



City of Portland, Oregon
Bureau of Development Services
Land Use Services

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Date: July 30, 2010
To: Interested Person
From: Sheila Frugoli, Land Use Services
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NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 10-114662 CU

GENERAL INFORMATION

Applicant: Bob Steele, Consultant
Design Intelligence
P.O. Box 286
Marylhurst, OR 97036

Owner: Carol L Lee
2722 NE 15th Ave
Portland, OR 97212-3302

Site Address: 2722 NE 15TH AVE
Legal Description: N 10' OF LOT 12 BLOCK 60 S 40' OF LOT 13 BLOCK 60, IRVINGTON
Tax Account No.: R420413020
State ID No.: 1N1E26AC 08200
Quarter Section: 2732
Neighborhood: Irvington, contact Dean Gisvold at 503-284-3885.
Business District: North-Northeast Business Assoc, contact Joice Taylor at 503-445-1321.
District Coalition: Northeast Coalition of Neighborhoods, contact Lauren McCartney at 503-823-4135.

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 owner wishes to establish a Bed and Breakfast facility. The proposed Bed and Breakfast would offer five guest rooms, for a maximum of 8 people and would be managed by the owner and her family members who will reside at the house. No cooking or hot meals will be offered. A self-service kitchen will be available for guests to prepare breakfast and complimentary snacks may be provided on occasion. No special events, gatherings or other activities other than overnight stays in the bedrooms will be offered. Three bicycles will be provided for guest use. Tri-Met public transportation maps and options, and walking and biking maps of Portland areas will be available to guests.

In accordance with Code Section 33.212, approval through a Conditional Use Review is required to locate a Bed and Breakfast in a residential zone. The Portland Zoning Code defines Bed and Breakfast uses as accessory to a Household Living Use. This means that the individual or family who operates the facility must occupy the house as their primary residence.

Relevant Approval Criteria: In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are those for Institutional and Other Uses in R Zones, Code Section 33.815.105, and A through E.

ANALYSIS

Site and Vicinity: The 5,000 square foot site is located on the east side of NE 15th Avenue, between NE Stanton and NE Knott Streets. The site is developed with a three-story home, plus basement, and attached garage. According to county records, the house was originally built in 1910. The home's street-facing façade and front yard area appears to have been recently updated. The site contains several mature deciduous trees, shrubs, and other landscaping. The rear yard contains a small patio area and is fully surrounded by a fence.

Nearby uses include primarily single-dwelling residences, some multi-dwelling residential structures and institutional uses including a church and pre-school located at the northwest corner of NE 15th and NE Knott and the Irvington School, located at NE 14th and NE Brazee. Approximately 1.5 blocks away, at 2337 NE 15th Avenue, The City granted Conditional Use approval to establish a Bed and Breakfast facility.

NE 15th Avenue is designated as a Neighborhood Collector, a Transit Access Street, a City Bikeway, and a City Walkway. NE Thompson and NE Brazee are Local Service Streets and Local Service Bikeways and Walkways. NE 15th is developed with a 4-foot planter strip, a 6-foot sidewalk, and an additional 2-foot right-of-way.

Zoning: The site and surrounding lots are zoned R5, Single-dwelling Residential. The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing. The R5 zone is a high density single-dwelling zone. The R5 zone allows attached and detached single-dwelling structures and duplexes.

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 **June 2, 2010**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Bureau of Parks-Forestry Division
- Site Development Division of BDS
- Fire Bureau
- Water Bureau

The **Bureau of Transportation /Development Review** responded with the following comment: PBOT 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.

At this location, NE 15th Avenue is classified as a Neighborhood Collector, Transit Access Street, City Bikeway, City Walkway, and a Major Emergency Response Street. It is improved with a 36-ft wide roadway with 12-ft sidewalk corridors that meet current City standards. Parking is allowed on both sides of 15th, except in front of the church/school immediately

across the street due to a bus zone. It also appears the church/school across the street has very few on-site parking spaces relative to the size of the institutional use.

