



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

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Date: November 4, 2022
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 **partially 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 22-181544 CU

GENERAL INFORMATION

Owner/Applicant: Rebecca Andersson
1842 SE 46th Ave.
Portland, OR 97215
(503) 407-1052
rebecca@ratherzen.com

Applicant's Representative: Melissa Wright
Short Term Rental Permits
22355 SW Dejong Rd.
Sheridan, OR 97378
(503) 407-1052
melissa@strpermit.com

Owner: Daniel Halli
1842 SE 46th Ave.
Portland, OR 97215

Site Address: 1842 SE 46th Ave.

Legal Description: BLOCK 1 LOT 12, FAILING ADD
Tax Account No.: R264100170
State ID No.: 1S2E06CA 25200
Quarter Section: 3235
Neighborhood: Richmond, contact Heather Flint Chatto at richmond.pdx.lutc@gmail.com
Business District: Hawthorne Blvd. Bus. Assoc., contact at explore@hawthornepdx.com
District Coalition: Southeast Uplift, contact Matchu Williams at matchu@seuplift.org
Plan District: None
Zoning: R5 – Single-Dwelling Residential 5,000
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 5-bedroom house on this site. The applicant would live in one of the bedrooms and rent the other 4 bedrooms to short-term rental guests. At times when the applicant is away from home (up to a maximum of 95 days per year), the applicant proposes to rent all 5 bedrooms to short-term rental guests. The applicant also requests approval to rent all 5 existing bedrooms to short-term rental guests after a new bedroom is constructed in the basement for the applicant's use. No commercial events or exterior alterations to the house are proposed. A nonresident employee would visit the home about 10 times per month to help prepare meals for guests.

Relevant Approval Criteria: To be approved, this proposal must comply with the approval criteria of Title 33, the Portland Zoning Code. The relevant criteria are in Zoning Code Section 33.815.105.A-E.

ANALYSIS

Site and Vicinity: The subject site is 4,950 square feet in area and located on the east side of SE 46th Avenue, just north of SE Harrison Street. The site is developed with a 5-bedroom, approximately 2,330-square-foot house that was constructed in 1913. A driveway on the north side of the house provides an off-street parking area, but there is no garage. Neighboring properties are also developed with single-family houses. A mixed-use corridor along SE Hawthorne Boulevard is approximately 800 feet north of the site.

Zoning: The R5 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 may be allowed through Conditional Use Review (Zoning Code Section 33.207.050.A.2).

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

Agency Review: A "Notice of Proposal" was sent to City agencies and mailed to neighbors September 28, 2022 (Exhibit D-2). 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 (BDS) responded with no concerns (Exhibit E-6).
- The Life Safety Review Section of BDS responded with no objections to approval (Exhibit E-7).
- The Urban Forestry Division of Portland Parks and Recreation responded with no objections (Exhibit E-8).

Neighborhood Review: In response to the mailed "Notice of Proposal" (Exhibit D-2), several neighbors submitted written comments in opposition to this application (Exhibits F-1 through F-6). These neighbors made the following statements:

- On multiple occasions, short-term rental guests at this property have been loud and disruptive, including late at night.

- The applicant is either rarely at home or does not live on the property.
- Short-term rentals would be less impactful if the homeowner is on-site with the renters.
- ASTR rentals will worsen traffic safety and parking problems.
- Renovation and maintenance work on the property has occurred at night, disturbing neighbors.

Staff response: The applicant maintains the home is her primary residence, and she acknowledges short-term rentals have occurred prior to this application, often on weekends when she was staying elsewhere. Noise and other livability impacts are discussed in the findings for approval criterion C, below. Staff notes the applicant submitted letters from some neighbors who were not opposed to the short-term rentals (Exhibit A-11).

PBOT reviewed the proposal for potential impacts on traffic safety and parking and found the approval criteria for these factors are met (Exhibit E-2). This analysis is in the findings for approval criterion D, below.

Hours for renovation and maintenance work are subject to the City's Noise Control Code (Title 18). Information about these regulations and enforcement is available here: <https://www.portland.gov/civic/noise>.

