# A PRILATED OF THE PRILATED OF

#### CITY OF

### PORTLAND, OREGON

#### **HEARINGS OFFICE**

1900 S.W. 4<sup>th</sup> Avenue, Room 3100 Portland, Oregon 97201 Telephone: (503) 823-7307 FAX: (503) 823-4347 TDD (503) 823-6868

## DECISION OF THE HEARINGS OFFICER ON APPEAL OF ADMINISTRATIVE DECISION

#### I. GENERAL INFORMATION

**File No.:** LU 08-137893 CU (HO 4080031)

**Applicant:** Jason L. Fayen and Ann Skvarek

4220 SE Clinton St.

Portland, OR 97206-1618

**Appellant:** Michael Lang

2721 SE 43<sup>rd</sup> Ave. Portland, OR 97206

**Hearings Officer:** Gregory J. Frank

**Bureau of Development Services (BDS) Staff Representative:** Crystal Hitchings

**Site Address:** 4220 SE CLINTON ST

**Legal Description:** LOT 3 BLOCK 10, MCMAHONS ADD

**Tax Account No.:** R552501340

**State ID No.:** 1S2E07BB 17800

**Quarter Section:** 3335

**Neighborhood:** Richmond

**Business District:** Division-Clinton Business Association

**District Coalition:** Southeast Uplift

**Plan District:** None

**Other Designations:** None

**Zoning:** R5, Residential 5,000

**Land Use Review:** Type II CU, Conditional Use

**BDS Administrative Decision:** Approval with conditions

**Public Hearing:** The hearing was opened at 8:59 a.m. on September 24, 2008, in the 3<sup>rd</sup> floor hearing room, 1900 SW 4<sup>th</sup> Avenue, Portland, OR, and was closed at 9:30 a.m. The record was closed at that time.

#### **Testified at the Hearing:**

Crystal Hitchings, BDS Staff Representative Michael Lang, 2721 SE 43rd Ave., Portland, OR 97206 Jason Fayen, 4220 SE Clinton, Portland, OR 97206

#### **Proposal:**

The applicants propose to remodel their existing home for use as a bed and breakfast facility. The bed and breakfast will provide 3 double-occupancy guest rooms. On-site guest activities will be limited to overnight accommodations and breakfast. No non-resident employees are proposed. Guests will be provided with "house rules" upon arrival which outline requirements to ensure the quiet, safety, and privacy of the residential neighborhood. Alternative forms of transportation will be encouraged through provision of shuttles from the airport and train station, provision of bicycles for guest use, and provision of all-day Tri-Met passes at no extra charge to registered guests. Street maps and information on available public transportation will also be provided to guests. The applicant will enter into a "Good Neighbor" agreement with the Richmond Neighborhood Association to address issues and concerns that arise from the B&B use. Remodeling for the B&B will be mostly interior, with the exception of a small second floor balcony to be located at the rear of the home above the existing porch. Interior changes include the conversion of a bedroom to a bathroom, the conversion of an unfinished area to a bedroom and bathroom, and electrical upgrades. Bed and Breakfasts are regulated by Zoning Code Section 33.212, which require approval through a Conditional Use review, and are subject to the approval criteria of Section 33.815.105, Institutional and Other Uses in R Zones.

#### **Summary of Testimony at the Public Hearing:**

BDS Staff planner Hitchings testimony summarized the BDS staff decision (Exhibit H.2), the appeal issues and a possible proposed compromise between the appellant and applicant (Exhibit H.6). Mr. Lang, the appellant, generally agreed with Ms. Hitchings testimony. Mr. Lang stated that after filing the appeal, in this case, he met with applicants and reached agreement to modify proposed condition of approval E; in the form presented by Ms. Hitchings in Exhibit H.6. Mr. Lang stated that if the revised language, as set forth in Exhibit H.6, was included in an approval then Mr. Lang agreed to "waive all other assignments of error" set forth in his Appeal Statement (See Exhibit H.1 – attachment to appeal form). Mr. Fayen, one of the applicants, testified that he agreed with the proposed modification of condition E as set forth in Exhibit H.6.

**Hearings Officer Introductory Comments:** The appeal in this case set forth a number of assignments of error (Exhibit H.1). The Hearings Officer summarizes the issues raised by the appellant below:

- Failure to address Portland City Code sections 33.212.040 A. and E. and also 33.212.070.
- Failure to adequately address approval criteria 33.815.105(C) (Livability).

In his testimony Mr. Lang, the appellant agreed to language set forth in Exhibit H.6, including the BDS recommendation to retain the second and third sentences, modifying Condition E. Mr. Lang agreed that if the revised condition E. language were incorporated into an approval decision he would not continue to pursue his appeal. The Hearings Officer finds that the proposed modification to condition E is reasonable and increases the protection of nearby residences from negative noise and privacy impacts created by a bed and breakfast at the subject location.

The Hearings Officer notes that Portland City Code 33.212.070 states that the "approval criteria are stated in 33.815.105, Institutional and other uses in R zones." The Hearings Officer finds that sections 33.212.040 A. and E. and also 33.212.070 are not approval criteria in this case and these sections would not provide a basis for denial of this application.

Mr. Lang, in his hearing testimony, indicated that the noise and privacy issues (33.815.105(C)) would be adequately addressed if the proposed revised condition E. language (Exhibit H.6) as follows were made part of any approval of this application:

"Outdoor noise generated by the B&B shall be restricted between the hours of 9 p.m. to 8 a.m. Sunday through Thursday and 10 p.m. to 8 a.m. Friday and Saturday, but quiet outdoor use is allowed after 9 p.m. throughout the week. This condition is intended to limit the impacts to the residential area generated from the B&B use and does not apply to private social gatherings hosted by and for the enjoyment of the residents as allowed by Zoning Code section 33.212. The applicants shall be the first line of enforcement, and shall provide their contact information to all abutting property owners and to those property owners directly across SE Clinton from the site."

