



# Portland City Auditor

Hearings Office

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

### I. GENERAL INFORMATION

**File Number:** LU 18-125412 CU (Hearings Office 4180014)

**Applicant/Appellant/Property Owner:** Zachary Cramer  
3105 SE Hawthorne Boulevard  
Portland, OR 97214

**Hearings Officer:** Gregory J. Frank

**Bureau of Development Services (BDS) Staff Representative:** Mark Moffett

**Site Address:** 3105 SE HAWTHORNE BOULEVARD

**Legal Description:** BLOCK 2 LOT 1, BON-TON ADD

**Tax Account Number:** R087800130

**State ID Number:** 1S1E01BD 23400

**Quarter Section:** 3133

**Neighborhood:** Sunnyside

**Business District:** Hawthorne Boulevard Business Association

**District Neighborhood Coalition:** Southeast Uplift

**Zoning:** R1 (Multi-Dwelling Residential 1,000 base zone)

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

**BDS Administrative Decision:** Approval with conditions.

**Public Hearing:** The hearing was opened at 10:11 a.m. on July 18, 2018, in the third-floor hearing room, 1900 SW 4<sup>th</sup> Avenue, Portland, Oregon, and was closed at 11:03 a.m. The

applicant waived applicant's rights granted by ORS 197.763 (6)(e), if any, to an additional seven day time period to submit written rebuttal into the record. The record was closed to all testimony and/or written submissions at the end of the hearing.

**Testified at the Hearing:**

Mark Moffett  
Zachary Cramer

**Proposal:** The applicant has proposed the operation of a 3-bedroom Type B Accessory Short-Term Rental (ASTR) unit in the upstairs of the duplex at 3105 SE Hawthorne Boulevard. The upstairs of the duplex is Unit B and also the owner's residence, and is currently serving as a Tier A 2-bedroom ASTR via an administrative permit issued in March 2017. The downstairs unit, Unit A of the duplex, will remain functioning as a long-term rental with no ASTR use. While a Tier A ASTR permit is allowed by-right at this location, the Tier B ASTR permit for three bedrooms requires approval through a Type II Conditional Use Review.

No physical or exterior changes are proposed to the property with this ASTR facility. Quiet hours will be imposed from 10:00 PM to 8:00 AM and disallow parties in the listings. Non-overnight guests are allowed only during the hours of 8:00 AM to 8:00 PM, and at no time may more than two non-registered guests be present. Gathering on the front porch and in the back yard are not allowed for guests, and these spaces will be identified by the operator as available for transition to and from points of entry only. Guests will have access to a second-floor balcony that faces SE Hawthorne Boulevard, with a sign on this balcony saying the space closes at 8:00 PM, and that guests should be quiet and respectful in their volume in consideration of adjacent neighbors. A maximum of 10 guests are proposed in the three bedrooms of Unit B, and off-site employees are limited to a twice-weekly cleaning service. No food or alcohol will be served to guests, but kitchen use is available. A log book will be maintained as required with guest names, home addresses, license plates if arriving by car, dates of stay, and room assigned.

Therefore, to convert the existing Type A 2-bedroom ASTR into a Type B 3-bedroom ASTR in Unit B of the duplex at 3105 SE Hawthorne Boulevard, the applicant has requested this Type II Conditional Use Review.

**Relevant Approval Criteria:** In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found at 33.815.105.A-E, Conditional Use Approval Criteria for Institutional and Other Uses in the Residential Zones.

## II. ANALYSIS

**Site and Vicinity:** The subject site is a corner lot located at the northeast corner of the intersection of SE 31<sup>st</sup> Avenue and Hawthorne Boulevard. The site is developed with a two-story duplex originally constructed in 1909, including a large wrap-around front porch at the

main entry doors, both of which face south towards SE Hawthorne Boulevard. The property has mature landscaping in the front and side yards, and a single-car surface parking space on the southern edge of the lot, with driveway access to SE 31<sup>st</sup> Avenue.

Surrounding properties are a mix of residential, commercial, and mixed-use developments. On the same block as the subject site to the north and east, adjacent properties have similarly-scaled older homes and small residential plex buildings, some of which also have small commercial storefront elements along the street. Across SE 31<sup>st</sup> Avenue to the east, a site with a large older home has been converted to an International Youth Hostel. Storefront commercial developments and a new 4-story apartment building are located across SE Hawthorne Boulevard to the south of the site.

Southeast Hawthorne Boulevard abutting the site is improved with a two-way, four-lane roadway with on-street parking in both directions, as well as curb-tight sidewalks with no street trees. Southeast Hawthorne Boulevard is classified as a Major Transit Priority Street, City Walkway, and City Bikeway in the City of Portland Transportation System Plan (TSP). Southeast 31<sup>st</sup> Avenue abutting the site is improved with a paved roadway, on-street parking, and planting strips between the curbed roadway and the concrete public sidewalks, with mature street trees in the planting strips. Southeast 31<sup>st</sup> Avenue is classified as a Local Service Street for all modes in the City of Portland TSP.

**Zoning:** The R1 zone is a medium-density multi-dwelling zone, with new development typically involving condominiums and apartments. The maximum density is one dwelling unit per 1,000 square feet of site area, with additional density possible through the use of bonus options. Accessory Short-Term Rentals (ASTR's) are allowed in dwelling units for two-bedrooms as a Type A facility via administrative permit. The Type B ASTR facilities having three to five bedrooms require a Type II Conditional Use Review.

**Land Use History:** City records indicate no prior land use reviews for this site.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed April 18, 2018. The following bureaus have responded:

The *Bureau of Environmental Services* (BES) has reviewed the proposal and notes that this project has no issues related to the public services criterion for stormwater and sanitary sewer services. No changes are proposed that would trigger BES regulations for sanitary or stormwater. Additionally, sanitary sewer service is available via a sewer within the site's frontage. Therefore, BES has no concerns or objections to approval of this application (Exhibit E.1).

The *Development Review Section of Portland Transportation* (PBOT) has reviewed the proposal and responded with detailed comments, findings, and a recommended condition of approval. These findings are discussed in detail under the public services approval criterion, later in this

decision document. With the condition of approval as requested, PBOT staff has no objection to the proposal. Exhibit E.2 contains staff contact and additional information.

The *Water Bureau* has reviewed the proposal and responded without objection, comment, or concern (Exhibit E.3).

The *Fire Bureau* has reviewed the proposal and responded without objection, comment, or concern (Exhibit E.4).

The *Police Bureau* has reviewed the proposal and responded with no concerns, verifying that they are capable of serving the proposed use. Exhibit E.5 contains staff contact and additional information.

The *Site Development Section of BDS* has reviewed the proposal and responded without objection, comment, or concern (Exhibit E.6).

