

City of Portland, Oregon

Bureau of Development Services

Land Use Services

FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner Paul L. Scarlett, Director Phone: (503) 823-7300 Fax: (503) 823-5630 TTY: (503) 823-6868 www.portlandoregon.gov/bds

Date: October 29, 2012 **To:** Interested Person

From: Kathleen Stokes, Land Use Services

503-823-7843 / Kathleen.Stokes@portlandoregon.gov

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has **approved** a proposal in your neighborhood. The reasons for the decision are included in the version located on the BDS website http://www.portlandonline.com/bds/index.cfm?c=46429. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 12-171874 CU

GENERAL INFORMATION

Applicant: Richard J Kroll

3360 SE Ankeny St / Portland, OR 97214

Site Address: 3360 SE ANKENY ST

Legal Description: BLOCK 90 INC 1/2 VAC ASH ST S OF & ADJ LOT 5-8, LAURELHURST

Tax Account No.: R479121270 **State ID No.:** 1N1E36DC 03500

Quarter Section: 3034

Neighborhood: Laurelhurst, contact Eric Fruits at 503-928-6635. **District Coalition:** Southeast Uplift, contact Bob Kellett at 503-232-0010.

Plan District: Laurelhurst

Zoning: R5 (R5,000, High Density Single-dwelling Residential)

Case Type: Conditional Use Review

Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal: The applicant is proposing to operate a bed and breakfast facility, with four guest rooms, in his residence at this site. The historic property, listed on the National Register of Historic Places and a City designated landmark, includes generous space for common areas that would be available for guests. On-site parking can accommodate up to six cars.

In accordance with the regulations of City Code, Section 33.212.040 E, no commercial social gatherings or meetings will be hosted. Private social gatherings of more than 8 persons would be limited to no more than 12 events per year.

In order to provide for care and maintenance of the home for the proposed operation, up to three nonresident employees would be hired. A lawn and landscaping maintenance company would also send about three employees to the site, on a weekly basis.

The applicant has proposed to enforce "house rules," that are intended to ensure that guests at the facility are respectful of the overall household and do not create any nuisance impacts for the surrounding residential area.

Relevant Approval Criteria: Institutional and Other Uses in R Zones, 33.815.105 A - E.

ANALYSIS

Site and Vicinity: The applicant's site is a 24,650 square-foot property, located on the south side of SE Ankeny Street, at the intersection with SE Floral Place. The site is designated as a National Register landmark that is developed with a 5,284 square-foot, two-story, colonial revival home that was constructed in 1912, as one of the first residences in the new Laurelhurst subdivision. The house was designed by Portland architect, A.E. Doyle, as a residence for Portland Mayor, H. Russell Albee. The structure sits at the top of a small embankment that is ascended by a formal entry stair that leads to the front porch and the portico at the front entryway. The drive presents a lazy s-curve on the west side of the house, terminating in a widened parking area adjacent to the double garage. Garden areas on the south side of the house visually merge with the abutting neighbor, Laurelhurst Park.

The adjacent park contains a little over 3.2 acres and was created, under the direction of Mayor Albee, at about the same time that that the house was built. The park was designed by Park Superintendent E.T. Mische, who was associated with renowned planner, Daniel Burnham, and recommended to the City by famed landscape architect, John C. Olmstead. The park is recognized for its rich planting plan, in the English naturalistic style. The only other neighbor that abuts the site is the 35,000 square-foot property to the west, which contains the 10,061 square-foot "Green Residence," that was constructed in 1927. (This property is also known, after the name of it's subsequent owner, as the "Bitar Mansion"). The right-of-way for SE Floral Place dead ends at SE Ankeny, directly across the street from the site. A number of other attractive vintage homes from the early 1900s are located on the north side of SE Ankeny Street, to the east and the west of SE Floral Place.

Zoning: The site is zoned R5, High Density Single-Dwelling Residential. This zone is intended to accommodate single-dwelling development, with an average of one unit per 5,000 square feet of site area. Bed and Breakfast facilities are allowed in residential zones, in accordance with the regulations of Code Section 33.212, when approved through Conditional Use Review.

The site is designated as a historic landmark. It contains the home of former Portland Mayor, H. Russell Albee, which was designed by influential Portland architect, A.E. Doyle. The property is also located within the Laurelhurst Plan District. This plan district has special minimum building setback requirements from all street property lines, which are intended to maintain the historic development pattern of the neighborhood.

Land Use History: City records include one prior land use review for this site. A Conditional Use Review, CU 097-72, was approved in 1972 to allow the location of a religious retreat house on the property. The proposal included using portions of the house for retreat space, and as a chapel and adminstrative office space. Approval was subject to a requirement that off-street parking be provided with, "adequate screening and landscaping."

