



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

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Date: May 17, 2019
To: Interested Person
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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 mailed copy of this document is only a summary of the decision. 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 18-124449 CU

GENERAL INFORMATION

Applicant: Michael Turkiewicz
3928 SE 34th Ave | Portland, OR 97202

Owner: Nicole Bencik
1921 S Calumet Ave | Chicago, IL 60616

Site Address: 3928 SE 34TH AVE

Legal Description: BLOCK 11 LOT 3 TL 5800, KENILWORTH
Tax Account No.: R443103720
State ID No.: 1S1E12DB 05800
Quarter Section: 3434

Neighborhood: Creston-Kenilworth, contact Joe Hovey at ckna.landchair@gmail.com
Business District: Greater Brooklyn, contact at greaterbrooklynba@gmail.com
District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010.

Plan District: None
Other Designations: None
Zoning: R2 Multi-dwelling Residential 2,000

Case Type: CU – Conditional Use
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:

The applicant resides at the attached house at 3928 SE 34th Avenue and requests Conditional Use approval to operate a Type B Accessory Short-Term Rental (ASTR) facility at this address. The 3-level house includes 1 bedroom on the lower garage level, and 2 bedrooms on the 2nd floor level. The applicant wishes to rent up to 3 bedrooms on a short-term basis for up to 6 guests. No exterior alterations to the house are proposed. With the exception of contract cleaning services and a biweekly landscape maintenance service, no outside employees, food or

beverage service, or commercial events are proposed. Proposed house rules would require quiet hours between 10 pm and 8 am.

Type B Accessory Short-Term Rentals are allowed in residential zones when the proposal meets the Conditional Use approval criteria and applicable standards. The regulations are intended to allow for efficient use of houses in residential areas if the neighborhood character is maintained. The regulations also provide an alternative form of lodging for visitors who prefer a residential setting.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are in Zoning Code Section 33.815.105.A-E: Conditional Use Approval Criteria for Institutional and Other Uses in a Residential Zone.

ANALYSIS

Site and Vicinity: The site is a 2,000 square foot lot. It is developed with an attached house, with the adjoining house located immediately north on its own 2,000 square foot lot. The grounds of this attached house include an attached wood deck and covered patio in the rear yard. There is also a 5' 6" to 6' 6" high wood fence extending around the perimeter of the rear yard and most of the length of the south property line.

The surrounding vicinity is zoned R2 Multi-dwelling Residential 2,000 and is developed with a mix of attached and detached single-family homes, duplexes and multi-dwelling structures on lots ranging in size from about 1,600 square feet to over 1 acre. There are also several uses that are not Household Living uses in the residential area within a 400-foot radius of the site. These uses include the Community Music Center, a Community Service use, operated by the Portland Bureau of Parks and Recreation at 3350 SE Francis Street, located one block west of the subject site, the Kenilworth Presbyterian Church at 4028 SE 34th Ave, located one half block south of the subject site, and the Reedwood Convalescent Center, a Group Living use, located at 3450 SE Francis Street, located two blocks east of the subject site. Also located within this perimeter is a permitted Type A ASTR located about one block north of the subject site, at 3806 SE 34st Avenue.

Zoning: R2 - Multi-dwelling Residential 2,000 – The R2 zone allows multi-dwelling residential development up to a maximum density of one unit per 2,000 square feet of site area, and requires a minimum density of one unit per 2,500 square feet of site area. Newly created lots in the R2 zone must be at least 4,000 square feet in area for multi-dwelling development, 1,600 square feet for development with attached or detached houses, and 2,000 square feet for development with duplexes. Minimum lot width and depth standards may apply.

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

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed on April 19, 2019. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services (Exhibit E.1);
- Fire Bureau (Exhibit E.2);
- Police Bureau (Exhibit E.3);
- Life Safety Section of BDS (Exhibit E.4);
- Site Development Section of BDS (Exhibit E.5);
- Bureau of Parks-Forestry Division (Exhibit E.6);
- Water Bureau (Exhibit E.8).

The Bureau of Transportation (PBOT) responded with comments: Please see Exhibit E.7 for additional details. PBOT's comments are included later in this decision in response to Approval Criterion 33.815.105.D.

Neighborhood Review: Four written responses have been received from notified property owners and from the Creston-Kenilworth Neighborhood Association in response to the Notice of Proposal. All four letters raise similar concerns with the proposal. Two letters from notified property owners are opposed to approval of the Conditional Use review. One letter from a notified property owner and the letter from the Creston-Kenilworth Neighborhood Association recommend that conditions of approval be applied if the Conditional Use review is approved. A summary of the concerns raised in the letters, followed by a staff response is:

- The operation of commercial “hotel” type use is not compatible with the residential character of the area.
The proposal is for a Type B ASTR. ASTRs are described in Zoning Code Section 33.207.020 as “where an individual or family resides in a dwelling unit and rents bedrooms to overnight guests for fewer than 30 consecutive days.” Section 33.207.020 also describes a Type B ASTR as “where 3 or more bedrooms are rented to overnight guests.” Further, Section 33.207.020 defines a “Resident” as “The individual or family who resides in the dwelling unit. The resident can be the owner or a long-term renter.” In this case, the house in which the Type B ASTR is proposed is a dwelling unit and the owner, who is also the applicant, has provided evidence in the form of a valid Oregon Drivers License that he resides in the dwelling unit. As the proposal is for the resident to reside in the dwelling for longer than 30 days at a time and for the other 5 bedrooms to be rented out for less than 30 days, the proposal meets the description of a Type B ASTR in the zoning code. Also, per Zoning Code Section 33.920.110 Household Living uses, ASTRs are listed as a use that is accessory to Household Living uses and that are subject to additional regulations. These additional regulations are located in Chapter 33.207. Further, per Zoning Code Section 33.920.250, hotels are a Retail Sales and Service use. Retail Sales and Service uses are not allowed in the R5 zone.
- The house is rented as an ASTR and the owner/resident is not present or does not live at the house;
Staff Response - Zoning Code Section 33.207.050.A.1 requires that the resident of a Type B ASTR occupy the dwelling unit at least 270 days during each calendar year. The site currently has a permit for use as a Type A ASTR (permit #HO 17-204019). The 270 day residency requirement also applies to Type A ASTRs. If the listed resident of the current Type A ASTR has not been residing in the ASTR for at least 270 days of each calendar year, whether there are guests staying in the house or not, that would be a violation of the ASTR standards. If there is concern that the requirement that the resident of the existing Type A ASTR (or future Type B ASTR) is not in residence at the home for at least 270 days per calendar year, City of Portland Zoning Code Compliance may be contacted to investigate and begin compliance procedures if warranted. The telephone number for Code Compliance is (503) 823-2663.
- There is a history of the number of guests staying at the house exceeding 6 people;
Staff Response – The site currently has a permit for use as a Type A ASTR (permit #HO 17-204019). Per Zoning Code Section 33.207.040.B, up to 2 bedrooms may be rented in a Type A ASTR, and the total number of residents and guests staying at the ASTR at any one time may not exceed the number allowed for a household. A household is defined as one or more persons related by blood or marriage, domestic partnership, legal adoption or guardianship, plus not more than five additional persons living together in one dwelling unit. If the number of guests staying at the existing Type A ASTR exceeds the number allowed in a household, or if more than 2 bedrooms are being rented at one time City of Portland Zoning Code Compliance may be contacted to investigate and begin compliance procedures if warranted. This proposal is a request for a Type B ASTR to allow up to 6 short-term guests to stay at the ASTR at any one time. If more than 6 guests were to stay at the ASTR following approval of this Type B ASTR, Code Compliance may also be contacted to investigate the violation of the guest limit and begin compliance procedures if warranted.
- Late night noise generated by guests;

Staff Response – This issue is addressed in the findings under the approval criteria below in this decision.

- Impacts on privacy from guests in the rear yard and second floor balcony, especially on children living on neighboring properties;
Staff Response – This issue is addressed in the findings under the approval criteria below in this decision.
Failure to move garbage, compost, and recycling containers off the street and back onto the site in a timely manner.
Staff Response – This issue is addressed in the findings under the approval criteria below in this decision.
- Parking of guest vehicles on the street and across the sidewalk.
Staff Response – This issue is addressed in the findings under the approval criteria below in this decision.

The letter from the Creston-Kenilworth Neighborhood Association (Exhibit F.4) identifies similar issues to those listed above and recommends that they be addressed through conditions of approval. No specific wording is suggested for these conditions by the Creston-Kenilworth Neighborhood Association. A summary of the recommended conditions in the letter from the notified property owners living directly south of the proposed Type B ASTR (Exhibit F.1) is:

- *Provide a visual barricade to prevent visual access from the attached wood deck into the back yard of the house south of the site.*
- *Establish quiet hours beginning at 8 p.m.*
- *Provide 24-hour access to someone to take and resolve formal complaints from neighbors.*
- *Require responsible trash and recycling placement and removal from the street at the appropriate times.*
- *Require the owner to repair or replace the home's water heater which creates noise and vibration when used by guests.*

Staff Response: These suggestions are evaluated and considered as conditions of approval in the findings section of this decision below.

ZONING CODE APPROVAL CRITERIA

33.815.105 Institutional and Other Uses in R Zones

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

- A. Proportion of Household Living uses.** The overall residential appearance and function of the area will not be significantly lessened due to the increased proportion of uses not in the Household Living category in the residential area. Consideration includes the proposal by itself and in combination with other uses in the area not in the Household Living category and is specifically based on:

1. The number, size, and location of other uses not in the Household Living category in the residential area; and
2. The intensity and scale of the proposed use and of existing Household Living uses and other uses.

Findings: For Criteria A.1 and A.2 below, the terms “area” and “residential area” are considered to be the same and are defined as an approximate distance of 400 feet from the site. This distance is reasonable for two reasons: it considers all residentially zone property within a few blocks of the site, and it expands on the 150-foot notification distance for this Type II land use review.

Note that properties within non-residential zones (such as Commercial or Open Space zones) are not included within the “residential area.”

There are 3 uses that are not Household Living uses in the residential area within a 400-foot radius of the proposed ASTR. These uses include the Community Music Center, a Community Service use, operated by the Portland Bureau of Parks and Recreation at 3350 SE Francis Street, located one block west of the subject site, the Kenilworth Presbyterian Church at 4028 SE 34th Ave, located one half block south of the subject site, and the Reedwood Convalescent Center, a Group Living use at 3450 SE Francis Street, located two blocks east of the subject site. The sites of these 3 non-Household Living use all include off-street parking areas and attractive, well-maintained open landscaping between the buildings and their respective street frontages. In the 400-foot vicinity, there is also a permit issued for a Type A ASTR at 3806 SE 34st Avenue, located about 1 block north of the subject site. This ASTR is located in an existing detached house on a 22,750 square foot lot that, like the subject property is consistent with the residential character of the neighborhood. No alterations are proposed to the exterior of the existing attached house proposed as the Type B ASTR, and the addition of the Type B ASTR use as accessory to the existing Household Living use within the residence will result in no change to the residential appearance of the area in combination with the other ASTR uses that also have a residential appearance.

While there are several nonresidential uses within a 400-foot radius of the subject site, the vast majority of properties within this vicinity area are developed with single-dwelling and some multi-dwelling residences. Within this 400-foot radius, there are approximately 70 lots of which approximately 90 percent are developed with single-dwelling residences or multi-dwelling residential complexes. As such, even with the proposed Type B ASTR, the residential appearance and function of the area will be maintained. Additionally, as described in response to Approval Criterion C, the intensity of the proposed Type B ASTR will be limited to a maximum of 3 bedrooms, with the total number of guests limited to 6 persons. This limit is intended to ensure that the total number of guests at the ASTR is consistent with the maximum number of people that could be expected in a typical single-dwelling residence that has 3 bedrooms (i.e., no more than two-persons per bedroom). Additionally, as required by Zoning Code Section 33.207.050, the resident is required to occupy the dwelling at least 270 days during each calendar year. Furthermore, no commercial meetings, including luncheons, banquets, weddings, meetings, charitable fund raising, commercial or advertising activities, or other gatherings for direct or indirect compensation are allowed as part of the proposed ASTR.

