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Bureau of Development Services
1900 SW Fourth Street, Suite 3100
Portland, OR 97201
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Re: File No. LU 18-190331 CU

The Bureau of Development Services should reject the proposal to eliminate the parking requirement and revoke the Conditional Use for the following reasons:

1. The parking transportation analysis provided by the applicant and the PBOT study based on that analysis are flawed, as they rely on estimates for medical/dental offices which do not reflect the level of use by Everett House and does not include all the properties involved.
2. The original Conditional Use granted was to the entity "Common Ground", not to "Everett House". Common Ground moved from the original site and now operates at 5010 NE 33 Avenue.
3. The Conditional Use was granted for the operation of a non-profit community club. The current Everett House operation is a for-profit commercial enterprise, not a community club.
4. The current owner of the operation has established a historical pattern of violating the terms of the conditional use and negotiating in bad faith. There is no reason to believe that this will change.
5. The size and intensity of the current operation does not fit in with the R5 zoning of the site, as it includes a medical office and exposes the residents of adjacent houses, many of whom are young children, to elevated levels of traffic and nude hot tub bathing.
6. The operation has caused parking and many other problems to the residents of the neighborhood, even before losing the limited parking it had before the redevelopment of its shared parking site last year. With the proposal to remove the requirement for 30 exclusive parking spaces, these problems will be exacerbated to an unreasonable level.

Failure to discontinue the conditional use would be an abrogation of the City's responsibilities to control the effects of this commercial activity in a residential zone. It will force residents who invested in residential real estate to live on a block with a business that has been constantly growing.

At the very least, the Bureau of Development Services should take steps to reduce the size and intensity of the commercial activity by limiting the hours of operation and preventing the addition of the newly acquired property at 2904 NE Everett to the complex.

1. Parking

The conditional use agreement includes the following condition:

“B. A total of at least 30 off-street parking spaces shall be provided within 300 feet of the site for the exclusive use of this club, as evidenced by a written lease or another document in a form acceptable to the City Attorney's Office.”

Although they have occasionally had arrangements for shared spaces with Circle Health Care and the Evangel Baptist Church, these spaces have never been for the exclusive use of Everett House. In 2016, Michelle Seward of the Bureau of Development Services provided neighbors in the area with forms to track and report use of street parking by employees and customers of the facility (Attachment 1). These documented the high level of street parking by the facility.

Local residents have put up signs in front of their houses to mitigate the problem (Attachment 2) and Elliott Mantell has also put signs on public streets (illegally) to mitigate the problem (Attachment 3). They also created flyers to place on their customers windows. (Attachment 4) In February 2017, Everett House placed a sign in front of their building to try to get their customers to park in the Circle Health Care lot (Attachment 5). This demonstrates that parking has been an ongoing problem and that Mr. Mantell is aware of it.

Problems with parking analysis

The parking analysis performed by Ard Engineering (Attachment 6) states:

TRIP GENERATION

“To estimate the average number of trips generated by the existing conditional-use facility over time, trip rates from the manual TRIP GENERATION, Tenth Edition, published by the Institute of Transportation Engineers (ITE) were used. The trip rates used were those for land-use code 720, Medical-Dental Office Building, since this is the closest corresponding use in the ITE Trip Generation Manual and results in a conservative analysis. Based on the gross floor area of 9,145 square feet, a total of 27 trips are projected during the morning peak hour, with 21 vehicles arriving and 6 vehicles departing the site. During the evening peak hour 33 trips are projected, with 9 entering and 24 departing the site. A weekday total of 264 site trips is expected with half entering and half exiting the site.”

This analysis is not accurate, because:

1. It is based on estimates of a type of building (medical/dentist office) that is very different from the Everett House site (hot tubs, meeting rooms, naturopath, chiropractic office, massage rooms).
2. It does not account for the existence and use of the hot tubs, which most medical/dental offices do not have.
3. It does not account for the many meetings that are conducted after hours at the Flanders St. property.
4. It does not include the additional traffic likely to be generated by the recently acquired 2905 NE Everett Street.

