Services included conditions of approval for mitigation to Vegetated Corridor, which include the removal of invasive species, planting requirements for Vegetated Corridor enhancement, and signage at the outer limits of the Vegetated Corridor.

The Committee finds that adequate stormwater drainage, treatment, and retention service is provided to the site to serve the proposed development.

Transportation: Vehicular access is provided to the site from SW 151st Place. Based on the information provided in the application and staff analysis, no street dedications are required with the proposed development.

Per BDC Section 60.55.20.2.A, a Traffic Impact Analysis (TIA) is required when a proposed development will generate 300 vehicles or more per day in average weekday

trips. The applicant's trip generation memorandum from David Evans and Associates, dated April 8, 2024, states that the resulting enrollment expansion will result in 106 more trips to the site compared to current enrollment numbers.

The applicant's trip generation memo identifies the number of students and the start and end times per age group. Start times are spaced 30 minutes apart, with 36 children starting at 9am and 24 children starting at 9:30am. End times are spaced 60 minutes apart, with 20 children ending at 12:00pm, 8 children ending at 12:30 pm, and 32 children ending at 1:00pm. Based on the student and staff count and the spacing of the start and end times, staff have no concerns with on-site queuing. Due to the young age of the children and the Playschool's requirement for parents to check in and check out the children, all vehicles will be parking in existing parking spaces, and will not experience the potential of queuing back up at schools for older children where vehicles may not formally park to drop off students. The site has approximately 90 parking spaces, which is sufficient to support all staff and student drop off and pickup needs.

The applicant's trip generation memo identifies that at the time the school reaches full enrollment, 60 students, the applicant will implement a pickup and drop-off plan to reduce crowding and congestion. This plan will have two or three classrooms accessed from the east side of the building, and the remaining classrooms will be accessed from the west side of the building, encouraging parents to park in different sections of the parking lot. While staff support any mitigation measures to minimize congestion, staff have not identified any code requirements that would necessitate such a program. As such staff does not believe it is necessary to require a condition of approval to require the applicant implement the mitigation measure.

Fire Protection: Fire protection will be provided by Tualatin Valley Fire and Rescue (TVF&R). TVF&R staff provided an email noting that no changes to fire department access and water supplies are being proposed, and as such, no Service Provide Permit is needed. Emergency vehicle access is provided in two locations along, from SW 151st Place and a chained access road to the south, SW 149th Terrace, only accessible for emergency services.

Conclusion: As conditioned, staff finds that the proposal meets the approval criterion.

Section 40.03.1.B

Essential facilities and services related to the proposed development are available, or can be made available, with adequate capacity to serve the development prior to its occupancy. In lieu of providing essential facilities and services, a specific plan may be approved if it adequately demonstrates that essential facilities, services, or both, will be provided to serve the proposed development within five (5) years of occupancy.

FINDING:

Chapter 90 of the Development Code defines “essential facilities” to be services that include schools, transit improvements, police protection, and on-site pedestrian and bicycle facilities in the public right-of-way.

Schools: The proposed development is within the Beaverton School District (BSD) boundaries. The proposal is not projected to generate additional demand on the Beaverton School District system as no residential uses are proposed.

Transit Improvements: Bus transit service is provided on SW Murray Boulevard in both directions with service from bus line 62.

Police Protection: The City of Beaverton Police Department will continue to serve the development site. As of the date of this report, Beaverton Police have not provided comments or recommendations to the Committee. Therefore, the Committee finds that adequate police protection service can be provided to the site to serve the proposed development.

Pedestrian and Bicycle Facilities: The proposed project site abuts three public rights-of-way (SW Weir Road, SW 151st Place, and SW 149th Terrace). Sidewalks are present along all three right of ways the subject site abuts. Bicycle lanes are present on SW Weir Road, a Collector. Shared bicycle facilities are located on SW 151st Place, and SW 149th Terrace, both designated as Local Streets.

The Committee has reviewed the proposal and has found that the essential facilities and services to serve the site are adequate to accommodate the proposal.

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

Section 40.03.1.C

The proposed development is consistent with all applicable provisions of CHAPTER 20 (Land Uses), or Sections 20.25 and 70.3 if located within the Downtown Design District, unless the applicable provisions are modified by means of one or more applications which shall be already approved or which shall be considered concurrently with the subject application; provided, however, if the approval of the proposed development is contingent upon one or more additional applications, and the same is not approved, then the proposed development must comply with all applicable provisions of CHAPTER 20 (Land Uses) or Sections 20.25 and 70.3 if located within the Downtown Design District.

FINDING:

The site is zoned Residential Mixed B (RMB). The Committee cites the Code Conformance Analysis chart at the end of this report, which evaluates the proposal as it relates the applicable Code requirements of Chapter 20.

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

Section 40.03.1.D

The proposed development is consistent with all applicable provisions of Chapter 60 (Special Requirements) and all improvements, dedications, or both, as required by the applicable provisions of Chapter 60 (Special Requirements), are provided, or can be provided in rough proportion to the identified impact(s) of the proposed development.

FINDING:

60.50.25.7 Uses Requiring Special Regulations – Child Care Facilities

Child care 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. The applicant is requesting an enrollment size of 60 children. One third of 60 children is 20 children, multiplied by 100 square feet results in a minimum requirement of 2,000 square feet of outdoor play space. By staff's measurement, the existing outdoor play area is approximately 8,500 square feet, exceeding the minimum requirement.

Additionally, conditional uses are required to provide the number of children proposed at the facility, the ages of the children, and any exceptions to the rules governing child care facilities the applicant will be apply to the Children's Services Division for. The applicant has indicated that there will be 60 children at maximum enrollment, with age groups breakdown shown in the table below. The applicant has not indicated they intend to apply for any exceptions to state rules for childcare facilities.