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 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: Technically, the proposal will not 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. All developed, residentially zoned lots within 400 feet of this site are developed with residential uses. Three Type A ASTR permits were previously issued within this area, and since Type A ASTRs are limited to 2 rental bedrooms, their operational characteristics and impacts are more comparable to typical residential uses. Another Type B ASTR (for 4 rental bedrooms) was previously approved at 4705 SE Harrison Street, one block east of the subject site (LU 19-182081 CU).

The house on this site is typical for the neighborhood in size and design, and no exterior alterations are proposed. The applicant lives in the home, and short-term rentals are proposed in bedrooms that are otherwise unused. To prevent the intensity and scale of the ASTR use from significantly impacting the residential character of the area, staff finds conditions of approval are warranted to limit the maximum number of ASTR guests to 2 per bedroom (regardless of age) and to 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 guests. (The maximum number of bedrooms will be discussed in the findings for approval criterion C, below.) To ensure over time that requirements for the numbers of guests are enforced, a condition of approval will require the applicant to provide confirmation data from the rental organization to the City upon request.

Since the applicant has not proposed to host commercial meetings on the site (Exhibit A-3, page 2), and the approval criteria for this review have been evaluated without consideration of commercial meetings, a condition of approval will prohibit commercial meetings at the ASTR facility without approval of a new Type II Conditional Use Review. Commercial meetings include luncheons, banquets, parties, weddings, meetings, charitable fundraising, commercial or advertising activities, or other gatherings for direct or indirect compensation.

The applicant has requested approval for a non-resident employee to be included in the operation to assist with food service for guests. The applicant states this employee will visit the property no more than 10 times per month (Exhibit A-3, page 2). With a condition of approval limiting the employee visits to 10 times per month, staff finds the non-resident employee will not noticeably affect the residential character of the area.

As there are no exterior alterations proposed to the existing house on this site, staff finds the use of the house as an 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 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 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 applicant does not request approval of late-night activities, and states that “house rules” requiring quiet hours after 10pm will be enforced (Exhibit A-3, page 2 and Exhibit A-7, page 5). 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.

However, several neighbors submitted comments into the record that short-term rentals on this property have already created noise disturbances late at night on multiple occasions (Exhibits F-1 through F-6). The applicant submitted letters from other neighbors which refute this (Exhibit A-11). Staff has no way to know for certain whether frequent noise disturbances have occurred or not, though the applicant acknowledged a neighbor approached her with a noise complaint on one occasion. Since the burden of proof in a land use review is on the applicant (Zoning Code Section 33.800.060), staff finds the objections raised in Exhibits F-1 through F-6 are credible evidence that must be weighed in the decision. Staff also finds that un-hosted rentals, while allowed up to 95 days per year (Zoning Code Section 33.207.050.A.1), are more likely to create noise issues because the homeowner is not on-site to immediately interrupt any problems at night.

Since some neighbors have raised credible concerns about noise and late-night impacts, staff finds the applicant’s full request (5 rental bedrooms up to 95 days per year, and 5 bedrooms up to 365 days per year when a new basement bedroom is completed) cannot be approved. Staff finds it appropriate to approve the use of only 4 bedrooms for short-term rentals throughout the year, with a maximum of 8 guests, regardless of age (2 per bedroom). This represents 80% of the maximum capacity allowed for Type B ASTRs (Zoning Code Section 33.207.050.B.1), and the reduced capacity is intended to reduce the likelihood of serious issues in the future.

The following, additional conditions of approval are also intended to manage livability impacts, especially during rentals when the applicant is not on-site:

- The “house rules” in Exhibit A-7 must be revised to prohibit short-term rental guests from occupying outdoor areas on the property after 8pm on any evening. This limitation would only apply to short-term rental guests, not to the applicant’s family or friends.
- The applicant must occupy the property at least 270 days each calendar year, per Zoning Code Section 33.207.050.A.1. Un-hosted short-term rentals are limited to 95 days each calendar year.
- The applicant must retain or install cameras (such as doorbell cameras) that can view the front and back yards of the property. During short-term rental periods where the applicant is not home, the applicant must check these cameras at 8pm, 9pm, and 10pm each night and respond immediately to any unauthorized outdoor activities.
- The applicant must install decibel monitors that can continuously detect noise levels in the front and back yards of the property. During short-term rental periods where the

applicant is not home, the applicant must check noise levels at 8pm, 9pm, and 10pm each night and respond immediately to noise levels that are likely to indicate a party or other nighttime gathering.

