



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

Carmen Rubio, Commissioner
Rebecca Esau, Director
Phone: (503) 823-7310
TTY: (503) 823-6868
www.portland.gov/bds

Date: January 23, 2023
To: Interested Person
From: Don Kienholz, Land Use Services
503-865-6716 / Don.Kienholz@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 22-160714 CU

GENERAL INFORMATION

Applicant: Tamar Oranje
1627 SW Montgomery St
Portland, OR 97201

Owners: Tamar ORanje and Tzu En Ko
1627 SW Montgomery St
Portland, OR 97201

Site Address: 1627 SW MONTGOMERY ST

Legal Description: LOT 7, JULIA POLLOCK TOWNHOUSES
Tax Account No.: R436580350
State ID No.: 1S1E04BD 00207
Quarter Section: 3127

Neighborhood: Goose Hollow, contact at board@goosehollow.org
Business District: None
District Coalition: Neighbors West/Northwest, contact Darlene Urban Garrett at darlene@nwnw.org

Plan District: None
Zoning: RM2 – Multi-Dwelling Residential – 2

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

Proposal:

The applicant is proposing a Type B Accessory Short-Term Rental (ASTR) in the existing townhome on the property consisting of three bedrooms and six guests for 365-days a year and a fourth bedroom with an additional two guests for up to 90-days a year, pursuant to Portland Zoning Code Section 33.207. The owner is the long-term tenant and operator and will occupy

the home at least 270-days a year. Type B ASTRs are allowed in the Multi-Dwelling zones if approved as Type II Conditional Uses.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are found in Portland Zoning Code Section 33.815.105 Institutional and Other Uses in Residential and Campus Institutional Zones.

ANALYSIS

Site and Vicinity: The immediate vicinity is developed with a mix of single-dwelling homes of varying heights and time periods consisting of townhomes and detached homes. A significant portion of the homes to the east are late 19th century homes on the Historic Resource Inventory, including gone of Portland's earliest fire houses. The subject home is part of a townhouse development of seven homes on seven lots. Immediately east of the home is a triplex and across the street is a very steep vacant lot. The greater vicinity generally has a steep slopes and winding roads traversing the contours. This area of southwest Portland is unique and known for its many stairways and urban trails.

Zoning: The subject site is zoned RM1. The RM1 zone is a low-scale multi-dwelling zone that is generally applied in locations intended to provide a transition in scale to single-dwelling residential areas, such as the edges of mixed-use centers and civic corridors, and along or near neighborhood corridors. Allowed housing is characterized by one to three story buildings that relate to the patterns of residential neighborhoods, but at a somewhat larger scale and building coverage than allowed in the single-dwelling zones. The major types of new development will be duplexes, triplexes, rowhouses, courtyard housing, small apartment buildings, and other relatively small-scale multi-dwelling and small-lot housing types that are compatible with the characteristics of Portland's residential neighborhoods.

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

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **November 2, 2022**. The following Bureaus have responded with no issues or concerns:

- Site Development Section of BDS, Fire Bureau and Water Bureau Response (Exhibit E.1);
- Police Bureau (Exhibit E.2);
- Life Safety Division of BDS (Exhibit E.3); and
- Bureau of Environmental Services (Exhibit E.4).

The Bureau of Transportation/Development Review (PBOT) provided a response (Exhibit E.5 and E.6) noting that in this area, connectivity does not meet City standards due to the presence of Oregon Highway 26 and Interstate 405, although SW Montgomery does cross I-405 and provides some connectivity to downtown. PBOT also noted that converting the garage to living space would require removal of the curb cut at the time of building permit. Lastly, PBOT evaluated the parking counts along SW Montgomery as part of their evaluation of the approval criteria, discussed further below in the findings.

The Bureau of Parks-Forestry Division provided a response (Exhibit E.7) noting that tree removal and preservation will be reviewed at the time of building permit.

Neighborhood Review: A total of seven written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal (Exhibits F.1 through F.7). The responses received were from neighbors and a Home Owners Association. One letter was in support while the others were in objection.