Class/Age Group	Proposed Number of Students
1 (ages 1.5-3 yrs)	8
2 (ages 1.5-3 yrs)	8
3 (ages 3-4 yrs)	12
4 (ages 4 yrs)	16
5 (ages 4-5 yrs/Pre-K)	16

60.55 Transportation Facilities

Staff cites responses to 40.03.1.A regarding sufficient on-site vehicle queuing and required traffic studies.

For all other applicable provisions of Chapter 60, The Committee cites the Code Conformance Analysis chart at the end of this report, which evaluates the proposal as it relates the applicable Code requirements of Chapter 60 (Special Requirements). Staff

will provide findings for the applicable guidelines for the Design Review Three request within the staff report.

Conclusion: As conditioned, staff finds that the proposal meets the approval criterion.

Section 40.03.1.E

Adequate means are provided or can be provided to ensure continued periodic maintenance and necessary normal replacement of the following private common facilities and areas, as applicable: drainage facilities, roads and other improved rights-of-way, structures, recreation facilities, landscaping, fill and excavation areas, screening and fencing, ground cover, garbage and recycling storage areas, and other facilities not subject to maintenance by the City or other public agency.

FINDING:

The applicant states that the proposal will not effect

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

Section 40.03.1.F

There are safe and efficient vehicular and pedestrian circulation patterns within the boundaries of the development.

FINDING:

Vehicular access is provided to the site from SW 151st Place, as well as emergency only access from SW 149th Terrace. Pedestrian access is also provided from SW 151st Place and SW 149th Terrace. Pedestrian connections are provided from the primary building and outdoor play area to the parking lot as well as SW 151st Place and SW 149th Terrace. Circulation patterns are not proposed to be modified with this proposal.

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

Section 40.03.1.G

The development's on-site vehicular and pedestrian circulation systems connect to the surrounding circulation systems in a safe, efficient, and direct manner.

FINDING:

Vehicular access is provided to the site from SW 151st Place, as well as emergency only access from SW 149th Terrace. Pedestrian access is also provided from SW 151st Place and SW 149th Terrace. No modifications to the on-site circulation are proposed.

The Committee finds that there are safe and efficient vehicular and pedestrian circulation patterns connecting to surrounding circulation system of the proposed development.

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

Section 40.03.1.H

Structures and public facilities serving the development site are designed in accordance with adopted City codes and standards and provide adequate fire protection, including, but not limited to, fire flow.

FINDING:

Staff cite the findings in Criterion A as applicable to this criterion. Fire protection for the site is provided by Tualatin Valley Fire and Rescue (TVF&R). TVF&R has stated that a service provider permit is not required for this proposal. The Committee finds that protection from hazardous conditions due to inadequate, substandard, or ill-designed development is ensured.

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

Section 40.03.1.I

Structures and public facilities serving the development site are designed in accordance with adopted City codes and standards and provide adequate protection from crime and accident, as well as protection from hazardous conditions due to inadequate, substandard, or ill-designed development.

FINDING:

The applicant states that the development site is designed in accordance with all adopted City codes and standards and provides adequate protection from crime and accident, as well as protection from hazardous conditions.

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

Section 40.03.1.J

Grading and contouring of the development site is designed to accommodate the proposed use and to mitigate adverse effect(s) on neighboring properties, public right-of-way, surface drainage, water storage facilities, and the public storm drainage system.

FINDING:

The proposed project includes expansion of enrollment for an existing school and retroactive approvals for an expanded outdoor play area.

The Committee has reviewed the applicant's plans showing current conditions, photos, and previously approved plans prior to the playground expansion. While the expansion of the designated playground area is notable, approximately 8,500 square feet compared to plans from 2001 showing approximately 2,000 square feet of play area, staff observes the almost the entirety of the play area is of pervious natural materials, such as dirt and mulch, and finds no adverse effect on neighboring properties, the public right-of-way, or the public storm system.

Staff notes that downstream flooding has historically been an issue on this site, with public testimony provided in 2001 for the approved church expansion identifying past flooding issues. Staff observes that these concerns were expressed prior to the church expansion and playground expansion.

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

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.

Section 40.03.1.L

The application includes all required submittal materials as specified in Section 50.25.1 of the Development Code.

FINDING:

The Major Modification to a Conditional Use application was submitted on August 11, 2023, and the Design Review Compliance Letter was submitted on February 5, 2024. The applicant deemed the applications complete on February 5, 2024. The applicant provided continuance requests to the 120-day clock on February 5, 2025.

In the review of the materials during the application review, the Committee finds that all applicable application submittal requirements, identified in Section 50.25.1 are contained within this proposal.

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

Code Conformance Analysis

Chapter 20 Use and Site Development Requirements

Residential Mixed B (RMB) Zoning District

CODE STANDARD	CODE REQUIREMENT	PROJECT PROPOSAL	MEETS CODE?
Development Code Section 20.10.20			
Child Care Facilities	Conditional Use	Proposal to expand permitted enrollment from 20 students to 60 students	See CU Findings
Development Code Section 20.10.15			
Parcel Area	No minimum land area for non-residential uses	Approximately 3.8 acres	N/A
Minimum Lot Dimensions	Width: 20 feet	414 feet	YES
Yard Setbacks	Front: 10 Side (abutting lot): 5 Rear: 15 feet	Front: 124 feet Side (west): 163 feet Side (east): 151 feet Rear: 108 feet	YES
Maximum Building Height	35 feet	No change proposed	N/A