Based on these findings, this criterion is met.

B. Physical compatibility.

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

Findings: City-designated scenic resources are identified on the Official Portland Zoning Maps with the ‘s’ overlay zoning symbol. As this site is not designated with the ‘s’ overlay zone, and there are no City-designated scenic resources on the site, this criterion is not applicable.

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

Findings: The proposal will be located within an existing attached house that is the same residential design as other nearby attached houses facing SE 34th Ave. The grounds of this house include an attached wood deck and covered patio in the rear yard. There is also a 5' 6" to 6' 6" high wood fence extending around the perimeter of the rear yard and most of the length of the south property line (see Exhibit C.1).

The attached house is a 3 story house with garage level, main, and second floors that meets the R2 zone standards for height, setbacks, and building coverage. The design of the adjoining attached house mirrors that of the subject house, as do two other attached house structures on the lots north of the subject house. The lots immediately south of the site and across SE 34th Street are developed with 1 to 1½ story single-family dwellings. The rear yard of the subject house abuts the exterior parking area of multi-dwelling housing complex that contains 8 or more living units. The house is similar in size and scale to the other attached houses facing this section of SE 34th Ave, and is of a smaller scale than the multi-dwelling complex to the east. As there are no appreciable differences in appearance or scale between this house and other attached houses on adjacent lots or in the surrounding residential area, there is no need to require mitigation to achieve similarity in appearance or scale through such means as setbacks, screening, landscaping, tree preservation, other design features. These criteria are met, as the existing house in which the proposed ASTR will locate, is not appreciably different in any way in terms of size, building scale and style, setbacks, tree preservation, or landscaping.

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 The applicant has provided a copy of House Rules and a Narrative: explaining the proposed ASTR operations (Exhibit A.3). Main characteristics of the proposal include:

- No parties;
- Quiet hours 10 PM to 8AM;
- Check-in at 4 PM;
- Check-out at noon;
- Treat the home and community as you would yours;
- No pets allowed;
- Please dispose of trash in the various trash cans located throughout the house and/or the large trash can in the trash bin area;
- Park vehicle in garage, driveway or curbside in front of the house; and
- Use the keypad and code to enter and exit the house.

The primary livability concern related to the proposal is the possibility of late-night activities and noise. The primary exterior spaces where late night activities and noise could occur are the attached elevated outdoor wood deck and ground level patio located in the rear yard. The 5' 6" to 6' 6" high fence located around the perimeter of the rear yard and along the south property line will provide buffering to the adjacent residential use in these directions. A certain level of noise is to be expected from long-term residents of a house, and the expectation of what noise might constitute a significant impact on livability is not complete silence, but whether the level of noise consistently exceeds what might be expected from that which long-term residents would generate. Long-

term residents in the house would be expected, generally to work during the day and, also, to recreate at home later in the evenings on weekends. The applicant's proposal to limit noise through the institution of "quiet hours" for guests is a reasonable method of limiting noise during times when adjacent residents could be expected to be sleeping. The City of Portland regulate noise through Title 18 (Noise Control). Title 18 prohibits the following:

- Operating or permitting the use or operation of any device designed for sound production or reproduction in such a manner as to cause a noise disturbance; or
- Operating or permitting the operating or use of any such device between the hours of 10 p.m. and 7 a.m. to be plainly audible within any dwelling unit which is not the source of the sound.

So that the quiet hours proposed by the applicant are consistent with Title 18, a condition of approval will require quiet hours between 10 p.m. and 7 a.m. be enforced in conformance with Title 18

The "quiet hours" will apply to the ASTR guests outside and within the house and will therefore apply to the exterior elevated wood deck and ground level patio where noise impacts would likely be greatest. Because the potential impacts from noise are greater when generated from outside, a condition is also required that use of outdoor spaces, which includes the deck and the patio, be prohibited during the quiet hours. The institution of "quiet hours" will work to ensure that the noise generated by ASTR guests remains similar to what could be expected if the house were occupied by a family, or by a group of unrelated long-term residents. Also, the 5'6" to 6'6" high fence located around the perimeter of the rear yard and along the south property line will provide buffering of noise that might be generated by people entering and leaving the site through the rear entrance or using outdoor spaces like the deck. To assure that this fence buffering remains, a condition of approval is required that the fences be maintained or replaced if necessary with similar fencing. Fencing meeting the F2 landscaping standard in Chapter 33.248 of the zoning code would meet this requirement. The F2 standard is a minimum 6' high 100 percent site obscuring fence.

A neighboring property owner in their written comments (Exhibit F.1) indicates that the water heating system in the home generates noise and vibration that is a nuisance and suggests it be repaired or replaced as a condition of approval of the Type B ASTR. The operation and effects of the water heater will be the same when the home is occupied by the resident and his family or during the up to 90 days a year that the home could be rented as an ASTR. As such, the impacts from the water heater are general to the home, not specific to the ASTR use.

With the fence condition, and the conditions of approval requiring the implementation of the House Rules, including that the House Rules be posted in all advertisements for the ASTR, and requiring that the contact information for the resident/operator of the ASTR be provided annually to neighbors so that there will be a means to initiate complaints if the House Rules are violated, this criterion will be met for noise.

The applicant is proposing no new exterior lights. This existing lighting is not different from what is normally found at a house without an ASTR, and the impacts of the lighting are thus not expected to have an adverse impact on the livability of adjacent residential zoned land. This criterion is met for glare.

