



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

Dan Ryan, Commissioner  
Rebecca Esau, Director  
Phone: (503) 823-7300  
Fax: (503) 823-5630  
TTY: (503) 823-6868  
www.portland.gov/bds

**Date:** January 31, 2022  
**To:** Interested Person  
**From:** Amanda Rhoads, Land Use Services  
503-865-6514 / Amanda.Rhoads@portlandoregon.gov

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

The Bureau of Development Services has approved a proposal in your neighborhood. The 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 21-089433 CU**

#### **GENERAL INFORMATION**

**Applicant/Owner:** Antonio Hayes  
9140 SE Duke St | Portland, OR 97266  
(503) 519-3481 | ahayesrealestate@gmail.com

**Site Address:** 9140 SE Duke St

**Legal Description:** LOT 3 POTENTIAL ADDITIONAL TAX, PARTITION PLAT 2008-73  
**Tax Account No.:** R649882910  
**State ID No.:** 1S2E21BA 00903  
**Quarter Section:** 3739  
**Neighborhood:** Lents, contact at 1017 NE 117<sup>th</sup> Ave, Portland OR 97220  
**Business District:** Lents Grown Business Association, contact lentsgrown@gmail.com. & Eighty-Second Ave of Roses Business Association, contact at info@82ndave.org

**District Coalition:** East Portland Community Office, contact at info@eastportland.org  
**Zoning:** R2.5 – Single-Dwelling Residential 2,500  
**Case Type:** CU – Conditional Use Review  
**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer

#### **Proposal:**

The applicant requests Conditional Use Review approval to operate a Type B accessory short-term rental (ASTR) facility in the existing 3-bedroom house on this site. The applicant lives in the home and proposes to use 2 of the bedrooms for short-term rentals for most of the year, and to use all 3 bedrooms for short-term rentals for up to 95 days each year. No alterations to the home are proposed, and an existing, paved driveway provides one off-street parking space. The home would be occupied by a single rental party at a time when the entire house is rented out. No commercial events are proposed, and the proposed house rules require quiet hours between 10 pm and 8 am.

**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.

**ANALYSIS**

**Site and Vicinity:** The site is a 1,909-square-foot lot developed with a three-bedroom, two-story single-dwelling residence constructed in 2019. The site has a driveway that accommodates one vehicle parking space. The house is adjacent to a house of similar design constructed concurrently; the immediate neighborhood is a mix of generally modest single-dwelling residences constructed either in the mid-20<sup>th</sup>-century or in the past two decades. The site is one lot from SE 92<sup>nd</sup> Ave, a major north-south arterial, but SE Duke St in this area is Local Service for Transit, Traffic, and Freight. SE Duke St is a City Bikeway and a Neighborhood Walkway, and is a Secondary Emergency Response Street.

**Zoning:** The Residential 2,500 (R2.5) single-dwelling zone is intended to preserve land for housing and to provide housing opportunities for individual households. The zone implements the Comprehensive Plan policies and designations for single-dwelling housing. The minimum density for new lots in this zone is 1 lot per 5,000 square feet and the maximum unit density is based on lot size and street configuration. Both detached and attached single dwellings are allowed. Minimum lot size for both types of development is 1,600 square feet with minimum front lot line of 30 feet and minimum depth of 40 feet. There is no required minimum lot width or front lot line for lots that are developed with structures that meet certain additional development standards related to design.

**Land Use History:** City records indicate there are no prior land use reviews for this site relevant to the current development. A 2005 land division created the lot on which the house sits (LU 05-118580 LDP). Conditions were met with existing development.

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **November 23, 2021**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services (Exhibit E.1);
- Water Bureau (Exhibit E.3);
- Fire Bureau (Exhibit E.4);
- Site Development Section of BDS (Exhibit E.5);
- Life Safety (Building Code) Plans Examiner (Exhibit E.6); and
- Bureau of Parks – Urban Forestry (Exhibit E.7).

The Bureau of Transportation (Exhibit E.2) and the Police Bureau (Exhibit E.8) responded with additional comments addressing the approval criteria D.1-D.3, which are included in the findings below.

**Neighborhood Review:** A total of two written responses were received from notified property owners in response to the proposal. One expressed concerns about safety with short-term renters. The other indicated a desire to have more parking onsite for the use. Both of these issues are addressed in the findings below (Criteria C and D, respectively).