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **September 25, 2012**. The following Bureaus have responded with no issues or concerns:

- Environmental Services provided information on the existing sanitary and storm water facilities for the site and the area. The bureau had no issues related to approval of the proposed Conditonal Use (Exhibit E-1).
- Transportation Engineering provided an analysis of the projected impacts on the transportation system and found that, given the small size of the proposed facility and the availablity of onsite and onstreet parking, on the abutting street frontage, that the impact would be negligible (Exhibit E-2).
- Water Bureau provided information on the existing water service for the site (Exhibit E-3).
- Fire Bureau noted the fire code must be met with the building permit review (Exhibit E-4).
- Police Bureau stated that they are capable of serving the proposed use and offered some suggestions for future safety precautions (Exhibit E-5).
- Life Safety Plan Review Section of BDS advised that a building permit is required to establish the proposed bed and breakfast facility (Exhibit E-6).

• Site Development Section of BDS and Parks-Forestry Division provided electronic responses of "no concerns."

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on September 25, 2012. One written response was received in response to this notice. A representative of the Laurelhurst Neighborhood Association wrote to say the neighborhood group had voted to oppose all bed and breakfast proposals, including this one. In the letter, they asked staff to postpone the decision on the proposal, to allow time for further discussion with the applicant, at a neighborhood meeting that is scheduled to occur on November 27th (Exhibit F-1).

(Staff Note: Staff does not have the authority to postpone a decision; only the applicant can make that determination. The applicant informed staff that he decided that he does not wish to postpone the decision for the proposal, as he felt that the neighborhood's position of opposing all bed and breakfast facilities does not leave any room for discussion).

ZONING CODE APPROVAL CRITERIA

33.815.105: Institutional And Other Uses In R Zones

33.815.040 Review Procedures

The procedure for reviews of conditional uses depends on whether the applicant is proposing a new conditional use, changing to another type of conditional use, or modifying development at an existing conditional use. The review procedure may also depend upon the type of use that is being proposed. This proposal is for the creation of a bed and breakfast facility in an R5 zone.

Bed and breakfast facilities are allowed in residential zones, in accordance with the regulations of Zoning Code Chapter 33.212. These regulations, "are intended to allow for a more efficient use of large, older houses in residential areas if the neighborhood character is preserved to maintain both the residential neighborhood experience and the bed and breakfast experience. These regulations enable owners to maintain large residential structures in a manner which keeps them primarily in residential uses. The proprietor can take advantage of the scale and often the architectural and historical significance of a residence. The regulations also provide an alternative form of lodging for visitors who prefer a residential setting." The regulations require the proposal to be approved through a Type II Conditional Use Review.

33.815.105 Approval Criteria for Non Household Living Uses in R Zones

These approval criteria apply to most conditional uses in R zones. The approval criteria allow institutions and other non household living uses in a residential zone which 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 residential area includes residentially-zoned properties within a few blocks of the site that might conceivably be impacted by visitors to the site. This area would be roughly considered to extend north to East Burnside Street, west to SE 32nd Avenue and east to SE Cesar E. Chavez Boulevard. The park provides a buffer in the OS zone to the south, so the area does not extend southward from the site. Nonresidential uses in the area include a church, located at 3212 SE 32nd Place, and a social meeting center, called

the Laurelhurst Club, which is located at 3721 SE Ankeny Street. Two nonconforming commercial properties, 3136 and 3158 East Burnside, are located at the edge of the defined residential area, at the southwest corner of East Burnside and SE 32nd Place.

The proposal will not alter the proportion of the area's uses that are not in the household living category because bed and breakfast facilities are not considered to be commercial uses, but are specifically defined (as noted in the discussion of procedure types above) to be a use that maintains the household use and character and provides flexibility to help owners of larger residential properties to meet the costs of maintaining them. Chapter 33.920.110 of the Portland Zoning Code describes the characteristics of household living and explicitly lists bed and breakfast facilities as one of the accessory uses of household living. Further, this proposal only calls for four guest bedrooms to be available, allowing a number of visitors that would be roughly equivalent to the number of people who could live in the house as a single household, without bed and breakfast status. The R5 zone could allow up to five homes to be built on this land, if it were subdivided. The proposed bed and breakfast would, therefore, result in a much smaller number of people than could be located on the site, if the house was not preserved and the property was redeveloped. There will be no increase in the size of the site or the location of the use.

The applicant notes that, through its 100 year history, the house has been the site of entertaining and frequent visitors. Events that may occur at the site, under approval as a bed and breakfast, will be limited, so the proposed facility is not expected to create any significant increase in the intensity of the use. Therefore, these criteria are met.

B. Physical compatibility.

1. The proposal will preserve any City-designated scenic resources; and

Findings: City-designated scenic resources are protected with an "s" or Scenic Resource Overlay Zone. There are no City-designated scenic resources at the site or adjacent to the site, therefore, this criterion does not apply.