Chapter 60 Special Requirements

CODE STANDARD	CODE REQUIREMENT	PROJECT PROPOSAL	MEETS CODE?
Development Code Section 60.05			
Design Review Principles, Standards, and Guidelines	Requirements for new development and redevelopment.	The property owner expanded the outdoor play area around 2010. The applicant seeks to retroactively permit this expansion.	See DR Findings
Development Code Section 60.07			
Drive-Up Window Facilities	Requirements for drive-up, drive-through, and drive-in facilities.	No drive-up window facilities are proposed.	N/A
Development Code Section 60.10			
Floodplain Regulations	Requirements for properties located in floodplain, floodway, or floodway fringe.	While staff acknowledges a history of complaints of localized flooding due to failing local draining, there is no FEMA mapped floodplain, floodway, or floodway fringe located on the subject site.	N/A
Development Code Section 60.11			
Food Cart Pod Regulations	Requirements for food carts and food cart pods.	No food cart pods are proposed.	N/A
Development Code Section 60.12			
Habitat Friendly and Low Impact Development Practices	Optional program offering various credits available for use of specific Habitat Friendly or Low Impact Development techniques.	No Habitat Friendly or Low Impact Development credits are requested.	N/A
Development Code Section 60.15			
Land Division Standards	On-site contouring within 25 feet of a property line within or abutting any residentially zoned property.	The subject site is not within 25 feet of a property line within or abutting any residentially zoned property.	N/A
Development Code Section 60.20			
Mobile and Manufactured Home Regulations	Requirements for the placement of mobile and manufactured homes.	No mobile or manufactured homes are proposed.	N/A
Development Code Section 60.25			
Loading Berths	No Loading Berths required for child care facilities	No loading berth proposed	N/A

CODE STANDARD	CODE REQUIREMENT	PROJECT PROPOSAL	MEETS CODE?
Development Code Section 60.30			
Off-Street Motor Vehicle Parking	No vehicle parking required.	90 vehicular parking spaces exist on-site, no changes are proposed to the on-site parking.	N/A
Required Bicycle Parking	Short-term: No requirements	Short-term: No spaces	YES
	Long-term: One per classroom (five classrooms proposed)	Long-term: Five spaces inside the building	
Development Code Section 60.33			
Park and Recreation Facilities and Service Provision	Requirements for annexing property to THPRD.	The site is already within THPRD's boundaries.	N/A
Development Code Section 60.35			
Planned Unit Development	Development and design principles for Planned Unit Developments.	The proposal is not associated with a Planned Unit Development.	N/A
Development Code Section 60.40			
Sign Regulations	Requirements for signs.	All signs will be reviewed under a separate sign permit and are not reviewed with this proposal.	N/A
Development Code Section 60.50			
Special Use Regulations	Childcare facility outdoor requirements	Refer to the Facilities Review Committee findings herein.	YES
Development Code Section 60.55			
Transportation Facilities	Requirements pertaining to the construction or reconstruction of transportation facilities.	Refer to the Facilities Review Committee findings herein.	YES
Development Code Section 60.60			
Trees and Vegetation	Regulations pertaining to tree removal and preservation.	The applicant proposes no tree removal with the application. No trees were identified as removed with the previous playground expansion.	YES
Development Code Section 60.65			
Utility Undergrounding	Requirements for placing overhead utilities underground.	No development is proposed that would require the underground of any overhead utilities.	N/A

Development Code Section 60.67

Significant Natural Resources	Regulations pertaining to wetlands and riparian corridors.	The subject site contains a wetland area. The applicant has provided drawings demonstrating that the previously expanded play did not encroach into the wetland area. The applicant has provided a service provider letter (SPL) from Clean Water Services stating that the proposal will not significantly impact the existing or potentially sensitive areas found near the site. The SPL did, however, observe that impacts to the on-site vegetated corridor have occurred, and mitigation and enhancement is required.	YES w/ COA
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Development Code Section 60.70

Wireless Communication Facilities	Regulations pertaining to wireless facilities.	No wireless communication facilities are proposed.	N/A
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Attachment B: MAJOR MODIFICATION OF A CONDITIONAL USE CU32023-00555

ANALYSIS AND FINDINGS FOR MAJOR MODIFICATION OF A Conditional Use APPROVAL

Recommendation: Based on the facts and findings presented below, staff recommends **APPROVAL** of **CU32023-00555**, subject to the applicable conditions identified in Attachment D.

Section 40.03.1 Facilities Review Approval Criteria:

The applicant for development must establish that the application complies with all relevant standards in conformance with Section 50.25.1.B, and all the following criteria have been met:

Facilities Review Approval Criteria Section 40.03.1.A-L

FINDING:

Staff has reviewed the applicable Facilities Review criteria in Attachment A to this report. Staff cites the findings presented in Attachment A in response to the Facilities Review approval criteria. As identified in Attachment A, above, by meeting the conditions of approval, the proposal meets Criteria A-L, and therefore meets the criterion for approval.

Conclusion: Therefore, the Committee finds that by meeting the conditions of approval, the proposal meets the criteria.

Section 40.15.05 Purpose:

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. Conditional Uses may be approved, approved with site-specific conditions designed to minimize or mitigate identified adverse impacts, or denied. This Section is carried out by the approval criteria listed herein.

Planning Commission Standards for Approval:

Section 40.15.15.2.C of the Development Code provides standards to govern the decisions of the Planning Commission as they evaluate and render decisions on Major Modification of a Conditional Use Applications. The Planning Commission will determine whether the application as presented meets the Major Modification of a Conditional Use approval criteria. In this portion

of the report, staff evaluates the application in accordance with the criteria for on Major Modification of a Conditional Use.

To approve a Major Modification of a Conditional Use application, the Planning Commission shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

Section 40.15.15.4.C.1

The proposal satisfies the threshold requirements for a Major Modification of a Conditional Use application.