The *Urban Forestry Division of Portland Parks and Recreation* has reviewed the proposal and responded without objection or concern with regards to street trees. If right-of-way improvements are required, street trees may be required per the City Forester. Exhibit E.7 contains staff contact and detailed street tree specification information.

The *Life Safety Section of BDS* has reviewed the proposal and does not object. Based on the information provided, there appears to be no conflicts between the proposal and applicable building codes. Exhibit E.8 contains staff contact and additional information.

**Neighborhood Review:** No letters from nearby neighborhood residents or the ONI-recognized associations were received during the comment period.

**Summary of Appeal Hearing:** BDS planner Mark Moffett (“Moffett”) appeared at the July 18, 2018 appeal hearing (the “Hearing”) and testified on behalf of BDS. Mr. Zachary Cramer (“Cramer”), the Applicant and Appellant, appeared at the Hearing and testified on his own behalf. Moffett and Cramer agreed the sole issue to be decided by the Hearings Officer, in this appeal case, was whether or not Portland City Code (“PCC”) 33.815.105.A.2 was properly interpreted by BDS in the Notice of a Type II Decision on a Proposal in Your Neighborhood document dated May 30, 2018 (Exhibit H.2 – hereafter the “Staff Decision”). Specifically, Cramer argued that the BDS conclusion that limited nightly room occupants to two is unsupported by the PCC or any other relevant regulations. Further, Cramer argued that granting approval for 10 overnight occupants (if three bedrooms available) or five overnight occupants (if two bedrooms available) would not increase the intensity of the proposed use in light of PCC 33.815.105.A.2.

Moffett, at the Hearing, indicated that the Subject Property is located at the corner of SE 31<sup>st</sup> and SE Hawthorne Boulevard. Moffett stated that the Subject Property is zoned R1 (Multi-

Dwelling Residential 1,000 base zone). Moffett stated that near the Subject Property is a youth hostel, multi-story apartment building, and one or more commercial uses. Moffett noted that Cramer's request for approval, in this case, was for 10 overnight house guests (when three bedrooms available). Moffett stated that BDS is currently attempting to establish more objective standards and/or conditions to be placed upon ASTR uses to allow for better and more equitable code enforcement. Moffett stated that BDS' goal, in this case, was to permit a level of intensity at the proposed ASTR that would be similar to a standard household use.

Moffett stated that BDS concluded that the common upper limit on number of occupants per bedroom per night is two persons. Moffett indicated that if three bedrooms are available (95 days per year) then six overnight guests would be allowed at the subject property and if two bedrooms are available (270 + days per year) then only four overnight guests would be allowed.

Moffett noted that the traffic study prepared by Appellant and reviewed by PBOT used 10 overnight guests in their calculations. Moffett indicated PBOT approved the Appellant's traffic study.

The Hearings Officer requested that both Moffett and Cramer provide citations to the PCC or Portland Policy documents discussing a methodology or protocol when determining the level of intensity (number of overnight occupants per room). Moffett referenced PCC 33.207.050.B.5 and PCC 33.207.040.B.5. Moffett stated neither of these sections provided a methodology or protocol to be used in determining what level of intensity (number or overnight occupants per bedroom).

Cramer testified that he requested 10 overnight guests be authorized at the Subject Property. Cramer stated his request was based upon the large size of the unit being rented, the large size of one of the bedrooms, the character of the immediate neighborhood, and the fact that other short term rental sites allowed more than two overnight occupants per bedroom. Cramer stated that the youth hostel, located directly across the street from the Subject Property, on SE 31<sup>st</sup>, has an overnight capacity of 40 persons. Directly across SE Hawthorne from the youth hostel is a three-story apartment building with 31 units. Cramer notes some of the apartment units are as small as 350 square feet in size. Cramer stated that a Cuban restaurant is located directly south of the Subject Property, across SE Hawthorne. Cramer stated the restaurant plays fairly loud music most evenings as late as 10:00 p.m. Cramer stated numerous commercial uses are located in the immediate vicinity of the Subject Property along SE Hawthorne.

The Hearings Officer finds, based upon the testimony of Moffett and Cramer, that only one section of the findings for the Administrative Decision is being contested by Cramer (first full paragraph, page 5). Cramer also contests the validity of Approval language (page 11) limiting the number of overnight guests to two per occupied bedroom. The Hearings Officer, therefore, finds the balance of the Administrative Decision to be accurate and valid. The Hearings Officer

finds no changes to the Administrative Decision need to be made excepting to the first full paragraph on page 5 and the approval language on page 11.

The Hearings Officer adopted the BDS staff descriptions and findings for the following sections of the Administrative Decision related to Site and Vicinity, Zoning, Land Use History, Agency Review, and Neighborhood Review. The Hearings Officer adopts the Administrative Decision findings for PCC 33.815.105.A.1, PCC 33.815.105.B, C, D and E. The Hearings Officer modifies the Administrative Decision findings for PCC 33.815.105.A.2, the Conclusion and Administrative Decision. The Hearings Officer adopts the Administrative Decision conditions of approval.

## **ZONING CODE APPROVAL CRITERIA**

### **33.815.010 Purpose of Conditional Use Reviews**

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

**Findings:** The “residential area” for purpose of this criterion is the residentially-zoned land found within approximately 400 feet of the site, or just slightly beyond the distance used for notifying property owners of this Type II land use review. In this case, the “residential area” includes the adjacent properties under R2.5 zoning to the north of the site (extending just south of SE Main Street), as well as

the R2.5 and R5-zoned areas south of Hawthorne but north of SE Market Street, all between SE 30<sup>th</sup> and 32<sup>nd</sup> Avenues. All but one of the properties in this residential area are developed with single-family homes or small duplex or multi-dwelling structures, and most are older structures from the Victorian and streetcar eras of the 19<sup>th</sup> and 20<sup>th</sup> centuries. The one exception to this residential character is an older home with a small single-story storefront commercial space off the basement, currently developed with a small nonconforming retail use at 3129 SE Hawthorne Boulevard.

At the time this decision was written, there is only one other ASTR facility within this residential area besides the Type A facility that already exists at the site, which will be converted into a Type B facility if this land use review is approved. That other ASTR is a Type A facility permitted in the home at 1616 SE 30<sup>th</sup> Avenue (@ Market Street on NE corner of intersection).

Given this surrounding residential context, and because an existing Type A ASTR facility is already permitted and operating at the site, the proposal would not increase the number, size or location of other uses in the area. The increase in bedrooms is an increase in intensity and scale of the use, and will be considered separately under criterion 33.815.105.A.2. To avoid confusion about two ASTR facilities operating at the same location, and to clarify that the Type B ASTR facility replaces the Type A ASTR facility which was previously permitted in the same dwelling unit, a condition of approval is necessary. To clarify that any approval for a Type B ASTR at the site is replacing the existing Type A ASTR facility, this will be explicitly noted in a condition. This condition will include language that the Type A ASTR permit is voided and no longer valid on the site once the Type B ASTR facility begins operations. With this condition of approval, the total number of ASTR uses on the site will remain the same, consistent the intent of this approval criterion.