- At least once per calendar year, the applicant must provide neighbors within 150 feet with a phone number and email address for the applicant and at least one back-up person who will immediately respond to complaints about evening or nighttime noise. If necessary, the person taking the call must come to the site immediately to interrupt disruptive activity by short-term renters. The back-up person could be a third-party host service, if desired. Contact information must be provided to residents of the following properties:
 - 1805 SE 46th Avenue
 - 1817 SE 46th Avenue
 - 1825 SE 46th Avenue
 - 1831 SE 46th Avenue
 - 1841 SE 46th Avenue
 - 1901 SE 46th Avenue
 - 1915 SE 46th Avenue
 - 1923 SE 46th Avenue
 - 1812 SE 46th Avenue
 - 1818 SE 46th Avenue
 - 1830 SE 46th Avenue
 - 1902 SE 46th Avenue
 - 1914 SE 46th Avenue
 - 1924 SE 46th Avenue
 - 1811 SE 47th Avenue
 - 1821 SE 47th Avenue
 - 1831 SE 47th Avenue
 - 1839 SE 47th Avenue
 - 1845 SE 47th Avenue
 - 1905 SE 47th Avenue
 - 1915 SE 47th Avenue
 - 1925 SE 47th Avenue

No exterior lighting that is not typical for a residential use is existing or proposed, and the applicant will manage garbage and recycling collection and property maintenance (Exhibit A-3, page 9). 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 significant, adverse livability impacts can be avoided. With these conditions of approval, staff finds criterion C.1 is met.

If neighbors suspect these conditions of approval are not met in the future, they can call (503) 823-CODE to file a complaint. If repeated complaints are substantiated, the City may pursue revocation of this approval pursuant to Zoning Code Section 33.700.040. However, the applicant may intend to pursue another Conditional Use Review in the future to expand the approved ASTR use to 5 bedrooms, as originally requested. The applicant understands a future application is more likely to be successful if fewer neighbors are opposed.

2. Privacy and safety issues.

Findings: The ASTR use will take place primarily indoors, and guests' use of the house is not likely to have unusual or significant impacts on neighbors' privacy. The property also has a covered front porch and a well-screened back yard (Exhibit A-5, page 5) that may be used by guests. A covered patio in the northeast corner of the back yard may attract

activity, but solid walls along both lot lines abutting this patio will preserve privacy for neighbors (Exhibit A-5, page 8). Guests' use of these outdoor spaces is unlikely to create privacy impacts for neighbors that are atypical for a residential use. Guests will not have access to any upper-level decks or balconies that present unusual privacy concerns.

No significant 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 proposed use (Exhibit E-5). PBOT reviewed the proposal for potential safety impacts on nearby streets and found none (Exhibit E-2).

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 condition 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):

To support the transportation-related approval criteria, the applicant submitted a professional Transportation Analysis prepared by Lancaster Mobley, dated August 24, 2022 [Exhibit A-6]. The Portland Bureau of Transportation (PBOT) Development Review has performed a review of the submitted professionally prepared analysis agrees with the methodologies, analyses, and conclusions to confirm that the transportation-related approval criteria are satisfied.

At this location, the City's Transportation System Plan (TSP) classifies SE 46th Ave as Local Service for all, which is improved with a 36-ft wide paved roadway with a 12-ft wide pedestrian corridor (4-6-2) configuration within a 60-ft wide Right-of-Way (ROW). The proposed Accessory Short-Term Rental (ASTR) is supportive of the Transportation System Plan (TSP) classifications.

Trip Generation and Distribution: To estimate vehicle trips generated by the proposed ASTR, information from the Trip Generation Manual, 11th Edition, published by the Institute of Transportation Engineers (ITE) was utilized. ITE does not have specific code for ASTRs, therefore ITE land use code 320, Motel to calculate trip rates for the proposed use. Utilizing this data, that applicant has shown in Table 3 of the submitted traffic study, that under the maximum rental scenario, that the proposed ASTR is expected to generate 2 additional morning peak hour trip, 2 additional evening peak hour trips, and 17 additional average weekday trips. These additional trips will likely use a combination of either SE 39th Ave and SE 50th Ave as the main north/south connection and SE Hawthorne as the main east/west connections. Therefore, development of the site with an ASTR will not impact the distribution of local traffic throughout the area.