The objections included the many issues, including the following issues below:

- Didn't get written notice;
- Site already on Air B&B;
- Believes use is a hotel and not allowed in the RM1 zone;
- Kitchen should be considered a restaurant and regulated by Multnomah county health department;
- Objects to smoking outdoors; and
- Parking availability in the area and use's impact;

Staff Response: The responses received raised many issues and concerns, some that address the approval criteria and some that do not. Those that address the approval criteria are discussed later on in this decision under the approval criteria. Those that are not addressing the specific aspects of the approval criteria while real issues and possibly impactful to the writers, cannot be addressed in this land use decision as land use decisions can only be decided based on the approval criteria as required by Oregon law.

Didn't get written notice: The City of Portland provides notification as required by Oregon law, which is to the listed property owners on the tax rolls. Additionally, the City provides an expanded notice to those renting or leasing as listed on an address database from the County Assessor. The entire mailing list of 58 recipients can be found in Exhibit D.1. The numerical address associated with the commentor who raised the issue of not receiving notification is for a townhouse development on a single tax lot with a listed owner of the Association of Unit Owners of Montgomery Townhouse Condominium with a discrete mailing address on SW Macadam. It is unclear why the County Assessor lists the property as it does, but notice was sent to the listed owner as required under Oregon law.

The site is already on Air B&B: There are two types of Accessory Short-Term Rentals (ASTR) under the zoning code: Type A and Type B. A Type A is for two bedrooms or less and does not require a land use review, merely a registration (Portland Zoning Code Section 33.207.040.C) through the property compliance program as an allowed use. Operators of a Type A ASTR may request converting the use to a Type B through a Conditional Use Review, such as the current proposal. The current owners of the property registered their current Type A ASTR in February 2022 allowing the ASTR to be operated.

Belief use is a hotel and not allowed in the RM1 zone:

The category a use falls under in the zoning code is determined by definitions in 33.207 and 33.910 and the characteristics of the use outlined in 33.920. Accessory Short-Term Rentals (ASTR) are differentiated from a hotel use in both definition and by characteristics. Hotel uses are a Retail Sales and Service use (33.920.250), colloquially known as a commercial use, while an ASTR is an accessory use necessarily ancillary to the primary use of a Household Living use, colloquially known as a residential use and for a long-term tenant. The citation to City code Title 16.90.145 is for a code section under the authority of the Portland Bureau of Transportation and relating to vehicles and traffic, not zoning or this land use review.

An accessory short-term rental is defined as where an individual or family resides in a dwelling unit and rents bedrooms to overnight guests for fewer than 30 consecutive days. There are two types of accessory short-term rental:

1. Type A. A Type A accessory short-term rental is where no more than 2 bedrooms are rented to overnight guests.
2. Type B. A Type B accessory short-term rental is where 3 or more bedrooms are rented to overnight guests.

(33.207.020.A)

The definition of ASTR is very specific to the renting of bedrooms in a dwelling unit where there is a long-term resident present for at least 270-days a year. As such, the zoning code makes clear the proposal is for a non-retail sales and service use and allowed through a Conditional Use Review.

Allowing the use would be a change to the character of the RM1 zone:

In adopting Accessory Short-Term Rental code provisions in 33.207, City Council made the explicit determination that ASTR's would be considered accessory uses and not primary uses because they would always have a long-term tenant occupying the dwelling unit, which would be the primary use of a building and property. However, City Council did recognize that an accumulation of larger ASTR's (Type B) in an area could have a larger impact on a neighborhood than Type A ASTR's and so all Type B ASTR's must be evaluated for the impact on a residential area through the Conditional Use Review approval criteria. As such, this concern is evaluated under 33.815.105.A further in this decision.

The Kitchen should be considered a restaurant and regulated by Multnomah county health department:

As noted earlier, the use is explicitly considered an accessory use to a household living use as described in 33.207.010 and in 33.920.110. The kitchen of a dwelling unit used for household living is part of that dwelling unit and not a retail sales and service use. Additionally, the house rules for the dwelling unit are that guests shall not use the kitchen (Exhibit A.X).