Otherwise, considering this use is confined to operation on the site of an existing duplex, and with a condition ensuring the Type B ASTR replaces the earlier Type A ASTR, the overall residential appearance and function of the area will not be significantly lessened due to the modest increase in the proportion of ASTR activity in the area. Therefore, with the noted condition of approval, this criterion is met.

2. The intensity and scale of the proposed use and of existing Household Living uses and other uses.

**Findings:** The proposal is to allow all three bedrooms in the upper (Unit B) to be used as an ASTR. The unit itself has only three bedrooms, so for 270 days per year, only two of the bedrooms will be rented out at any one time, as the third bedroom will be reserved for the resident operator, who in this case is also the

property owner. No commercial events or other large gatherings are proposed. No food and alcohol will be served to guests, and off-site employees are limited to a twice-weekly visit by a janitorial contractor to clean the interior. Yard maintenance will be done by the property owner.

The proposed house rules (Exhibit A.3) have significant restrictions regarding the use of outdoor spaces. Parties are not allowed, and non-overnight guests may only be in the rental unit from 8:00 AM to 8:00 PM, and at no time may more than two non-registered guests be present. Guests are not allowed to congregate on the front porch or in the back yard of the facility at any time, for any reason. Those spaces are to be used only for transition to and from points of entry. The second-floor balcony to which guests have access is on the Hawthorne Boulevard side of the duplex, on the upper floor at the southeast corner of the structure. The house rules require a sign to be posted on the porch stating that guests may not use the porch after 8:00 PM, and that guests on the porch must be quiet and respectful in their volume in consideration of neighbors.

Proposed quiet hours inside the unit are from 10:00 PM to 8:00 AM. These are reasonable hours for limiting potential late-night noise and nuisance impacts associated with ASTR guests, if such guests were always contained inside a sound-proofed building with no window openings. During the summer and on other nice days and especially evenings, however, interior noise from gathering guests in rooms with windows open could conceivably bother neighbors after 9:00 PM, which is a more reasonable cut-off time for noisy activity in residential areas where nearby neighbors must get up early for work. In order to ensure that noise and outdoor activity are kept to a minimum, a condition of approval will require the applicant to maintain the house rules proposed in Exhibit A.3 over time, with the exception that indoor quiet time shall be from 9:00 PM to 8:00 AM daily.

The following language was found in the original Administrative Decision (page 5, first full paragraph):

“The intensity and scale of the use is dependent on the facility operating only with the proposed number of guests (10) and bedrooms (3) as proposed in this application. As proposed, however, the number of guests is excessive for what would be typically reasonable in terms of intensity and scale for a three-bedroom facility where only bedrooms are available to rent. For a household living use, the typical occupancy of a single bedroom is a maximum of two people. Ten people occupying a three bedroom facility means three people in each bedroom plus a tenth individual sleeping in common spaces, or two people in each bedroom plus four individuals sleeping in common spaces: this exceeds the



intensity and scale intended for the ASTR facilities, which are designed and limited by code to approximate the activity level usually associated accessory activities within a primary household living use. In addition, for 270 days per year only two bedrooms will be available, as the resident operator will be occupying the third bedroom. In order to provide for two residents per bedroom in an effort to ensure the facility operates within an appropriately accessory intensity and scale when compared to the primary household living use. Therefore, in order to be consistent with the intent of renting out bedrooms in an existing dwelling unit, the approval language for this decision will allow only 2 guests per bedroom, and clarify the annual limits on use of the facility as a 3-bedroom rental, which can only be up to a maximum of 95 days per year. With approval language ensuring a guest maximum of 6 when three bedrooms are rented, and 4 when two bedrooms are rented, the overall intensity and scale of the facility will remain within the levels associated with accessory activities associated with a primary household living use.”

The Hearings Officer deletes the quoted section above and replaces that section with the following language:

“Moffett, at the Hearing, acknowledged that there is no clear and definitive code or regulatory language describing a process or methodology in determining how to calculate the number of overnight guests per rentable room in an ASTR that will satisfy the ‘intensity and scale’ requirement for PCC 33.815.105.A.2. Moffett testified that BDS staff currently use two persons per occupied bedroom, in an ASTR, as the upper limit which will satisfy PCC 33.815.105.A.2.

“Cramer, the Appellant, Applicant, and owner of the Subject Property, testified that the immediate area surrounding the Subject Property contains a youth hostel (40 occupants per night), a three-story apartment building and at least two restaurants. Cramer described SE Hawthorne as being a four-lane roadway with parking on both sides. Cramer described the character of the immediate area surrounding the Subject Property as being highly urban, busy, noisy and not at all similar to a quiet residential neighborhood. Cramer described the portion of the duplex sought to be permitted as a Type B ASTR as large and spacious.

“Cramer argued that permitting 10 overnight occupants (if three bedrooms available) or five overnight occupants (if two bedrooms available) will not overwhelm the Subject Property or its immediate neighborhood because of its intensity and scale. Cramer indicated that increasing the number of overnight occupants from six to 10 (if three bedrooms available) and four to five (if two bedrooms available) will have no discernable impacts on the neighborhood.

“The Hearings Officer finds BDS Staff have no clear set of standards to determine the appropriate number of overnight guests staying in an ASTR bedroom. The Hearings Officer, in this case, finds BDS’ justification for two persons per bedroom was that typically household uses have two persons per bedroom. The Hearings Officer finds Cramer’s approach to determining the ‘intensity and scale’ impacts from overnight occupants of an ASTR included a review of the character of the immediate neighborhood and size of space in the ASTR. The Hearings Officer finds Cramer’s testimony and argument should prevail. The Hearings Officer finds, based upon the character of the immediate neighborhood, as described by Cramer, and the size of the rental unit/bedrooms that permitting a total of 10 overnight occupants (if three bedrooms are available) or five overnight occupants (if two bedrooms are available) is appropriate intensity and scale for Cramer’s proposed Type II ASTR.”

If complaints are made by neighbors that the intensity of the use is exceeding what was permitted, the City must investigate and verify the intensity level conforms with this conditional use decision. In order to do so, City staff will verify that the advertisements for the ASTR in question prominently display the number of bedrooms and people allowed in the facility per nightly rental. Availability of the ASTR must also conform to residency requirements, whereby the presence of the resident operator limits the facility to only two bedrooms for at least 270 days per year, when the resident operator is sleeping there each night, too. Secondly, confirmation data from the authorized rental organization (such as Airbnb or VRBO) should be made available to City staff upon request, including the name, home address, and phone number of all ASTR guests, including the dates of stay. With conditions requiring that all advertisements include the maximum number of bedrooms and guests consistent with this decision and the residency requirements of Chapter 33.207, and with another condition requiring the provision of confirmation data from the associated rental organization(s) such as Airbnb or VRBO, the intensity and scale of the use can be regulated and verified over time by City staff in the event of neighbor complaints and concerns.