Note: the italicized language above remains from the original condition E. as proposed in the BDS staff decision.

The Hearings Officer finds that by including the proposed revised language for Condition E. section 33.815.105(C) is satisfied. The Hearings Officer found that the findings as set forth in the original BDS staff decision are supported by substantial evidence and concurs with BDS staff that all relevant approval criteria are satisfied. The Hearings Officer modified the findings for 33.815.105(C) to reflect the comments made above.

#### **Relevant Approval Criteria:**

Conditional Use requests will be approved if the review body finds that the applicant has shown that approval criteria A. through E. of Section 33.815.105, Institutional and Other Uses in R Zones, have been met.

#### II. ANALYSIS

**Site and Vicinity:** The site is located on the south side of SE Clinton Street, three lots west of SE 43<sup>rd</sup> Avenue, in a residential area, generally characterized by older, single-dwelling one- and two-story craftsman and bungalow style homes located close to the street on well-landscaped,

densely developed lots. Toward the west, along SE 41<sup>st</sup> and Clinton, are several multi-dwelling and duplex residential structures.

The subject site is developed with a single-dwelling home originally built in 1913. The site is well screened from the street by several large street trees directly in front of the home along SE Clinton Street, and a screen of trees and shrubs along the front and west side facades of the home. The east side of the home is bordered by a driveway paved with concrete drive strips. The central strip of the upper half of the drive has been converted to a garden, but the lower portion still provides approximately 35 feet of on-site parking. The lot directly east of the site is separated from the subject site by the driveway and a tall, dense arbor vitae hedge. The lot directly to the west of the site is separated from the subject site by a tall, dense bamboo hedge. The lot directly to the south of the site is separated from the subject site by trees and vegetated screening. The back yard is fenced and contains several mature trees.

The site is located two blocks south of SE Division and three blocks east of SE 39<sup>th</sup>, making it well-connected to arterial streets and public transportation. The closest bus stop is just over 700 feet away, and there are two Zip Cars within 10 blocks of the site. The local service neighborhood streets provide on-street parking, and SE Clinton is improved with a sidewalk and planting strip on either side of the street.

**Zoning:** The area surrounding the site is zoned R5, Residential 5,000, which is a high density Single-Dwelling Residential Zone. Nearby areas to the north are zoned R2.5, Residential 2,500, and some of the R5 zones in the area have a Comprehensive Plan Designation of R2.5. The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. Single-dwelling zones allow attached and detached single-dwelling residential structures. The zones implement the comprehensive plan policies and designations for single-dwelling housing.

Land Use History: City records indicate that there are no prior land use reviews on this site.

**Agency Review:** A "Request for Response" was mailed **July 8, 2008**. The following Bureaus responded with no issues or concerns (Exhibits E.1-E.3):

- Site Development
- Fire Bureau
- Water Bureau

The following Bureaus did not express any concerns and submitted additional comments:

The **Life Safety Bureau** (Exhibit E.4): stated that a Building Permit has been applied for and is currently under review or has been issued or, a Life Safety plans examiner has been in contact with the applicant, and referred to correspondence from the Life Safety plans examiner for building code-related comments.

The **Bureau of Environmental Services** (Exhibit E.5): commented that further development of the property would be subject to the Bureau of Environmental Services' standards and requirements during the building plan review process.

The **Bureau of Transportation Engineering** (Exhibit E.6): Portland Transportation ("PDOT") provided information regarding street classifications, and stated that the proposed use is supportive of the street designations of the Transportation Element of the Comprehensive Plan, and that the transportation system is capable of supporting the proposed use in addition to existing uses in the area. PDOT did not require a transportation impact study and found that access and connectivity are adequate. PDOT concluded that if the B&B were full to capacity there would be sufficient on-street parking to accommodate all vehicles associated with the facility. PDOT further stated that there is no reason to believe there will be any negative effects on pedestrian, bicycle or transit circulation, or safety, based on the anticipated traffic generated by the proposed use. PDOT suggested that the operators of the B&B should provide Tri-met transit materials, including schedules and maps to all guests, and perhaps indicate the availability of mass transit on all advertising materials.

**The Bureau of Parks-Forestry Division** (Exhibit E.7): commented that existing street trees should be protected.

**Neighborhood Review (prior to issuance of BDS Staff decision):** A "Notice of Proposal in Your Neighborhood" was mailed on **July 8, 2008**. A total of two written responses were received by BDS staff from either the Neighborhood Association or notified property owners in response to the proposal.

One response, from a nearby neighbor, expressed concern regarding the potential increased demand for on-street parking, and asked that the applicant provide any on-site parking possible. The respondent also suggested that the business and neighborhood association enter into a good neighbor agreement to address any future issues such as parking.

BDS Staff Response: The applicants presented the proposal to the Neighborhood Association prior to submitting this application, and no concerns were raised regarding parking. The NA has not submitted any comments on this proposal. In response to this respondent's concerns, the applicant conducted an informal parking survey and submitted additional narrative to emphasize their intent to provide for alternative methods of transportation. The results of this survey, PDOT comments, and other parking issues are further addressed under Approval Criterion D, Public Services.

The second response, also from a nearby neighbor, recommended denial of the proposal and expressed concerns regarding non-resident employees; service of alcohol to guests and visitors; commercial meetings and private social gatherings; noise and privacy impacts from use of outdoor areas; glare; late night gatherings; and on-street parking. The neighbor also submitted a letter outlining suggestions for conditions of approval, which was received following the close of the comment period. These suggestions called for conditions regarding employees, social gatherings, outdoor use curfew and noise restrictions, food service, alcohol, annual compliance review, and garbage service, and requested that all limitations on the use be specifically addressed in the conditions of approval.