As the primary use and the ASTR are both residential uses, any odors generated that are discernable from off the property can reasonably be expected to be the

same as would be generated by a strictly long-term residential use, such as those associated with the preparation of food, for example. The impacts of such odors on the livability of nearby residences, therefore, will generally be no more adverse than if there were only a long-term residence at the house and no ASTR. An exception to this is the possibility that guests may choose to smoke outdoors on the site. As this is a potential source of nuisance odors that would impact adjacent properties, a condition is needed to prohibit smoking in outdoor areas on the site, and have this prohibition also be added to the House Rules. With this condition, this criterion will be met for odors.

The applicant narrative indicates that a yard maintenance service will be employed to maintain the yard every two weeks. The House Rules proposed by the applicant ask that guests dispose of trash in the various trash cans located throughout the house and/or the large trash can in the trash bin area. Written comments from neighboring property owners and the Creston-Kenilworth Neighborhood Association (Exhibits F.1, F.2, and F.4) indicate that, despite the House Rules, the trash and recycling bins have not been consistently removed from the street after designated waste pickup days resulting in the bins and trash remaining in the street for extended periods. To resolve this a condition of approval is needed to require that trash, compost and recycling containers must be removed from the public right-of-way and stored back onto the site into the south side yard or within the interior of the house or garage within 24 hours of the end of the regularly scheduled day of pickup. The ASTR operator should be responsible for assuring that the resident or guests of the ASTR comply with this condition and the House Rules should be amended to include this requirement. The condition discussed above requiring the Operator's contact information be provided to neighbor on annual basis will also give neighbors a contact if trash and recycling containers are not moved. These two actions, the yard maintenance and trash disposal, along with the condition that containers be moved back onto the site within 24 hours, will mitigate any potential issue with litter that might be related to guests staying at the ASTR. With the condition of approval, discussed in the preceding findings, requiring that the House Rules be posted in all advertisements for the ASTR, and provided to guests in advance of their stay, the requirement for trash disposal will be communicated to guests.

Based on these findings and with the conditions of approval detailed above, this criterion is met.

2. Privacy and safety issues.

Findings: The Fire and Police Bureaus state no concerns about the proposal, indicating they are capable of serving the proposed use (Exhibits E.2 and E.3). There are no inherent safety issues with the proposed ASTR. Standards for ASTRs in Zoning Code Section 33.207.050.B.4 require an inspection of bedrooms to assure compliance with building safety regulations prior to commencement of the ASTR use, and this requirement is also included as a condition of approval of this decision.

The elevated outdoor deck poses a privacy concern. The adjacent neighbor to the south in written comments (Exhibit F.1) indicates that guest of the existing Type A ASTR can stand on the deck and view into their rear yard and suggests that views into this rear from the deck be screened. This site and the neighboring properties are within the R2 Multi-dwelling 2,000 zone. There is not an expectation of 100% privacy for single family homes in residential zones, and the expectation for privacy in a multi-dwelling zone such as this R2, with development standards that allow for greater density, smaller setbacks, and taller buildings that may include open balconies, is even less so. The privacy impacts due to guests using the deck are mitigated to some degree by the 5' 6" to 6' 6" high fence around the rear yard and along the south lot line. Also, with conditions limiting the hours the deck

may used and requiring maintenance or replacement of the fence, both discussed under the findings for the preceding criterion, privacy impacts will be reduced. To provide further privacy for the neighbor to the south, a condition of approval will require a medium sized evergreen to be planted between the elevated deck and southern property line. With these two conditions, 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: The site has street frontage on SE 34th Ave. The Transportation Element of the Comprehensive Plan designations of this street are listed in the table below:

Street	Traffic	Transit	Emergency Response	Bicycle	Pedestrian	Freight
SE 34 th Ave	Local Service	Local Service	Minor Emergency Response	Local Service	City Walkway	Local Service

SE 34th Avenue provides direct access to the site for cars, bikes, delivery vehicles, and emergency responders, and sidewalks that can be used to walk to bus lines on nearby streets. This is consistent with the Local Service designations for traffic, bicycle, freight, transit, and with the Minor Emergency Response designation for emergency vehicles.

Regarding the City Walkway classification for the pedestrian mode and the other street classifications, the Portland Bureau of Transportation (PBOT) reviewed the application, and provided the following findings (Exhibit E.7) addressing conformance of the proposal with these street designations:

The SE 34th Ave. frontage does not meet City standards due to having a 10-ft wide pedestrian corridor opposed to the standard 11-ft. Given that no increase in occupancy is proposed and no Significant Alteration is proposed, dedication or frontage improvements are not required at this time. The proposed ASTR is supportive of these designations and the development of the site with an ASTR will not impact the distribution of local traffic throughout the area.

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: The applicant submitted a transportation impact analysis prepared by a professional traffic engineer (Exhibit A.2). The Portland Bureau of Transportation (PBOT) reviewed the application, including the transportation impact analysis, and provided the following findings (Exhibit E.7) addressing the above evaluation factors:

To address the transportation approval criteria, the applicant submitted a professional Transportation Impact Study (TIS) prepared by Kittelson & Associates. PBOT Development Review staff has reviewed the TIS and agrees with the methodologies, analyses, assumptions, findings and conclusions including on-street parking impacts to confirm that the transportation-related approval criteria are satisfied, subject to the recommended conditions of approval.

Street Capacity/Level of Service

To estimate the vehicle trips generated by the proposed ASTR, information from the Trip Generation Manual, 10th Edition, published by the Institute of Transportation Engineers (ITE) was used. Data for land use #320, Motel, were used to calculate trip rates for the proposed facility. ITE does not have specific data for an ASTR and the Motel use is the closest land use category for which data is available.

The proposal is to rent the entire house as an Accessory Short Term Rental (ASTR) at times when the residents are not present. The proposed whole-house, 3-bedroom ASTR is estimated to generate 1 trip during both the morning and evening peak hours and a total of 10 trips per weekday. This represents a slight increase in trips over a single-family dwelling which generates 1 trip during both the morning and evening peak hours and 9 total trips per weekday. Since the applicant's findings propose a whole house rental, rather than individual rentals for each proposed bedroom, the estimated trips are projected to be less than the projected maximum. It should be noted that based on the submitted data, most trips associated the proposed ASTR will likely not occur during the AM/PM peak hours.