Length of ownership:

One of the letters objected to a narrative response in the materials stating the owner was a long-term tenant and owner of the property and the ability to establish an Accessory Short-Term Rental in the dwelling unit so quickly. A long-term tenant is a term associated with the distinction between a residential use and commercial use, not tenure of ownership. Specifically, tenancies over one month are considered residential uses as either Group Living or Household Living:

“Group Living is the residential occupancy of a dwelling unit that contains more than eight bedrooms. Group Living is also the residential occupancy of a congregate housing facility. Tenancy is arranged on a month-to-month basis, or for a longer period. Uses where tenancy may be arranged for a shorter period are not considered residential. They are considered to be a form of transient lodging (see the Retail Sales And Service and Community Service categories)...” (33.920.100.A)

“Household Living is the residential occupancy of a dwelling unit that contains eight or fewer bedrooms. Tenancy is arranged on a month-to-month basis, or for a longer period. Uses where the length of stay may be arranged for a shorter period are not considered residential. They are considered to be a form of transient lodging (see the Retail Sales And Service and Community Service categories)...” (33.920.110.A)

Tenancies less than 30-days in length are considered transient lodging such as a motel or hotel:

“Entertainment-oriented: Restaurants, cafes, delicatessens, taverns, and bars; indoor or outdoor continuous entertainment activities such as bowling alleys, ice rinks, and game arcades; pool halls; indoor firing ranges; theaters, health clubs, gyms, membership clubs, and lodges; hotels, motels, recreational vehicle parks, and other temporary lodging with an average length of stay of less than 30 days.” (33.920.250.C.3)

Owning a residential property with a dwelling unit allows the owner to utilize the array of allowed and limited uses provided by the zoning code as long as standards and approval criteria are satisfied. Establishing a Type A or B ASTR is part of the ‘bundle of sticks’ of real property rights that goes with owning a dwelling unit in Portland, no matter the length of ownership.

Objects to smoking:

Smoking is an externality commonly associated with household living as well as retail sales and service. Smoking is an established individual right that is not evaluated under a land use review. However, late night operations and odor are included as evaluation factors in the approval criterion under 33.815.105.C.1 and are addressed further on in this decision.

ZONING CODE APPROVAL CRITERIA

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:

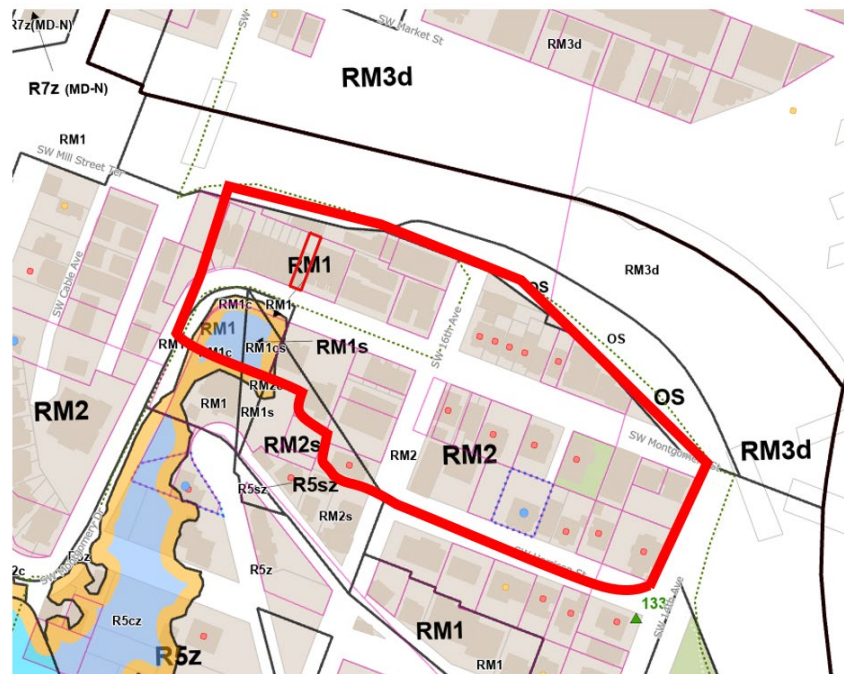
- A. Proportion of Household Living uses. The overall residential appearance and function of the area will not be significantly lessened due to the increased proportion of uses not in the Household Living category in the residential area. Consideration includes the proposal by itself and in combination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

Finding: For Criteria A.1 and A.2 below, the terms “area” and “residential area” are synonymous and are generally defined as an approximate distance of 400 feet from the site. This distance is reasonable for three reasons: it considers all residentially zoned property within a couple blocks of the site; is the same area reviewed for most parking analyses; and ensures no adverse impacts even beyond the 150-foot noticing distance required. Note that properties within non-residential zones (such as Commercial or Open Space zones) are not included within the “residential area.”

