



**Date:** December 24, 2019  
**To:** Interested Person  
**From:** Andrew Gulizia, Land Use Services  
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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 19-232832 CU**

**GENERAL INFORMATION**

**Applicants/Owners:** Yeugeniy Petrusha | Denis Petrusha  
 PO Box 66373  
 Portland, OR 97290

**Site Address:** 16121 NE San Rafael St.

**Legal Description:** BLOCK 5 LOT 7, ROBINBROOK; BLOCK 5 LOT 8, ROBINBROOK  
**Tax Account No.:** R713903120, R713903140  
**State ID No.:** 1N2E25DA 11000, 1N2E25DA 11100  
**Quarter Section:** 2846  
**Neighborhood:** Wilkes Community Group, contact Richard Anderson at 503-254-1625  
**Business District:** Gateway Area Business Association, contact at [gabapdxboard@gmail.com](mailto:gabapdxboard@gmail.com)  
**District Coalition:** East Portland Community Office, contact at 503-823-4550  
**Zoning:** R7h – Single-Dwelling Residential 7,000 base zone with Aircraft Landing (“h”) overlay  
**Case Type:** CU – Conditional Use review  
**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer

**Proposal:** The applicant requests Conditional Use approval to operate a Type B accessory short-term rental (ASTR) facility in the existing 6-bedroom house on this site. No exterior changes to the house or property are proposed for the ASTR use. The homeowner would live in the house full-time and make 5 bedrooms available for short-term rental guests. The property has a 3-car garage and driveway parking for up to 4 cars. No commercial events are proposed with this application. The proposed house rules include quiet hours for outdoor areas between 9pm and 7am on weekdays and between 10pm and 7am on weekends.

**Relevant Approval Criteria:** 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.

The City's 2035 Comprehensive Plan has been appealed. Because Zoning Code Section 33.815.105.A-E is considered an "unacknowledged land use regulation" while the appeal is pending, this proposal must also comply with applicable Statewide Planning Goals.

## ANALYSIS

**Site and Vicinity:** The subject site is a 14,212-square-foot property at the northeast corner of NE San Rafael Street and NE 160<sup>th</sup> Place. The site includes two tax lots and is developed with a 2-story, 4,809-square-foot, 6-bedroom house that was constructed in 1989. The house has an attached 3-car garage and driveway parking for up to 4 additional cars. Most neighboring properties are also developed with single-dwelling houses, though the St. George Antiochian Orthodox Church property is about 150 feet north of the site. The subject site is one lot from the City of Portland's eastern boundary at NE 162<sup>nd</sup> Avenue. Properties on the east side of NE 162<sup>nd</sup> Avenue are in the City of Gresham.

**Zoning:** The R7 single-dwelling residential zone is intended to preserve land for housing and to promote housing opportunities for individual households. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. Type B ASTR facilities are allowed in the R7 zone when approved through Conditional Use Review.

The site is also within the Aircraft Landing ("h") overlay zone. The "h" overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation in employment, industrial, and open space zones. The regulations of the "h" overlay zone do not apply to the subject site because it's in a residential zone (Zoning Code Section 33.400.030.B).

**Land Use Review History:** There are no prior land use reviews for this site.

**Agency Review:** A "Notice of Proposal" was sent November 18, 2019. The following Bureaus responded:

- The Bureau of Environmental Services (BES) responded with no concerns. (Exhibit E-1)
- The Portland Bureau of Transportation (PBOT) responded with findings for the transportation-related approval criteria. Details of this response are included below under "Zoning Code Approval Criteria." (Exhibit E-2)
- The Water Bureau responded with no concerns. (Exhibit E-3)
- The Fire Bureau responded with no concerns. (Exhibit E-4)
- The Police Bureau responded that police services are adequate for the proposed use. (Exhibit E-5)
- The Site Development Review Section of the Bureau of Development Services responded with no concerns. (Exhibit E-6)
- The Life Safety Review Section of the Bureau of Development Services responded with no objections to approval. (Exhibit E-7)
- The Urban Forestry Division of the Parks Bureau responded with no concerns. (Exhibit E-8)

**Neighborhood Review:** No written responses to the mailed "Notice of Proposal" were received from either the Neighborhood Association or notified neighbors.

## ZONING CODE APPROVAL CRITERIA

### Conditional Uses

#### 33.815.010 Purpose

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

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

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

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

**Findings:** The ASTR facility will not technically create a new non-Household Living use in the residential area, since ASTR facilities are classified as accessory to Household Living use (Zoning Code Section 33.920.110.B). However, because the characteristics of a Type B ASTR are different from a typical residential use, the proposed ASTR will be considered a non-Household Living use for purposes of this approval criterion.

For purposes of this criterion, staff considers the “residential area” to be residentially-zoned lots within a 400-foot radius of the subject site. Within this residential area, there are no other proposed or approved ASTR facilities. All of the properties in the residential area are developed with residential uses except for St. George Antiochian Orthodox Church, which is two lots north of the site.

No exterior alterations are proposed to the existing house on this site, and the applicant will live full-time in the house and use 5 of the 6 bedrooms for short-term rentals. To ensure the intensity and scale of the ASTR use is comparable to a more typical residential use, staff finds a condition of approval is warranted to limit the number of bedrooms rented to ASTR guests to 5, and to limit the number of ASTR guests to 2 per bedroom (10 total), regardless of age. Another condition of approval will require that all advertisements for the ASTR display prominently in the title of the advertisement the maximum number of people allowed per bedroom. Also, to ensure over time that requirements for the number of guests are enforced, a condition of approval will require the applicant to maintain a guest log and provide data to the City upon request.