To address the street capacity and Level of Service (LOS) evaluation factors, the applicant's traffic engineer conducted 24-hour volume counts along SE 34th Ave. in the vicinity of the property on October 30, 2018 while schools were in session. SE 34th Ave. was found to carry approximately 589 vehicles per day. The proposed 3-room ASTR is estimated to generate approximately 1 trip during both the morning and evening peak hours, with an additional 9 trips total each weekday based upon the maximum rental scenario. This represents a slight increase in trips over a single-family dwelling which would generate the 2-peak hour daily trips, and approximately 10 total trips each weekday. Based upon these observations, the nearby intersections will be able to support the existing uses in the area plus the proposed ASTR use at the site. The applicants are not proposing to use the house as both a single family dwelling and a short term rental at the same time. Since the ASTR will only be operating when the residents are absent, there will be a total increase of 1 trip, which equates to a 0.0017% increase in trips through the studied intersection. The proposed use is not anticipated to have a significant impact upon morning or afternoon peak hour traffic, or the operation of area intersections given the minimal number of trips that the use is expected to generate.

Safety for All Modes

The applicant's traffic engineer indicated that the proposed ASTR will not yield any difference than that of a permanent residence, as no changes to access or street systems are proposed. A field visit indicated there is sufficient sight distances at the site's driveway on SE 34th Ave. As such, no measurable impact to safety of the transportation system is anticipated.

Connectivity

The subject site is located within a well-connected neighborhood in which the grid system is generally complete, providing multiple redundant routes to and from the site for all modes. The subject property is located one block away from SE Powell Blvd. and three blocks from SE Holgate Blvd, both of which are served by bus lines. The subject site and surrounding areas are well connected with continuous sidewalks throughout the neighborhood. SE 34th Ave. connects to SE Powell Blvd. at a location with a marked pedestrian crossing with a pedestrian activated flashing beacon and refuge island. The bus shelters for travel in both directions along Powell are at this intersection, which is one block north of the site.

The east/west streets on both sides of the subject block are classified as City Bikeways, and connect into a comprehensive system of cycling routes in the area providing safe and comfortable cycling environment. SE Gladstone street is one block south of the site and has marked bike lanes. The property is adequately accessed by all modes, providing connectivity and access to support existing uses as well as the proposed ASTR at the subject property.

Transit Availability

Transit connections are available within a reasonable walking distance both north and south of the site. The site is approximately 900 feet (which is one block in this case) south of SE Powell Blvd. At this location, SE Powell Blvd is served by the #9, which is a frequent service line providing connections westward to the Central City and eastward to the Gresham Transit Center. SE Powell is also served by the #66 which provides service westward to the South Waterfront area and Marquam Hill and northward to the Hollywood Transit Center. The site is approximately 1,500 feet north of SE Holgate Blvd. At this location, SE Holgate is served by the #17 which is a frequent service bus line providing access to many parts of Portland including the Alberta Arts District, Lloyd Center, the Central City, the South Waterfront, and Lents. The site is well served by transit.

On-Street Parking Impacts

The parking demand generated from the proposed development was estimated using parking demand rates from Parking Generation, 4th Edition, published by the Institute of Transportation Engineers (ITE). The data used to determine the parking demand for the proposed conditional use were for land use #320, Motel as it represents the closest use to the proposed ASTR for which data is available. The home presently has a single-car garage accessed off SE 34th Ave. and a driveway which can reasonably be expected to accommodate one additional parked vehicle, for a total of two spaces on site.

To determine the demand and availability of on-street parking in the vicinity of the site, the applicant's traffic engineer conducted observations during the overnight period corresponding to the expected peak period for residential parking demand in the site vicinity. The observations were conducted from 11:00 pm to 12:00 am on a typical weekday in October 2018, within the study area along both sides of SE 34th Ave. between SE Francis St. and SE Gladstone St. Within the study area, the parking study estimated that there was an on-street parking capacity of 30 spaces, of which 12 were occupied at time of observation. Therefore, the estimated on-street parking was observed at 40%. PBOT does not consider an area to be heavily parked until occupancy rates reach approximately 85%. Accordingly, based on the observations and analysis, the available on-street parking in the site vicinity is adequate to

safely support the proposed use in addition to the existing uses in the site vicinity.

The peak parking demand for a motel with three rooms is three parking spaces, typically rented to three separate parties, each of which would likely travel separately. In this instance, the applicant did state the ASTR is proposed to be a whole house rental, which would likely result in fewer than 3 vehicles coming to the site. Even based on the more conservative estimate of 3 vehicles, with sufficient parking supply on-site and in the immediate neighborhood, the anticipated parking demand will be negligible.

Access Restrictions

Vehicle access to the proposed use will continue to be provided via SE 34th Ave. Access to the site is well connected via established streets, sidewalks, and multi-modal options. Due to the availability of nearby transit and multi-modal options, PBOT has no access restriction concerns.

Neighborhood Impacts

The transportation-related neighborhood impacts associated with the proposed use typically involve impacts to on-street parking and potential increases in traffic at area intersections. As documented by the applicant's analysis, there is a sufficient supply of on-street parking to accommodate the use. Additionally, services for the ASTR, such as landscaping, regular maintenance, and/or cleaning will be consistent with a typical single-family home. Additionally, the minimal number of vehicle trips that will be added during the peak hours as a result of this use will not impact area intersections. Therefore, transportation-related impacts as a result of the proposed ASTR will be negligible.

Adequate Transportation Demand Management Strategies

Transportation Demand Management (TDM) strategies are actions designed to change travel behavior in order to reduce the use of single-occupant vehicles to the site and, in turn, improve the performance of transportation facilities. While not required, the applicant has proposed several strategies to mitigate demand on the surrounding transportation system, including requiring that all vehicles first park on-site before on the street; provide information and walking/biking maps to nearby commercial districts and places of interest; and information on public transit.