The area of the subject site is unique in that two major highways cut the area into distinct and discrete sections – Oregon Highway 26 and Interstate 405. Additionally, there is significant topographic change from north to south and also from east to west. From north to south, the elevations rise from the 190-ft elevation line along Highway 26 to the 240-ft elevation at the subject site’s driveway continuing up to the 350-ft elevation due south at SW Upper Hall St. a mere 250-ft away from the site. Google street view shows the property across the street to the south as being a cliff jutting nearly straight up. Looking west of the site, the topography again is at the 250-ft elevation line in front of the property and rises to the 260-ft contour at the western edge of SW Montgomery St. before dropping significantly down to the 200-ft elevation line over a mere approximately 70-ft in distance to SW 18th Ave. It again rises significantly up from SW 18th Ave to the 350-ft contour line on the continuation of SW Montgomery Drive approximately 270-ft away. These significant breaks and rises in topography create a unique ‘area’ for the evaluation that differs from an ‘area’ along a relatively flat grid street pattern.

Based on the general concept of area above and modified as a result of the highways and steep contours, the ‘area’ considered for this review extends east from the site to the SW Montgomery St. overpass of I-405; south to SW Harrison and those properties facing south along SW Montgomery St; . and facing SW 16th Ave. to SW Harrison; west to SW Montgomery Drive and north to Highway 26 as depicted below:

Figure 1
(Note that dots are buildings on the Historic Resource Inventory)



In the identified area, every property is zoned residential. There is only one site in non-residential use, located at 1436 SW Montgomery St., that has contained several non-conforming uses, including originally a fire station and later on a theater. It is not clear if the theater or building are currently in use. Also in the same area along SW Montgomery St., there are three other Type A Short-Term Rentals. Type A ASTRs are allowed by right, and are limited to renting one to two-bedrooms for short-term occupancy in a dwelling. In allowing Type A ASTRs by right, and limiting the number of rooms that could be rented for short-term occupancy, the Zoning Code acknowledges that these uses are similar in character to residential uses and any impacts associated with Type A ASTRs are not different enough from a residential use to necessitate Conditional Use review.

Portland Zoning Code Section 33.207.020.B allows for the rental of an ASTR with three or more bedrooms if approved through the Conditional Use review process. While it is likely that the majority of homes in the city consist of three or fewer bedrooms, there are many that do have four, and even five. As such, use of three bedrooms year-round and a fourth up to 95-days a year in the home as an ASTR is in the same intensity and scale as a larger household living uses found in the single-dwelling zones.

As the residential area is made up of approximately 45 lots and 75 dwelling units with only one in non-residential use (a non-conforming use), the overall residential appearance and function of the area will not be lessened nor will the non-residential intensity be increased.

To further limit the intensity of the use, a condition of approval will limit the extent of the ASTR rental. For up to 270 days of the year, the condition of approval will limit the ASTR to a maximum of 3 bedrooms and 6 guests, and for a maximum of 95 days, the ASTR is limited to 4 bedrooms and 8 guests. No more than two guests will be allowed per bedroom. Additionally, a condition of approval will limit the ASTR rental to a single-group at a time so as to limit the number of vehicles that may be generated by the rental.

With conditions of approval, this criterion is met.

B. Physical compatibility.

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

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

Criterion met.

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.

Finding: The proposed Type B ASTR is to be located within an existing house on a lot on SW Montgomery St. that is part of a townhouse development in a multi-dwelling zone. The townhouse is a 2.5-story townhouse built in 1996 located in a development of other mid 1990's townhomes. Immediately adjacent to the east is a three-unit condominium development constructed after 2016. Further to the east on both sides of SW Montgomery St. are developments of dwelling units from the 1970's up to the last 5 years. From exterior appearances, the site will blend in with the rest of the residential neighborhood. The primary difference is that the majority of the townhomes and condominiums facing the street have a garage. The applicant has applied for a building permit to convert the garage to living space and remove the curb cut to the site. Garage conversions are a common and regular occurrence to residential structures and the change is consistent with the character of the residential zones.