The study by Portland Bureau of Transportation states:

“Assuming the worst case scenario of all the healing center's peak period parking occurring during this timeframe, the proposed on -street parking occupancy rate increases to **84.8%**; which is still below our threshold of 85 percent. Therefore, there are no detrimental impacts to the on-street parking in the vicinity.” **PBOT considers 85% occupancy to be full.**”

If it is close to 85% fully occupied parking with estimates based on medical/dental office use and one property excluded, it would clearly exceed that threshold once the actual number of properties and type of use are considered.

The Ard Engineering analysis also includes this passage (p. 8)

“NEIGHBORHOOD IMPACTS

The Everett House Community Healing Center has been in continuous operation since 1977, when it operated under a home occupational permit. It has operated under a conditional-use permit since 1981.

Renewal of the conditional-use permit for the site will maintain conditions similar to those experienced over the past few decades, and is not projected to result in any significant impacts to the surrounding neighborhood.”

However, the conditions experienced over the last decades have included many problems.

2. Conditional Use was granted to another entity

Between 1982 and 2006, the three- house complex (now four) was operated by a group called Common Ground. In 2006, Elliott Mantell attempted to evict them and take over the operation. In the resulting civil lawsuit, Mr. Mantell made it clear that he considered Common Ground to be a separate entity. The following is a quote from Elliot Mantell’s deposition from the court transcripts of civil court case No. 0702-02098: (Attachment 7)

Elliott Mantell’s deposition- Volume 1, p. 134

“I, Elliott Mantell, being first duly sworn, depose and say as follows:

1. I am the owner of **commercial properties** located at 2917 and 2927 NE Everett St. Portland, Oregon. I rent portions of these properties to various tenants operating health and wellness **businesses**. One of my tenants is Inner City Hot Tubs, owned by Common Ground Wellness Center, Inc. (Defendant in this matter), which operates a spa facility in a certain part of my property at 2927 NE Everett Street. This operation includes a sauna, an open public shower and outdoor hot tubs.”

3. Operation as a non-profit community club

The conditional use agreement grants the right to operate a community club, generally understood to be a place where people from a particular community can meet for social, educational, or recreational activities. The staff report appended to that conditional use decision

includes this description of a community club. Portland Zoning Code Section 33.12.210 defines community club as:

" ...buildings and grounds used for and operated by a non-profit organization whose membership is open to any resident of the district, neighborhood, or community in which the club is located; provided that the *primary objectives* of the organization are the improvement of the district, neighborhood, or community and its social welfare and recreation."

However, Everett House has never met this definition. It operates as a **for-profit** hot tub facility, an office for three chiropractors, and offices for practitioners of various healing arts. It advertised on in-flight magazines and offers Groupons (see Attachment 8). Groupon is an online marketplace connecting subscribers with local merchants by offering activities, travel, goods and services. Everett House, as its primary purpose, does not provide facilities and activities for the residents of the neighborhood, as a community club would, but rather advertises widely for anyone to pay to have a hot tub, sauna, massage, chiropractic and naturopathic services, etc. Its general purpose is not to provide social, educational and recreational activities for a community, but to these services for a profit.

The following are quotes from statement filed by Mr. Mantell's attorney in Multnomah County civil court case No. 0702-02098 that indicate that Elliott Mantell understands that the operation at the site are commercial and not a community service club: (Attachment 9)

p. 243

"Justice requires that an Order to Show Cause and Temporary Restraining Order be 21 issued to prevent the Defendant-Tenant from committing waste to the Plaintiff-Landlord's **commercial property** by continuing to allow toxic *stachybotrys chartarum* mold ("stachybotrys") to grow in the leased premises, endangering Defendant's employees, patrons, and the general public."

p. 244

"II. FACT SUMMARY

Elliott J. Mantell is the owner of commercial property located at 2927 NE Everett Street, Portland, Oregon 97232. Common Ground Wellness Center, Inc. is an Oregon non-profit corporation with a month-to-month tenancy of the basement and back deck of the Plaintiffs **commercial property** on which It operates its **business**, Inner City Hot Tubs."

p. 247

"This Court can, and should, find that the tenant's month-to-month tenancy in the Plaintiff's **commercial property** should be forfeited and Defendant should be immediately evicted, so as to allow the Plaintiff-Landlord to enter the premises and remediate the toxic mold threat."