As there are no exterior alterations proposed to the existing house on this site, staff finds the ASTR facility will not noticeably impact the residential appearance of the area. With the conditions of approval mentioned above, staff also finds the intensity and scale of the ASTR

use will not significantly lessen the residential function of the area. For these reasons, and with the conditions of approval, staff finds approval criterion A 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 zoning maps with a lower case “s.” The zoning maps show no City-designated scenic resource on or near this site. Therefore, criterion B.1 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 subject site is comparable to neighboring residential properties in terms of site size, building scale and style, building setbacks, and landscaping. The ASTR use will take place inside the existing house on the site, and no physical changes to the house or property are proposed with this Conditional Use application.

Since the proposed Conditional Use will not create any differences in appearance or scale between the subject site and neighboring residential properties, staff finds criterion B.2, above, is met. (Since B.2 is found to be met, B.3 does not have to be addressed.)

**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 proposed house rules require quiet hours after 10pm every day and after 9pm outdoors on weeknights (Exhibit A-6, page 10). These quiet hours will comply with the requirements of Title 18 (Noise Control), and a condition of approval will prohibit noise impacts that violate Title 18. Another condition of approval will require the house rules to be posted within the house and on any website in which the ASTR is advertised. To help prevent noise or other livability impacts, another condition of approval will require the applicant to provide a telephone number and e-mail address of the ASTR operator (the full-time resident of the house) to the immediate neighbors at least once each year. Notification to the following properties will be required:

- 2010 NE 160<sup>th</sup> Pl.
- 2009 NE 162<sup>nd</sup> Ave.
- 16137 NE San Rafael St.

No new exterior lighting is proposed for the ASTR use, and existing exterior lighting is typical for a residential use. Garbage and recycling collection will be managed by the applicant (Exhibit A-6, page 8). No aspect of the short-term rental operation is likely to produce glare, litter or odor impacts that are different from a typical residential use or that would adversely impact neighbors.

For these reasons, and with the conditions of approval mentioned above, staff finds there will be no significant adverse impacts related to noise, glare from lights, late-night operations, odors, or litter. With the conditions of approval, criterion C.1 is met.

2. Privacy and safety issues.

**Findings:** The proposed ASTR rooms are inside the existing house on the site. The back of the house faces the side lot line of the abutting property to the north, and the fencing around the back yard will tend to contain outdoor use associated with the ASTR to the subject property. The outdoor amenities on the subject site (hot tub, patio, and second-story deck) face the side of the adjacent two-story house rather than the neighboring back yard. The subject property is fairly large (14,212 square feet), and these amenities are approximately 20 feet from the lot line and approximately 32 feet from the neighboring house. For these reasons, and with the condition of approval for noise impacts mentioned above, staff finds the proposed ASTR use will not create significant adverse impacts on neighbors' privacy.

No adverse safety impacts are anticipated, either. The Fire Bureau reviewed the proposal and responded with no concerns (Exhibit E-4). The Police Bureau reviewed the proposal and found that police services are adequate for the ASTR use (Exhibit E-5). PBOT found there would be no safety impacts on adjacent streets with a condition of approval for the applicant to maintain the hedge at the east lot line at 3 feet or less in height (Exhibit E-2). To further ensure safety, another condition of approval will require the applicant to obtain an inspection verifying the building code, smoke detector, and carbon monoxide alarm requirements in Zoning Code Section 33.207.050.B.4 are met for each ASTR bedroom.

With the conditions of approval mentioned above, criterion C.2 is met.

#### **D. Public services.**

1. The proposal is supportive of the street designations of the Transportation Element of the Comprehensive Plan;
2. Transportation system:
  - a. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include safety, street capacity, level of service, connectivity, transit availability, availability of pedestrian and bicycle networks, on-street parking impacts, access restrictions, neighborhood impacts, impacts on pedestrian, bicycle, and transit circulation. Evaluation factors may be balanced; a finding of failure in one or more factors may be acceptable if the failure is not a result of the proposed development, and any additional impacts on the system from the proposed development are mitigated;
  - b. Measures proportional to the impacts of the proposed use are proposed to mitigate on- and off-site transportation impacts. Measures may include transportation improvements to on-site circulation, public street dedication and improvement, private street improvements, intersection improvements, signal or other traffic management improvements, additional transportation and parking demand management actions, street crossing improvements, improvements to the local pedestrian and bicycle networks, and transit improvements;
  - c. Transportation improvements adjacent to the development and in the vicinity needed to support the development are available or will be made available when the development is complete or, if the development is phased, will be available as each phase of the development is completed;

**Findings:** PBOT reviewed the proposal and submitted the following response (Exhibit E-2):

*At this location, the City's Transportation System Plan (TSP) classifies NE San Rafael as a Neighborhood Collector, City Bikeway, City Walkway, Secondary Emergency Response, Community Corridor for Design, and Local Service for all remaining modes; whereas NE 160th Pl. is classified as Local Service for all modes. At this location, NE San Rafael is a*