In conclusion, based on the evidence included in the record, and primarily, the applicant has demonstrated to PBOT's satisfaction that "the transportation system is capable of supporting the proposed use in addition to the existing uses in the area".

PBOT has no objections to the proposed Accessory Short-Term Rental (ASTR), subject to the following conditions:

The applicant shall implement the following strategies to reduce vehicle trips associated with the proposed use:

- The applicant may only use the house as a short-term rental during the periods of time when the residents are absent from the site. The house should not be simultaneously occupied by both the long-term residents and short-term renters.*
- On-site, provide short-term renters with transit schedules, walking/biking maps, and information on multi-modal options.*

Based on the findings of PBOT above, this criterion is met, or can be met with the conditions cited above, for all the evaluation factors listed in the criterion. The applicant's narrative indicates that when the house is rented as a short-term rental it is rented as a whole house, and only when the resident and his family are not staying at the house. This is consistent with PBOT's recommended conditions that the house only be used as a short term rental when the residents are absent from the site. For the Transportation Demand Management Strategies evaluation factor, PBOT's response indicates that this factor can also be met with a condition requiring implementation of the Transportation Demand Management (TDM) plan.

With the two conditions recommended by PBOT, all of the evaluations factors will be met to demonstrate that the transportation system is capable of supporting the proposed ASTR in addition to the existing uses in the area. 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 Fire Bureau, Police Bureau, and Water Bureau have indicated, through their respective responses of "no concerns" with the proposal (Exhibits E.2, E.3, and E.8), that they are capable of serving the proposed ASTR. The response from the Bureau of Environmental Services (Exhibit E.1) indicates no objection to approval of this Conditional Use based on there being sanitary sewer service available via the public combined sewer within the site's frontage; and there being no BES requirement for additional stormwater disposal systems. This criterion is be met.

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

Findings: This site is within the area of the adopted Creston Kenilworth Neighborhood Plan. The following policies and objectives from this plan listed below relate to this proposal:

Policy 1A: Reduce reliance on the private automobile and improve access to all parts of the neighborhood by encouraging walking, bicycling and riding public transit.

As noted in the findings cited above from PBOT (Exhibit E.7), the applicant has demonstrated in the traffic analysis (Exhibit A.3) that adequate transportation demand management will be provided through a TDM program that includes measures to encourage the use of public transportation. PBOT recommends that the implementation of these measures be made a condition of approval. With the above cited condition related to TDM, the proposal will encourage the use of public transportation, which is consistent with Policy 1A.

Policy 3: Business and Economic Development.

Objective 3.7 – Encourage home businesses in the neighborhood.

The R2 Multi-dwelling 2,000 zone, like all residential zones in the City of Portland, allows Type B ASTRs within existing dwellings through approval of a Conditional Use review, as is requested herein with this application. Review of the proposal through a Conditional Use provides a means of evaluating and mitigating the potential effects on residential areas of uses, like ASTRs, that have some characteristics that are similar to commercial uses. An ASTR is similar to a businesses where overnight lodging is

provided for a fee. As the applicant has applied for a Conditional Use permit and has demonstrated, as shown elsewhere in this decision, that the proposal complies with the conditional use approval criteria, the proposal is consistent Policy 3, Objective 3.7 of the Creston Kenilworth Neighborhood Plan.

As the proposal, with conditions described above, is consistent with the policies in the Creston Kenilworth Neighborhood Plan that relate to the proposal, 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.

CONCLUSIONS

The existing attached house on its own lot in which the ASTR is proposed is a single-dwelling residential structure that is compatible in appearance and scale with the surrounding residential neighborhood. There is a church, a community center, and a convalescent home located within close proximity to the site. These other uses provide off-street parking and are maintained with attractive landscaping and the intensity and scale of these uses in combination with the proposed use will not significantly lessen the residential appearance and function of the area. There is also one other Type A ASTR in relatively close proximity to this proposed Type B ASTR. This Type A ASTR also maintains a residential appearance which will not change with the addition of this Type B ASTR. Where there are potential impacts on the surrounding residential area due to noise, late-night operations, and litter, the residential character of the area can be maintained through conditions of approval implementing the House Rules to establish and maintain quiet hours, and to provide for disposition of trash and recyclable materials. Assurance of privacy can also be maintained over time with a condition requiring replacement of the existing fencing that provides privacy should the existing fencing fail and the planting of an evergreen tree between the elevated deck and the southern lot line. City services for police, fire, water, and sanitary sewer and stormwater drainage are available and capable of serving the site. The transportation analysis provided by the applicant and reviewed by PBOT demonstrates that the proposal is consistent with the classifications of streets, and that the transportation system is capable of serving the proposed use, including consideration of the impacts of the use on the supply of on-street parking, and provided conditions are established to implement the proposed TDM program and limit the rental of the house only to those times when the resident is not staying at the house.

ADMINISTRATIVE DECISION

Conditional Use approval of a Type B – 3 Bedroom Accessory Short-Term Rental (ASTR) facility, limited to 1 bedroom in the garage level and 2 bedrooms on the second level of the house, per the approved plans, Exhibits C.1 through C.3, signed and dated May 15, 2019, subject to the following conditions:

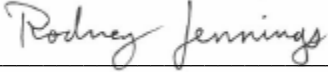
A) Prior to the start of operation of the Type B Accessory Short-Term Rental, the ASTR operator must meet the following conditions:

1. Purchase from BDS a fee-paid inspection to confirm that the requirements of Zoning Code Section 33.207.050.B.4 are met for 3 bedrooms on the garage and second levels that will be used as ASTR rentals.