p. 248

“As set forth in the Verified Complaint, the attached Affidavits, and as explained above, the Plaintiff is entitled to injunctive relief as demanded in his Verified Complaint to stop the Defendant from committing waste of its (the Plaintiffs) **commercial property.**”

“For the reasons set forth above, the Court should issue an Order requiring Defendant to show cause, if any there be, why preliminary injunction should not issue in this case, and the court should further issue a Temporary Restraining Order to abate the serious health hazard posed by the Defendant's waste of Plaintiffs **commercial property.**”

p. 252

“At all material times, Defendant has been doing business as Inter City Hot Tubs on the leased premises which includes **two commercial spas** on the outdoor deck, and a sauna, shower and dressing facilities in the basement area as shown in the diagram attached as exhibit A and by this reference incorporated herein. Defendant's patrons routinely use the shower, sauna and dressing facilities on the leased premises.

Vol 2 p 77 (Attachment 10)

“Q. Do you know of any mold condition, especially Including stachybotrys chartarum, In the deck area where the hot tubs are located?”

“Mantell: No. I don't know. I know that there is some dry rot on the foundation --I'm sorry, the framing of the hot tubs, but I don't know that. I also know there is a-- what I was told, that there is a cracked-- couple of cracks in one of the hot tubs themselves, and I was told by the inspector who looked at it that that was a violation of the health department rules for **commercial hot tubs.**”

It is telling that once the land use review was announced, Everett House has suddenly instituted several “community” programs and put up a new website. This seems to be a naked attempt to disguise the true commercial nature of the operation.

Similarly, when a complaint was made about the nature of the business, Mr. Mantell responded by simply re-filing papers to become a non-profit corporation (From staff report (Attachment 11):

6-132256 CC

– neighbor complaint that site is operating as a for -profit commercial business, and no longer non-profit in nature as required by the definition of Community Service uses. Case was closed as “owner abated” after Dr. Elliott Mantell provided incorporation papers from the State of Oregon showing that the facility had been **re- incorporated** as a non-profit entity;

4. Historical pattern conditional use violations and bargaining in bad faith

A. New construction

The conditional use agreement includes the following condition:

I. No new exterior construction shall take place.

At various times, the following new construction has taken place at Everett House:

- A fence around 2917 NE Everett in 1995
- New in-ground hot tubs at 2917 NE Everett 1995
- A water feature between 2926 NE Flanders and 2927 NE Everett
- Fence and new structures in 2016
- Tea house in 2016

B. Code violations

The conditional use agreement includes the following condition:

“All applicable City and State Codes shall be met at all times.”

However, Everett House has violated these codes many times:

- In 1995, a new steam room and flotation tanks were built at 2917 NE Everett without permits.
- Wall and fence constructed in 2007 at 2917 Everett (2007) (Case No. 2007-131083-000-00-CC)
- A kiosk was built in 2011 in front of 2926 NE Flanders Street (Case No. 11-145414-CC -see Attachment 12)
- Offices are not allowed under the R5 zoning designation. However, a chiropractic office is operating at Everett House.
- A tea house was opened in 2016 in the house at 2926 NE Flanders Street. No food service facility had operated at this site for the 29 years I have lived in this neighborhood. I believe that adding a restaurant to this facility constitutes a change in use, which would have required a review of the conditional use.
- 4/6/2006 [2006-121234-000-00-VI](#)
Complaint Received - work done without permit - steam room, sauna & floatation tank has been installed and currently doing work in preparation for opening to the public.
- 5/17/2007 [2007-131083-000-00-CC](#)
Complaint Received. Building retaining wall and fence, possibly in violation of of Conditional Use that prohibits no external construction.
- 3/10/2014 [2014-125178-000-00-NC](#)
COMPLAINT RECEIVED: DRUMS AND GONG HEARD IN COM'S HOME, AUDIBLE WITH DOORS AND WINDOWS CLOSED
- 5/12/2015 [2015-169146-000-00-CC](#)
Complaint received - Not compliant with conditional use permit 82-001303-LU, too many cars for available street parking, and elevated pedestrian traffic. See comment.