*divided roadway which is improved with a 33-ft paved roadway abutting the site within a 90-ft wide ROW, in which the pedestrian corridor is improved with a 5-ft curb tight sidewalk. The NE 160th frontage is improved with a 28-ft paved roadway within a 50-ft ROW, in which also had a 5-ft curb tight sidewalk within approximately 11-ft of frontage from the face of curb. The proposed Accessory Short-Term Rental (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.*

*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 utilized. 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. Utilizing this data, the maximum rental scenario of a 5-unit short term is estimated to generate 17 daily trips, including three weekday morning and evening trips, in addition to the existing single-family use. The applicant's traffic engineer collected 24-hr tube volume counts on October 10, 2019, which determined that NE San Rafael as an average daily traffic demand of approximately 1,140 vehicles. Which under the maximum rental scenario, the small increase of 17 trips will not pose a significant increase in traffic volumes.*

*To address the street capacity and Level of Service (LOS) evaluation factors, the applicant's traffic engineer performed week-day PM peak hour observations at the intersection of NE San Rafael and NE 162nd Ave. The findings note steady gaps in the traffic stream in both directions on NE 162nd is attributed to the traffic signals at NE Halsey St and NE Sandy Blvd, which has minimal vehicle delay to the San Rafael volumes. Therefore, the existing intersections are capable of handling the nominal increase in traffic and will not negatively affect City of Portland's operational standards.*

*Safety for All Modes: The applicant's traffic engineer evaluated safety for all modes in conjunction with the proposed ASTR use. Given the high classification of NE San Rafael, vehicles would typically have to enter and exit the roadway in a forward manner. However, the applicant is not proposing any structural changes to the existing home, which presently has direct access to a three-car garage and a secondary driveway leading to the rear yard east of the home. Provided the low volume of NE San Rafael, and that the subject property is proposing to mitigate the increase of vehicles by providing most anticipated vehicles on-site, the existing driveways are permitted to remain.*

*A field visit from the applicant's traffic engineer did note that a hedge row along the property's eastern property line impeded visibility of on-coming traffic westward from NE 162nd. In recognition of this, the property owner has trimmed the hedge row to less than 3-ft in height, allowing for vehicles to have sufficient sight distance to see oncoming traffic. Maintaining the hedge at no more the 3-ft in height shall be a recommended condition of approval.*

*Pedestrian, Cycling, and Transit Availability: The subject site is located near two TriMet transit options within a quarter mile of the site. First is bus service #74-162nd which is located approximately 200-ft to the east and provides for 30-min service; whereas bus service #77- Broadway/Halsey is located approximately 1,200 feet to the south at the intersection of NE Halsey and NE 162nd Ave, which provides 15-min Frequent Service, both of which provides easy access to the Central City and other areas within the greater Portland metro area.*

*For bicycles, NE San Rafael is identified as a City Bikeway, and is the one of two-primary east-west bicycle routes through outer northeast Portland, connecting to other parts of Portland's larger bicycle network, including established bike lanes on NE 162nd. The established pedestrian network allows for safe walking conditions for pedestrians to*

connect nearby bus stops or other areas of interest. Therefore, the proposed use will have no significant safety concerns for any mode.

Connectivity: The subject site is located on a corner within a moderately-connected neighborhood for outer northeast Portland, in which the established street system provides multiple routes to and from the site for vehicles and other modes. The site is approximately 140-ft from NE 162nd Ave, which is a major north-south arterial. The property is within two transit stops, and the surrounding Local Service streets provide safe passage for both cycling and pedestrian modes. Therefore, 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.

On-Street Parking Impacts: The applicant's traffic engineer notes that the existing single-family home is required to provide one on-site parking space, which will be provided in one of the available three-car garage spaces. Under the maximum rental scenario, which based upon ITE data, the proposed ASTR would generate five additional parking spaces, for a total demand of six parking spaces. The applicant's findings note that the remaining two spaces in the garage can accommodate two additional vehicles, plus the existing driveway east of the home can accommodate two more vehicles, for a total of five spaces on-site, necessitating one parking space to be provided on-street.

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 utilized 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. To determine the demand and availability of on-street parking in the vicinity of the site, the applicant's traffic engineer conducted observations within 1-2 blocks from the site, during the overnight period corresponding to the expected peak period for residential parking demand, beginning at 11:00 pm on October 10, 2019. Within the study area, the parking study estimated that there was an on-street parking capacity of 24 spaces, in which 2 spaces were occupied at time of observation, which is an on-street parking occupancy rate of 8%. 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. Therefore, the anticipated parking demand will be negligible.

Access Restrictions: This portion of San Rafael is a divided roadway which abutting the site accommodates west-bound only. On-street parking is available on both sides of the property. The Transportation facilities are adequate to accommodate the proposed use. Therefore, 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 within the study area to accommodate the use. 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.

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".

