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I just want to start out by saying that a Place of Worship use is allowed within the R-5 underlying zone. The use is not a point of contention in these matters. This is not about religious matters, it is about dimensional requirements and parking requirements.

As I outlined in my memo to the Board, Inspection Services received a permit application on March 3, 2009 to change the use of the property at 978 Washington Avenue from a TV repair shop on the first floor and one dwelling unit on the second floor to a place of worship/assembly use on the first floor with the one dwelling unit on the second floor to remain unchanged.

978 Washington Avenue is located within an R-5 Residential Zone. The R-5 Zone allows a place of worship with a the granting of a Conditional Use appeal before the Planning Board. Prior to the Planning Board receiving a conditional use application, Zoning performs a zoning review of the proposal. The zoning review indicated two deficiencies of the requirements: 1) The minimum lot size and 2) the minimum parking requirements.

The R-5 Zone requires a minimum lot size of one acre or 43,560 square feet of land for a place of worship. The property has only 14,400 square feet of land area, or only about 1/3 of what is required.

The parking requirements state that places of worship require 1 parking space for each 25 square feet of sanctuary area. It is now my understanding that the "rear room" shown on the floor plans is a worship area for women and children separated from the other area of worship. Using the entire first floor as a sanctuary results in a requirement of 39 required spaces along with one parking space required for the upstairs residential use, for a total of 40 required parking spaces. 20 parking spaces or only 50 percent of the required number of spaces are to be provided. The application submittals state that there is a maximum occupancy load of 45.

The prior use of the first floor was a TV repair shop with some sales of repaired TVs. The use was existing prior to the current Land Use Ordinance. It was considered to be legally nonconforming. This property was for sale for several years prior to its purchase. Our office had many inquiries concerning the property. As far as its nonconforming use, a similar use could replace it, such as service & sales of computers, or service and repair of lawn mowers. It could not be turned into a retail grocery store. It could not be turned into a restaurant.

There are other use options available to the applicant. Other uses allowed and available to the applicant in the R-5 Zone based on the current lot size would be to add one additional dwelling unit to the building. Another use allowable in the R-5 Zone based on the current lot size would be for a lodging house. Based only on current lot size, this lot may be dividable into two lots. The minimum lot size in the R-5 Zone is 6,000 square feet. There maybe other limiting factors regarding a potential lot split. I have not seen a survey with all the necessary dimensions listed.

In regards to the parking issue, the Land Use Ordinance states in 14-333 that parking shall be located on the same lot or within 300 feet of the lot. There are a few options available to the applicant, within 300 feet, or a “reasonable” distance away to supplement the deficient number of spaces. Most notable is the Chevrus parking lot for their ball fields and tennis courts “kitty-corner” across the street. There are 35 parking spaces available there. There is also a florist (a legal nonconforming use) almost directly across the street. There are less available spaces there, but some. Not too far away, but could still be considered a reasonable distance is the Grace Baptist Church on the corner of Washington and Canco Road. Perhaps a form of shuttling can be made available. The applicant has not submitted information that they have tried to search out any of these options.

The neighborhood in the vicinity of the property is mostly residential in nature. There are a couple other places of worship and some offices located at the old Rainbow Mall which is perhaps 1200 feet away. There are some small businesses going down Washington Avenue the opposite way. This is not a unique lot within the neighborhood. Again the R-5 Residential Zone allows places of worship, regardless of religion.

There are two types of Variances before the Zoning Board of Appeals. The Practical Difficulty Variance is limited to relief of **lot area**, lot coverage, frontage and setback requirements. A Practical Difficulty Variance concerning the deficient lot area is before the Board. The other type of variance is for the required number of parking spaces. It is considered to be a full Variance. The criteria that the Zoning Board review and vote on for each Variance have been handed down by the State Legislature and incorporated within the City of Portland’s Land Use Zoning Ordinance. There are different criteria for each type of Variance. Each criterion for each type of Variance must be met in full or the Variance must be denied.

Reviewing the applicant’s submittal, it is my opinion that the criteria are not being met.

Marge Schmuckal
Zoning Administrator