BDS Staff Response: Chapter 33.212, Bed and Breakfast Facilities, outlines the development standards for B&B's, which this proposal must and does comply with. No non-resident employees are proposed. Commercial meetings, including luncheons, banquets, parties, weddings, and other gatherings for direct or

indirect compensation are not allowed in residential zones. Private social gatherings are allowed when hosted by and for the enjoyment of the residents (not the guests) as part of a normal Household Living use, but are limited in number because there is a B&B on site. Up to 12 private social gatherings per year are allowed for more than 8 guests, and unlimited private social gatherings are allowed for 8 or fewer guests. Service of food and alcohol is allowed, but only breakfast is proposed to be served.

Issues involving privacy, noise, glare, and parking are addressed in detail under the Livability and Public Services approval criteria below.

#### ZONING CODE APPROVAL CRITERIA

#### 33.815.010 Conditional Uses, Purpose

Certain uses are conditional uses instead of being allowed outright, although they may have beneficial effects and serve important public interests. They are subject to the conditional use regulations because they may, but do not necessarily, have significant adverse effects on the environment, overburden public services, change the desired character of an area, or create major nuisances. A review of these uses is necessary due to the potential individual or cumulative impacts they may have on the surrounding area or neighborhood. The conditional use review provides an opportunity to allow the use when there are minimal impacts, to allow the use but impose mitigation measures to address identified concerns, or to deny the use if the concerns cannot be resolved.

#### 33.815.105 Institutional and Other Uses in R Zones

These approval criteria apply to all conditional uses in R zones except those specifically listed in sections below. The approval criteria allow institutions and other non-Household Living uses in a residential zone that maintain or do not significantly conflict with the appearance and function of residential areas. The approval criteria are:

- **A. Proportion of Household Living uses.** The overall residential appearance and function of the area will not be significantly lessened due to the increased proportion of uses not in the Household Living category in the residential area. Consideration includes the proposal by itself and in combination with other uses in the area not in the Household Living category and is specifically based on:
  - 1. The number, size, and location of other uses not in the Household Living category in the residential area; and
  - 2. The intensity and scale of the proposed use and of existing Household Living uses and other uses.

**Findings:** The subject site is located in the center of a large residential area accessed by local service streets and bounded on the north by commercial zoning. For the purposes of this review, the residential area will be more specifically defined as those properties within the boundaries noted below (Exhibit C.4 shows a graphical depiction of the inventory area – this exhibit is not attached to the decision). The boundaries are mainly defined by local service streets (with the exception of the north boundary) which enclose the immediate residential area most likely to be affected by this proposal.

**North:** SE Division Street, an east/west Neighborhood Collector street and Major Transit Priority street, is approximately two blocks north of the site, and defines the break between predominantly residential and predominantly commercial areas. The commercial/residential zoning line runs approximately one-half block south of SE Division, and these commercially zoned lots directly south of SE Division are not included in the inventory area.

**South:** SE Woodward Street, an east/west local service street, is approximately two blocks south of the subject site. The properties directly south of SE Woodward are included in the residential area.

**East:** SE 45<sup>th</sup>, a north/south local service street and City Bikeway, is approximately 560 feet east of the subject site. The properties directly east of SE 45<sup>th</sup> are included in the residential area.

**West:** SE 41<sup>st</sup> Avenue, a north/south local service street, is approximately 400 feet west of the subject site. The properties directly west of SE 41<sup>st</sup> are included in the residential area.

Within this area, the zoning is R5 and R2.5, and most lots are 4,700 to 9,500 square feet in size and are developed with single dwelling homes. Some lots are smaller or larger, and there are several multi-dwelling homes within the western portion of the residential area. The lots immediately adjacent to the subject site are 4,700 square feet in area and are developed with single-dwelling, typically older craftsman-style homes. Homes are located close to the street, and most lots and street planting strips are extensively landscaped, creating a lush residential streetscape.

The only non-household living use documented within this area is a private art studio located at 4039 SE Clinton. There are no signs or other defining characteristics, except for the architectural style of the structure, that demarcate this use as being different from the residential uses. The proposal is for a B&B facility that offers overnight accommodations and breakfast, with no proposal to hold social functions and no proposal for external changes to the existing home that would be visible from the street. The only exterior change proposed is a small second story balcony at the rear of the home. The highest proposed capacity of the B&B is 6 guests plus the residents of the home. Parking for guests will be provided on-street, with shuttle service from the train station and airport and bicycles provided to guests, and other modes of transport will be encouraged. The site is located approximately 650 feet from Division Street and 4 blocks from SE 39<sup>th</sup> Avenue, making walking, biking, and bus transport a feasible and attractive option. The intensity and scale of the proposed use, alone and in combination with the art studio, would not be out of character with existing residential uses in the area. Because the proposal retains the residential atmosphere and appearance of the home and does not introduce high-intensity use of the facility, the proposed B&B will not significantly lessen the residential appearance and character of the area. This criterion is met.

#### B. Physical compatibility.

- 1. The proposal will preserve any City-designated scenic resources; and
- 2. The proposal will be compatible with adjacent residential developments based on characteristics such as the site size, building scale and style, setbacks, and landscaping; or
- 3. The proposal will mitigate differences in appearance or scale through such means as setbacks, screening, landscaping, and other design features.