#### RECOMMENDATION

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

- *Hedge at eastern property line shall be maintained at a height of no more than 3-ft to ensure safe sight distance for vehicles backing out into SE [San] Rafael.*
- *The applicant provides information regarding transit schedules, multi-modal information, bike rentals, maps, car share options, etc. in order to reduce vehicle trips associated with the proposed use.*

Based on these findings from PBOT, and with the conditions of approval recommended by PBOT, staff finds criteria D.1 and D.2 are 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 the Fire Bureau reviewed the proposal and responded with no concerns (Exhibits E-3 and E-4, respectively). The Portland Police Bureau reviewed the proposal and responded that police services are adequate for the proposed use (Exhibit E-5). The Bureau of Environmental Services reviewed the proposal and responded with no objections, indicating no concerns with the existing sanitary waste disposal and stormwater disposal from the property (Exhibit E-1). For these reasons, criterion D.3 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 located within the Wilkes Community and Rockwood Corridor Plan. Staff finds the following statements from the Wilkes Community and Rockwood Corridor Plan to be relevant:

- Plan Goal A: Enhance and improve the quality of the urban environment. (page 13)
- Plan Goal C: Protect and preserve a sense of community identity. (page 13)
- Plan Goal E: Preserve and improve the livability of established residential neighborhoods. (page 13)
- Plan Goal L: Enhance the environment of local residential streets. (page 13)
- Policy 10: Maintain developed residential use protected from encroachment by incompatible uses. (page 16)
- Policy 18: Promote development of pedestrian, bicycle, and transit amenities. (page 17)
- Policy 21, C.2: Use design features such as landscaping, screening, and building orientation to ensure compatibility with surrounding residential developments. (page 18)
- Community Design Guidelines, A.5: Preserve the privacy and attractive characteristics of existing residential areas. (page 21)

The ASTR use will take place inside the existing house on this site. No exterior alterations to the house or property are proposed with this Conditional Use Review, and the existing landscaping and trees around the house will be maintained. The property is compatible in appearance and design with neighboring properties along NE San Rafael Street and NE 160<sup>th</sup> Place, as most of these properties were developed at about the same time.

As discussed in the findings above for approval criterion C, no significant impacts to neighborhood livability or to neighbors' privacy are expected.

As discussed in the findings for approval criterion D.1-.2, the applicant will provide information to guests to promote the use of transit and bicycles.

For these reasons, staff finds the proposal is consistent with the Wilkes Community and Rockwood Corridor Plan. Approval criterion E is met.

### **Oregon Statewide Planning Goals**

Because one or more of the criteria listed above is an "unacknowledged" land use regulation, this proposal must comply with applicable Statewide Planning Goals.

#### Goal 1: Citizen Involvement

Goal 1 calls for "the opportunity for citizens to be involved in all phases of the planning process." It requires each city and county to have a citizen involvement program containing six components specified in the goal. It also requires local governments to have a Committee for Citizen Involvement (CCI) to monitor and encourage public participation in planning.

**Findings:** The City of Portland maintains an extensive citizen involvement program which complies with all relevant aspects of Goal 1, including specific requirements in Zoning Code Chapter 33.730 for public notice of land use review applications that seek public comment on proposals. For this application, a written notice seeking comments on the proposal was mailed to property owners and tenants within 150 feet of the site, and to recognized organizations in which the site is located and recognized organizations within 400 feet of the site. There is also an opportunity to appeal the administrative decision at a local hearing. The public notice requirements for this application have been and will continue to be met, and nothing about this proposal affects the City's ongoing compliance with Goal 1. Therefore, the proposal is consistent with this goal.

#### Goal 2: Land Use Planning

Goal 2 outlines the basic procedures of Oregon's statewide planning program. It states that land use decisions are to be made in accordance with a comprehensive plan, and that suitable "implementation ordinances" to put the plan's policies into effect must be adopted. It requires that plans be based on "factual information"; that local plans and ordinances be coordinated with those of other jurisdictions and agencies; and that plans be reviewed periodically and amended as needed. Goal 2 also contains standards for taking exceptions to statewide goals. An exception may be taken when a statewide goal cannot or should not be applied to a particular area or situation.

**Findings:** Compliance with Goal 2 is achieved, in part, through the City's comprehensive planning process and land use regulations. For quasi-judicial proposals, Goal 2 requires that the decision be supported by an adequate factual base, which means it must be supported by substantial evidence in the record. As discussed in the Zoning Code approval criteria findings, the proposal complies with the applicable regulations, as supported by substantial evidence in the record. As a result, the proposal meets Goal 2.

#### Goal 3: Agricultural Lands

Goal 3 defines "agricultural lands," and requires counties to inventory such lands and to "preserve and maintain" them through farm zoning. Details on the uses allowed in farm zones are found in ORS Chapter 215 and in Oregon Administrative Rules, Chapter 660, Division 33.

#### Goal 4: Forest Lands

This goal defines forest lands and requires counties to inventory them and adopt policies and ordinances that will "conserve forest lands for forest uses."

**Findings:** In 1991, as part of Ordinance No. 164517, the City of Portland took an exception

to the agriculture and forestry goals in the manner authorized by state law and Goal 2. Since this review does not change any of the facts or analyses upon which the exception was based, the exception is still valid, and Goal 3 and Goal 4 do not apply.

#### Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources

Goal 5 relates to the protection of natural and cultural resources. It establishes a process for inventorying the quality, quantity, and location of 12 categories of natural resources. Additionally, Goal 5 encourages but does not require local governments to maintain inventories of historic resources, open spaces, and scenic views and sites.