**ZONING CODE APPROVAL CRITERIA****33.815.010 Conditional Use 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 Residential and Campus Institutional Zones**

*These approval criteria apply to all conditional uses in R and campus institutional zones except those specifically listed in sections below. The approval criteria allow institutions and other non-Household Living uses in residential and campus institutional zones that maintain or do not significantly conflict with the appearance and function of residential or campus areas. Criteria A through E apply to institutions and other non-Household Living uses in residential zones. Criteria B through E apply to all other conditional uses in campus institutional zones. 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 proposal will not technically create a new non-Household Living (non-residential) 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 may be 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 non-residential uses and no other Type B ASTRs. Type A ASTRs have been approved for 3 lots within this residential area (at the subject site, 6525 SE 92<sup>nd</sup> Ave, and 6516 SE 92<sup>nd</sup> Ave), but this is a small percentage of all lots in the area. Also, since Type A ASTRs are limited to 2 rental bedrooms, they have lower impacts and operational characteristics that are little different from typical residential uses.

No exterior alterations are proposed to the existing house on this site. The full-time resident of the site will use the main second-floor bedroom, with the other two bedrooms upstairs available for full-time for short-term rentals (Exhibit A.9). The applicant intends to vacate the site when all three bedrooms are rented out. Since residents must reside onsite at least 270 days a year, a condition of approval is warranted limiting the number of nights all three bedrooms can be rented out together to 95 per calendar year.

In addition, to prevent the intensity and scale of the ASTR use from significantly impacting the residential character of the area, staff finds a condition of approval is warranted to limit the maximum number of ASTR guests to two guests per bedroom, for a maximum of 6 while 3 bedrooms are used for short-term rentals, and that the three bedrooms are rented out together to one party. A condition of approval will require that all advertisements for the ASTR must display prominently in the title of the advertisement the maximum number of bedrooms and the maximum number of people allowed per nightly rental. To ensure over time that requirements for the numbers of guests are enforced, a condition of approval will require the applicant to provide rental data from the rental organization to the City upon request as required by Zoning Code Section 33.207.060, Monitoring.

Additionally, consistent with standards for ASTRs in single-dwelling residential zones, a condition of approval will prohibit commercial meetings at the ASTR facility. Commercial meetings include luncheons, banquets, parties, weddings, meetings, charitable fundraising, commercial or advertising activities, or other gatherings for direct or indirect compensation.

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 finds the intensity and scale of the ASTR use will not significantly lessen the residential function of the area. Therefore, with the conditions of approval, staff finds 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 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 surrounding residential area has varying house sizes and building styles, but the subject site is compatible with neighboring 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 exterior changes to the house or property are proposed.

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 include quiet hours between 10 pm and 8 am daily (Exhibit A.5). These quiet hours are consistent with, and 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 since the owner anticipates vacating the house up to 95 days a year to rent it out in its entirety, another condition of approval will require the applicant to provide a telephone number and e-mail address of the full-time resident (who must occupy the property at least 270 days each year, per Zoning Code Section 33.207.050.A.1) and any management company involved in managing the business to the immediate neighbors at least once each calendar year. Notification to the following properties will be required:

- 9128 SE Duke St
- 9115 SE Duke St

- 6507 SE 92<sup>nd</sup> Ave
- 6525 SE 92<sup>nd</sup> Ave
- 6522 SE 91<sup>st</sup> Ave

The current House Rules state that smoking inside the house is prohibited, and that an ashtray is provided in the backyard. However, smoke from guests has been consistently raised as a livability issue for other ASTR sites, and smoke certainly can have odor impacts on neighboring properties. Therefore, a condition of approval will require the applicant to include a House Rule that no smoking is allowed anywhere on the premises – the ASTR is a nonsmoking facility. This condition will not affect the long-term resident's behavior but will be limited to all ASTR guests.

The property has no exterior lighting that is not typical for a residential use, and no new exterior lighting is proposed for the ASTR. No aspect of the short-term rental operation is likely to produce glare or litter 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 bedrooms proposed for ASTR rentals are inside the existing house on the site, and guests' use of these bedrooms will not have unusual or significant impacts on neighbors' privacy. The property has a small backyard with a covered porch patio that may be used by guests for socializing or recreation (Exhibit C.1). However, the back yard is enclosed on the sides by a 7-foot-tall solid wood fence, and this existing fencing will limit impacts on the adjacent neighbors' privacy. The yard faces the property to the south; while there is no fence on the subject site along the rear, the neighbor has a chain link fence with slats that provides visual interruption between the two properties. The backyard looks into the backyard of that house to the south, making it unlikely privacy impacts will be felt even if that chain link fence were to go away.