Improvements without permits Soon after we purchased our home in 1994 we discovered that Everett House was expanding. They had extensive work done without permits to install a new sauna, flotation tanks and other facilities at 2917 NE Flanders, and dug a hole for three additional hot tubs diagonally across from my backyard at that location (Attachment 13). All of this was completely illegal. We complained to the city about this and they agreed with us. The work that had not yet been completed was halted. A copy of the article written in Willamette Week at that time is enclosed (see Attachment 14). It is also documented in a video that you can see at this location: <https://youtu.be/2iMCqSAYqcg>

C. Historical pattern of bargaining in bad faith

In 1996 Elliott Mantell entered in to negotiations with Southeast Uplift and neighbors of Everett House for a good neighbor agreement Attachment 15). As part of the 1996 agreement negotiated with the Southeast Uplift Neighborhood Association, they agreed to:

- Set out exclusive parking and have their staff and customers park there (show parking notices)
- Stop installing new facilities and structures
- Include a statement about parking in all their advertising
- Make their books available annually to the Kerns Neighborhood Association to show their non-profit status
- Close the chiropractic office
- Reduce staff to six
- Limit meetings to ten people at a time

They did not do any of those things.

In 2007 Mr. Mantell evicted Common Ground who had operated the hot tubs and the Flanders Street property in order to take over these operations. In a protracted civil trial that followed, he fired three lawyers, refrained from appearing for scheduled depositions and made so many unreasonable demands that the trial judge cited him for operating in bad faith (Attachment 16):

p. 37

“Plaintiff’s attorney fees are not awarded due to Plaintiffs **bad faith** and retaliatory rent increase of August 2005.”

5. Conflicts with residential character of the neighborhood

A. Maintaining homes in a condition to allow them to revert to residential use

The conditional use agreement includes the following condition:

“D. All property shall remain in a residential character at all times so that it may revert to complete residential use without major remodeling”

All three buildings operated by Everett House to date have been modified in such a way that they would require extensive work to return them to residential use. The building at 2926 NE Flanders Street has no kitchen, and a commercial fire escape was attached to the exterior of the building. It cannot revert to residential use without major remodeling. The building at 2917 NE

Everett had a steam room and flotation tanks installed (without permits). A water feature was constructed between the houses at 2927 NE Everett and 2926 NE Flanders, which attracts mosquitoes and also prevents both houses from reverting to residential use. The remodeling to add the restaurant was another step toward removing this house permanently from residential housing.

The Amendment Request (Attachment 17) states: (p 7.)

“The use utilizes existing historic residential structures with augmented landscaping and water features. The houses present no exterior sign of the property’s use except small signs.”

Attachment 18 is an images of the signage in from of Everett House and Flanders House. They are not small. They are respectively four feet five inches by 28 inches and four feet by two feet three inches.

B. Effect on property values

In a recent study on the effects of businesses on property values (An Assessment of the Marginal Impact of Urban Amenities on Residential Pricing, Johnson Gardener, 2007, Attachment 19) Metro found that having a spa nearby reduces the value of a home:

“In other words, all else equal and controlling for the general proximity of homes to urban districts, seven urban amenities measurably matter to nearby home prices: five amenities positively impact home prices, while two types of businesses were considered disamenities by home buyers in terms of sales price: music shops and spas.”

“Recreation/Wellness amenities: With statistical confidence, bike shops and fitness centers demonstrate positive price premiums for homes nearby, while results indicate that spas are considered a disamenity by home buyers (-6.3%).” (p. 32)

“Two urban amenities, all things equal, have statistically significant price impacts that are negative, indicating that buyers view this type of service or retail as a disamenity and prefer to be further away rather than nearby.

Spas: Price premiums for spas are estimated to range from as low as -11.3% to no more than -1.2% $P > |t| = 0.026$, indicating that these estimates may be more sensitive to specification than others. (p. 35)

This means that having this facility near a home can decrease the home’s value by as much as 11.3%.

C. Effect on residential livability

The purpose of conditional use is to mitigate the effects of the facility on the people who live in close proximity to the facility. Everett House has solicited the testimony of many of its customers in support of the proposal. However, none of these supporters live within a one block radius of the facility.

In general, the activity around the site is of a type and intensity that deprives the local residents of full use of their homes. Complaints from neighbors to police and other city agencies puts unnecessary stress on both the neighbors and the agencies that respond to these complaints.