**Findings:** A historic landmark is located at 3916 SE Taggart Street, approximately 900 feet southwest of the subject site, and is not affected by the proposal. The proposed facility is an existing single-dwelling residential structure. Building scale, setbacks, and landscaping are all consistent with the type and scale of development that is allowed in the R5 zone, and none of these characteristics will change. The existing home will continue to provide the primary residence for the property owners. The only proposed exterior change to the existing home is the addition of a new 7-foot by 12-foot second floor balcony at the rear of the home, therefore the appearance and size of the residence will remain unchanged. The proposal will remain physically consistent with the adjacent residential development in the area. No mitigation is necessary. This criterion is met.

- **C. Livability.** The proposal will not have significant adverse impacts on the livability of nearby residential zoned lands due to:
  - 1. Noise, glare from lights, late-night operations, odors, and litter; and
  - 2. Privacy and safety issues.

**Findings:** Mr. Lang, a nearby neighbor and appellant, appeared at the public hearing and testified. Mr. Lang stated that after filing the appeal, in this case, he met with applicants and reached agreement to modify proposed condition of approval E; in the form presented by Ms. Hitchings in Exhibit H.6. Mr. Lang stated that if the revised language, as set forth in Exhibit H.6, were included in an approval then Mr. Lang agreed to "waive all other assignments of error" set forth in his Appeal Statement (See Exhibit H.1 – attachment to appeal form). Mr. Fayen, one of the applicants, testified that he agreed with the proposed modification of condition E as set forth in Exhibit H.6. The language agreed to, by Mr. Lang, Mr. Fayen and BDS staff representative Hitchings is:

"Outdoor noise generated by the B&B shall be restricted between the hours of 9 p.m. to 8 a.m. Sunday through Thursday and 10 p.m. to 8 a.m. Friday and Saturday, but quiet outdoor use is allowed after 9 p.m. throughout the week. This condition is intended to limit the impacts to the residential area generated from the B&B use and does not apply to private social gatherings hosted by and for the enjoyment of the residents as allowed by Zoning Code section 33.212. The applicants shall be the first line of enforcement, and shall provide their contact information to all abutting property owners and to those property owners directly across SE Clinton from the site."

**Note:** the italicized language above remains from the original condition E. as proposed in the BDS staff decision.

The existing home has adequate space to accommodate 5-6 bedrooms. The potential residential use of this home could include a large number of residents engaging in normal

household activities, which would include on-street parking, outdoor use of the yard and balcony, social interaction, and the comings-and-goings of a number of people, among other things. Use of the B&B is proposed for registered guests for overnight accommodations and breakfast. The proposed B&B includes a potential for up to 6 guests per night (two per room), which would not result in a significant increase in activities from what could normally be generated by a residential home of this size. The applicants are drafting a "house rules" document which will be given to arriving guests. This document outlines parking courtesy and requirements for personal decorum to ensure that the quiet, safety, and privacy currently enjoyed in the neighborhood is maintained. The applicants stress in their submittal statements that the goal of their business is to provide quiet, comfortable accommodations for their guests, and that it is therefore in their best interest to protect and enhance the characteristics of the residential neighborhood that contribute to this, and that it is important to the applicants to keep the neighborhood quiet, private, clean and safe for themselves, their neighbors, and their B&B guests.

No non-residential employees are proposed. Zoning Code section 33.212 allows non-resident employees, if approved as a part of the conditional use review, and allows the number and frequency of B&B employees to be restricted. Although the applicant does not propose employees, an occasional, paid employee may be required to assist or replace the owners during vacations or unforeseen situations. Additionally, hired service for normal maintenance and repair will be required. Therefore, a condition of approval (condition C) is warranted to allow 1 occasional and temporary non-resident employee, and to allow hired service for normal maintenance and repair of the site.

The applicants have presented their proposal at a Neighborhood Association meeting, and have personally contacted their immediate neighbors and left contact information with them for further discussion of the proposal. The applicants have also agreed to work with the Neighborhood Association to draft a "Good Neighbor" agreement to address any issues or concerns that arise in the future.

The proposal does not include exterior lighting, odors, or late-night operations. No commercial meetings or social gatherings are allowed on the premises (private social gatherings are allowed for the residents, with limitations outlined under 33.212.E). No odors or significant litter beyond that generated by a large household use are anticipated from this proposal.

Noise generated by a B&B at the subject site was a prime concern of Mr. Lang in this appeal. BDS noted that use as a B&B will increase only to the point that a maximum of 6 guests per day could be entering or leaving the home, bringing luggage to or from vehicles on the street, talking as they walk or bike through the streets, or operating motor vehicles in the neighborhood. The main concern about noise raised by neighbors, including Mr. Lang, was related specifically to noise generated in outdoor areas. Guests may or may not use the backyard for quiet enjoyment, but no specific guest-related activities are proposed for outdoor areas. The back yard on the subject site abuts three other back yards directly, and touches two other back yards at the very corners. The 7x12-foot second floor balcony is accessible only by guests of the north room, which

would be a maximum of 2 people at a time. BDS Staff inquired with the Noise Control Office of BDS, and learned that B&B neighborhood noise issues most commonly arise from outdoor music associated with weddings and other commercial functions, which, due to the residential zoning of the site, are not permitted to occur as part of this proposal. Alcohol is not proposed to be served to guests. Applicant, appellant and BDS staff agreed that if the BDS proposed language for condition E. is revised (per the quoted language above) the noise concerns would be adequately addressed. The Hearings Officer concurs that the revised language for condition E. is sufficient to satisfy noise concerns in this case.

Similarly, the proposal is not expected to create adverse privacy or safety impacts, since the number of guests and levels of activity will be similar to those of a large household. Privacy for nearby residents is already provided by existing fencing around the back yard and dense vegetative screening around the home. Photographs taken from the balcony show that views into or from adjacent lots are screened by existing trees which, according to the applicant, are approximately 25-feet tall. Safety would not be decreased by the few extra vehicles, bicycles, or pedestrians using the street. The property owners will continue to live in the home, and have stated that they intend to protect privacy, safety, and residential character for themselves and their neighbors, and for the benefit of their guests who seek quiet accommodations immersed in a residential neighborhood. The interior remodeling and deck construction will conform to building code requirements, thereby providing the degree of safety typical of residential uses. The "House rules" mentioned above will help ensure that quiet, safety and privacy are maintained for neighbors, residents, and guests.