FINDING:

The applicant proposes to increase student enrollment in a previously approved Child Care Facility, from 20 students to 60 students. This increase is projected to result in more than 100 additional vehicle trips per day. Additionally, the applicant proposes to expand the interior area of the church utilized by the Child Care Facility, from 700 square feet to 2,515 square feet. Accordingly, staff finds the proposal is subject to a Major Modification of a Conditional Use review by meeting Thresholds 1 and 3 which reads:

- 1. An increase in the gross floor area of an existing Conditional Use more than 10% or more than 1,000 gross square feet of floor area for all properties that are located in a Residential zoning district or within a distance of up to and including 50 feet of a Residential zoning district.*
- 2. Any projected or actual increase in vehicular traffic to and from a site approved for an existing Conditional Use of more than 100 vehicle trips per day as determined by using the Institute of Transportation Engineers (ITE) Trip Generation manual or an evaluation by a traffic engineer or civil engineer licensed by the State of Oregon for all properties that are located in a Residential zoning district or are located at a distance of up to and including 50 feet from a Residential zoning district.*

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 40.15.15.4.C.2

All City application fees related to the application under consideration by the decision making authority have been submitted.

FINDING:

The applicant paid the required fee for this Major Modification of a Conditional Use application.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 40.15.15.4.C.3

The proposal complies with the applicable policies of the Comprehensive Plan.

FINDING:

The applicant identifies livability, equity, sustainability, and resiliency as values emphasized in the Comprehensive Plan. The applicant provides the following statement regarding Ash Creek's support of these values:

- **Livability:** Explicitly noted in the definition of livability in the Comprehensive Plan is “educational opportunity” and “economic prosperity.” Educating and engaging our next generation in a school is exactly the kind of land use envisioned in the Plan and is an obvious fit. A thriving economy depends on parents being able to work, and that means their children who are not yet old enough for public school need somewhere safe and nurturing to be.
- **Equity:** The Ashcreek Playschool is a community - a family of caregivers and children bonded together to maximize the joy and potential of everyone involved. Scholarships make up a notable share of the school's budget and our tuition is lower than other early education providers in the region.
- **Sustainability:** Providing an option embedded within our neighborhood is crucial to reduce climate impacts from commuting long distances to early education in other cities. Furthermore, the Ashcreek Playschool teaches about nature through gardening and outdoor play, as well as recycling and other crucial concepts for children to be introduced to early in their journey.
- **Resiliency:** Students at Ashcreek learn about natural disasters and learn to prepare for them. For many students, this will be their first time learning about fire drills, earthquakes, and other disasters that will require them to be resilient and part of a family fighting for survival.

Staff agrees with the applicant that the major themes of the Comprehensive Plan are Livability, Equity, Sustainability, and Resiliency. However, these overall themes are not specific policies with the Comprehensive Plan. Staff cites Goal 3.8.1 Complete and Livable Neighborhoods, as containing policies applicable to this analysis. Specifically, staff cites policy 3.8.1.g, which reads:

“Ensure integration of parks and schools into neighborhoods in locations where safe, convenient connections from adjacent neighborhoods on foot and by bike are or will be available.”

Staff notes the childcare facility and playground provide similar services to schools and parks as referenced in the policy. The Comprehensive Plan encourages these types of uses to be integrated into residential neighborhoods, emphasizing access. The applicant notes that through their sustainability analysis that the existing church site is embedded within the neighborhood providing these services to the local area. Furthermore, staff notes that the site is well accessed by pedestrians and cyclists, as the three roads that front on the church property, SW Weir Road, SW 151st Place, and SW 149 Terrace are constructed with sidewalks that provide direct connections to the site, and SW Weir Road has striped bike lanes for reasonable bike access to the site.

The applicant also addresses the Noise Section of Chapter 8, specifically Section 8.4. The applicant notes that Section 8.4 makes reference to the abatement program in Municipal Code Section 5.05, and notes there are additional noise provisions in Section 5.15 of the Municipal Code. The applicant provides the following analysis regarding compliance with BC Section 5.15 Noise.

Based on the descriptions in these documents, the nature of the noise impacts created by our activities does not negatively impact the livability of the neighborhood. This conclusion is based on:

- Nature of the noise: Noise does not rise to the level of “Unreasonable Noises” during typical school outdoor playtime per Municipal Code Section 5.15.030.A.
- Timing: “Yelling, shouting and similar activities (including singing)” - which occur during playtime - are allowable in residential areas outside of the established 10 pm - 7 am quiet hours per Municipal Code Section 5.15.030.C.
- There are no other types of noise or impacts from other subsections of Municipal Code Section 5.15.030 due to school activities.

Staff provides additional analysis regarding the Noise Ordinance. The Municipal Code is intended to *“to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the residents and visitors of Beaverton through the reduction, control, and prevention of loud and raucous noise, or any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety, or causes public inconvenience, annoyance, or alarm to reasonable individuals of ordinary sensitivity.”* (BC 5.15.020)

Per BC 5.15.025 Unreasonably loud or raucous noise within the city limits are prohibited, as are any noises which unreasonably disturbs, injures or endangers the comfort, health, safety, peace or safety of reasonable individuals with or ordinarily sensitivity. Factors cited for making this determination include time day, land use zoning, and nature of the area the sound is created and heard, duration of the sound, whether the sound is recurring, and if the sound is above 50 dBA between 10:00pm and 7:00am.

BC Section 5.15.030 describes Unreasonable Noises, which are a violation of the Municipal Code, as *“The unreasonable making of, or knowingly and unreasonably permitting to be made, any unreasonably loud, boisterous or unusual noise, disturbance, commotion, or vibration in any residential dwelling, place of business, or upon any highway, park, or other place or building.”* However, the provision continues, reading *“The ordinary and usual sounds, noises, commotion, or vibration incidental to the operation of these places when conducted in accordance with the usual standards of practice and in a manner which will not unreasonably disturb the peace and comfort of adjacent noise-sensitive areas or which will not detrimentally affect the operators of adjacent places of business are exempted from this provision.”*

Staff observes that comments provided to the city regarding noise impacts describe the outdoor activities of the children enrolled at the child care facility. It has not been reported that these activities are outside the ordinary practices of child care facility, where play and instruction occur in the designated play area directly west of the church. Staff has been given no reason to believe that that noises produced by the outdoor play are outside of the normal standards of a child care facility, and as such are exempt from this provision.