No adverse safety impacts are anticipated. 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.8). PBOT reviewed the proposal for adverse safety impacts on nearby streets and found none (Exhibit E.2). A property manager for a nearby house raised a concern about safety with this use (Exhibit D.1), but there is no evidence in the record that a short-term rental use would cause more safety issues than a Household Living use.

To further ensure safety, staff finds a condition of approval is warranted for 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 all bedrooms to be used for short-term rentals.

For these reasons, and 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;*

**Findings:** PBOT reviewed the proposal against the street designations and made the following conclusions:

At this location, the City's Transportation System Plan (TSP) classifies SE Duke Street as a *City Bikeway*, *Neighborhood Walkway*, *Secondary Emergency Response*, and *Local Service* for all remaining modes. The Right-of-Way (ROW) is currently improved with a 36-ft paved roadway within a 55-ft Right-of-Way (ROW), in which the pedestrian corridor appears to be recently approved to an 11-ft wide standard configuration. 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.

For this reason, staff finds this criterion is met.

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):

The transportation related approval criteria related to the proposed Conditional Use that must be addressed are found in Code Section 33.815.105.D.1 and D.2. To address the transportation approval criteria, the applicant submitted a professional Transportation Impact Study (TIS) prepared by Kittelson and Associates, dated November 15, 2021. The Portland Bureau of Transportation (PBOT) Development Review has performed a review of the submitted professionally prepared TIS and agrees with the methodologies, analyses, assumptions, findings and conclusions including intersection capacity, on-street parking impacts, neighborhood impacts, etc. to confirm that the transportation-related approval criteria are satisfied...

To estimate vehicle trips generated by the proposed ASTR, information from the *Trip Generation Manual, 10<sup>th</sup> Edition*, published by the Institute of Transportation Engineers (ITE) was utilized. Data for land use code #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 3-unit short term is estimated to generate 10 daily trips, including one weekday morning and one evening trip, in addition to the existing single-family use. Under the maximum rental scenario, the small increase of 10 trips will not pose a significant increase in traffic volumes.

*Street Capacity/Level of Service:* To address the street capacity and Level of Service (LOS) evaluation factors, the applicant's traffic engineer cited TRN 10.27, which noted that a LOS study is not required when proposed development results in no net increase

to vehicle trips. The applicant's traffic engineer concluded that the maximum rental scenario will not generate any more trips than single-family home. Therefore, all the intersections are deemed to be operating at current LOS and 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:* For vehicle safety, the applicant's traffic engineer evaluated safety for all modes in conjunction with the proposed ASTR use, utilizing Oregon Department of Transportation's (ODOT) Crash Analysis and Reporting data for the most recent five years (January 2015 to December 2019). A detailed review of the intersection crash data found a relatively high number of crashes at the SE 92nd Avenue/SE Flavel Street and SE 92nd Avenue/SE Woodstock Boulevard intersections. Of the reported crashes at both intersections, rear-end collisions were the most predominant crash type which is often the case in high volume signalized intersections in urban locations. No specific patterns or geometric deficiencies were noted at either intersection that would be contributing to the rear-end collisions. As discussed, the use of the residential portion of the property as a short-term rental is not anticipated to yield a comparative increase in the number of daily and peak hour trips. Further, no changes in access to the street system are necessitated by the short-term rental status. Therefore, based upon the submitted information, no significant safety hazards were identified at the study intersections.

*Pedestrian, Cycling, and Transit Availability:* The subject site is located near three TriMet bus lines - #10-Harold, #14-Hawthorne, and #73-122<sup>nd</sup> Ave - all within a quarter mile from the site and have complete sidewalks and adequate crossings between the site and transit stop. For bicycles, both SE Duke and SE 92<sup>nd</sup> Ave are identified Bikeways, while the remaining surrounding streets are low-volume neighborhood streets which is designed to provide a safe and comfortable traveling environment for cyclists. The established pedestrian network is complete in the area and allows for safe walking conditions for pedestrians to connect nearby bus stops or other areas of interest. Given the availability of a variety of multi-modal options in close proximity to the site, the applicant shall provide information regarding transit schedules, multi-modal information, bike rentals, maps, and car share options in order to mitigate the reliance on vehicle trips associated with the proposed use.