2. Provide residents of properties adjacent to and across the street from the site with phone contact information for the long-term resident/owner/operator. Properties include: 3924, 3932, 3925, and 3935 SE 34th Avenue. The ASTR operator shall maintain paper copies of these notifications, including the list of who was notified and when, for inspection by City staff upon request.
 3. This Type B approval shall replace the existing Type A ASTR permit (#17-204019 HO). The Type A ASTR permit will be voided and will no longer be valid on the site.
- B) For the duration of operation of the Type B ASTR facility, the ASTR operator will meet the following conditions:
1. Short-term rental of the house is limited to the maximum of 90 days per calendar year when the resident is not staying at the house. Short-term rental arrangements are limited to a single group only in the house at one time, with a maximum of 2 guests per legal bedroom at any one time, regardless of age. If the maximum number of 3 bedrooms are rented, ASTR group size is limited to 6 people.
 2. Noise in violation of Title 18 is not allowed between the hours of 10:00 p.m and 7 a.m. Use of all outdoor spaces are prohibited during these quiet hours.
 3. Within 24 hours of the end of the regularly scheduled day of pickup, trash, compost and recycling containers must be removed from the public right-of-way and back onto the site into the south side yard or inside the garage or house. The ASTR operator is responsible for assuring that the resident or guests of the ASTR comply with this condition.
 4. Commercial meetings are prohibited. Commercial meetings include luncheons, banquets, parties, weddings, meetings, charitable fund raising, commercial or advertising activities, or other gatherings for direct or indirect compensation.
 5. Smoking by ASTR guests in outdoor spaces on the property is prohibited.
 6. The applicant shall post in the house and provide information packets to each rental party that includes:
 - Parking guidelines requiring that all vehicles to first park in the property's garage space and/or the driveway space;
 - The location of the nearby SE Powell Boulevard and SE Holgate bus lines/stops and the major destinations served by each;
 - Walking maps to nearby essential destinations such as the commercial and retail establishments along SE Powell Boulevard.
 7. The ASTR operator must amend the House Rules and Narrative included in Exhibit A.3 to comply with this decision and Conditions B.2 through B.5 of this approval. The amended House Rules and Narrative must be included in all advertisements for the ASTR facility.
 8. The ASTR operator must maintain the House Rules and Narrative, as required to be amended by this decision and conditions, for the duration of the operation of the ASTR facility. The ASTR Operator must email or mail copies of these House Rules to guests in advance of their visits. The ASTR Operator must ensure that at least one paper copy of these House Rules and Narrative is displayed prominently within a common area of the house.
 9. All advertisements for the ASTR shall display prominently in the title of the advertisement the maximum number of bedrooms, the maximum number of people allowed per nightly rental, and a statement that rental is limited to single groups only as a whole house rental.

10. Confirmation data from the authorized rental organization (such as Airbnb and VRBO) shall be provided to City staff upon request. Confirmation data must include the name, home address and phone number of the ASTR guests, and the dates of stay.
11. The ASTR Operator will maintain a Guest Log Book. The Guest Log Book must include the names and home addresses of guests, guest's license plate numbers if traveling by car, dates of stay, and the room assigned to each guest. The log must be available for inspection by City staff upon request.
12. On an annual basis, the ASTR operator must provide residents of properties adjacent to and across the street from the site with phone contact information for the long-term resident/onsite manager, and the property owner. Properties include: 3924, 3932, 3925, and 3935 SE 34th Avenue. The ASTR operator shall maintain paper copies of these notifications, including the list of who was notified and when, for inspection by City staff upon request. The ASTR operator is responsible to ensure that phone contact information remains current and neighbors are provided with updates.
13. The ASTR operator shall provide written or electronic notice to the Creston-Kenilworth Neighborhood Association and to neighboring residents of properties listed in Condition A.2 whenever the resident will be away from the site for more than three consecutive days and the dwelling unit will be occupied by anyone other than the resident or a member of the resident's immediate family.
14. In the event the existing fence, located around the perimeter of the north, rear, and south property lines (see Ex. C.1), are removed or damaged, the property owner must repair or replace it with a new fence that meets the F2 standard (minimum 6' high, fully site obscuring) of Zoning Code Chapter 33.248.
15. A medium size evergreen tree shall be planted in the south side yard between the elevated attached outdoor deck in the rear yard and the back yard of the property located south of the site. The species of tree shall be selected from the list of medium evergreen trees in the [Portland Tree and Landscaping Manual](#).

Staff Planner: Rodney Jennings

Decision rendered by:  **on May 15, 2019.**
By authority of the Director of the Bureau of Development Services

Decision mailed: May 17, 2019

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 February 20, 2018, and was determined to be complete on August 19, 2018.

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 February 20, 2018.

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 requested that the 120-day review period be extended by 245 days. **The 120 days will expire on: August 19, 2019.**

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 May 31, 2019** at 1900 SW Fourth Ave. Appeals can be filed at the 5th floor reception desk of 1900 SW 4th Avenue Monday through Friday between 8:00 am and 4:30 pm. **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 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, 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 will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded after **May 31, 2019** by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

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

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

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

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

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

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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statements
 1. Applicant's original statement and plans, received February 20, 2018
 2. Traffic Study including approved scope of work, received April 12, 2019
 3. Applicant's revised statement, received April 12, 2019
 4. Applicant's revision of application requesting a limit of 6 guests, received April 17, 2019
 5. Applicant's confirmation of fence height, received April 19, 2019
 6. Applicant's response to comments received, received may 14, 2019
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. Main Level, Second Level, and Garage Level floor plans
 3. Front Elevation
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Bureau of Environmental Services
 2. Fire Bureau
 3. Police Bureau
 4. Life Safety Review Section of BDS
 5. Site Development Review Section of BDS
 6. Bureau of Parks, Forestry Division
 7. Bureau of Transportation
 8. Water Bureau