Staff also observe the use of the term “noise sensitive area” in this provision. Staff cites the definition of noise-sensitive area in Section BC 5.15.015 as “*includes, but is not limited to, a sleeping facility, or real property normally used as a school, church, hospital, or public library.*” Staff notes that this definition does not include residential uses on residentially zoned property.

Regarding the actual use of the playground for the Child Care Facility, the applicant states that during a typical class day, each class includes somewhere between 40 and 70 minutes of outdoor time, depending on curriculum. This time is staggered to limit the number of children on the playground at any given time. The applicant projects that at the full requested enrollment capacity of 60 children, the outdoor time would be structured approximately as follows: Up to 20 children outside between 9:00am -10:15am and 11:45:am and 1:00pm; as well as 30 children outside between 10:15am and 11:45am. The applicant states that this approach is in compliance with the Municipal Code.

Staff concurs that the times proposed are located outside of the 10pm-7am window where noises in and next to residential areas are strictly regulated. Staff observes that the staggered approach to limit the number of children outdoors at any time limit the possibility of any unreasonable noises. Staff concurs with the applicant that the approach will likely remain in compliance with the Noise Ordinance of the Municipal Code, but also notes that the Code Compliance remains an option if noises outside of “*ordinary and usual sounds, noises, commotion, or vibration incidental to the operation*” (BC Section 5.15.030) become an issue.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 40.15.15.4.C.4

The existing use has been approved as a Conditional Use as governed by the regulations in place when the use was established and complies with the applicable conditions of the Conditional Use approval unless the applicant has received or is concurrently requesting one or more conditions be removed or modified as part of the current application.

FINDING:

The original approval for a Child Care Facility on the subject site was granted through CUP 94011 Murray Hills Montessori School. The original approval limited the size of the facility to 20 pre-school students, 2 staff and 700 square feet. The specific language is shown below:

“3. This permit will allow no more than 20 pre-school students, 2 employees, and no greater than 700 square feet of building are to be used for the school within the existing church building. Future school expansions, if proposed, may be processed administratively.”

The applicant has requested to modify the condition of approval to grant a larger enrollment cap, staff levels and expanded area within the church. Analysis regarding the

process to modify Condition of Approval 3 three from land use approval CUP 94011 is found below in responses to Section 50.95 Modification of a Decision.

Conclusion: Therefore, staff finds that by meeting the conditions of approval the proposal meets the criterion for approval.

Section 40.15.15.4.C.5

The location, size, and functional characteristics of the proposal are such that it can be made reasonably compatible with and have a minimal impact on livability and appropriate use and development of properties in the surrounding area of the subject site.

FINDING:

The proposal is to expand the enrollment of a Child Care Facility at a Murray Hills Christian Church (MHCC). The applicant has provided a floor plan demonstrating the location of the five classrooms within the church, indicating that there is sufficient indoor instruction area within the church.

Vehicle access is provided to the site via SW Weir Road/SW 151st Place. The applicant has provided a trip generation memo (Exhibit 3.6) Identifying the total number of trips projected based on a 60-child enrollment level. The applicant notes that school start and finish times are staggered to limit the number of parents on-site for drop-off and pick-up at any given time. The applicant further notes that each child is required to be checked in and checked out, so each on-site vehicle will park on site, limiting any motor vehicle queuing and stacking impacts to the parking lot and public right of way. Staff acknowledges the increase in vehicle trips related to increased enrollment, but observes the driveway location on SW 151st Place is less than 100 feet from SW Weir Road, limiting the amount of vehicle traffic traveling through the neighborhood. Staff note that motor vehicle access from the south along SW 149th Terrace is prevented via a chain strung across the driveway entrance. No motor vehicle access is allowed from the south in this configuration. No changes to this access point are proposed or anticipated.

Regarding noise impacts, a more thorough analysis of noise impacts, particularly in relation to the Municipal Code, can be found above in Criterion 3, which staff cites in response to the provision. However, staff reiterates that the most likely noise impacts to the community are related to outdoor uses, particularly the outdoor play area. The applicant states that during a typical class day, each class includes somewhere between 40 and 70 minutes of outdoor time, depending on curriculum. This time is staggered to limit number of children on the playground at any given time. The applicant projects that at the full requested enrollment capacity of 60 children, the outdoor time would be structured approximately as follows: Up to 20 children outside between 9:00am -10:15am and 11:45:am and 1:00pm; as well as 30 children outside between 10:15am and 11:45am. Staff agrees that the staggering of children's outdoor play area works to minimize impacts to the neighboring properties.

Conclusion: Therefore, staff finds that the proposal meets the criterion for approval.

Section 40.15.15.4.C.6

Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

FINDING:

The applicant submitted a Design Review Compliance Letter application to be processed concurrently with Major Modification of Conditional Use request. No additional applications or documents are needed at this time. Staff recommends a general condition requiring approval of the associated application.

Conclusion: Therefore, staff finds that by meeting the conditions of approval the proposal meets the criterion for approval.

Section 40.15.15.4.C.7

Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

FINDING:

The applicant submitted a Design Review Compliance Letter application to be processed concurrently with this Major Modification of Conditional Use request. No additional applications or documents are needed at this time. Staff recommends a general condition requiring approval of the associated application.

Conclusion: Therefore, staff finds that by meeting the conditions of approval the proposal meets the criterion for approval.

