



Promote the common good

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FINDINGS AND DECISION OF THE NOISE REVIEW BOARD

APPLICANT: ANDERSEN CONSTRUCTION COMPANY *JUSTIN PAULL*

REQUEST: TWO-YEAR VARIANCE FOR UP TO 80 INSTANCES OF WORK EITHER BEGINNING AT 5:00 AM, OR ENDING BY 9:00 PM FOR THE CONSTRUCTION OF A 20-STORY MIXED-USE RESIDENTIAL TOWER AT 140 SW COLUMBIA. VARIANCE BEGINS APRIL 2019 AND GOES THROUGH JANUARY, 2021

VARIANCE NUMBER: 19-109484-000-00-NV

DECIDED: FEBRUARY 13, 2019

DECISION: APPROVED WITH CONDITIONS

BACKGROUND:

Title 18 establishes sound levels based on the zones of both the source and receivers of noise. Events that produce noise above permitted levels may be considered for variance from the code. The Noise Review Board is charged by code to review and act upon some of these applications. The review must consider the physical characteristics; times & duration of the emitted sound; the geography, zone and population density of the affected area; whether the public health, safety or welfare is impacted; whether the sound source predates the receiver(s); and whether compliance with the standard would produce hardship without equal or greater benefit to the public. The code does not preclude review of other factors, nor does it specify the weight to be given to each criterion.

REQUEST:

Request from Justin Paull, representing Andersen Construction, for a variance between April 2019 through January 2021, up to 80 times between 5:00 am – 9:00 pm, for concrete pours, deliveries, and hydraulic crane mobilizations.

FINDINGS:

- A. The public's health, welfare and safety are not affected by the anticipated noise levels, except possible temporary interference with sleep at later hours and for closer-in properties.
- B. The sound source does not predate receivers.
- C. The last criterion in reviewing Noise Variances speaks to a sort of "balancing test", in which compliance/non-compliance is measured against the "public good." Will the denying of this application produce hardship without equal or greater benefit to the public? Although "benefit" usually refers to economic gain, the Board also includes the pleasure obtained from the viewing of an event, the fostering of interest in an activity, or the pride in one's city, which occurs via national exposure. In the present case the event is not only a well recognized community event, per se, but it also contributes to the national exposure of the City of Portland. The Noise Review Board finds that denying this event will not benefit the public good.

DECISION:

Motion was made by Destiny Wright to grant a variance for Andersen Construction with the conditions below. Michael Wallace requested a friendly amendment, which was accepted, and is included in the conditions. Michael Wallace seconded the motion. The motion passed 3 – 0. Members Jamie Hurd and Ernest Harris were absent.

The Variance is approved with the following conditions:

- A. No more than 60 5:00 am starts.
- B. Applicant to return to the June 2019 Noise Review Board meeting to review variance and to offer the Board an opportunity to review the record to date and make permit modifications as needed.

Michael Wallace makes a friendly amendment to:

- C. Back trucks onto 2nd Ave after the job trailer is removed from the construction site.
- D. Try to accommodate the wishes of the Porter Hotel to try to place concrete on Mondays and/or Fridays when possible.
- E. Andersen shall provide regular reports on the actual use of variance days.
- F. Andersen shall notify nearby neighbors, including Porter Hotel, Marriot Hotel, and KOIN Tower of upcoming early-morning concrete pours.

The applicant understands that this variance is subject to review upon complaint.

This decision becomes effective on February 13, 2019.

APPEAL PROCEDURES: PCC Section 18.14.020 (i) states that "A variance decision of the Noise Control Officer or the Noise Review Board may be appealed to the City Council as follows: (1) A variance decision may be appealed by the applicant, his legal representative, or by any person who has submitted oral or written testimony on the application. (2) Notice of intent to appeal shall be submitted in writing to the City Auditor's Office within 10 day of the effective date of the decision. The notice shall identify the decision that is being appealed, and shall include the appellant's name, address and signature, phone number, relationship to the variance decision action, and a clear statement of the specific reason(s) for the appeal including alleged misapplication of City Codes.

(3) Upon receipt of such appeal, the Auditor shall then place the matter upon the Calendar of the City Council. At the time of hearing, the City Council may consider such new matters as it deems appropriate, as well as the record developed before the Noise Control Officer or the Noise Review Board, and thereafter may affirm, reverse, modify or remand the decision".

Paul van Orden,
for the Noise Review Board,
City of Portland



Handwritten signature of Paul van Orden and the date February 28, 2019.