



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

Ted Wheeler, Mayor
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www.portlandoregon.gov/bds

Date: April 15, 2019
To: Interested Person
From: Marguerite Feuersanger, Land Use Services
503-823-7619 / mfeuersanger@portlandoregon.gov
Justin Lindley, Property Compliance
503-823-7478 / justin.lindley@portlandoregon.gov

NOTICE OF A PUBLIC HEARING
REGARDING THE RECONSIDERATION OF A
LAND USE APPROVAL FOR A TYPE B
ACCESSORY SHORT-TERM RENTAL (ASTR) USE

ORIGINAL
CASE FILE #: LU 18-118937 CU
REVIEW BY: Hearings Officer
WHEN: May 15, 2019, at 1:00 PM
WHERE: 1900 SW Fourth Ave., Suite 3000
Portland, OR 97201

The Bureau of Development Services (BDS) has obtained substantial evidence that conditions of this land use approval have been violated and the use and its associated activities are substantially increased in intensity from what was approved. The BDS Director sent a zoning violation letter to the ASTR Operator on November 30, 2019 and again on December 7, 2019. As such, BDS has initiated a Reconsideration Process. A copy of the site plan and zoning map are attached. We are the BDS staff handling the Reconsideration Process. Please contact us if you have questions regarding this process.

ASTR Operator: Raymond Burse, Jr.
2948 NE 9th Avenue, Portland, OR 97212

Owners: Raymond Burse, Sr. and Raymond M. Burse, Jr.
2948 NE 9th Avenue, Portland, OR 97212

Site Address: 2946 NE 9th Avenue

Legal Description: BLOCK 101, LOT 15, IRVINGTON
Tax Account No.: R420422790
State ID No.: 1N1E26BD 05800
Quarter Section: 2731

Neighborhood: Irvington, contact Dean Gisvold at 503-284-3885.
Business District: Soul District Business Association, contact at outreach@nnebaportland.org

District Coalition: Northeast Coalition of Neighborhoods, contact Jessica Rojas at 503-388-5030.

Zoning: R5, Single Dwelling Residential 5,000 Zone

Other Designations: Historic Resource Protection Overlay Zone, Contributing Structure within Irvington Historic District

Original Case Type: CU, Conditional Use

Procedure: Modified Type III, with a public hearing before the Hearings Officer. The decision of the Hearings Officer can be appealed to City Council. However, the Type III reconsideration procedure does not require a pre-application conference and does not require submittal of a fee or an application.

Purpose of the Reconsideration Process

The ability to publicly reconsider a land use approval provides an opportunity to determine if the use or development is in compliance with Title 33 (Portland Zoning Code). It also allows for clarification of prior land use approvals. As part of the reconsideration, the ability to add new conditions or even revoke the approval provides a strong enforcement mechanism for the Zoning Code.

Reconsideration Criteria

Certain land use approvals, including Conditional Uses, may be reconsidered if there is evidence that situations listed in 33.700.040.B.1-3 have occurred. These situations are the Reconsideration Criteria. For the subject site, the Conditional Use (Type B ASTR) land use approval is being reconsidered because BDS has found substantial evidence of the following:

- One or more conditions of the land use review approval have not been implemented or have been violated (33.700.040.B.1); and
- The activities of the use, or the use itself, are substantially different or have substantially increased in intensity from what was approved (33.700.040.B.2).

ASTR Review Process and Proposal Background

Zoning Code regulations allow ASTR uses in residential zones, provided the relevant regulations of Chapter 33.207, Accessory Short-Term Rentals, are met. The Type B ASTR use allows three to five bedrooms for rent if approved through the Type II Conditional Use review procedure (Portland Zoning Code Section 33.207.050.A.2). The approval criteria for Type B ASTRs are found in Section 33.815.105.A-E, Conditional Use Approval Criteria for Institutional and Other Uses in the Residential Zones. Find full Zoning Code chapters and approval criteria online at www.portlandoregon.gov/zoningcode.