Street Capacity/Level of Service: To address the street capacity and Level of Service (LOS) evaluation factors, the applicant's traffic engineer conducted traffic observations at two intersections of significance that may be impacted by the proposed short-term rental. Traffic observations were conducted at the study intersections during the morning and evening peak periods of Tuesday, July 12th, 2022, from approximately 8:00 AM to 8:35 AM and 4:30 PM to 5:05 PM.

The results of the field observations indicate that all study intersections are currently operating acceptably during the peak hour periods. Based these observations, the applicant concludes that Short-term rental of the home will have a negligible impact on existing vehicle delays, and intersections will continue to maintain acceptable operations. Therefore, the existing intersections are able to manage 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 obtained from the Oregon Department of Transportation's (ODOT) Crash Data System, a review of approximately five years of the most recent available crash history (January 2016 through December 2020) was performed at the study intersections as demonstrated in Tables 4 and 5 of the traffic study. Based on the review of historical crash data and field observations at the intersections, the applicant's traffic engineer concluded that no significant safety hazards were identified at the study intersections.

For bicycles, there are three identified Neighborhood Greenways in close proximity to the site detailed on page 6 of the applicant's traffic analysis: SE 41st Ave, SE Lincoln St, and SE 52nd Ave. All of which have pavement markings and low-speed designations intend to give priority to cyclists. The remainder of neighborhood streets not listed as bicycle routes in the immediate site vicinity are typically low-volume roadways that provide alternative routes to these and other nearby bicycle paths. Accordingly, the surrounding bicycle infrastructure provides a safe and comfortable traveling environment for bicyclists.

For pedestrians, Sidewalks are generally complete along both sides of nearby area roadways, including SE 46th Avenue, SE Hawthorne Boulevard, and SE Lincoln Street. There is one marked crossing across SE Hawthorne Boulevard at the intersection with SE 45th Avenue and SE 47th Avenue. For area intersections/roadways that don't provide marked crossings, these transportation facilities typically serve low volumes of traffic with posted/statutory speeds of 20 mph. The proposed short-term rental will not remove or block any existing walkways within the area, whereby pedestrian safety and connectivity in the immediate vicinity will be maintained.

Pedestrian, Cycling, and Transit Availability: The project site is located near two TriMet bus lines that have stops located within an approximate half-mile or less walking/biking distance of the project site. Complete sidewalks and adequate crossing measures are available between the site and the nearest stops which serve each transit line. A summarized description of each transit line is shown in Table 6 of the applicant's TIS document.

For pedestrians, as noted above, the sidewalk conditions in the area are generally complete along both sides of nearby area roadways, including marked crosswalks and some locations. The neighborhood street grid provides abundant pedestrian routing options to a variety of local destinations, and sidewalks are generally provided on both sides of each street.

Also as noted above, there are three identified Neighborhood Greenways in close proximity to the site detailed on page 6 of the applicant's traffic analysis: SE 41st Ave, SE Lincoln St, and SE 52nd Ave. All of which have pavement markings and low-speed designations intend to give priority to cyclists. The remainder of neighborhood streets not listed as bicycle routes in the immediate site vicinity are typically low-volume roadways that provide alternative routes to these and other nearby bicycle paths. The remainder of area streets are low-volume roadways which connect to other identified routes.

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.

Access Restrictions: There are no access restrictions affecting the property.

On-Street Parking Impacts: To determine the availability of parking as well as the existing parking demand in the study area, parking observations were conducted during the late evening hours from approximately 11:15 PM to 11:30 PM on Tuesday, July 12th, 2022. Observations were conducted along the vicinity roadways of SE 46th Avenue and SE Harrison Street, within an approximate one block distance from the site. The total amount of available parking along the studied roadways was 99 spaces. The total observed on-street parking demand was 48 spaces during the late evening hours, thus a total of 51 parking spaces remain available within the study area during the peak parking demand period. For the purposes of this analysis, parked trailers and motorcycles were treated as on-street parked cars., which calculates an estimated on-street parking occupancy of rate of 49%.