To ensure that livability is not significantly adversely impacted by the location of a B&B within a residential area, a condition of approval (condition B) is warranted that clarifies that the use of the B&B shall be limited to registered guests for overnight accommodations and breakfast, as well as a condition of approval (condition D) that a list of "house rules" outlining requirements for personal decorum to ensure the quiet, safety, and privacy of the neighborhood shall be provided to each guest upon arrival, and posted on the businesses website, if applicable.

For the reasons described above, in conjunction with the conditions of approval (including revised condition E.), the proposal will not have <u>significant</u> adverse impacts on the livability of nearby residential zoned lands, and this criterion is met.

#### D. Public services.

- 1. The proposed use is in conformance with the street designations of the Transportation Element of the Comprehensive Plan;
- 2. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity, level of service, and other performance measures; access to arterials; connectivity; transit availability; on-street parking impacts; access restrictions; neighborhood impacts; impacts on pedestrian, bicycle, and transit circulation; safety for all modes; and adequate transportation demand management strategies;

3. Public services for water supply, police and fire protection are capable of serving the proposed use, and proposed sanitary waste disposal and stormwater disposal systems are acceptable to the Bureau of Environmental Services.

**Findings:** Most streets in the area are local service streets, with the exception of SE Division, which is a Neighborhood Collector, and SE 39<sup>th</sup>, which is a Major City Traffic street. SE 39<sup>th</sup> is a Transit Access street, and SE Division is a Major Transit Priority street. All streets within the area are either City bikeways and walkways or Local Service bikeways and walkways. The proposed B&B use would typically not generate more than 3 additional vehicles, and, with shuttle service, bus passes, and bikes provided to the guests, and the close proximity to bus lines (650+ feet) and Zip Cars (2 within 10 blocks), vehicles may not be used in the immediate neighborhood at all by most guests. On-street parking is available throughout the residential area to serve the few extra vehicles generated by the use, and one on-site space is available. Alternative transportation methods are supported by the street designations.

The applicants conducted an informal parking survey for 3 consecutive evenings over one weekend. The survey spanned 375 feet to the west and 500 feet to the east along SE Clinton Street, and 300 feet north and south along SE 43<sup>rd</sup> Avenue (the area on the north side of Clinton Street between SE 43<sup>rd</sup> and SE 45<sup>th</sup> was not included, as it is a designated "no parking" zone.) Results showed 43 empty, on-street parking spaces. It is likely that the anticipated maximum of 3 cars generated by the proposed use would easily be accommodated within one block of the site. The applicant states that the B&B will "target visitors who are receptive to, and predisposed towards, alternative transportation options" and will "actively promote alternative transportation options available in the city to reduce automobile use" and that they will provide shuttle service to the airport and train station, will provide bicycles for use by the guests (Exhibit A, section D), and will provide all-day Tri-Met passes at no additional charge to each guest. Local maps will be provided to guests who use Tri-Met, bikes, or walk. Guests will be informed upon arrival on parking courtesy. The applicant has stated that the "house rules" described under approval criterion C above will also include instructions on parking courtesy.

PDOT has reviewed the proposal and expressed no concerns with on-street parking availability or the capacity of the neighborhood to handle up to three extra vehicles. PDOT further stated that there is no reason to believe there will be any negative effects on pedestrian, bicycle or transit circulation, or safety, based on the anticipated traffic generated by the proposed use. PDOT suggested that the operators of the B&B provide Tri-met transit materials, including schedules and maps to all guests, and indicate the availability of mass transit on all advertising materials.

To ensure that alternative transportation modes are promoted for this site, a condition of approval (condition F) is warranted to require that transit tickets (TriMet) must be offered, free of charge, to all B&B guests. Public transit information, including current schedules, routes and maps, for TriMet buses and light rail, must be offered to all guests at the time of registration. Advertising for the B&B should indicate the availability of public and alternative transit. The "house rules" provided to the guests shall include instructions

outlining parking courtesies. With these conditions, and for the reasons described above, these criteria will be met.

**E. Area plans.** The proposal is consistent with any area plans adopted by the City Council as part of the Comprehensive Plan, such as neighborhood or community plans.

**Findings:** The project site is located in the Richmond Neighborhood, which does have an adopted neighborhood plan. The Richmond Neighborhood Plan vision statement describes a village community in which businesses, churches, schools and residents flourish, a place where everyone can be safe and secure living, working, and doing business, and where growth is supported while maintaining the current single family zoning. Policies applicable to this proposal include: Policy 1: Business; Policy 5: Safety and Crime Prevention; and Policy 6: Transportation. Policy 1 acknowledges the importance of compatible businesses.

The proposal is for an accessory Household Living use, which is compatible with a residential zone. Policy 5 establishes a safe and stable community, encourages community participation, and promotes car, bicycle, and pedestrian safety. The applicants have agreed to establish a "good neighbor" policy, which encourages community participation, will educate their guests through a set of "house rules" on behavior that is respectful of the residential neighborhood, and actively promote alternative transportation as part of the B&B experience. Policy 6 strives to reduce the negative impacts of auto traffic in residential areas. In addition to actively promoting alternative transportation as part of the B&B experience, which includes providing bicycles and Tri-met passes, the applicants will retain existing on-site parking and will instruct their guests on appropriate parking courtesies to help reduce conflicts with the residents of the neighborhood.