Section 50.95 Modification of a Decision

The applicant has requested a modification to a condition of approval of the previously approved Conditional Use Permit (CUP 1994-011). Therefore, Section 50.95 of the Development Code is applicable to the request. To approve a modification of a decision related to a Conditional Use application, the decision-making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

Section 50.95.1

An applicant or successor in interest may file with the Director an application to modify a prior decision that was the subject of a Type 1, Type 2, or Type 3 procedure. In addition to other requirements, such an application to modify a prior decision shall describe the nature of the proposed change to the original decision and the basis for that change, including the applicable facts and law, together with the fee prescribed for that application type necessary to modify the prior decision. Such an application to modify a prior decision shall be subject to the approval criteria and development regulations in effect when the Director receives a complete application for the modification.

FINDING:

The applicant requests to modify one condition of approval previously approved with application, Conditional Use Permit (CUP 1994-011). Specifically, the request is to modify the maximum student enrollment, staffing levels, and area of the church occupied. This modification is associated with a decision that was originally approved through a Type 3 procedure. Therefore, the application is subject to a Type 3 procedure, and the applicant must return to the Planning Commission to request approval of this modification.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 50.95.2

An application for modification is subject to pre-application conference and completeness review; provided, the Director shall only require an application for modification to contain information that is relevant or necessary to address the requested change or the facts and regulations on which it is based. An application for modification is not subject to the neighborhood review meeting requirement.

FINDING:

The applicant requests modification of one condition of approval of CUP 1994-011. A Pre-Application Conference was held on November 16, 2022 for the Ashcreek Playschool, with a focus on increasing student enrollment.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 50.95.3

An application for modification does not extend the deadline for filing an appeal and does not stay appeal proceedings. An application for modification is subject to the 120-day requirement pursuant to ORS 227.178.

FINDING:

Staff confirms that the application complies with the 120-day requirement of ORS 227.178.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 50.95.4

Only a decision that approves or conditionally approves an application can be modified. A decision denying an application cannot be modified. Refer to Section 50.99.

FINDING:

The applicant has applied to modify the approved Conditional Use Permit application, CUP 1994-011, associated with the original childcare facility on-site, now operating under the name Ashcreek Playschool.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 50.95.5

Expedited Land Divisions and Preliminary Middle Housing Land Divisions are not eligible for modification of a decision.

FINDING:

The request is to modify a condition of approval associated with a Conditional Use Permit application.

Conclusion: Therefore, staff finds that the criterion for approval does not apply.

Section 50.95.6

An application for modification shall be subject to a Type 1, Type 2, or Type 3 procedure as determined by the Director.

FINDING:

The originally approved childcare facility, Murray Hills Christian Church Montessori School, (CUP 1994-011) was processed through a Type 3 procedure. Therefore, the requested modification to a condition of approval of the Conditional Use Permit application must follow the same Type 3 procedure as the original approval.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 50.95.7

The process type for an application to modify a decision shall be based upon the thresholds for the appropriate application listed in Chapter 40. In all cases, regardless of the thresholds listed in Chapter 40, when a proposed modification involves a condition of approval, that condition of approval can be modified or removed only by the same decision-making authority that issued the

original decision and through the same procedure that was followed to establish the condition to be modified. Modification or removal of a condition of approval shall only be granted if the decision-making authority determines any one of the following:

- A. The applicant or owner has demonstrated that a mistake of law or fact occurred, and that the mistake was substantial enough to warrant modification or removal of the condition to correct the mistake.
- B. The condition could not be implemented for reasons beyond the control of the applicant and the modification will not require a significant modification of the original decision.
- C. The circumstances have changed to the extent that the condition is no longer needed or warranted.
- D. A new or modified condition would better accomplish the purpose of the original condition.

FINDING:

As identified in response to Section 50.95.1 above, the applicant seeks to modify one condition of approval of the approved Conditional Use Permit (CUP 1994-011). The applicant states that the circumstances have changed that no longer warrants the specific enrollment cap, and a modified condition would better accomplish the purpose of the original condition of approval. Specifically, the applicant seeks to modify Condition of Approval 3, which can be reviewed in Exhibit 1.4

The applicant states that the changed circumstances since the original 1994 condition of approval include both a greater demand for childcare facilities, as well as the expansion of the church, approved in 2001 through casefiles BDR2000-0185 and APP2001-0012, increasing in size from 12,510 square feet to 25,935 square feet. The applicant states that the original approval for enrollment size and limits to space occupied were based on the intent to create a space for high-quality care, and the expansion of the church allows for a greater number of students and space in church occupied by the school allows for high-quality care to continue in the larger church space. The applicant also states that a 10 student to 1 teacher ratio is not consistent with best practices for childcare and early education facilities, and the lower student to teacher ratio reflects current best practices.

As the applicant is requesting an increase in enrollment to 60 students and 10 teaching staff through the appropriate land use process and staff is recommending approval of the requested increase in students and staff, city staff recommend the Condition of Approval 3 from casefile CUP 1994-011 be removed.

Current condition of approval:

“This permit will allow no more than 20 pre-school students, 2 employees, and no greater than 700 square feet of building are to be used for the school within the existing church building. Future school expansions, if proposed, may be processed administratively.”

Condition of approval 3 from CUP 1994-011 would be superseded by this approval and proposed condition of approval 1 of this decision requires compliance with this approval unless otherwise modified through an appropriate process. Proposed condition of approval one reads:

“The childcare facility shall operate in conformance with this approval, unless modified pursuant to applicable regulations and procedures.”

Staff finds that the proposed condition of approval requiring compliance with the Major Modification of a condition use is appropriate to supersede condition of approval 3 from CUP 1994-011. The applicants request under CU32023-00555 reflects changed circumstances from those used to evaluate the 1994 Conditional Use permit, including an increase in church square footage, updated best practices, and demand for child care.

Conclusion: Therefore, staff finds that, by meeting the conditions of approval, the proposal meets the criterion.