**Findings:** The City complies with Goal 5 by identifying and protecting natural, scenic, and historic resources in the City's Zoning Map and Zoning Code. Natural and scenic resources are identified by the Environmental Protection ("p"), Environmental Conservation ("c"), and Scenic ("s") overlay zones on the Zoning Map. The Zoning Code imposes special restrictions on development activities within these overlay zones. Historic resources are identified on the Zoning Map either with landmark designations for individual sites or as Historic Districts or Conservation Districts. This site is not within any environmental or scenic overlay zones and is not part of any designated historic resource. Therefore, Goal 5 is not applicable.

#### Goal 6: Air, Water and Land Resources Quality

Goal 6 requires local comprehensive plans and implementing measures to be consistent with state and federal regulations on matters such as groundwater pollution.

**Findings:** Compliance with Goal 6 is achieved through the implementation of development regulations such as the City's Stormwater Management Manual at the time of building permit review, and through the City's continued compliance with Oregon Department of Environmental Quality (DEQ) requirements for cities. BES reviewed the proposal with respect to sanitary sewer and stormwater requirements and expressed no objections to approval of the application (Exhibit E-1). Staff finds the proposal is consistent with Goal 6.

#### Goal 7: Areas Subject to Natural Disasters and Hazards

Goal 7 requires that jurisdictions adopt development restrictions or safeguards to protect people and property from natural hazards. Under Goal 7, natural hazards include floods, landslides, earthquakes, tsunamis, coastal erosion, and wildfires. Goal 7 requires that local governments adopt inventories, policies, and implementing measures to reduce risks from natural hazards to people and property.

**Findings:** The City complies with Goal 7 by mapping natural hazard areas such as floodplains and potential landslide areas, which can be found in the City's MapWorks geographic information system. The City imposes additional requirements for development in those areas through a variety of regulations in the Zoning Code, such as through special plan districts or land division regulations. The subject site is not within any mapped floodplain or landslide hazard area, so Goal 7 does not apply.

#### Goal 8: Recreation Needs

Goal 8 calls for each community to evaluate its areas and facilities for recreation and develop plans to deal with the projected demand for them. It also sets forth detailed standards for expediting siting of destination resorts.

**Findings:** The City maintains compliance with Goal 8 through its comprehensive planning process, which includes long-range planning for parks and recreational facilities. Staff finds the current proposal will not affect existing or proposed parks or recreation facilities in any way that is not anticipated by the zoning for the site, or by the parks and recreation system development charges that are assessed at time of building permit. Furthermore, nothing about the proposal will undermine planning for future facilities. Therefore, the proposal is consistent with Goal 8.

### Goal 9: Economy of the State

Goal 9 calls for diversification and improvement of the economy. Goal 9 requires communities to inventory commercial and industrial lands, project future needs for such lands, and plan and zone enough land to meet those needs.

**Findings:** Land needs for a variety of industrial and commercial uses are identified in the adopted and acknowledged Economic Opportunity Analysis (EOA) (Ordinance 187831). The EOA analyzed adequate growth capacity for a diverse range of employment uses by distinguishing several geographies and conducting a buildable land inventory and capacity analysis in each. In response to the EOA, the City adopted policies and regulations to ensure an adequate supply of sites of suitable size, type, location and service levels in compliance with Goal 9. The City must consider the EOA and Buildable Lands Inventory when updating the City's Zoning Map and Zoning Code. Because this proposal does not change the supply of industrial or commercial land in the City, the proposal is consistent with Goal 9.

### Goal 10: Housing

Goal 10 requires local governments to plan for and accommodate needed housing types. The Goal also requires cities to inventory its buildable residential lands, project future needs for such lands, and plan and zone enough buildable land to meet those needs. It also prohibits local plans from discriminating against needed housing types.

**Findings:** The City complies with Goal 10 through its adopted and acknowledged inventory of buildable residential land (Ordinance 187831), which demonstrates that the City has zoned and designated an adequate supply of housing. For needed housing, the Zoning Code includes clear and objective standards. Since the house subject to this proposal will serve as the full-time residence for the applicant, the house will remain part of the City's existing housing stock. Since the proposal will facilitate continuing investment in the City's housing stock, the proposal is consistent with Goal 10.

### Goal 11: Public Facilities and Services

Goal 11 calls for efficient planning of public services such as sewers, water, law enforcement, and fire protection. The goal's central concept is that public services should be planned in accordance with a community's needs and capacities rather than be forced to respond to development as it occurs.

**Findings:** The City of Portland maintains an adopted and acknowledged public facilities plan to comply with Goal 11. See Citywide Systems Plan adopted by Ordinance 187831. The public facilities plan is implemented by the City's public services bureaus, and these bureaus review development applications for adequacy of public services. Where existing public services are not adequate for a proposed development, the applicant is required to extend public services at their own expense in a way that conforms to the public facilities plan. In this case, the City's public services bureaus found that public services are adequate for the proposal. Therefore, the proposal is consistent with Goal 11.

### Goal 12: Transportation

Goal 12 seeks to provide and encourage "safe, convenient and economic transportation system." Among other things, Goal 12 requires that transportation plans consider all modes of transportation and be based on inventory of transportation needs.

**Findings:** The City of Portland maintains a Transportation System Plan (TSP) to comply with Goal 12, adopted by Ordinances 187832, 188177 and 188957. The City's TSP aims to "make it more convenient for people to walk, bicycle, use transit, use automobile travel more efficiently, and drive less to meet their daily needs." The extent to which a proposal affects the City's transportation system and the goals of the TSP is evaluated by PBOT. As discussed earlier in this report, PBOT evaluated this proposal and found the transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Therefore, the proposal is consistent with Goal 12.