As the existing dwelling unit has a size consistent with other homes in the area; the placement on the lot is consistent with homes in the area; and the exterior appearance is consistent with homes in the area, there is no need to require mitigation to achieve similarity in appearance or scale through such means as setbacks, screening, landscaping, tree preservation, other design features.

Criteria met

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

2. Privacy and safety issues.

Finding: The applicant has provided a narrative and proposed house rules (Exhibit X) to help reduce potential adverse impacts to the surrounding properties and neighborhood. Conditions of Approval will also be imposed to ensure adverse impacts are reduced or eliminated. Some of the most relevant house rules include:

- No smoking outdoors;
- No more than 2 guests per room;
- Guests cannot use the kitchen;

- Quiet hours start at 10pm;
- Check in is at 4PM; Check out at 11AM;
- Maintain a log book of guests;
- Provide contact information for surrounding properties for concerns related to guests; and
- Prohibit commercial uses such as commercial photography or video creation/production or meetings.

The primary livability concerns related to Type B ASTRs are the possibility of late-night activities and noise, smoking, lack of parking and the intensity of the activity. The primary exterior space where late night activities and noise could occur is the outdoor deck off the back of the house.

A certain level of noise is to be expected from the long-term resident(s) of the home, and the expectation of what noise might constitute a significant impact on livability is not complete silence, but whether the level of noise consistently exceeds what might be expected from that which long-term residents would generate. Long-term residents in the house would be expected generally to work during the day and, also, to recreate at home later in the evenings on weekends. The applicant's proposal to limit noise through the institution of "quiet hours" after 10:00 pm is a reasonable method of limiting noise during times when adjacent residents could be expected to be sleeping and corresponds to Portland's noise ordinance. However, what constitutes 'quiet hours' is discretionary. The only way to ensure quiet hours is to restrict use of outdoor areas. A condition of approval will be included to prohibit use of the outdoor area between the hours of 10 PM and 7: 00 AM by ASTR guests on weeknights and weekends and will require that the ASTR not create noise impacts in violation of Portland City Code Title 18.

To further enforce the quiet hours and ability of the operator to control potentially rowdy guests, a condition of approval is needed to require that the contact information of the long-term resident and the local operator be provided annually to surrounding neighbors so that they will have a means of registering complaints should there be guests that violate the rules.

Together, the prohibition of the use of outdoor areas by ASTR guests between 10 PM and 7 AM, the requirement to abide by Title 18 and the ability of neighbors to contact a local person to help enforce those hours will work to ensure that the noise generated by ASTR guests remains similar to what could be expected if the house were occupied by a family, or by a group of unrelated long-term residents.

As the primary use and the ASTR are both residential uses, any odors generated that are discernable from off the property can reasonably be expected to be the same as would be generated by a strictly long-term residential use, such as those associated with cooking, barbecuing or smoking. However, smoking has been raised as a concern by neighbors and odors are listed as a livability impact. Because the subject site is a townhouse connected to an adjacent home by a common wall without the benefit of setbacks, proximity of residents is even closer than in single-dwelling zones. Guests smoking on an exterior deck that is immediately adjacent and connected to the adjacent property's deck would constitute an adverse impact. Therefore, a condition of approval will restrict smoking on the exterior of the property to ensure livability is not impacted.

With the noted House Rules and conditions of approval, this criterion is met.

D. Public services.

1. The proposal is supportive of the street designations of the Transportation Element of the Comprehensive Plan;

Findings: The following findings were provided by Portland Bureau of Transportation staff. For D.1:

“At this location, the City’s Transportation System Plan (TSP) classifies SW Montgomery St. at this location as a City Bikeway, City Walkway, and Local Service street for all other modes. The design classification is Local Street.

Pursuant to the TSP, the above referenced street classifications include, but are not limited to, the following functions:

City Bikeway streets are “intended to serve the Central City, regional and town centers, station communities, and other employment, commercial, institutional, and recreational destinations”. City Walkway streets are “intended to provide safe, convenient, and attractive pedestrian access along major streets and trails with moderate level of pedestrian activity supported by current and planned land uses. These includes Community and Regional Corridors, non-frequent transit lines, and moderate-demand off-street trails.” Local Service Traffic Streets are “intended to distribute local traffic and provide access to local residences or commercial uses.”