For these reasons, the proposal is compatible with the Richmond Neighborhood Plan. Therefore, this criterion is met.

#### **DEVELOPMENT STANDARDS**

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

#### III. CONCLUSIONS

The proposed use is for a B&B that provides overnight accommodations and breakfast. The only exterior change to the home is the addition of a 7-foot by 12-foot second story balcony at the rear of the home. No non-resident employees are proposed. Interior remodeling includes additional bathroom and bedroom area and does not alter the residential function of the property. The use brings to the neighborhood up to a maximum of six guests and their associated transportation

needs, which will include a combination of vehicles, public transport, bicycling, and walking. The proposal does not significantly alter the existing privacy or residential character currently enjoyed in the neighborhood, and local streets and public services can accommodate the proposed use.

Five conditions of approval should be imposed with this Decision to ensure neighborhood compatibility. The Hearings Officer revised condition E. in accordance with language proposed by the appellant, applicant and BDS staff. With these conditions, and for the reasons listed above, this proposal meets the development standards for Bed and Breakfasts, and meets the approval criteria for Conditional Uses.

#### IV. DECISION

The Appellant prevailed.

**Approval** of a B&B that provides overnight accommodations and breakfast for up to 6 registered guests in 3 guest rooms, per the approved plans, Exhibits C-1, C.2a, C.2b, C.3a and C.3b through C-3, signed and dated August 4, 2008, subject to the following conditions:

- A. To establish the Bed and Breakfast, a Zoning Permit must be obtained. The Zoning Permit application submittal must include the approved site plan (Exhibit C.1), the approved elevations (Exhibit C.2), and the approved floor plans (Exhibit C.3), and conditions B through E must be noted on the plans or included as a separate sheet in the plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE Case File LU 08-137893 CU." All conditions must be labeled "REQUIRED."
- B. Use of the B&B shall be limited to registered guests for overnight accommodations and breakfast.
- C. One occasional and temporary non-resident employee is allowed, and hired service for normal maintenance and repair is allowed.
- D. A list of "house rules" shall be provided to each guest upon arrival that outlines instructions for parking courtesy and requirements for personal decorum to ensure the quiet, safety, and privacy of the neighborhood, and shall be posted on the business website, if applicable.
- E. Outdoor noise generated by the B&B shall be restricted between the hours of 9 p.m. to 8 a.m. Sunday through Thursday and 10 p.m. to 8 a.m. Friday and Saturday, but quiet outdoor use is allowed after 9 p.m. throughout the week. This condition is intended to limit the impacts to the residential area generated from the B&B use and does not apply to private social gatherings hosted by and for the enjoyment of the residents as allowed by Zoning Code section 33.212. The applicants shall be the first line of enforcement, and shall provide their contact information to all abutting property owners and to those property owners directly across SE Clinton from the site.

Decision of the Hearings Officer on Appeal of Administrative Decision LU 08-137893 CU (HO 4080031)
Page 14

F. Transit tickets (TriMet) must be offered, free of charge, to all B&B guests. In addition, public transit information, including current schedules, routes and maps, for TriMet buses and light rail, and information about Zip Cars, must be offered to all guests at the time of registration. Advertising for the B&B should indicate the availability of public and alternative transit.

Gregory J. Frank, Hearings Officer

Date

**Application Deemed Complete:** July 1, 2008

Report to Hearings Officer:September 12, 2008Decision Mailed:October 2, 2008Last Date to Appeal:October 23, 2008

**About this Decision.** This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

**Conditions of Approval.** This project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

**Appealing this decision.** The Hearings Officer's decision is final and takes effect on the day the notice of decision is mailed. The decision may not be appealed to City Council, but may be appealed to the Oregon Land Use Board of Appeals (LUBA), as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that:

- an appellant before LUBA must have presented testimony (orally or in writing) as part of the local hearing before the Hearings Officer; and
- a notice of intent to appeal be filed with LUBA within 21 days after the Hearings Officer's decision becomes final.

Please contact LUBA at 1-503-373-1265 for further information on filing an appeal.

#### Recording the final decision.

If this land use review is approved, the final decision must be recorded with the Multnomah County Recorder. A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet. For further information on recording, please call the County Recorder at 503-988-3034.

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

**Expiration of this approval.** An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

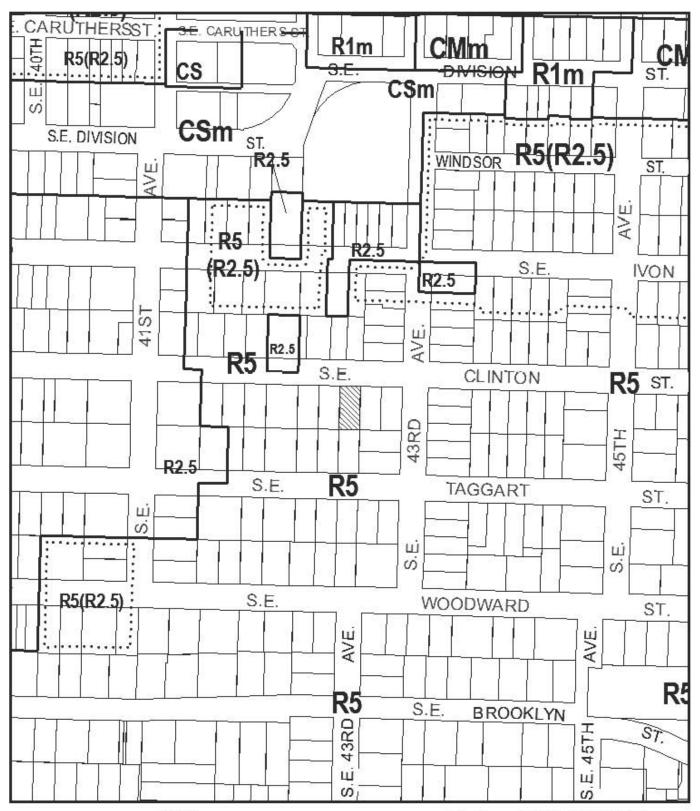
**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