CONCLUSION & RECOMMENDATION

Based on the facts and findings presented, staff recommends APPROVAL of CU32023-00555, subject to the applicable conditions identified in Attachment D

Attachment C: DESIGN REVIEW COMPLIANCE LETTER DR12024-00090

ANALYSIS AND FINDINGS FOR DESIGN REVIEW COMPLIANCE LETTER APPROVAL

Recommendation: Based on the facts and findings presented below, staff recommends **APPROVAL** of **DR12024-00090**, subject to the applicable conditions identified in Attachment D.

Section 40.20.05 Purpose:

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 the proposals are properly related to their sites and to their surroundings by encouraging compatible and complementary development. The purpose of Design Review as summarized in this Section is carried out by the approval criteria listed herein.

Planning Commission Standards for Approval:

Section 40.20.15.1.C of the Development Code provides standards to govern the decisions of the Commission as they evaluate and render decisions on Design Review Compliance Letter Applications. The Commission will determine whether the application as presented, meets the Design Review Compliance Letter Application approval criteria. The Commission may choose to adopt, not adopt or modify the Committee’s findings. In this portion of the report, staff evaluates the application in accordance with the criteria for a Design Review Compliance Letter.

To approve a Design Review Compliance Letter application, the decision-making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

Section 40.20.15.3.C.1

The proposal satisfies the threshold requirements for a Design Compliance Review Letter.

FINDING:

The applicant is requesting to retroactively permit previous expansions to an existing playground on the church site. The playground is used both by the applicant, Ashcreek Playschool, as well as other church users. The playground area was expanded in and around 2010 based on purchase records of play equipment currently installed on the property.

The improvements to the play area include replacing the previously approved play structure and swing set, the construction of low fencing and retaining wall with minor grading along portions of the south and west edge of the playground area, a new toddler swing set, and several picnic tables. Additionally, a new back vinyl coated chain link fence with a person gate, approximately four feet tall, was installed at the north end of the play area.

The above referenced play structure and swing set were included in previous land use approvals on the site, including casefiles CUP2000-0031 BDR2000-0185 which permitted an expansion of the church building. In those plans, a play structure and swing set are shown on the approved site plan. A rough measurement of that play area is approximately 3,000 square feet. The current site plan of the play area provided by the applicant, including all play elements and fencing surrounding the play area is roughly measured to be approximately 8,500 square feet, and increase of approximately 5,500 square feet.

By staff's rough measurement of the site, there is approximately 105,000 square feet of landscaped area. A modification of 5,500 square feet of landscaped area repurposed for a play area falls below 15% of the overall landscaped area. Therefore, threshold 1.f is met:

1.f: Modification of up to 15 percent on-site landscaping with no reduction in required landscaping.

Additionally, the placement of fencing meets threshold 1.h:

1.f: Addition or modification of new fences, retaining walls, or both.

Additionally, the minor grading meets threshold 1.i:

1.i: Changing of existing grade.

Finally, the placement of play structures meets threshold 1.m:

1.m: Construction or modification of a permanent structure, not considered a building, which has a footprint of up to 1,000 square feet and is a use permitted within the underlying zoning district.

Staff notes that both main users of the play area, Murray Hills Christian Church, and the Child Care Facility, are conditionally permitted uses. Additional findings for the use of the playground associate with the Child Care Facility are located in Attachment B.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 40.20.15.3.C.2

All City application fees related to the application under consideration by the decision making authority have been submitted.

FINDING:

The applicant paid the required fee for this Design Review Compliance Letter application.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 40.20.15.3.C.3

The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code.

FINDING:

The applicant has provided all materials specified in Section 50.25.1 of the Development Code.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 40.20.15.3.C.4

The proposal meets all applicable Site Development Requirements of Sections 20.05.15., 20.10.15., 20.15.15., and 20.20.15. of the Development Code unless the applicable provisions are subject to an Adjustment, Planned Unit Development, or Variance application which shall be already approved or considered concurrently with the subject proposal.

FINDING:

An analysis of compliance with applicable provisions of Chapter 20 can be found under Attachment A of this report. The analysis demonstrates the proposal complies with all application Site Development Requirements in Chapter 20.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 40.20.15.3.C.5

The proposal, which is not an addition to an existing building, is consistent with all applicable provisions of Sections 60.05.15 through 60.05.30 (Design Standards).

FINDING:

Staff refers to Design Review Standards Compliance Table at the end of this Section of this report, demonstrating compliance with applicable standards

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 40.20.15.3.C.6

If applicable, the proposed addition to an existing building and/or site, and only that portion of the building and/or site containing the proposed improvements, complies with the applicable provisions of Sections 60.05.15 through 60.05.30 (Design Standards) as they apply to the following:

- a. Building articulation and variety (Section 60.05.15.1.).
- b. Roof forms (Section 60.05.15.2.).
- c. Exterior building materials (Section 60.05.15.4.).
- d. Foundation landscaping requirements (Section 60.05.25.4.D.).
- e. Screening roof-mounted equipment requirements (Section 60.05.15.5.).
- f. Screening loading areas, solid waste facilities and similar improvements (Section 60.05.20.2.).
- g. Lighting requirements (Section 60.05.30.).
- h. Changes to the existing on-site vehicular parking, maneuvering, and circulation area does not require additional paving to the site. [ORD 4782; April 2020] [ORD 4844; August 2023]
- i. Pedestrian circulation.

FINDING:

Staff refers to Design Review Standards Compliance Table at the end of this Section of this report, demonstrating compliance with applicable standards

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 40.20.15.3.C.7

The proposal complies with all applicable provisions in CHAPTER 60 (Special Requirements).

FINDING:

An analysis of compliance with applicable provisions of Chapter 60 can be found under Attachment A of this report. The analysis demonstrates the proposal complies with all application Site Development Requirements in Chapter 60.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 40.20.15.3.C.8

The proposal complies with the grading standards outlined in Section 60.15.10 or approved with an Adjustment or Variance.