*Connectivity:* The subject site is located in a well-established typical grid network of ROW connections, which the system provides multiple routes to and from the site for all 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 parking demand generated from the proposed development was estimated using parking demand rates from Parking Generation, 5th 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. Zoning code 33.266.110 no longer requires on-site parking for existing single-family home, although there is one on-site parking space provided off SE Duke. Under the maximum rental scenario, the proposed ASTR would generate three parking spaces.

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 from 11:00 pm to 12:00 am on a typical weekday evening. Within the study area, the parking study estimated that there was an on-street parking supply of 73 spaces, in which 57 spaces were occupied at time of observation, which is an on-street parking occupancy rate of 78%. With one on-site parking space provided, the expected demand for additional on-street parking is two spaces, which increases the potential occupancy rate to 81%. PBOT does not consider an area to be heavily parked until occupancy rates reach approximately 85%. Therefore, PBOT finds that based upon the observational data provided by the applicant's traffic analysis, the nominal increase to the

on-street parking demand is sufficient to safely support the proposed use in addition to the existing uses in the site vicinity.

*Access Restrictions:* There are no access restrictions with the proposed ASTR use.

*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".

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

- 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.

The PBOT response noted there is one onsite parking space; however, the applicant indicated in Exhibit A.8 that the carport could accommodate two vehicles. To ensure that parked vehicles do not park where they are not allowed, and that the sidewalk is not blocked by an extra vehicle, a condition of approval will clarify that only one vehicle is allowed to park in the driveway and that no parking is allowed within the first 10 feet of the property.

One neighbor was opposed to the use unless a parking space was added. However, this analysis by PBOT (Exhibit E.2) of the applicant's Transportation Study (Exhibit A.4) demonstrates that the additional expected parking on the street will not exceed the capacity of the area. Based on these findings from PBOT, and with a condition of approval requiring the applicant to make information regarding multi-modal transportation options available to guests, as well as limited the parking location to the permitted parking space, staff finds Criterion D.2 is met.

3. *Public services for water supply, police and fire protection are capable of serving the proposed use, and proposed sanitary waste disposal and stormwater disposal systems are acceptable to the Bureau of Environmental Services.*

**Findings:** The Water Bureau and 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.8). The Bureau of Environmental Services reviewed the application and found that existing sanitary waste disposal and stormwater disposal from the property are adequate for the proposal (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 subject site is within the boundaries of the Outer Southeast Community Plan and Lents Neighborhood Plan.



Few of the policies and objectives directly related to this limited proposal. Economic development objectives were generally focused on the commercial parts of the included areas and did not address small businesses started by residents. Safety objectives were focused on developing stronger relationships with public safety agencies; reducing graffiti, maintaining adequate sidewalks and street lights – namely, things outside the scope of this proposal. Similarly, since no proposed changes to the exterior of the residence are proposed, Urban Design objectives were also not relevant, nor were ones focused on the environment of transportation. Below the housing objectives from both plans are considered.

### *Housing*

The Outer SE Community Plan has objectives to construct thousands of new housing units; to encourage property owners to maintain homes so that neighborhoods remain stable and attractive, and increase opportunities to build more single-dwelling residences. Specific to the Lents Town Center area, an objective is to ensure a wide range of housing in terms of structure, ownership, rental patterns, and price. The Lents Neighborhood Plan housing objectives include increasing home ownership and encouraging the development of new buildings.

The subject site is developed with a new single-dwelling residence constructed in 2019 on a small lot created through a 2005 land division. This kind of infill development has been instrumental in gaining housing units in existing neighborhoods like what was anticipated with both the area and neighborhood plans.

The house and yard on the subject property appear well-maintained, and the ASTR rentals (a home-based business) will encourage and provide revenue for continuing maintenance and investment in the property. At the same time, since a full-time resident is required by Zoning Code Section 33.207.050.A.1, the proposal does not remove the house from the neighborhood's long-term housing stock, and is likely to provide relatively affordable housing for the property's full-time resident (currently the property owner).

For these reasons, the proposal does not conflict with the relevant policies and objectives of the area's adopted plans. 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 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 operate a Type B ASTR facility within the existing house on this site. 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 to serve the proposal, and a condition of approval will require transportation demand management measures to limit on-street parking impacts. The proposal is also consistent with relevant statements from the Outer Southeast Community Plan and the Lents Neighborhood Plan. With conditions of approval, the proposal meets the applicable approval criteria and therefore must be approved.