### Goal 13: Energy

Goal 13 seeks to conserve energy and declares that “land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles.”

**Findings:** With respect to energy use from transportation, as identified above in response to Goal 12, the City maintains a TSP that aims to “make it more convenient for people to walk, bicycle, use transit, use automobile travel more efficiently, and drive less to meet their daily needs.” This is intended to promote energy conservation related to transportation. Additionally, at the time of building permit review and inspection, the City implements energy efficiency requirements as required by the current building code. For these reasons, staff finds Goal 13 is met.

### Goal 14: Urbanization

This goal requires cities to estimate future growth and needs for land and then plan and zone enough land to meet those needs. It calls for each city to establish an “urban growth boundary” (UGB) to “identify and separate urbanizable land from rural land.” It specifies seven factors that must be considered in drawing up a UGB. It also lists four criteria to be applied when undeveloped land within a UGB is to be converted to urban uses.

**Findings:** In the Portland region, most of the functions required by Goal 14 are administered by the Metro regional government rather than by individual cities. The desired development pattern for the region is articulated in Metro’s Regional 2040 Growth Concept, which emphasizes denser development in designated centers and corridors. The Regional 2040 Growth Concept is carried out by Metro’s Urban Growth Management Functional Plan, and the City of Portland is required to conform its zoning regulations to this functional plan. This land use review proposal does not change the UGB surrounding the Portland region and does not affect the Portland Zoning Code’s compliance with Metro’s Urban Growth Management Functional Plan. Therefore, Goal 14 is not applicable.

### Goal 15: Willamette Greenway

Goal 15 sets forth procedures for administering the 300 miles of greenway that protects the Willamette River.

**Findings:** The City of Portland complies with Goal 15 by applying Greenway overlay zones which impose special requirements on development activities near the Willamette River. The subject site for this review is not within a Greenway overlay zone near the Willamette River, so Goal 15 does not apply.

### Goal 16: Estuarine Resources

This goal requires local governments to classify Oregon’s 22 major estuaries in four categories: natural, conservation, shallow-draft development, and deep-draft development. It then describes types of land uses and activities that are permissible in those “management units.”

### Goal 17: Coastal Shorelands

This goal defines a planning area bounded by the ocean beaches on the west and the coast highway (State Route 101) on the east. It specifies how certain types of land and resources there are to be managed: major marshes, for example, are to be protected. Sites best suited for unique coastal land uses (port facilities, for example) are reserved for “water-dependent” or “water-related” uses.

### Goal 18: Beaches and Dunes

Goal 18 sets planning standards for development on various types of dunes. It prohibits residential development on beaches and active foredunes, but allows some other types of development if they meet key criteria. The goal also deals with dune grading, groundwater drawdown in dunal aquifers, and the breaching of foredunes.

### Goal 19: Ocean Resources

Goal 19 aims “to conserve the long-term values, benefits, and natural resources of the nearshore ocean and the continental shelf.” It deals with matters such as dumping of dredge spoils and discharging of waste products into the open sea. Goal 19’s main requirements are for state agencies rather than cities and counties.

**Findings:** Since Portland is not within Oregon’s coastal zone, Goals 16-19 do not apply.

## **DEVELOPMENT STANDARDS**

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all 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 applicant proposes to live full-time in the 6-bedroom house on this site and rent 5 of the bedrooms as a Type B ASTR facility. Staff finds that with conditions of approval, the proposal will maintain the residential appearance and function of the area, maintain physical compatibility, and limit livability impacts on neighbors. Public services are available for the site, and the Portland Bureau of Transportation found the transportation system in the area can accommodate the proposed use. With conditions of approval, the proposal meets all of the applicable approval criteria and therefore must be approved.

## **ADMINISTRATIVE DECISION**

Approval of a Type B accessory short-term rental (ASTR) facility with up to 5 bedrooms within the existing house on this site, subject to the following conditions:

- A. Before the ASTR facility can operate, the applicant or operator must obtain approval of a fee paid inspection from BDS to confirm that the building code, smoke detector, and carbon monoxide alarm requirements of Zoning Code Section 33.207.050.B.4 are met for the bedrooms to be rented to overnight guests.
- B. No more than 5 bedrooms at a time can be rented to ASTR guests.
- C. No more than 2 ASTR guests per bedroom (regardless of age) are allowed.
- D. All advertisements for the ASTR must display prominently in the title of the advertisement the maximum number of bedrooms rented to ASTR guests (5) and the maximum number of ASTR guests allowed per bedroom (2).
- E. The “house rules” in Exhibit A-6, pages 10-11 must be posted in a visible location in the rental and posted on any website on which the ASTR is advertised.
- F. Commercial meetings including luncheons, banquets, parties, weddings, meetings, charitable fund raising, commercial or advertising activities, or other gatherings for direct or indirect compensation are not allowed.
- G. The ASTR facility may not create noise impacts in violation of Title 18 (Noise Control), which 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 use or operation of any such device between the hours of 10pm and 7am to be plainly audible within any dwelling unit which is not the source of the sound.
- H. The applicant or operator must annually provide a telephone number and e-mail address for the full-time resident of the property to residents of the following neighboring properties:
- 2010 NE 160<sup>th</sup> Pl.;
  - 2009 NE 162<sup>nd</sup> Ave.; and
  - 16137 NE San Rafael St.
- I. The applicant or operator must maintain a Guest Log Book. The Guest Log Book must include the names and home addresses of guests, guests' 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. Confirmation of this data from the authorized rental organization (such as AirBnb or VRBO) must also be provided to City staff upon request.
- J. The applicant or operator must maintain the hedge between the driveway and the east lot line at no more than 3 feet in height to ensure safe sight distance for vehicles backing out into SE San Rafael Street.
- K. The applicant or operator must provide information on transit, bike shares, and car shares and provide maps of nearby walkable attractions in a central location within the rental.