#### **EXHIBITS**

#### NOT ATTACHED UNLESS INDICATED

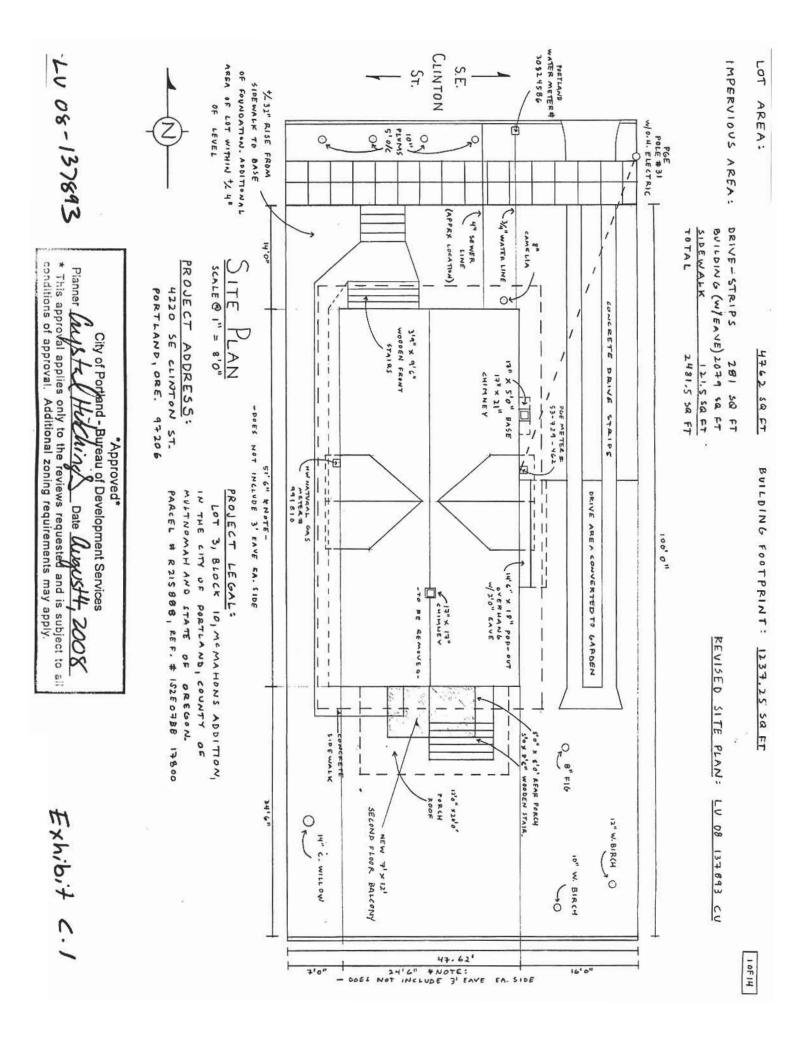
- A. Applicant's Statement
  - 1. Information for Complete Application
  - 2. Information Addressing Neighbor's Concerns
  - 3. Information Addressing Neighbor's Concerns
  - 4. Photos taken from back deck
  - 5. Aerial photos
- B. Zoning Map (attached)
- C. Plans/Drawings
  - 1. Site Plan (attached)
  - 2a. Elevations (attached)
  - 2b. Elevations (attached)
  - 3a. Floor Plans (attached)
  - 3b. Floor Plans (attached)
  - 4. Inventory of other uses not in Household Living category
- D. Notification information
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses
  - 1. Site Development Review Section of BDS
  - 2. Water Bureau
  - 3. Fire Bureau
  - 4. Life Safety Bureau
  - 5. Bureau of Environmental Services
  - 6. Bureau of Transportation Engineering and Development Review
  - 7. Bureau of Parks, Forestry Division
- F. Correspondence
  - 1. David Schoellhamer and Kathy Kuivila; July 22, 2008; concern about increase in onstreet parking demand, suggest applicant provide on-site parking
  - 2. Michael Lang and Melissa Ryan; July 29, 2008; recommendation of denial based on incompatibility with the existing residential neighborhood
  - 3. Michael Lang and Melissa Ryan; July 30, 2008; suggested conditions for approval
- G. Other
  - 1. Original LU Application
  - 2. Site History Research
- H. Received in Hearings Office
  - 1. Hearing notice, Hitchings, Crystal
  - 2. Staff report (with appeal form on top), Hitchings, Crystal
  - 3. E-mails, Lang, Michael