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), using land use code 320, Motel as it represents the closest use to the proposed ASTR use. Under the maximum rental scenario Based on the Parking Generation Manual data, the proposed short-term rental, in addition to the long-term tenant, is expected to increase the average peak parking demand of the site by four vehicles. Subsequently, the net available parking is expected to decrease from 51 to 47 space, or a usage of 53%. Detailed parking generation calculations are shown in Table 8 of the applicant's traffic study. Based on the parking analysis, adequate on-street parking is available to serve the proposed conditional use in addition to the existing surrounding land uses.

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:

- *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 condition 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 Police Bureau reviewed the proposal and responded that police services are adequate for the proposed use (Exhibit E-5). The Bureau of Environmental Services also responded with no concerns, indicating the existing sanitary sewer connection and stormwater disposal on the site are adequate for the proposal (Exhibit E-1). For these reasons, staff finds 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 boundaries of the Richmond Neighborhood Plan, which was adopted by the City Council as part of the Comprehensive Plan. Staff finds the following policies from the Richmond Neighborhood Plan to be relevant:

- *Policy 4 (Housing), Objective 4.1: Encourage restoration, rehabilitation and maintenance of existing owner occupied and rental housing stock.*
- *Policy 4 (Housing), Objective 4.3: Support housing opportunities for people of all ages, backgrounds, and economic levels.*
- *Policy 6 (Transportation), Objective 6.3: Make Richmond a transit-friendly neighborhood. Encourage the use of public transportation by those who work, live, shop and visit the neighborhood. Support convenient, cost effective public transportation serving Richmond. Work with Tri-Met to improve the transit infrastructure in Richmond.*
- *Policy 6 (Transportation), Objective 6.5: Minimize the negative impacts of motorized vehicle traffic in the Richmond Neighborhood.*

The applicant will continue to reside in the home, and income from the ASTR rentals will make owning and maintaining the home more affordable. The ASTR rentals will also provide both an incentive and a revenue stream for the property to be maintained in good condition.

PBOT found the transportation system in the neighborhood, including the availability of on-street parking, is adequate to support the ASTR use (Exhibit E-2). To help minimize the

number of motor vehicles associated with the ASTR use, a condition of approval will require the applicant to provide all ASTR guests with information on transit, bike rentals, and other alternatives.

For these reasons, and with the condition of approval mentioned above, staff finds approval criterion E 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 on this site. Staff finds that with conditions of approval, the proposal will not detract from the residential appearance and function of the area, will maintain physical compatibility with neighboring homes, and will limit impacts on neighborhood livability. Public services are available to serve the proposal, and the proposal is consistent with relevant statements from the Richmond Neighborhood Plan. With the conditions of approval listed below, the proposal meets the applicable approval criteria and therefore must be approved.

ADMINISTRATIVE DECISION

Approval of a Type B accessory short-term rental (ASTR) operation in the existing house on this site, subject to the following conditions:

- A. No more than 4 bedrooms in the house can be used for ASTR rentals at any time, and no more than 2 ASTR guests per bedroom (regardless of age) are allowed. All advertisements for the ASTR must display prominently in the title of the advertisement the maximum number of bedrooms rented to ASTR guests (4) and the maximum number of ASTR guests allowed per bedroom (2).
- B. The applicant/ASTR operator must occupy the property at least 270 days each calendar year, per Zoning Code Section 33.207.050.A.1. Un-hosted short-term rentals are limited to 95 days each calendar year.
- C. Before the ASTR facility can operate, the applicant/ASTR operator must obtain approval of a fee paid inspection from BDS to confirm that the building code, smoke detector, and carbon monoxide alarm requirements in Zoning Code Section 33.207.050.B.4 are met for each of the 4 bedrooms to be used for short-term rentals.
- D. The “house rules” in Exhibit A-7 must be revised to prohibit ASTR guests from occupying outdoor areas on the property after 8pm on any evening. This limitation would only apply to ASTR guests, not to the applicant’s family or friends. The revised “house rules” must be posted in a visible location in the rental. The “house rules” and the prohibition on using outdoor areas after 8pm must also be disclosed prominently on any website on which the ASTR is advertised.
- E. Before the ASTR facility can operate, and at least once per calendar year, the applicant/ASTR operator must provide neighbors with a phone number and email address for the applicant/ASTR operator and at least one back-up person who will immediately respond to complaints about evening or nighttime noise. If necessary, the person taking the call must come to the site immediately to interrupt disruptive activity

by short-term renters. The back-up person can be a third-party host service, if desired. Contact information must be provided to residents of the following properties:

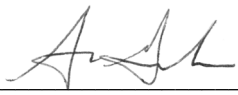
- 1805 SE 46th Avenue
- 1817 SE 46th Avenue
- 1825 SE 46th Avenue
- 1831 SE 46th Avenue
- 1841 SE 46th Avenue
- 1901 SE 46th Avenue
- 1915 SE 46th Avenue
- 1923 SE 46th Avenue
- 1812 SE 46th Avenue
- 1818 SE 46th Avenue
- 1830 SE 46th Avenue
- 1902 SE 46th Avenue
- 1914 SE 46th Avenue
- 1924 SE 46th Avenue
- 1811 SE 47th Avenue
- 1821 SE 47th Avenue
- 1831 SE 47th Avenue
- 1839 SE 47th Avenue
- 1845 SE 47th Avenue
- 1905 SE 47th Avenue
- 1915 SE 47th Avenue
- 1925 SE 47th Avenue

- 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 without a new Type II Conditional Use Review.
- 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/ASTR operator must maintain a guest log. 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.
- I. The applicant/ASTR operator must retain or install cameras (such as doorbell cameras) that can view the front and back yards of the property. During short-term rental periods where the applicant/ASTR operator is not home, the applicant/ASTR operator must check these cameras at 8pm, 9pm, and 10pm each night and respond immediately to any unauthorized outdoor activities.
- J. The applicant/ASTR operator must install decibel monitors that can continuously detect noise levels in the front and back yards of the property. During short-term rental periods where the applicant/ASTR operator is not home, the applicant/ASTR operator

must check noise levels at 8pm, 9pm, and 10pm each night and respond immediately to noise levels that are likely to indicate a party or other nighttime gathering.

- K. A non-resident employee may visit the site to help with food service no more than 10 times each month.
- L. The applicant/ASTR operator must provide information including maps to all guests about transportation alternatives such as transit service, bike rentals, and car share options in order to minimize single-occupancy vehicle trips associated with the ASTR.

Staff Planner: Andrew Gulizia

Decision rendered by:  **on November 1, 2022**

By authority of the Director of the Bureau of Development Services

Decision mailed: November 4, 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 9, 2022 and was determined to be complete on September 26, 2022.

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 9, 2022.

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 January 24, 2023.**

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.portland.gov/sites/default/files/2020/lu_type2_2x_appeal_form_071116.pdf. Appeals must be received **by 4:30 PM on November 18, 2022. The completed appeal application form must be emailed to LandUseIntake@portlandoregon.gov and to the planner listed on the first page of this decision.** If you do not have access to email, 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 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 **November 18, 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 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 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. Original narrative
 - 2. Revised narrative, submitted September 20, 2022
 - 3. Final revised narrative, submitted September 26, 2022
 - 4. Plans
 - 5. Photos
 - 6. Transportation study
 - 7. House rules
 - 8. Proof of residency
 - 9. Sample rental listing
 - 10. Sample guest log
 - 11. Neighbor letters submitted by applicant October 27, 2022
- B. Zoning Map (attached)
- C. Plans/Drawings (none)
- 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. Parks and Recreation – Urban Forestry Division
- F. Correspondence:
 - 1. Email from Shannon Brazil-Carcia, received October 7, 2022
 - 2. Email from Anthony Carcia, received October 7, 2022
 - 3. Email from Kara Marx, received October 9, 2022
 - 4. Email from Mark Shadle, received October 13, 2022
 - 5. Email from Megan Langworthy and Peter Wallace, received October 18, 2022
 - 6. Email from Paul Kenney, received October 19, 2022
- G. Other:
 - 1. Land use application form
 - 2. Incompleteness determination letter, dated September 16, 2022

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).



For Zoning Code in effect Post August 1, 2021

ZONING 

 Site

File No.	<u>LU 22 - 181544 CU</u>
1/4 Section	<u>3235</u>
Scale	<u>1 inch = 200 feet</u>
State ID	<u>1S2E06CA 25200</u>
Exhibit	<u>B</u> <u>Sep 09, 2022</u>