**Staff Planner: Andrew Gulizia**

**Decision rendered by:**  **on December 17, 2019**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: December 24, 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 September 26, 2019 and was determined to be complete on November 13, 2019.

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 September 26, 2019.

ORS 227.178 states the City must issue a final decision on land use review applications within 120 days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on March 12, 2020.**

**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, who will hold a public hearing. Appeals must be filed **by 4:30 PM on January 7, 2020** at 1900 SW Fourth Ave. Appeals can be filed at the 5<sup>th</sup> floor reception desk of 1900 SW 4<sup>th</sup> 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 (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.portlandoregon.gov](http://www.portlandoregon.gov).

**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 **January 7, 2020** 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 recording documents please call the Bureau of Development Services Land Use Services Division at (503) 823-0625.

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

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a

new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

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

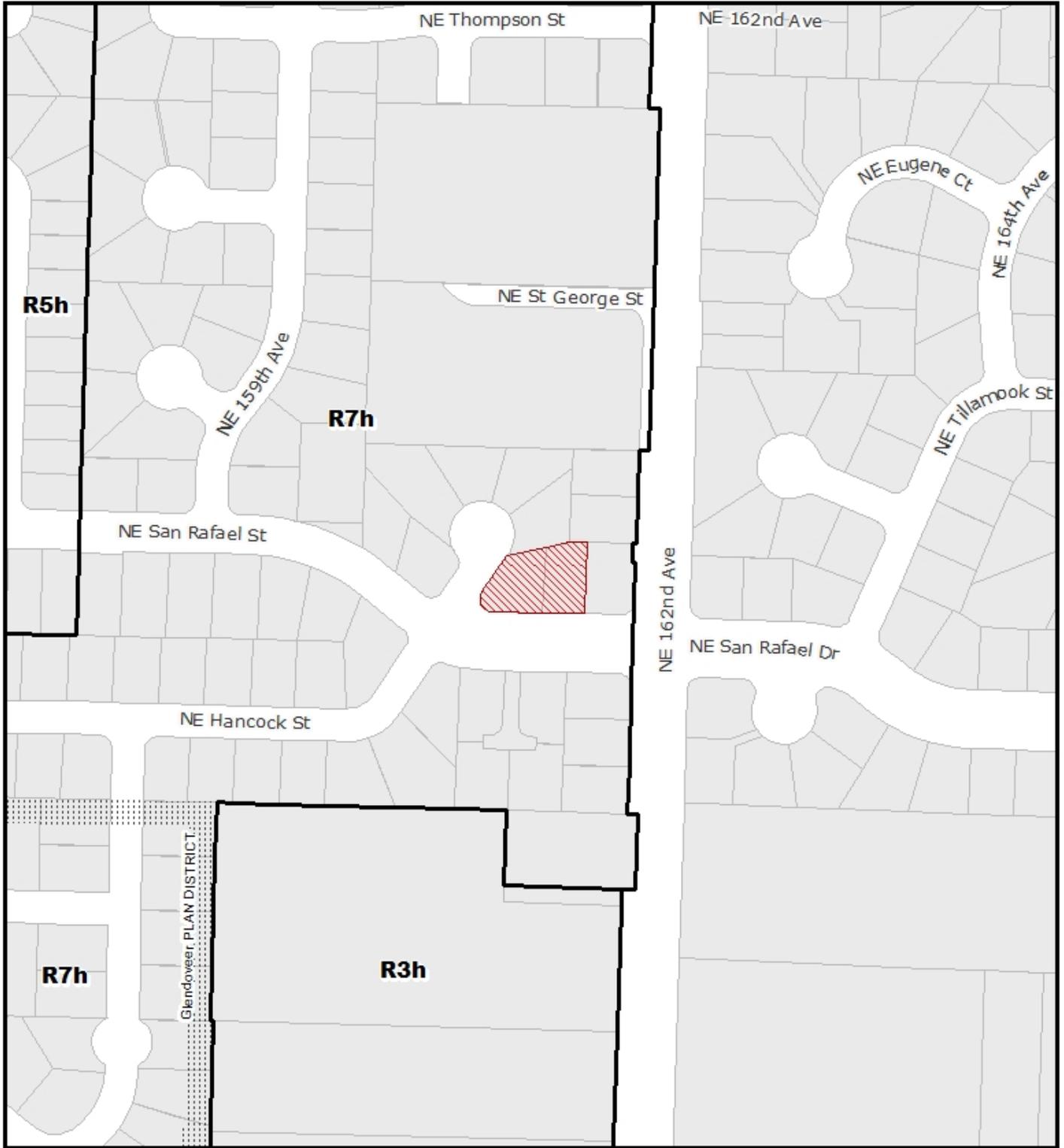
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
  - 1. Photographs
  - 2. Memo from applicant's transportation engineer
  - 3. Transportation impact study
  - 4. Proof of residency
  - 5. Original narrative
  - 6. Revised narrative
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site plan (attached)
  - 2. Floor plans
  - 3. Building elevations and section drawings
- D. Notification Information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Portland Bureau of Transportation
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Police Bureau
  - 6. Site Development Review Section of BDS
  - 7. Life Safety Review Section of BDS
  - 8. Bureau of Parks, Forestry Division
- F. Correspondence – none received
- G. Other:
  - 1. Land use application form and receipt
  - 2. Incompleteness determination letter, dated October 9, 2019