FINDING:

Minor grading was conducted to level a portion of the play area. The grading was not near any property lines, and not Significant Trees or Groves are located on the site.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 40.20.15.3.C.9

Except for conditions requiring compliance with approved plans, the proposal does not modify any conditions of approval of a previously approved Type 2 or Type 3 application.

FINDING:

Staff has no evidence of conditions of approval limiting the size, location or usage of the play area.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 40.20.15.3.C.10

Proposals for Community Gardens comply with Section 60.05.25.14 of CHAPTER 60. Community Gardens are exempt from Criteria 4, 5, 6, 7, and 8 above.

FINDING:

The applicant does not propose a Community Garden.

Conclusion: Therefore, staff finds the proposal meets the criterion for approval.

Section 40.20.15.3.C.11

Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

FINDING:

The applicant submitted a Major Modification of Conditional Use application to be processed concurrently with this Design Review Compliance Letter request. No additional applications or documents are needed at this time.

Conclusion: Therefore, staff finds that by meeting the conditions of approval, the proposal meets the criterion.

CONCLUSION & RECOMMENDATION

Based on the facts and findings presented, staff recommends APPROVAL of DR12024-00090, subject to the applicable conditions identified in Attachment D.

Design Standards Analysis

Standards not applicable to the proposal have been omitted

Section 60.05.20 Circulation and Parking Design

DESIGN STANDARD	PROJECT PROPOSAL	MEETS STANDARD
Connections to the Public Street System		
60.05.20.1 Connect on-site circulation to existing and planned street system	The site is developed as a church with a play area an accessory use. Existing sidewalks provide connections to the play area and building entrances.	YES
Pedestrian Circulation		
60.05.20.3.A Link to adjacent facilities	The site is developed as a church with a play area an accessory use. Existing sidewalks provide connections to the play area and building entrances.	YES
60.05.20.3.B Direct walkway connection	The site is developed as a church with a play area an accessory use. Existing sidewalks provide connections to the play area and building entrances.	YES

Section 60.05.25 Landscape, Open Space, and Natural Areas Design Standards

DESIGN STANDARD	PROJECT PROPOSAL	MEETS STANDARD
Minimum Landscape Requirements for Non-Residential and Mixed Use Developments		
<p>60.05.25.5.A Minimum Landscaped Area</p>	<p>Excluding the entirety of the play area, approximately 99,500 square feet of the site is landscaped, which is 60% of the site, which is greater than the minimum 15% requirement.</p>	<p>YES</p>
<p>60.05.25.5.B Minimum Planting Requirements</p>	<p>The proposal does not affect the existing planting materials of the church site, and the existing site exceeds the minimum planting requirements for landscaped area.</p>	<p>YES</p>
Retaining Walls		
<p>60.05.25.8 Retaining Walls</p>	<p>During site visit, staff observed a low retaining walls constructed of wood that was installed associated with grading of the play area. The walls are approximately 1.5-2 feet tall at the highest point. Based on the site visit and plans provided by the applicant, staff estimate the wall is approximately 100-125 feet in length. There are dense plantings along the western edge of the retaining wall screening view from neighboring properties.</p>	<p>YES</p>
Fences and Walls		
<p>60.05.25.9.A-E Fencing Materials</p>	<p>Low wooden fences are located along the southern and western edges of the playground. Fencing along the north edge of the playground is black powder coat chain-link fencing. The chain link fence does not include slats to all for visibility from the parking lot into the play area for security reasons. The fence is approximately four feet in height, and is located outside of required front yard setback.</p>	<p>YES</p>
Minimize Significant Changes to Existing On-Site Surface Contours at Residential Property Lines		
<p>60.05.25.10.A-B Minimize grade changes</p>	<p>Minimal grading occurred to level play area. The Clean Water Services Service Provider Letter states that the retroactively permitted grading related to the playground expansion will not significantly impact the existing Sensitive Area.</p>	<p>YES</p>
Natural Areas		

DESIGN STANDARD	PROJECT PROPOSAL	MEETS STANDARD
<p>60.05.25.12 Resource preservation</p>	<p>Wetlands on the Local Wetland Inventory are located in the southwest portion of the site. All playground improvements are located in the uplands portion of the site, outside of the delineated wetland. The Clean Water Services Service Provider Letter states that the previous unpermitted grading related to the play area expansion will not significantly impact the existing Sensitive Area. However, the playground was expanded into the protected Vegetated Corridor. As such, Clean Water Services has included Vegetated Corridor mitigation requirements, which include invasive species removal and native planting requirements to enhance the vegetated corridor.</p>	<p>YES w/ COA</p>
Landscape Buffering and Screening		
<p>60.05.25.13 Landscape buffering between contrasting zoning districts</p>	<p>An existing landscape buffer exists to the west and south of the church and play area via a natural area. To serve as the required landscaping buffer the natural area must be a minimum of 40 feet wide. The natural area is approximately 70 feet wide to the west and 140 feet wide to the south.</p>	<p>YES</p>

Attachment D: RECOMMENDED CONDITIONS OF APPROVAL

Application: LU32023-00557 Ashcreek Playschool

Recommendation: APPROVE CU32023-00555 / DR12024-00090

Major Modification of a Conditional Use (CU32023-00555)

A. General Conditions, the applicant shall:

1. The childcare facility shall operate in conformance with this approval, unless modified pursuant to applicable regulations and procedures. (Planning / SR)
2. 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)

Design Review Compliance Letter (DR12023-00090)

A. General Conditions, the applicant shall:

1. Prior to commencing mitigation work required by Clean Water Services' Service Provider Letter (file 24-001877, dated September 10, 2024), obtain any required permits from Beaverton's Site Development Division. (Planning / SR)