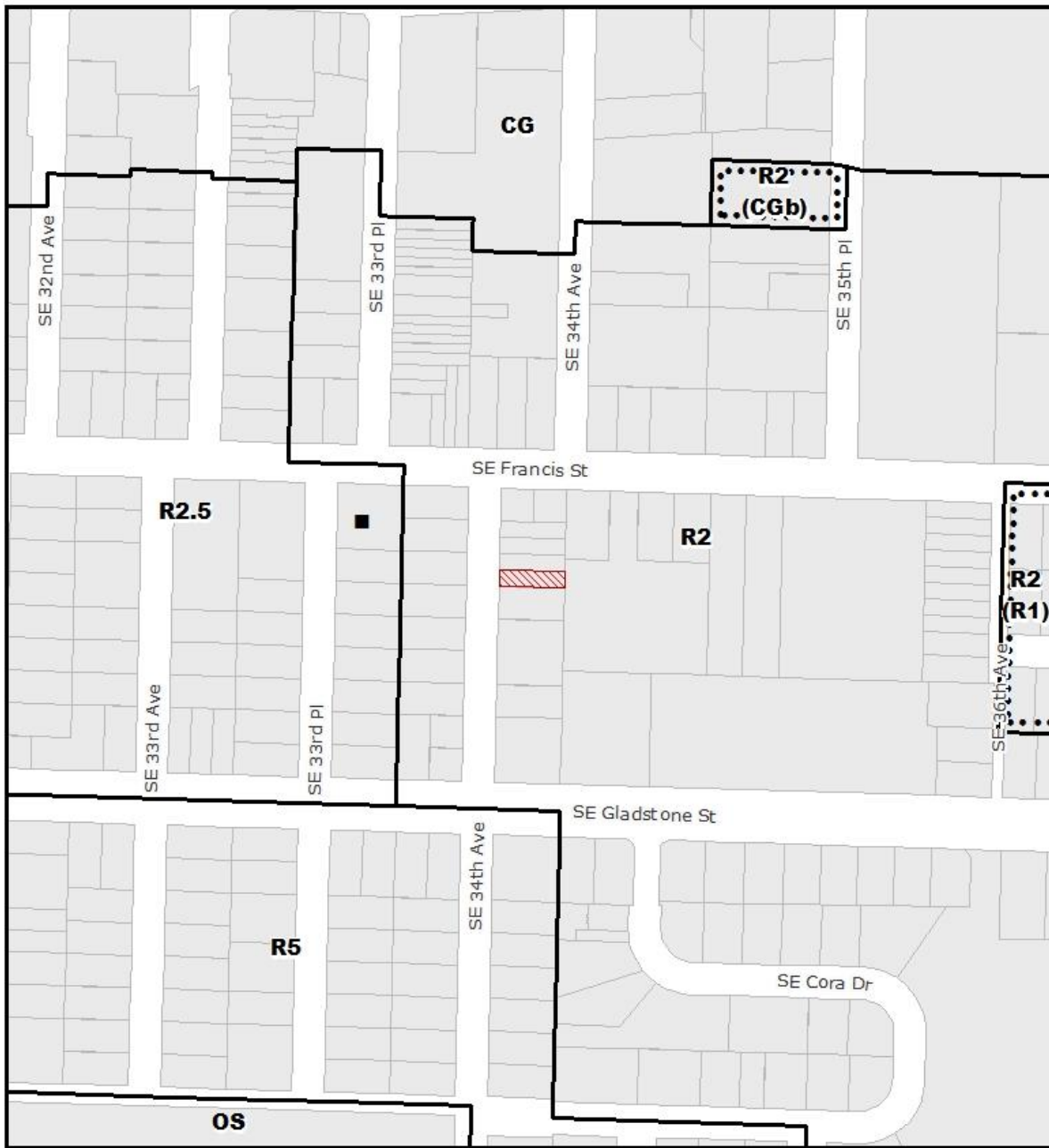
F. Correspondence:

1. John and Brandy Balicanta, May 8, 2019, recommend conditions if approved
2. Nicholas Pascetta, May 10, 2019, opposed
3. Charles Brody and Beth Rubin, May 10, 2019, opposed
4. Creston-Kenilworth Neighborhood Association, May 10, 2019, recommend conditions

G. Other:

1. Original LU Application & Receipt
2. Incomplete letter
3. Reminder of expiration of 180-day period to complete application
4. Request for extension of 120-day review period by 245 days

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).



ZONING



Site



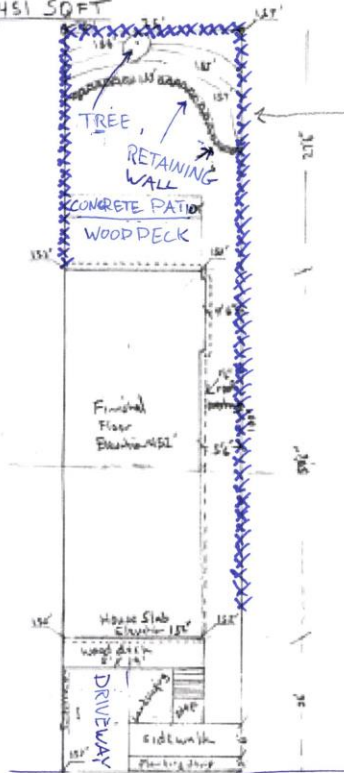
Historic Landmark

File No.	LU 18-124449 CU
1/4 Section	3434
Scale	1 inch = 200 feet
State ID	1S1E12DB 5800
Exhibit	B Feb 24, 2018

Site Plan

IMPERVIOUS AREA	BUILDING COVERAGE	LOT AREA
DRIVEWAY 231 SQ FT	BUILDING FOOTPRINT 838 SQ FT	7500 SQ FT
PATIO 190 SQ FT		
WALK 87 SQ FT		
ROOF AREA (INCL OVERHANG) 943 SQ FT		
TOTAL 1451 SQ FT		

xxxx-5'6" to 6'6" TALL FENCE



SE 34TH AVE

Approved
City of Portland
 Bureau of Development Services
 Planner Rodney Jennings
 Date 5/15/19

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

PROJECT LEGAL Kenilworth Block 11, Lot 3
TLS 800

PROJECT ADDRESS 3928 SE 34th Avenue
Portland, OR 97202

SITE PLAN
 SCALE 1" = 10'
 10'



LU 18-124449 CU

CASE NO. 18-124449 CU
 EXHIBIT C.1