- 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: The proposal does not include any physical changes to the site. As previously noted, the building is a designated historic landmark that was constructed in 1912. The building is part of the fabric of the surrounding neighborhood and will maintain its compatibility with the surrounding area and the site will also retain the existing generous setbacks, screening, landscaping and design features. Therefore, these criteria are 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: No significant adverse impacts related to noise, glare from lights, late-night operations, odors or litter are expected to result from this proposal. The exterior of the property will remain unaltered and will continue to be regularly maintained and well lighted in the evening hours. The applicant has crafted the following "house rules," for expected guests:

- No illegal activities
- No smoking on the property

- No pets
- No eating in guestrooms
- Guestrooms to be quiet after 9:00 pm
- Use of audio music devices require approval of the owner or manager
- No flood lights or laser lights used outside or inside
- No extended idling of an automobile parked in front
- Don't Litter
- Think of yourself as the neighbor next door.

No late-night activities are proposed and there will be no activities that generate any additional noise that would impact the residential area.

The applicant anticipates that his major clientele will be responsible, mature visitors who will be looking for comfortable, quiet and genteel accommodations for their visit to the City and will not present an impact on neighborhood safety. The position of the house, with only one abutting residential neighbor, and that neighbor being on an even larger parcel, means that any activities that may occur outdoors will not impact the privacy of the surrounding neighbors. Therefore, these criteria are met.

D. Public services.

1. The proposed use is in conformance with the street designations of the Transportation Element of the Comprehensive Plan;

Findings: At this location, SE Ankeny is classified as a Local Service Street for all modes. Local Streets are designed to complement planned land uses and reduce dependence on arterials for local circulation. They are multi-modal, but are not intended for trucks, other than local deliveries. A low impact use such as this will be easily accommodated by location on a local service street. Therefore, this criterion is met.

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;

Findings: Portland Transportation/Development Review has reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, Title 33, Title 17, and for potential impacts upon transportation services and provided the following analysis:

In this location, SE Ankeny is improved with sidewalk corridors that meet or exceed current minimum standards. Transit service is available nearby, on both East Burnside Street and on SE Cesar Chavez Blvd. The applicant states that there are six on-site parking spaces that will provide adequate parking for the majority of activities associated with the four-room bed and breakfast. The site has approximately 325-ft of frontage on SE Ankeny that could accommodate up to 12 on-street parking spaces. If the demand for employee and guest parking spaces exceeds the six on-site spaces, these on-street parking spaces could accommodate the demand without impacting the general on-street parking supply for adjacent residences. Traffic generated will typically not occur during the PM Peak Hours and therefore no significant impact on transportation facilities is anticipated. The transportation system can support the proposed use, in addition to existing uses in the area. Therefore, this criterion is met.

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: The service agencies responded to indicate that public services are adequate to serve the proposal. This criterion is met.

E. Area plans. The proposal is consistent with any area plans adopted by the City Council such as neighborhood or community plans.

Findings: This site is not located within the boundaries of any adopted area plan. Therefore, this criterion does not apply.

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.

CONCLUSIONS

The proposal meets all of the applicable approval criteria for the requested Conditional Use Review. The proposed bed and breakfast facility will only have four rooms for guests and will serve no more than ten guests at any time and usually will have no more than eight guests. This will not represent a change in use or intensity that will differ from the household character of the area. There will be no physical changes to the 100-year-old landmark property. House rules will direct guest to conduct themselves so that there are no impacts on the livability of the residential area. The small scale of the proposed facility will not generate any noticeable increase in traffic. Parking for guests and staff can be easily accommodated, either on-site or on the abutting street frontage. No projected impacts to City services were noted by other City agencies. The proposal can be approved, in accordance with the size, activities and house rules that have been described in the applicant's proposal.

ADMINISTRATIVE DECISION

Approval of Conditional Use Review, in general compliance with the applicant's description of the proposal, including "house rules," and the approved site plan, Exhibit C-1, signed and dated October 25, 2012.

Staff Planner: Kathleen Stokes

Decision rendered by: _____ on October 25, 2012

By authority of the Director of the Bureau of Development Services

Decision mailed: October 29, 2012

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.

Procedural Information. The application for this land use review was submitted on August 15, 2012, and was determined to be complete on **September 20, 2012**.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on August 15, 2012.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or

extend the 120-day review period. Unless extended by the applicant, **the 120 days will expire on: January 18, 2013.**

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, 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. This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on November 13, 2012** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged**. The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

• Unless appealed, The final decision may be recorded on or after **November 14, 2012.**

• 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.

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.