Noise The noise from customers using the facility is a nuisance, since the hot tubs abut the backyards of other properties. Maintaining conversations in groups over the sound of pumps and fountains can get loud. The fact that the brightly lit facility is open until 11:00 PM seven days a week makes it even more of a nuisance.

Loud conversations to be heard as Everett House customers go to their cars, particularly bad in the summer when windows are open. Everett House sponsors loud parties throughout the year, with amplified music and banging drums. Most recently, there have been loud parties there on July 2018 and November 4, 2018.

One of the practitioners at Everett House, Carlos, lived for years in a shack on the property. This was illegal. He also practiced a form of primal scream therapy. We called 911 the first time we heard the screams.

The Amendment request (Attachment 17) states:

“Condition A has been abided by and has worked out well. We have had the City conduct a records research for all 3 of our houses over our 41-year existence. There has only been one recorded noise complaint and it was in 2014 as per Portland Police department records. The complaint was taken care of right away. A copy of the City's records request and search is attached. Neighbors have the numbers of the center's phones as well the cell phone number of the director and staff and are encouraged to contact us should there be any concerns for any reason. This has always been handled right away.”

In reality, neighbors have become so frustrated by the constant level of noise coming from the hot tubs over the years that we have given up on complaining.

Lack of Privacy We had to build a wall around our back yard to protect our children from being exposed to the nude hot tubs visible from our property, and a driveway to have a place to park near our house. This was very expensive.

As it stands, there are families with young children on our block whose bedroom windows overlook a nude hot tub operation.

Safety The heightened level of traffic caused by the facility (massage therapists, customers, delivery trucks) places the children residing in the neighborhood in danger. For a time the Flanders Street property was leased to an organization called HARP. Our next-door neighbor was very shocked to look out her window one day and see their employees encouraging her children to play on the roof of the house. They also built an illegal kiosk in front of the property, that the city later forced them to remove. (Case No. 11-145414-CC - see Attachment 12)

General nuisance As far back as the 1980s, a neighbor who is now deceased informed us that people from Everett House intimidated her and her disabled son, taking food from their garden and informing them that their guru taught that they had a right to it.

Commercial use of the street parking means that our streets never get completely cleaned. While local residents clear the streets for leaf pickups and street cleaning, people coming in to work at Everett House and their customers do not have the same concerns. Massage therapists try to prevent residents from having block parties because it interferes with their business. We recently found that someone at Everett House shaved our cat without asking because some of its fur was matted (Attachment 20).

Having these four houses used for a bogus community club that is really a business deprives the community of families who could be living in those houses. There is a housing shortage in Portland, as you know. The people who live in this area are being deprived of at least six families who could be our neighbors, kids to play with our kids, neighbors to garden and recreate with.

Summary

In brief, Everett House is a neighborhood nuisance and has routinely violated its 1982 Conditional Use permit. The parking analysis provided by the applicant is based on a different type of use (medical/dental) and only three of the properties, thus underestimates the actual level of the parking problem. The neighbors deal with noise from customers in open-air hot tubs. Everett House continues to expose neighbors to nudity and traffic in a manner that is not consistent with a single family residential area with young children. Everett House generally operates without regard to the conditional use agreement or the needs of its neighbors. It does not function as a non-profit community center, but as a commercial business and medical offices that violate zoning restrictions.

For these reasons, the proposal to remove the parking requirement from the conditional use permit should be rejected and the conditional use permit should be withdrawn.

Attachments:

1. Bureau of Development Services Parking Complaint Log
2. Sign in front of Duke home
3. No parking sign made by Mantell
4. Parking flyers made by Common Ground
5. Dry erase sign in front of Common Ground 2017
6. Ard Engineering study
7. Mantell deposition in Multnomah County Civil Court case 0702-02098
8. Groupon and Dex online ads
9. Multnomah County Civil Court case 0702-02098 pp. 243-25
10. Mantell interview 0702-02098
11. Staff report page 8
12. Violation for kiosk
13. Image of excavation 1996 new hot tubs
14. Willamette Week article
15. Southeast Uplift Good Neighbor Agreement

16. Multnomah Court - judge cites bad faith
17. Conditional Use Amendment Request
18. Images of signs in front of facilities
19. An assessment of the Marginal Impact of Urban Amenities on Residential Pricing-
Johnson Gardner 2007
20. Image of shaved cat