With a condition that the house rules be implemented as proposed, with the exception of changing the indoor quiet time to be from 9:00 PM to 8:00 AM daily instead of from 10:00 PM to 8:00 AM, the proposal will not significantly lessen the overall residential character and appearance of the area based on the intensity and scale of the proposed Type B ASTR use. With conditions of approval requiring advertisements to list the guest and bedroom limitations of the facility, and requiring confirmation data from the relevant authorized rental organizations to be provided upon request to City staff, the intensity and scale of the use can be monitored and controlled if necessary over time. Therefore, with the conditions of approval as noted, this criterion is met.

**B. Physical compatibility.**

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

**Findings:** There are no City-designated scenic resources on or near the site. 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, tree preservation and landscaping; or

**Findings:** No changes are proposed to the exterior of the duplex with this proposal, and the site appearance, setbacks, on-site landscaping, and other site features will remain the same as today. The site retains the appearance of a streetcar-era detached duplex on a lot with residential-type appearance and landscaping, similar to many other nearby homes and structures. No additional on-site parking or other alterations that would impact the green spaces or development on the site are proposed. With no physical changes to the structure or site exterior as proposed, the proposal will be compatible with adjacent residential developments based on these physical characteristics, and this criterion can be met.

3. The proposal will mitigate differences in appearance or scale through such means as setbacks, screening, landscaping, tree preservation, and other design features.

**Findings:** Because the site maintains the appearance of an existing detached duplex similar to other homes and duplexes in the nearby area, there are no differences in appearance or scale that require mitigation. 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

**Findings:** No changes to outdoor lighting are proposed, and neither odors nor litter are expected to result from the use of the home as an ASTR. The most likely impacts of the ASTR use would be noisy guests using the outdoor spaces during the late hours, or causing other noise issues for abutting or nearby properties. To address this concern, the applicant has proposed house rules that would limit the hours of indoor noise: quiet hours are proposed from 10:00 PM to 8:00 AM. Use of the outdoor spaces beyond the upper-floor Unit B porch which faces SE Hawthorne Boulevard are limited to passage in and out of the ASTR unit, and use of the outdoor porch features signage and nightly cut-off time for guest use of 8:00 PM. A condition of approval will ensure that the proposed house rules shown in Exhibit A.3 are implemented for the life of the ASTR facility. This condition will also increase the indoor quiet hours by one hour, to begin each evening at 9:00 PM instead of 10:00 PM, in order to reduce potential noise for nearby neighbors on warm evenings when windows in the area are likely to be open, allowing the human voice and voice projection to travel further from the site.

A condition of approval will also require the applicant to provide the name and phone number of the resident operator to all recognized associations whose boundaries include the site (currently Sunnyside Neighborhood Association and Southeast Uplift District Coalition). This information should be provided prior to operation of the use, at least once annually while the facility is in operation, and should also be sent to the residents and owners of residentially-owned property nearby and abutting the property (1403 SE 31<sup>st</sup>, 1411 SE 31<sup>st</sup>, 1404 SE 31<sup>st</sup>, 1412-1420 SE 31<sup>st</sup>, 3107-3109 SE Hawthorne, 3117 SE Hawthorne). The applicant will be required to keep a log of these notifications, including the list of who was notified and when, for inspection by City staff upon request. With this condition of approval, significant adverse impacts on the livability of surrounding properties can be addressed.

With approval granted on the condition that house rules be maintained, that indoor quiet time be followed from 9:00 PM to 8:00 AM daily, and with annual notification to neighbors providing resident operator contact information, the proposal will not have significant adverse impacts on nearby residential livability in terms of noise, light, glare, late-night activities, odors or litter. Therefore, this criterion is met.

2. Privacy and safety issues.

**Findings:** The Life Safety Section of the Bureau of Development Services has reviewed the proposal and responded without comment or concern, noting that Building Codes apply. However, consistent with requirements for the Type A ASTR

facilities, this facility will also be required to document via a special inspection that each sleeping room meets legal sleeping room requirements, and that the facility has interlinked smoke detector and carbon monoxide alarms (per Portland Zoning Code Section 33.207.050.B.4). This inspection was conducted for the two-bedroom Type A ASTR facility at the site, but all three bedrooms need inspection for this Type B ASTR as proposed.

Routine issues of smoke detectors, carbon monoxide alarms and egress issues are addressed through a condition of approval requiring a fee-paid inspection for these issues prior to operation of the ASTR use. With the quiet hours limiting noise and activity out-of-doors at the facility, there are no other anticipated privacy or safety issues associated with this use, which involves private renters using the existing upper unit in the duplex as temporary lodging. No adverse safety- or privacy-related impacts are anticipated regarding the guest sleeping rooms inside the duplex.

With the noted conditions of approval regarding a special fee-paid inspection to verify that life safety issues are provided for as required by the Portland Zoning Code for such ASTR facilities, 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;

**Findings:** Staff from Portland Transportation has reviewed the proposal for street designations and has responded as follows (Exhibit E.2 excerpt):

*“At this location, the City’s Transportation System Plan (TSP) classifies SE Hawthorne as a District Collector, Major Transit Priority Street, City Walkway, City Bikeway, Truck Access Street, and Community Main Street. The TSP classifies SE 31<sup>st</sup> as a Local Service Street for all modes. The TSP states “District Collectors are intended to serve as distributors of traffic from Major City Traffic Streets to streets of the same or lower classification. District Collectors serve trips that both start and end within a district.” The TSP states “Local Service streets provide local circulation for traffic, pedestrians and bicyclists” and that “Local Service Traffic Streets are intended to distribute local traffic and provide access to local residences or commercial uses.” The proposed accessory short-term rental (ASTR) is supportive of the designations of the adjacent street.”*

With these findings from PBOT staff in Exhibit E.2, 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:** Staff from Portland Transportation has reviewed the proposal for the above evaluation factors and has responded as follows (Exhibit E.2 excerpt):

**“Street Capacity/Level of Service**

To address this evaluation factor, the applicant submitted a Traffic Impact Analysis (TIA) prepared by Lancaster Engineering, dated April 10, 2018. This TIA evaluated five nearby intersections, which were observed on Tuesday, March 27, 2018. The TIA estimated the number of vehicle trips generated by the proposed development, using the manual *Trip Generation, 9<sup>th</sup> Edition*, published by the Institute of Transportation Engineers (ITE). Specifically, the TIA used category #320 Motel and #210 Single-Family Detached Housing to estimate the expected number of trips to be generated by the proposed development.