## **ADMINISTRATIVE DECISION**

Approval of a Conditional Use to allow a Type B Accessory Short-Term Rental facility within the existing single dwelling with up to a maximum of three bedrooms available for

rent at a time for up to 95 days out of the year, and two bedrooms the remaining 270 days. Approval is per Exhibit C.1 and is subject to the following conditions:

- A. Since a long-term resident who occupies the dwelling unit at least 270 days each year (per Zoning Code Section 33.207.050.A.1) is always required for ASTR use to occur, short-term rentals of all three bedrooms in the house are limited to a maximum of 95 days per calendar year.
- B. No more than 2 ASTR guests per bedroom (regardless of age) are allowed. When all three bedrooms are rented out, they must be rented to a single party.
- C. All advertisements for the ASTR must display prominently in the title of the advertisement the maximum number of bedrooms rented to ASTR guests (3 or fewer, pursuant to condition of approval A, above) and the maximum number of ASTR guests allowed per bedroom (2).
- D. The applicant or operator must maintain a guest log per Zoning Code Section 33.207.060. The guest log 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.
- E. Commercial meetings including luncheons, banquets, parties, weddings, meetings, charitable fund raising, commercial or advertising activities, or other gatherings for direct or indirect compensation are prohibited.
- F. 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.
- G. The "House Rules" in Exhibit A.5, as altered by these conditions, must be posted in a visible location in the rental and posted on any website on which the ASTR is advertised.
- H. At least once each calendar year, the applicant or operator of the ASTR must provide a telephone number and e-mail address for the full-time resident (who must reside on the site at least 270 days each year, per Zoning Code Section 33.207.050.A.1) AND the ASTR operator, to residents of the following neighboring properties:
  - 9128 SE Duke St
  - 9115 SE Duke St
  - 6507 SE 92<sup>nd</sup> Ave
  - 6525 SE 92<sup>nd</sup> Ave
  - 6522 SE 91<sup>st</sup> Ave
- I. The "House Rules" in Exhibit A.5 must be edited to state that no smoking is allowed on the property, inside or outside. Smoking by guests is prohibited.
- J. Before the ASTR facility can operate, the applicant 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 each bedroom to be rented to ASTR guests.

- K. No more than one parking space is available on the driveway for ASTR guests or the on-site resident(s). Parking is not allowed on-site within 10 feet of the front property line.
- L. To limit single-occupancy vehicle trips and on-street parking impacts, the ASTR operator must provide all ASTR guests with information on transit, ride sharing, and bike sharing services, biking and walking maps, and restaurants and attractions within walking distance.

**Staff Planner: Amanda Rhoads**

**Decision rendered by:**  **on January 26, 2022**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: January 31, 2022**

**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 23, 2021, and was determined to be complete on November 17, 2021.

*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 23, 2021.

*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 17, 2022.**

**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, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. Appeals must be received **by 4:30 PM on February 14, 2022. The completed appeal application form must be emailed to [LandUseIntake@portlandoregon.gov](mailto:LandUseIntake@portlandoregon.gov) and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. **An appeal fee of \$250 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for Office of Community and Civic Life recognized organizations for the appeal of Type II and IIx decisions on property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in this file, please contact the planner listed on the front of this notice. The planner can email you documents from the file. A fee would be required for all requests for paper copies of file documents. Additional information about the City of Portland, and city bureaus is available online at <https://www.portland.gov>. A digital copy of the Portland Zoning Code is available online at <https://www.portlandoregon.gov/zoningcode>.

**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 **February 14, 2022** 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.

**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. Applicant Proposal
  - 2. House Plans
  - 3. Site Plan
  - 4. Traffic Study
  - 5. House Rules
  - 6. Revised Proposal
  - 7. Resident Documentation
  - 8. Narrative
  - 9. Floor Plans
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Life Safety Plans Examiner
  - 7. Bureau of Parks, Urban Forestry Division
  - 8. Police Bureau
- F. Correspondence:
  - 1. Kelly Yang, November 30, 2021, opposed due to safety issues
  - 2. Lihua Yu, December 7, 2021, opposed unless more parking is provided
- G. Other:
  - 1. Original Land Use Application

**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).**