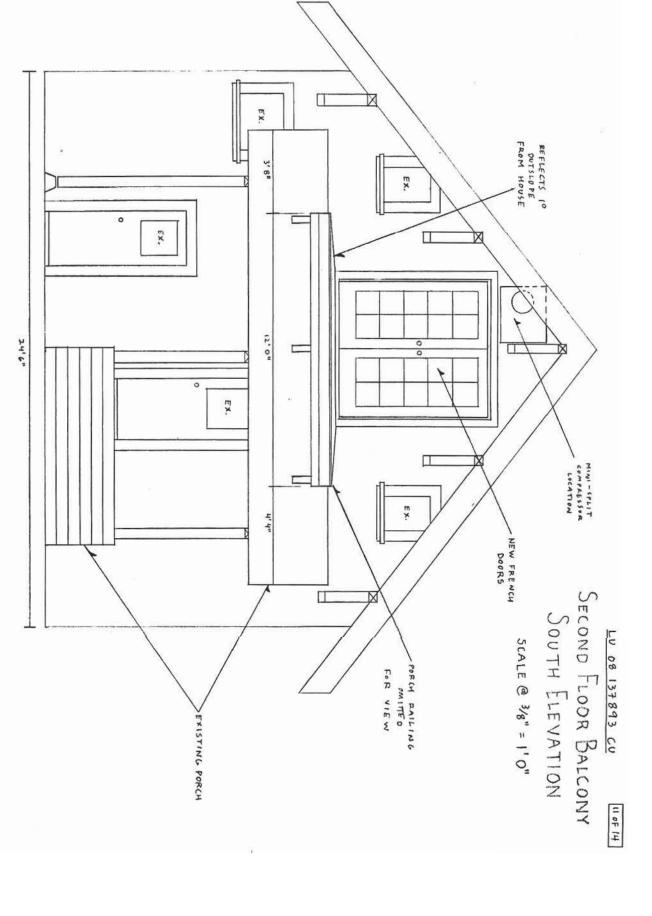


ZONING Site

LU 08-137893 CU File No. 3335 1/4 Section \_ 1 inch = 200 feet Scale. 1S2E07BB 17800 State Id В (Jun 19,2008) Exhibit.







conditions of approval. Additional zoning requirements may apply. \* This approval applies only to the reviews requested and is subject to all Hothings Date Way 5 4, 2008

Planner Cuptul

City of Portland, - Bureau of Development Services

\*Approved\*

Exhibit C. 2-a

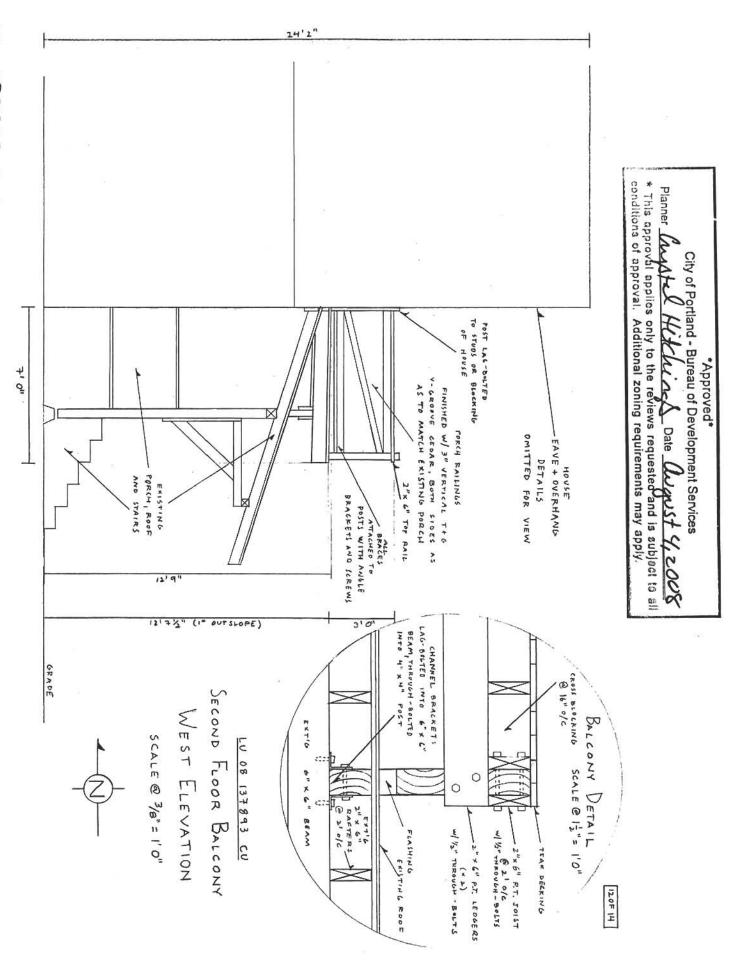
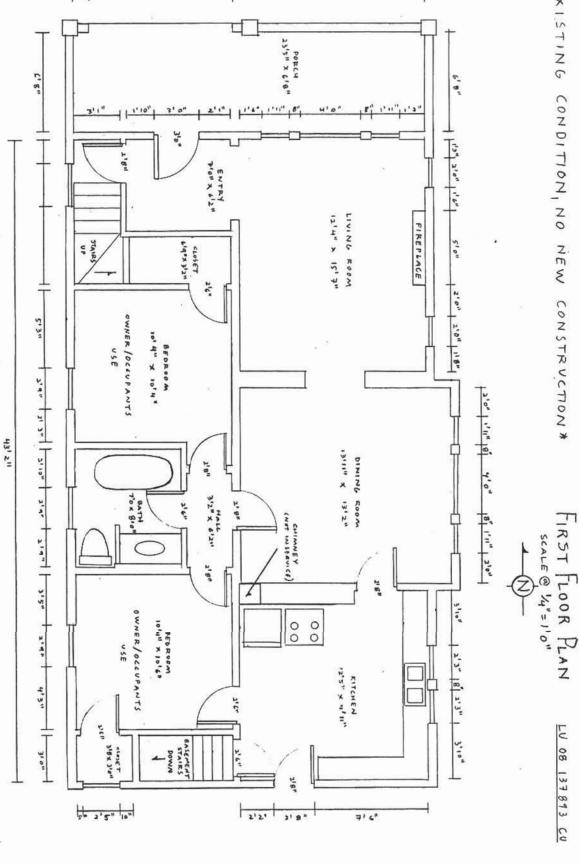


Exhibit C.2.6

\* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply. Planner Criptal City of Portland - Bureau of Development Services Hikhings Date august 4,2008 \*Approved\*

\*EXISTING CONDITION, NO NEW



12' 9"