All of the surrounding streets will continue to function as intended above; the continuation of the site as a residence with the addition of an accessory short term rental will not impact the classifications or functions of said streets. The proposed accessory short term rental will result in an increase in trips to the site. The increase is not anticipated to be of the scale that it will affect the fundamental functions of any street as detailed in the submitted TIS and the findings below.”

Based upon PBOT’s review and analysis of this criterion, staff finds the standard is met.

Criterion 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: The following findings were provided by Portland Bureau of Transportation staff:

“Portland Transportation/Development Review has reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, Title 33, Title 17, and for potential impacts upon transportation services.

To address the transportation approval criteria, the applicant submitted a professional Transportation Impact Study (TIS) prepared Kittelson and Associates. The TIS scope was reviewed and approved by PBOT Development Review Planner Tammy Boren-King (21-197286-TR). PBOT Development Review staff concurs with the applicant’s findings.

The proposal is to retain the existing dwelling, which is currently three bedrooms. The proposal states the owner plans to convert the garage to a fourth bedroom, removing all on site parking. The originally submitted TIS does not state specifics about the planned operation. Emailed correspondence with the traffic consultant dated 11/8/2022 states the owner, “plans on renting out rooms individually so that 1, 2, 3, or 4 rooms could be rented by guests. He expects that one of the rooms would only be available between 0-95 days per year for rent, and that he would be occupying that room the other 270+ days per the requirements of ASTR permits.” The proposed short term rental would allow the property to be used as a 4-bedroom rental at limited times and a 3 bedroom rental with on-site resident most of the time. In both scenarios, the applicant’s traffic consultant states the maximum assumed parking demand would be 4 vehicles.

The existing roadway and sidewalk networks are largely complete in this area. Within the frontage of the subject site, SW Montgomery St. is paved with curbs, sidewalks, and street lighting. Sidewalk facilities do not exist south of the site on SW Montgomery St. Instead, to reach Goose Hollow or other points west of the site, a paved multi-use trail exists parallel to the freeway behind the subject site. The trail can be accessed via SW 16th Ave. To the east, an intact network of paved streets and sidewalks exist connecting this site to PSU and the rest of downtown.

At this location, connectivity does not meet City standards due to the presence of the interstate highway. There is no additional potential for connectivity through the site. The existing street and multi-use path network connects pedestrians and cyclists to the larger city wide system. SW Montgomery street crosses I-405 to the west and connects into the downtown street network. The multi-use path connects pedestrians and cyclists to cross under Highway 26 on SW 18th Ave. SW 18th Ave. connects into Goose Hollow and the street network for inner SW and NW Portland. SW Montgomery Dr. provides vehicle connections both east and west.

Based on information in the City’s database on Portland Traffic Deaths and Injuries since 2010, there have been no fatal or injury accidents on SW Montgomery St. between SW Vista Ave. and I-405.

The site is well served by transit and the residential use of the site is mapped as being exempt from vehicle parking per 33.266.110.B.1. The application materials stated the owner will be seeking a building permit to convert the existing garage to a bedroom. When this happens, the driveway will no longer lead to on site parking. The curb cut will be required to be rebuilt as part of the building permit process. Restoring the curb will increase the amount of usable curb length available for on-street parking, but will restore less than 1-full length on street parking space to the system. This leaves the question of whether the surrounding

neighborhood can absorb the anticipated increase in on street parking from the proposed conditional use.

The worst case scenario as document by the submitted TIS is that the use will generate the need for 4 parking spaces. Staff notes this is a worst case, but is unlikely based on the submitted rental log data. The site currently operates as a 2 bedroom short term rental which does not require a conditional use review. The site is within a parking permit area, meaning renters who wish to park on street must request a parking pass from the owner. To date, 23% of the renters have requested a parking pass. Given the location very close to both downtown and Goose Hollow, it is anticipated that many short term rental users will ride transit or use ride share services. In order to fully address the approval criteria and a reasonable worst case, PBOT requested the applicant submit a parking study. The applicant's traffic consultant conducted a parking study during peak parking demand hours for residential uses (11pm to 12 am) on a weeknight. This parking survey found a total of 45 on street parking spaces within 500-feet of the subject site. Of these, 32 were occupied leaving a surplus of 13 spaces. If the full 4 vehicle potential demand came to pass, there would still be 9 spaces available. Including 4 vehicles for the short term rental use, the anticipated on-street parking demand would be 80%. As the TIS states on page 5, "This anticipated demand is below what is generally considered the effective capacity of the parking supply (85%)."