“Any services that may be provided to operate an ASTR-- such as landscaping, regular maintenance, or cleaning-- will be consistent with a typical single-family home and are not expected to occur during peak hours. The TIA estimated a total increase of 6 weekday vehicle trips generated by the proposed use. The TIA concluded that the ‘short term rental of the unit is anticipated to have negligible impact on operation of the study area intersections due to the low anticipated increase in trip generation... the study intersections will continue to operate acceptably either with or without the addition of site traffic.’ The TIS concludes that ‘the study roadways and intersections meet the City of Portland’s operational standards and are capable of safely supporting the existing uses as well as the proposed use of the site. No capacity or level of service mitigations are necessary or recommended.’ PBOT agrees with this assertion.

**“Access to Arterials**

The proposed ASTR site is at the intersection of SE Hawthorne and SE 31st, 1,600 ft from SE Belmont, 2,000 feet from SE Division, and 2,700 ft from SE Powell. It is in close proximity to arterials and therefore connected to the City’s broader transportation system.

The site is within a gridded street network that provides convenient vehicle access to arterials.

**“Connectivity**

The proposed development is in an area with established block patterns and within walking distance of destinations including multiple restaurants and a grocery store on SE Hawthorne Blvd. The site is in close proximity to bikeways that provide access to Portland’s downtown core. PBOT has no concerns relative to connectivity and this proposed Conditional Use request.

**“Transit Availability**

The proposed development is within 275-ft of a stop for the #14 bus that travels to downtown Portland. The site is within 0.4-mile of a stop for the #15, 0.5-miles of the #75 bus, 2,000-ft of the #4, and 1.0 miles of the #70. The buses accessible from the subject location provide access to downtown and the greater Portland metro area. Comfortable and safe sidewalks are available throughout the neighborhoods surrounding the proposed development. The area provides sufficient transit facilities and bus stops to serve existing and proposed development.

**“On-Street Parking Impacts**

Lancaster Engineering conducted parking observations in the site vicinity on March 28, 2018. The TIA stated that 88 spaces were available in the site vicinity, 62 vehicles parked, and space for 26 vehicles remaining. The TIA states ‘the actual observed parking capacity was approximately 70 percent utilized for this area.’ PBOT considers 80% approaching full (heavily parked) and 85% full. The TIA estimated the parking demand will increase by 1 vehicle during the overnight period. Therefore, PBOT staff finds that the existing on-street parking is capable of supporting the proposed use in addition to the existing uses in the area. *The applicant is strongly advised to provide information to prospective guests that on-street parking is limited and that viable alternate modes of transportation are readily available near the ASTR.*

**“Access Restrictions**

Vehicle access to the existing house will continue to be provided via a driveway/curb-cut on SE 31st PBOT has no access restriction concerns.

**“Adequate Transportation Demand Management Strategies**

The applicant proposes transportation demand management measures that will reduce demand on the transportation system, including on-street parking. These measures include providing:

- 1) Provide secure on-site bicycle parking.
- 2) Provide two bicycles for use by renters.
- 3) Information and maps showing popular destinations and amenities in the area, about bicycle rental and car-share, and transit maps as well as information about the nearest bus stops.

*“As a condition of approval the applicant is also required to provide information to guests about how to use MAX service to get from the airport to downtown or the subject development site.*

#### **“Neighborhood Impacts**

The development site is within an area zoned for commercial use and is between areas zoned for single-family and multi-family use. The development is within a commercial corridor on SE Hawthorne, and within an area in which there are several commercial corridors and related activity. Impacts related to additional trips generated will be mitigated because the proposed use is in a neighborhood with a gridded street pattern and multiple points of entry and egress existing to and from the subject parcel. The increase in vehicle trips from the proposed development is not expected to negatively impact the operations of area intersections. Additionally, based on the analysis provided by the TIA, the vicinity of the proposed development is expected to be able to meet the demand for one additional parking space generated by the proposed use. The TIA also states that the proposed use keeps with the residential character of the surrounding neighborhood... and will have negligible impacts on the circulation of pedestrians, bicycles, or transit.” As such, staff finds that the proposed use will be able to be incorporated into the existing development pattern in the area with minimal impacts to the neighborhood.

#### **“Impacts on Pedestrian, Bicycle, and Transit Circulation**

There is no reason to believe that the proposed ASTR will result in any negative impacts to pedestrian, bicycle, or transit circulation in the area.

#### **“Safety for All Modes**

The TIS states *‘no crash patterns and no significant safety deficiencies were identified at any of the study area intersections.’*



Streets in the immediate vicinity have sidewalks with curbs. PBOT has no concerns related to safety for all modes.

#### **“TITLE 17 REQUIREMENTS**

- 1. TSP Classifications:** At this location, the City’s Transportation System Plan (TSP) classifies SE Hawthorne as a District Collector, Major Transit Priority Street, City Walkway, City Bikeway, Truck Access Street, and Community Main Street. The TSP classifies SE 31<sup>st</sup> as a Local Service Street for all modes.
- 2. Existing Conditions:** According to City GIS, at this location SE Hawthorne is improved with a 52-ft paved roadway and 9-ft sidewalk corridor (7-2 configuration, with ~9-ft behind the curb), within a ROW that is 70-ft in width. SE 31<sup>st</sup> is improved with a 26-ft paved roadway and 12-ft sidewalk corridor, in a right-of-way that appears to be 50-ft in width. *Note: The information in this document is derived from City of Portland GIS data, which may be inaccurate. A survey will be necessary for accurate ROW information.*
- 3. Standard Improvements**  
**SE Hawthorne:** According to the *Pedestrian Design Guide*, standard improvements at this location on SE Hawthorne include a 12-ft sidewalk corridor, to consist of a 0.5-ft curb, 4-ft furnishing zone, 6-ft sidewalk corridor, and 1.5-ft frontage zone. **Due to the width of the sidewalk corridor, reconstruction of the sidewalk corridor and the sidewalk corner on SE Hawthorne are not required in relation to the proposed development.**  
**SE 31<sup>st</sup>:** According to the *Pedestrian Design Guide*, standard improvements at this location on SE 31<sup>st</sup> include an 11-ft sidewalk corridor, to consist of a 0.5-ft curb, 4-ft furnishing zone, 5-ft sidewalk corridor, and 0.5-ft frontage zone. However, TRN 1.22 “Infill Development on Streets with an Existing Sidewalk Corridor” applies at this location. **Therefore, the applicant is not required to reconstruct the sidewalk corridor on SE 31<sup>st</sup> in relation to the proposed development.**
- 4. Dedication:** Dedication is not required in relation to the proposed development.

**“Transportation System Development Charges (Chapter 17.15)** may be assessed for this development. The applicant is advised to leave a voicemail message to include the case file number, at (503) 823-7002, Option 2. Additional information about PBOT SDCs can

be located at this link:

<https://www.portlandoregon.gov/transportation/46210>

**“Curb cuts and driveway construction must meet the requirements in Title 17.** The Title 17 driveway requirements will be enforced during the review of Building Permits.