The property owner received Conditional Use approval for a Type B ASTR limited to three bedrooms and six guests, for the house on the subject site, on August 18, 2018. The Conditional Use approval (#18-119837 CU) included Conditions A.1-A.3 and B.1 – B.16. Since that time, BDS obtained substantial evidence that shows the following conditions of the approval were violated: Condition #s B.1, B.2, B.3, B.5, B.7 and B.8.:

B) For the duration of operation of the Type B ASTR facility, the ASTR operator will meet the following conditions:

- 1. Provide rental arrangements limited to single groups only, with a maximum of two guests per legal bedroom at any one time, regardless of age. If the maximum number of three bedrooms are rented, ASTR group size is limited to six people. The resident's bedroom in the basement of the site shall not be rented to guests at any time.*
- 2. All persons on the site shall comply with quiet hours between 9 p.m. and 8 a.m. Sundays through Thursdays and between 10 p.m. and 8 a.m. Fridays and Saturdays. Use of all outdoor spaces, including the main level rear porch and second story rear porch, and yards are prohibited by anyone between the ours of 7 p.m. and 8 a.m. all days. Use of the driveway and front walkway shall be limited to parking of passenger vehicles and*

for travel to and from the house during these hours. Gathering or waiting in the driveway is prohibited between 7 p.m. and 8 a.m. all days.

3. *No more than two tandem parking spaces are available on the driveway. Parking is not allowed within 10 feet of the front property line.*
5. *Smoking and inhalant delivery systems (vaping, etc.) is prohibited anywhere on the property, including indoor and outdoor spaces.*
7. *Guests shall be required to access the residence via the front door. No guest access is permitted between the driveway and the rear yard.*
8. *The ASTR operator must amend the House Rules and Narrative included in Exhibit A-3 to comply with this decision and Conditions B1 through B7 of this approval. The amended House Rules and Narrative must be included in all advertisements for the ASTR facility.*

Per Zoning Code Section 33.700.040(C), reconsideration of the land use approval is being initiated by the Director of BDS.

Decision Making Process

BDS staff will be making a recommendation on this reconsideration; the staff report and recommendation will be available 10 days before the hearing. The ASTR Operator must provide written comments to BDS at least 15 days prior to the scheduled hearing to be included in the staff report and recommendation.

The staff report and recommendation will be posted on the BDS website at <https://www.portlandoregon.gov/bds/35625>. Land use reviews are listed by the District Coalition shown at the beginning of this document. 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. We can provide some information over the phone (see contact information at the top of the first page of this notice). 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 <http://www.portlandonline.com/auditor/index.cfm?c=28197>.

The neighborhood association, listed on the first page of this notice, may take a position on this reconsideration and may have scheduled an open meeting prior to making their recommendation to the Bureau of Development Services. Please contact the person listed as the neighborhood contact to determine the time and date of this meeting.

To comment, you may write to the Land Use Hearings Officer, 1900 SW Fourth Ave., Suite 3100, Portland, OR 97201, or FAX your comments to 503-823-4347; or you may testify at the hearing. In your comments, you should address the Reconsideration Criteria cited above. Your comments must be directed at the criteria and provide enough specificity to allow all parties the opportunity to respond to the issues you raise. The Hearings Officer does not accept comments via e-mail. Please refer to the file number when seeking information or submitting testimony. Written comments must be received by the end of the hearing. Please note that all correspondence and testimony received will become part of the public record. BDS staff will be at the hearing to answer questions and respond to comments. The general order of appearance for oral testimony at the hearing is as follows: BDS staff report, ASTR operator testimony, testimony of interested parties who wish to ask questions or testify, staff response and closing comments, and ASTR operator's closing comments. The Hearings Officer will make a decision about this Reconsideration within 17 days of the close of the record.

Possible Actions at the Reconsideration Hearing

Depending on the situation, the Hearings Officer may take any of the actions described below.