In conclusion, based on the evidence included in the record, 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".

Based on PBOT's evaluation, findings, and conclusions, staff finds the approval criteria are met.

Criteria 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.

Finding: The Water Bureau and Fire Bureau have indicated, through their respective responses of "no concerns" with the proposal (Exhibits E.1), that they are capable of serving the proposed ASTR. The Police Bureau responded they have been and will continue to provide service to the site (Exhibit E.2). The response from the Bureau of Environmental Services (Exhibit E.3) indicates no objection to approval of this Conditional Use based on there being sanitary sewer service available via the public sewer within the site's frontage; and there being no BES requirement for additional stormwater disposal systems and this criterion will be met.

This criterion 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.

Finding: The subject site is within the Southwest Community Plan area. However, a review of the plan document did not identify any applicable plans or policies relevant to the proposal.

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 existing townhouse on its own lot in which the ASTR is proposed is a single-dwelling residential structure that is compatible in appearance and scale with the surrounding residential neighborhood. There is one other non-residential use within the defined 'residential area' so the addition of a Type B ASTR will not materially alter the residential area or lessen the appearance of it. There are other Type A ASTRs within the defined area of this proposed ASTR. These ASTRs also maintain a residential appearance which will not change with the addition of this ASTR. Where there may be potential impacts on the surrounding residential area due to noise, late-night operations, and litter, the residential character of the area can be maintained through conditions of approval implementing the House Rules to establish and require conformance with the City's noise ordinance, a prohibition on outdoor smoking, and to provide for disposition of trash and recyclable materials. City services for police, fire, water, and sanitary sewer and stormwater drainage are available and capable of serving the site. The transportation analysis provided by the applicant and reviewed by PBOT demonstrates that the proposal is consistent with the classifications of streets, and that the transportation system is capable of serving the proposed use, including consideration of the impacts of the use on the supply of on-street parking.

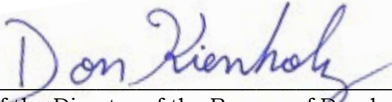
ADMINISTRATIVE DECISION

Conditional Use approval of a Type B ASTR for a maximum 3 bedrooms and 6 guests for 270-days a year; and for a maximum of 95 days a year, a maximum of 4 bedrooms and 8 guests; in no case shall there be no more than two guests allowed per bedroom. The Type B ASTR approval is for the existing home at 1627 SW Montgomery St., with the long-term resident(s) occupying the home at least 270-days a year. Approval is per Exhibits C.1 through C.4, and subject to the following conditions:

- A) Prior to the start of operation of the Type B ASTR, the ASTR operator must meet the following conditions:
1. Purchase from BDS a fee-paid inspection to confirm that the requirements of Zoning Code Section 33.207.050.B.4 are met for all bedrooms in the house that will be used as ASTR rentals.
 2. Provide residents of residentially used properties adjacent to the site (including across SW Montgomery Sr. with the phone contact information for the long-term resident, operator, and property owner. The ASTR operator shall maintain paper copies of these notifications, including the list of who was notified and when, for inspection by City staff upon request.
- B) For the duration of operation of the Type B ASTR facility, the ASTR operator will meet the following conditions:
1. Rental of the ASTR shall be limited to a single group at a time. Renting of individual rooms to unrelated/unassociated individuals shall not be permitted.