**“RECOMMENDATION**

PBOT has no objection to the proposed Conditional Use, subject to the following condition:

1. As a condition of Conditional Use Permit approval, the applicant shall maintain a current and active Transportation Demand Management Plan, as proposed for this land use review, *yet amended to provide information to guests about how to use MAX service to get from the airport to downtown and/or the subject development site.*”

Based on the above findings, and with a condition of approval regarding Transportation Demand Management as amended and requested by PBOT staff, 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 Water Bureau and Fire Bureau have reviewed the proposal and responded without objection, as has the Bureau of Environmental Services (Exhibits E.3, E.4 & E.1). The Police Bureau has reviewed the proposal and responded with the statement that public services are adequate to serve the proposed use (Exhibit E.5). Therefore, this criterion is 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 site is within the boundaries of the *Sunnyside Neighborhood Plan (1999)*. Policy 4, Land Use seeks to “ensure that residential uses predominate in areas of Sunnyside designated for residential use in the Comprehensive Plan” (pp. 55-56). The proposal maintains a primary household living use at the site by virtue of the fact that a resident will be present in the unit for at least 270 days per year. The ASTR use is accessory to the primary residential use by definition and overall function. Requiring implementation of Transportation Demand Management (TDM) measures through a condition of approval is consistent with the alternative transportation and mode split

goals of Policy 8, Transportation. There are no other relevant goals or policies in the plan that speak directly to this proposal. 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 requirements of Title 11 can be met, and 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 Applicant has proposed a three-bedroom Type B Accessory Short-Term Rental (ASTR) facility in the upper unit (Unit B) of the duplex at 3105 SE Hawthorne Boulevard. Use of the outdoor spaces is strictly limited for guests, with the exception of the original upper story cover porch on the second floor facing SE Hawthorne, where signage informs guests that use of this outdoor space must terminate by 8:00 PM. Indoor quiet hours and other house rules will help limit impacts on the surrounding residential areas and enforcement-related conditions provide for neighborhood communication and access to relevant operational data by City staff over time if any livability issues arise with the use. Because the proposal is able to meet the approval criteria with conditions, the request must be approved. The Hearings Officer modifies the BDS Administrative Decision to allow 10 overnight guests if three bedrooms are rented and five overnight guests if two bedrooms are rented.

## **IV. DECISION**

**The Appellant prevails in this appeal.**

**Approval of a Conditional Use Review** for a Type B Accessory Short-Term Rental Facility with a maximum of three bedrooms with up to ten (10) guests for up to 95 days per year, and a maximum of two bedrooms with up to five guests for up to 270 days per year, both occurring exclusively in the upper unit (Unit B) of the duplex at 3105 SE Hawthorne Boulevard, per the approved site and floor plans, Exhibits C-1 and C-2, signed and dated May 23, 2018, and subject to the following conditions:

- A. Upon commencement of the Type B ASTR operations at the site, this Type B land use review approval for the site shall replace the existing Type A ASTR permit (#17-104061 HO), which will become void and no longer be valid on the site.
- B. The Applicant shall implement the house rules for the life of the ASTR facility, including limitations on outdoor access and rules about parties (none allowed) and non-guest visitors

(maximum two at any time, only from 8:00 AM to 8:00 PM), as described in detail in Exhibit A.3. The only change to the written house rules proposed by the Applicant is that indoor quiet hours in the facility shall be from 9:00 PM to 8:00 AM (beginning one hour earlier than the 10:00 PM start time proposed) daily. These rules shall be posted in the ASTR, and on any online listing or advertising sites on which the ASTR facility is listed or advertised.

- C. All advertisements for the ASTR shall display prominently in the title of the advertisement the maximum number of bedrooms and the maximum number of guests allowed per nightly rental. Listing availability and any booking calendars should also reflect the fact that only two bedrooms are available for at least 270 days per year, when the resident operator is using one of the three sleeping rooms.
- D. Confirmation data from the authorized rental organizations (such as Airbnb or VRBO) shall be provided to City staff upon request. Confirmation data must include the name, home address, and phone number of all ASTR guests, and the dates of stay.
- E. Prior to operation of the Type B ASTR facility, and at least once annually thereafter as long as the use is in operation, the Applicant must provide the name and contact phone number for the resident at the site, or the operator if the operator is not the resident, to the recognized neighborhood association and district coalition for the site (currently Sunnyside and Southeast Uplift, respectively), as well as to residents and owners of the following nearby properties: 1403 SE 31<sup>st</sup>, 1411 SE 31<sup>st</sup>, 1404 SE 31<sup>st</sup>, 1412-1420 SE 31<sup>st</sup>, 3107-3109 SE Hawthorne, 3117 SE Hawthorne. The Applicant shall keep a hard copy of these initial and ongoing notifications, including the list of who was notified and when, for inspection by City of Portland staff upon request.
- F. Prior to operation of the facility, the Applicant must pay for and successfully obtain City of Portland approval on a fee-paid inspection from the Bureau of Development Services to verify all three sleeping rooms conform to Zoning Code 33.207.050.B.4.a-c (egress from sleeping rooms, carbon monoxide and smoke detectors).
- G. The Applicant shall maintain a current and active Transportation Demand Management Plan, as proposed for this land use review in the Lancaster Engineering memo on page 13 of Exhibit A.4, yet amended to provide information to guests about how to use MAX service to get from the airport to downtown and/or the subject development site.



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Gregory J. Frank, Hearings Officer

Date: July 27, 2018

**Application Determined Complete:** April 12, 2018  
**Staff Decision to Hearings Officer:** July 2, 2018  
**Decision Mailed:** July 27, 2018  
**Last Date to Appeal:** August 17, 2018