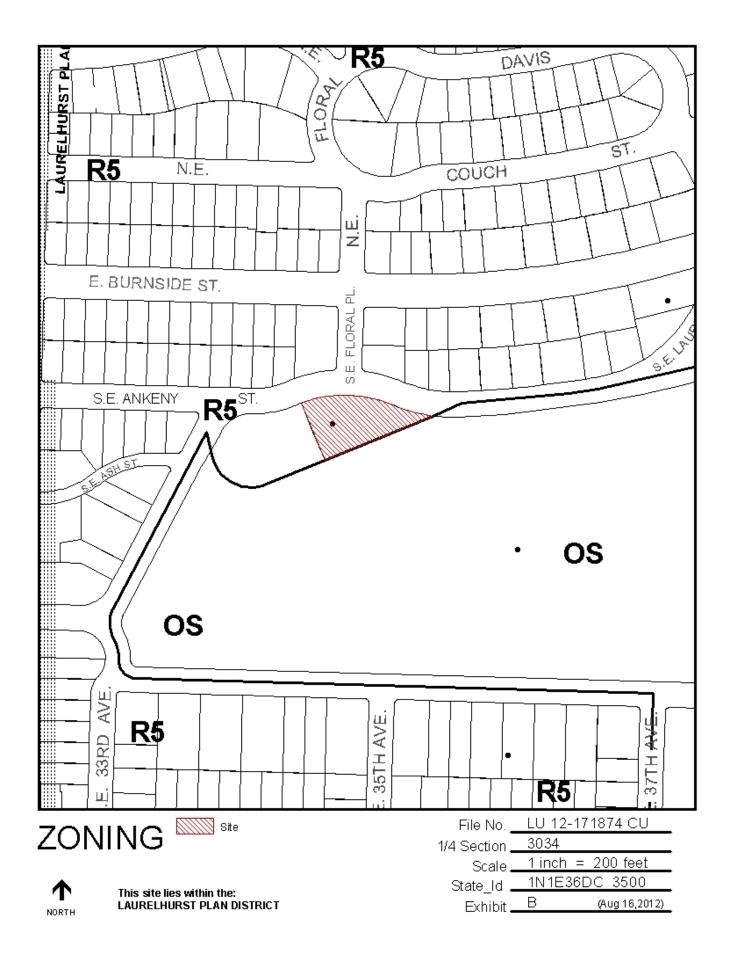
EXHIBITS

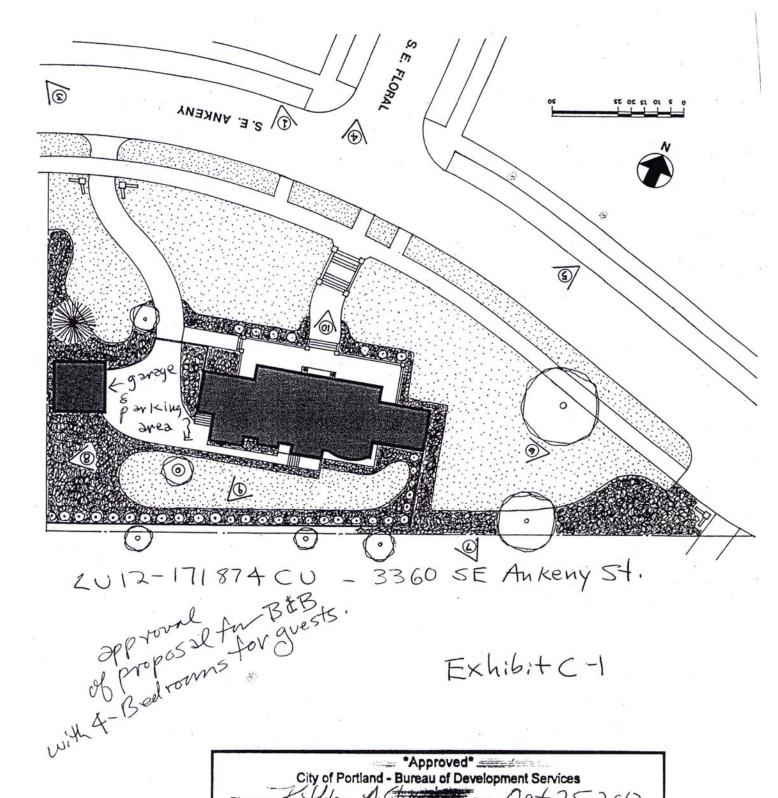
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Application, plans and original narrative
 - 2. Addendum, received September, 20, 2012
 - 3, Copy of National Register of Historic Places registration information
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Police Bureau
 - 6. Life Safety Plan Review Section of BDS
 - 7. Summary of electronic responses from City service agencies
- F. Correspondence:
 - 1. Eric Fruits, Ph.D, President, Laurelhust Neighborhood Association
- G. Other:

- 1. Site History Research
- 2. Letter from Kathleen Stokes to Richard Kroll, August 29, 2012

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).





* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.