1. Uses or development which are alleged not to have fulfilled conditions or which violate conditions are subject to the following actions.
 - a. The Hearings Officer may find that the use or development is complying with the conditions of the land use approval. In this case, the use or development is allowed to continue.
 - b. The Hearings Officer may find that the use or development does not fully comply with the conditions of approval, but that the violations are not substantial enough to warrant revocation, and that the use can comply with the original approval criteria if the conditions are met. In this case, the Hearings Officer may modify the existing conditions, add new conditions to ensure compliance with the approval criteria, and refer the case to the Code Hearings Officer for enforcement of the existing conditions.
 - c. The Hearings Officer may revoke the land use approval if it finds that there are substantial violations of conditions or failure to implement conditions of prior land use decisions, such that the original approval criteria for the use or development are not being met.
2. Uses and development which are alleged to be different from what was approved are subject to the following actions.
 - a. The Hearings Officer may find that the use or development is consistent with what was approved. In this case, the use or development is allowed to continue.
 - b. The Hearings Officer may find that the use or development, including its intensity or scale, is not consistent with what was approved, but that the differences are not substantial enough to warrant revocation, and that the use or development can comply with the original approval criteria with appropriate conditions. In this case, the Hearings Officer may modify the existing conditions or add new conditions to ensure compliance with the original approval criteria.
 - c. The Hearings Officer may revoke the land use approval if it finds that the land use being conducted on the site is substantially different from what was approved, does not comply with the original approval criteria for the use, and it cannot be reasonably conditioned to come into compliance.

Prior to the conclusion of the hearing before the Hearings Officer, any participant may request an opportunity to present additional evidence or testimony regarding the reconsideration. If such a request is made, the record will be held open for seven days to receive the new evidence and the record shall be held open for at least an additional seven days to provide the other parties an opportunity to respond to that new evidence. Unless waived by the ASTR operator, there will be an additional seven days provided to the ASTR operator for written rebuttal to the evidence, if the ASTR operator requires that time.

Appeal Process

You can appeal the reconsideration decision of the Hearings Officer to the City Council. If appealed, City Council will hold an “on the record” hearing. New evidence cannot be submitted to the City Council in the event of an appeal. No fee is charged for an appeal of a reconsideration decision to City Council.

The City Council’s decision may be appealed to the Oregon Land Use Board of Appeals (LUBA).

Failure to raise an issue in person or in writing by the close of the record at or following the final evidentiary hearing before the Hearings Officer on this case may preclude an appeal to City Council or LUBA on that issue. Also, if you do not provide enough detailed information to the Hearings Officer, they may not be able to respond to the issue you are trying to raise. In such a situation an appeal to City Council or LUBA based on that issue may not be allowed.

Hearing Cancellation

This public hearing will be cancelled if the City of Portland is closed due the inclement weather or other similar emergency. Check local television or the City of Portland website (www.portlandoregon.gov) for closures. Contact the Hearings Office at 503-823-7307 for immediate information regarding cancellations or rescheduling.

The hearing will be rescheduled for the earliest possible date. A renotification notice will not be sent.

To attend the hearing, public transportation is available. Tri-Met buses stop near the BDS building at SW Fifth or Sixth Ave. at SW Hall St. and SW Harrison St. Call Tri-Met at 503-238-7433 (or www.trimet.org) for routes and times. Hourly rated public parking is available a half block south of the building on Fourth Ave.

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).

Enclosures:

Zoning Map

Site Plans



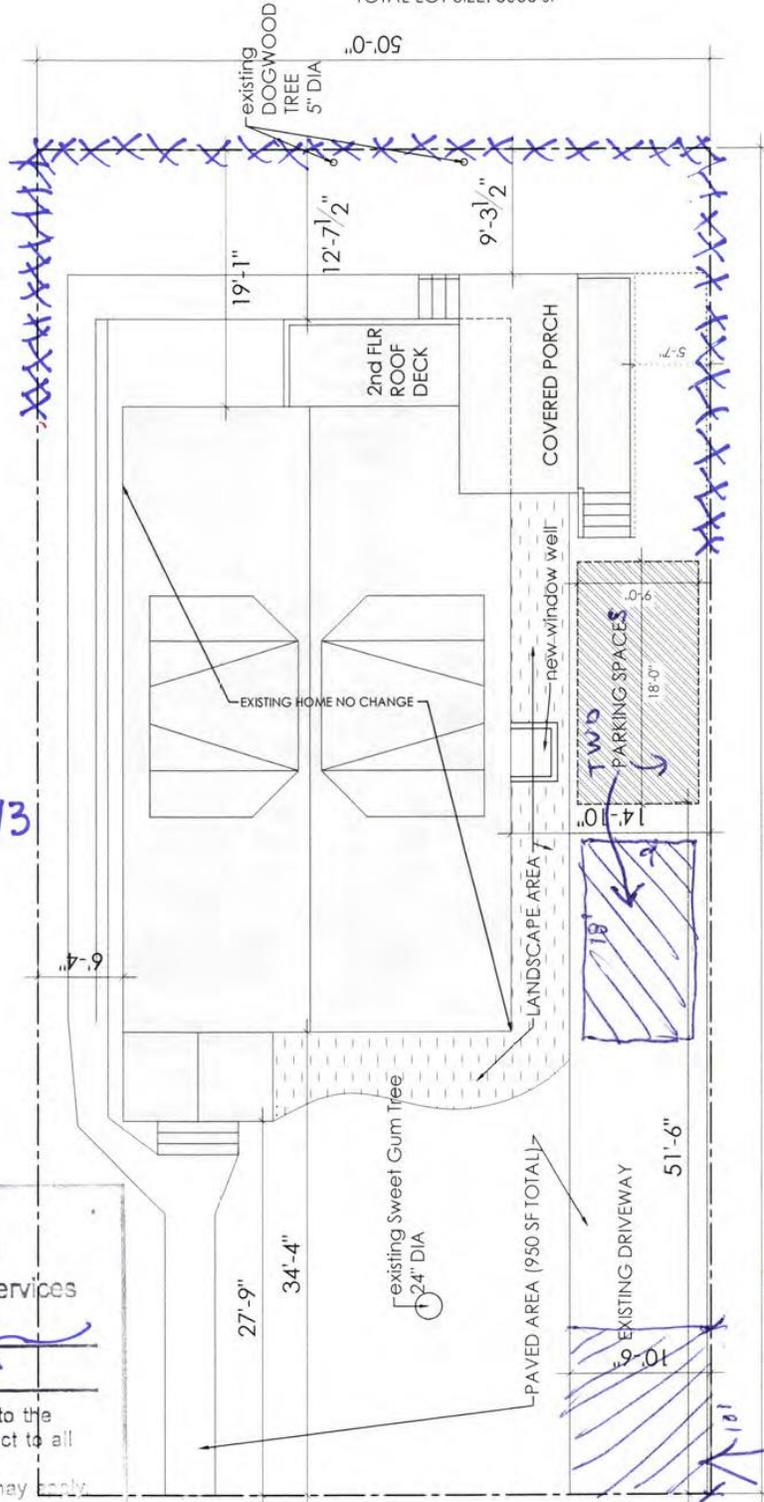
ZONING

THIS SITE LIES WITHIN THE:
IRVINGTON HISTORIC DISTRICT

-  Site
-  Historic Landmark

File No.	<u>LU 18-118937 CU</u>
1/4 Section	<u>2731</u>
Scale	<u>1 inch = 200 feet</u>
State ID	<u>1N1E26BD 5800</u>
Exhibit	<u>B Feb 13, 2018</u>

TOTAL IMPERVIOUS COVERAGE: 2700sf
TOTAL LOT SIZE: 5000 sf



xxx-Location of Required fence per Condition B.13

PER CONDITION B.3,
NO PARKING IN THIS AREA

Approved
City of Portland
 Bureau of Development Services
 Planner [Signature]
 Date May 30, 2018

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

SITE PLAN
not to scale

rec. 3/20/18

NE 9TH AVE

2946 NE 9th Ave

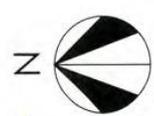


EXHIBIT C-1
18-118937-04