**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.

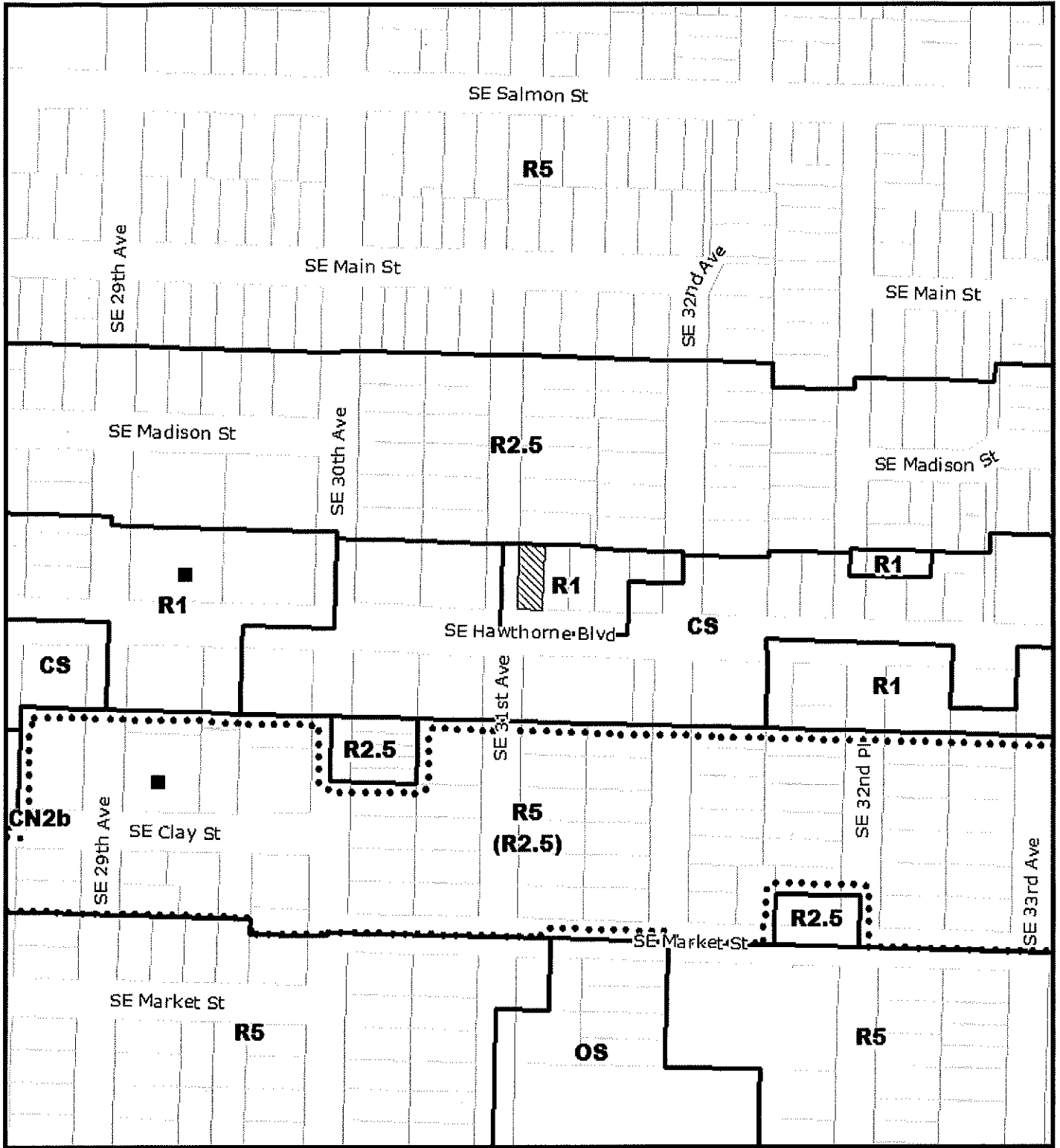
**Appealing this decision.** The Hearings Officer’s decision is final and takes effect on the day the notice of decision is mailed. The decision may not be appealed to City Council, but may be appealed to the Oregon Land Use Board of Appeals (LUBA), as specified in the Oregon Revised Statute (ORS) 197.830.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



**EXHIBITS**  
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statements
  - 1. Original narrative statement
  - 2. Copy of prior Type A ASTR permit application and issued permit – 17-104061 HO
  - 3. Revised narrative statement, rec'd. 4/12/18
  - 4. Traffic Study, Lancaster Engineering, dated 4/10/18
  - 5. Owner proof of residency, rec'd. 4/12/18
- B. Zoning Map **(attached)**
- C. Plans/Drawings
  - 1. Site Plan **(attached)**
  - 2. Floor Plan **(attached)**
- D. Notification information
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses
  - 1. Bureau of Environmental Services
  - 2. Development Review Section of Portland Transportation
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Police Bureau
  - 6. Site Development Section of the Bureau of Development Services
  - 7. Urban Forestry Division of Portland Parks and Recreation
  - 8. Life Safety Section of the Bureau of Development Services
- F. Correspondence (*none received at time of decision mailing*)
- G. Other
  - 1. Original LU application form and receipt
  - 2. Incomplete letter from staff to applicant, sent 3/9/18
  - 3. Correspondence on completeness with staff and applicant, March 9<sup>th</sup> – 14<sup>th</sup>, 2018
  - 4. Correspondence on completeness with staff and applicant, March 14<sup>th</sup>–19<sup>th</sup>, 2018
  - 5. Correspondence on completeness with staff and applicant, March 19<sup>th</sup>, 2018
  - 6. Routing slip for traffic study, sent by staff 4/13/18
- H. Received in the Hearings Office
  - 1. 120 Day Deadline Worksheet for Type II Cases - Hearings Office
  - 2. Staff Decision - Moffett, Mark
  - 3. Appeal Submission (4 pages) - Moffett, Mark
  - 4. Rescheduled Hearing Notice - Moffett, Mark
  - 5. Power Point Presentation Printout - Moffett, Mark
  - 6. Record closing Information - Hearings Office