**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).**



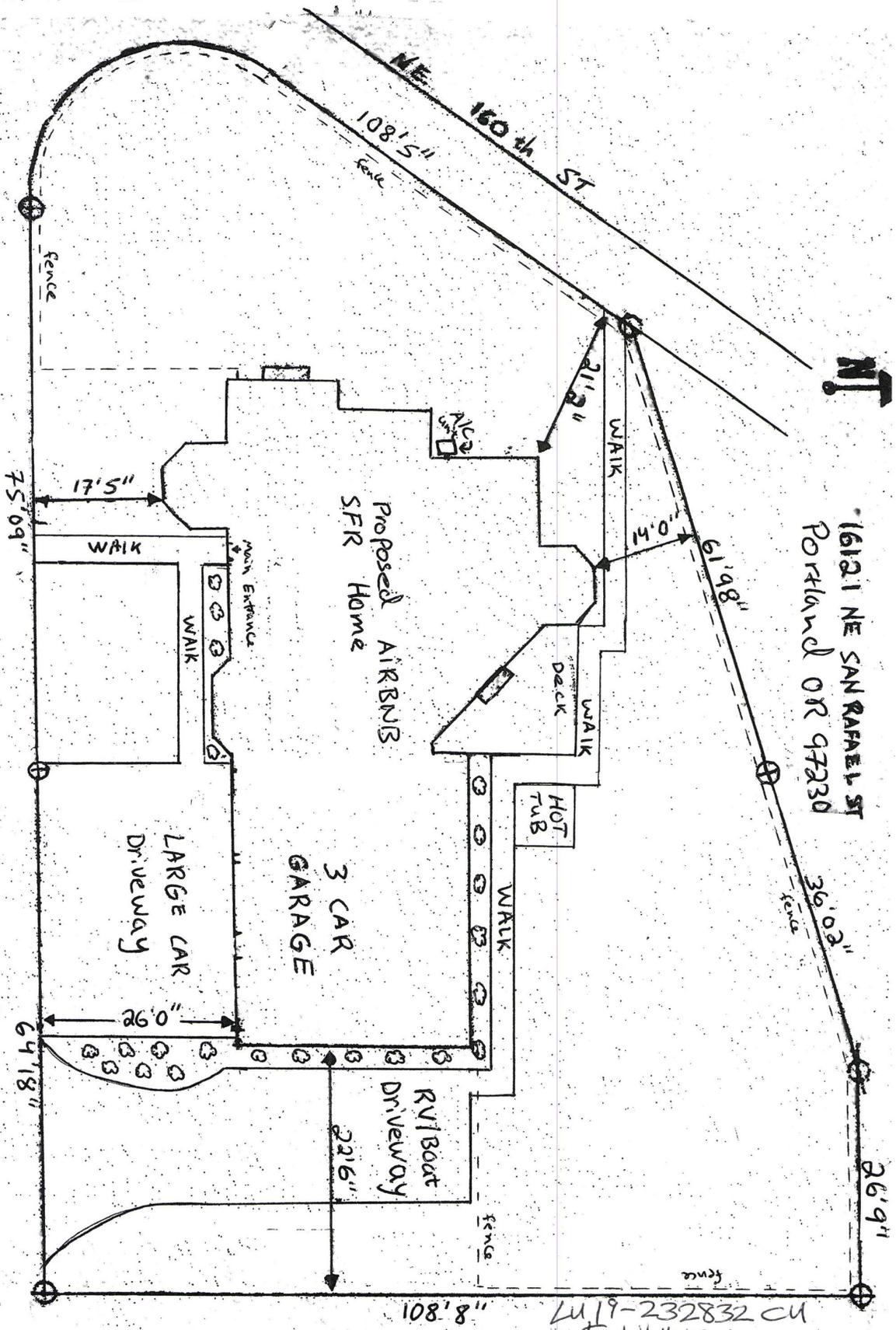
**ZONING**  NORTH

 Site

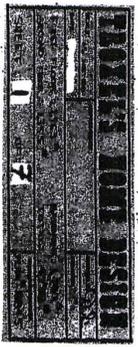
File No.	LU 19 - 232832 CU
1/4 Section	2846
Scale	1 inch = 200 feet
State ID	1N2E25DA 11000
Exhibit	B Sep 30, 2019



16121 NE SAN RAFAEL ST  
PORTLAND OR 97230



LOTS 7 & 8 BLOCK 5  
ROBIN BROOK  
R258281 & R258280



LU 19-232832 CU

LU 19-232832 CU  
Exhibit C-1