2. Use of exterior areas after 10:00 PM are prohibited. Additionally, the ASTR may not create noise impacts in violation of Portland City Title 18 Noise Control, which prohibits the following:
 - a. Operating or permitting the use of operation of any device designed for sound production or reproduction in such a manner as to cause a noise disturbance; or
 - b. Operating or permitting the operating or use of any such device between the hours of 10 PM and 7 AM to be plainly audible within any dwelling unit which is not the source of the sound (the operator may impose a more restrictive time frame).
3. Smoking is prohibited in exterior areas of the property.
4. Commercial, meetings and events are prohibited. Commercial meetings include luncheons, banquets, parties, weddings, meetings, charitable fund raising, photoshoots, commercial or advertising activities, or other gatherings for direct or indirect compensation.
5. Check in shall be after 4PM and check out by 11AM.
6. The ASTR operator must amend the House Rules to include the conditions in B1-B4, above. The amended House Rules must be included in all advertisements for the ASTR facility.
7. The ASTR operator must maintain the House Rules, as required to be amended by this decision and conditions, for the duration of the operation of the ASTR facility. The ASTR Operator must email or mail copies of these House Rules to guests in advance of their visits. The ASTR Operator must ensure that at least one paper copy of these House Rules is displayed prominently within a common area of the house.
8. All advertisements for the ASTR, including on-line rental sites, shall display prominently in the title of the advertisement the maximum number of bedrooms and the maximum number of people (six when using three bedrooms, eight during the 95 days four bedrooms are allowed to be used) allowed per nightly rental.
9. Confirmation data from the authorized rental organization (such as Airbnb and VRBO or similar platforms) shall be provided to City staff upon request. Confirmation data must include the name, home address and phone number of the ASTR guests, and the dates of stay.
10. The ASTR Operator will maintain a Guest Log Book. The Guest Log Book must include the names and home addresses of guests, guest's license plate numbers if traveling by car, dates of stay, and the room assigned to each guest. The log must be available for inspection by City staff upon request.
11. On an annual basis, the ASTR operator must provide residents of properties identified in Condition of Approval A.2 with phone contact information for the long-term resident, operator, and the property owner. The ASTR operator shall maintain paper copies of these notifications, including the list of who was notified and when, for inspection by City staff upon request. The ASTR operator is responsible to ensure that phone contact information remains current and neighbors are provided with updates.
12. Information regarding transit schedules, multi-modal information and maps, and bike and car share options shall be placed in a prominent common area of the house.

Staff Planner: Don Kienholz

Decision rendered by:  **on January 19, 2023**
By authority of the Director of the Bureau of Development Services

Decision mailed: January 23, 2023

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 July 8, 2022, and was determined to be complete on October 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 July 8, 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 requested that the 120-day review period be extended a total of 45-days (Exhibit A.12). Unless further extended by the applicant, **the 120 days will expire on: April 9, 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.portlandoregon.gov/bds/45477>. Appeals must be received **by 4:30 PM on February 6, 2023.** **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 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 6, 2023** 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 Materials
 - 1. Original Site Plan
 - 2. Original Floor Plans
 - 3. Building Permit history
 - 4. Narrative
 - 5. Applicant Incomplete Response Email
 - 6. Existing Front Elevation
 - 7. Proposed Front Elevation
 - 8. House Rules
 - 9. Oregon Driver's License
 - 10. Transportation Impact Study
 - 11. Applicant Response to Comments Received
 - 12. Applicant 45-day extension to statutory clock
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. First Floor Plan (Attached)
 - 3. Second Floor Plan (Attached)
 - 4. Basement Floor Plan (Attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Site Development, Fire Bureau and Water Bureau
 - 2. Police Bureau
 - 3. Life Safety Section of BDS
 - 4. Bureau of Environmental Services
 - 5. Portland Bureau of Transportation
 - 6. Portland Bureau of Transportation Supplemental
 - 7. Bureau of Parks, Forestry Division
- F. Correspondence:
 - 1. Montgomery Townhouse Homeowners Association November 7, 2022 Comment letter in opposition.
 - 2. Baldwin November 7, 2022 Letter of Opposition
 - 3. Hu November 9, 2022 Letter of Opposition
 - 4. Hartman November 10, 2022 Letter of Opposition
 - 5. Williams November 10, 2022 Letter of Opposition
 - 6. Li November 13, 2022 Letter of Support
 - 7. Simon November 17, 2022 Letter of Opposition
- G. Other:
 - 1. Original LU Application
 - 2. Summary of Fees Paid
 - 3. Incomplete Letter

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).