# ZONING

 NORTH

-  Site
-  Historic Landmark

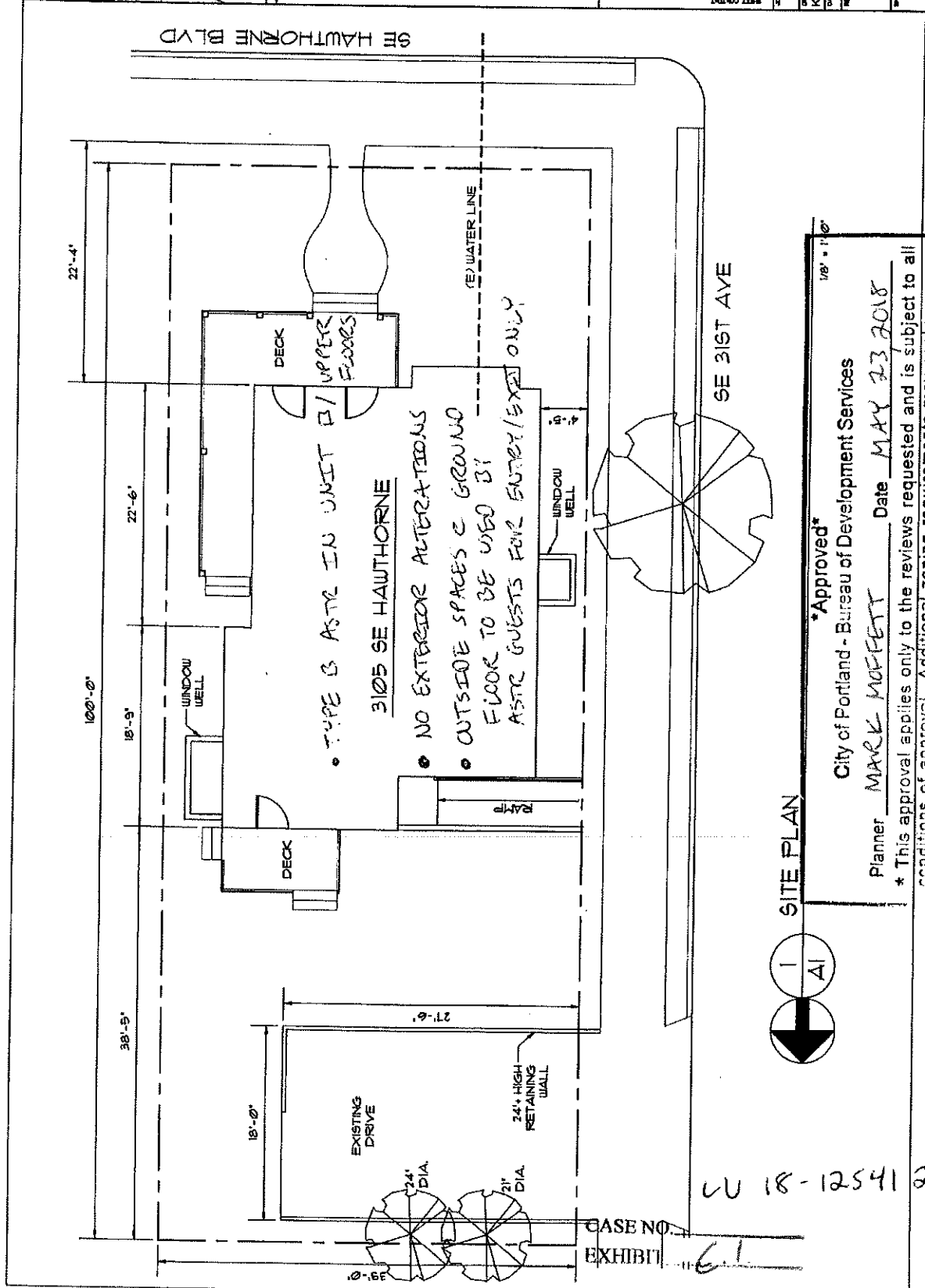
File No.	LU 18-125412 CU
1/4 Section	3133
Scale	1 inch = 200 feet
State ID	1S1E01BD 23400
Exhibit	B Feb 27, 2018



3105 SE HA Hawthorne Blvd  
 PORTLAND, OREGON  
 CRAMER RESIDENCE

3105 SE HA Hawthorne Blvd  
 PORTLAND, OREGON  
 CRAMER RESIDENCE

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 KLS  
 DIMS  
 2-20-18  
 A1-1



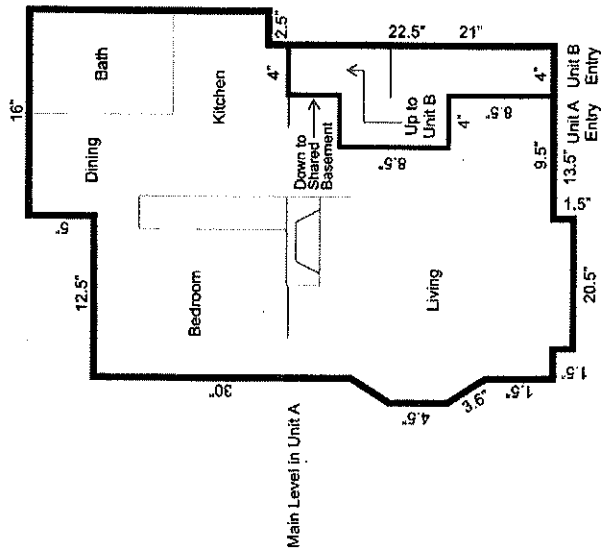
**\*Approved\***  
 City of Portland - Bureau of Development Services  
 Planner MARK MOFFETT Date MAY 23 2018  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

CU 18-125412 CU

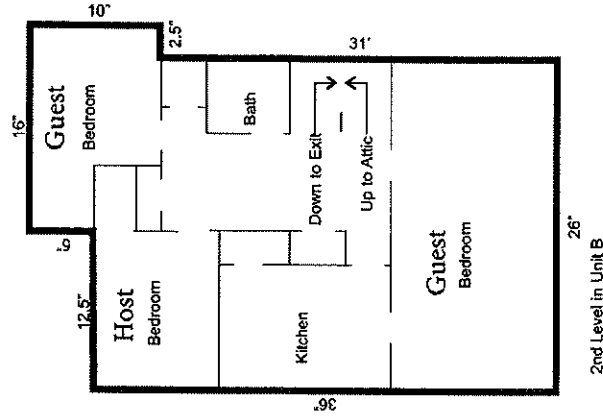
CU 18-125412 CU

CASE NO. \_\_\_\_\_  
 EXHIBIT 6.1

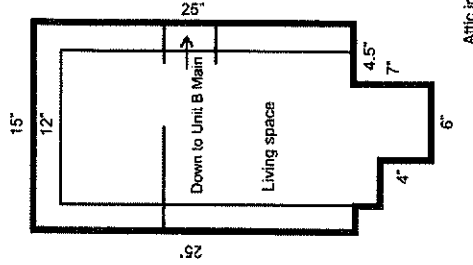




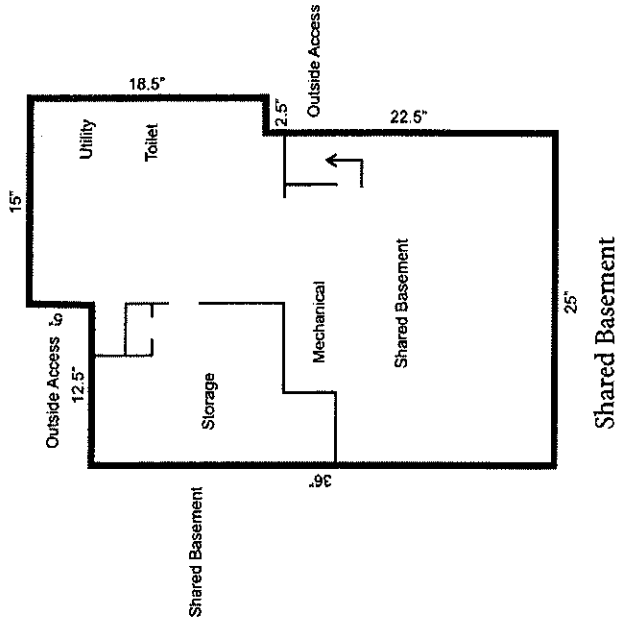
UNIT A (Household Living)



UNIT B - Main level (ASTR)



Unit B second level (ASTR)



Shared Basement

\*Approved\*  
 City of Portland - Bureau of Development Services  
 Planner MARK MOFFETT Date MAY 27 2018  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

CASE NO. W 18-125412 CU  
 EXHIBIT C-2