The applicant states their desire to open a B&B with five bedrooms with a maximum of eight guests. There will be no employees. The only other residents are family members. Vegetation/landscaping on the northern edge of the driveway appears to only leave room for one car to park in the driveway. Even with the landscaping trimmed back, only two on-site parking spaces are proposed with one of those reserved for the owner. PBOT does not have any strong concerns about the amount of traffic potentially generated by the proposed use. Most of the associated vehicle trips will likely occur outside of the AM and PM peak hours.

The impact on on-street parking is the most common concern with this type of use in a residential neighborhood. The applicant has provided a parking survey showing the number of available parking spots and their usage within a block of the property. The survey was taken on a weekday in the morning, at noon and in the evening, as well as on Sunday afternoon when the majority of residents would be at home. The survey shows that on average, only 20% of the on-street spaces are in use at any given time within 1 block of the subject property. This suggests that on-street parking availability is ample to accommodate overflow parking from the B&B.

In addition to the on-street parking survey, the applicant has provided a Transportation Demand Management (TDM) plan outlining options for B&B patrons to reduce single occupant vehicles coming to the site. The applicant will provide information to guests about airport transportation options, including busses and light rail. The applicant will provide a kiosk or bulletin board with Tri-Met information and brochures, taxi cab information, Zip Car information, town car services and bicycle and walking route maps. Note that Tri-Met bus line #8 stops within 150 feet of this site and a Zip Car (car sharing) is located 1 block away. The applicant will provide two bicycles to guests at no charge. Adequate bike parking is available in a locked garage and in side and rear yards.

The applicant has further indicated that no special events or gatherings will be held at the site and the use will be limited to a bed and breakfast.

Based on information provided by the applicant, it appears that the transportation services are adequate to serve this proposal. However, to further reduce reliance on autos and minimize on-street parking impacts, the applicant should make Tri-Met day passes available to guests.

Therefore, Transportation has no concerns with the proposed development with the following condition: The applicant must provide Tri-Met day passes to guests (Exhibit E.1).

The **Life Safety Plans Review Section of BDS** responded with the following comment:

A bed and breakfast containing only 5 guestrooms and a maximum of 10 guests is considered an R3 Occupancy. Therefore this structure would not require a change of occupancy permit. In order to operate the bed and breakfast, a fee-paid inspection is required. The form for this inspection is online at <http://www.portlandonline.com/bds/index.cfm?c=45059&a=266804>.

For this inspection, the Residential Inspector arranges field visit with the owner to check:

- Existing living space is legal
- Egress windows
- Hard-wired smoke alarms

Residential Inspector will inform you of any corrections/permits required

No plan of the basement was provided. If the basement contains any habitable space, you will need a permit showing this is legal living space, and that there are no guestrooms provided on this level.

Permit records do not show that the third floor is legal living space.

There are 2 options to resolve this issue. You may submit a permit for an attic conversion with drawings that show that this level meets the structural and habitable space standards in Brochure 9, "Converting Attics, Basements and Garages to Living Space", available online: <http://www.portlandonline.com/bds/index.cfm?c=45053&a=93019>

Alternatively, you may request a residential fee paid attic inspection, in which a building inspector will visit the house in order to visually determine if the attic space appears to be original living space. The application and additional information on this type of inspection is available at: <http://www.portlandonline.com/bds/index.cfm?c=45059&a=266804> . (Exhibit E.2)

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on June 2, 2010. One written response has been received from the Neighborhood Association in response to the proposal.

Dean Giswold, Land Use Chair, Irvington Community Association (ICA), wrote that the Irvington Land Use Committee (Committee) met on June 17, 2010, to discuss this proposal. In attendance was Carol Lee, the applicant and owner of the property, and approximately 20 residents of the Irvington neighborhood. After Carol presented her proposal, the group had 30 minutes of questions and answers. Also in attendance were four B and B operators already established in the neighborhood.

There were lots of questions, but, unfortunately, not many answers. For example, when asked about her proposed use of the third floor for a guest room, she was asked if she had visited with the fire department and her insurance agent. She did not know that another access point or a sprinkler system is generally required by the fire dept. She said she did not have another access point and the building was not sprinkled. She said she would look into this matter.

Another example. The proposal says, "No cooking or hot meals will be offered. A self service kitchen will be available for guests to prepare breakfast and complimentary snacks may be provided on occasion." When asked about whether she had discussion with the health dept. of Multnomah County and their requirements for no guests using the kitchen, especially regarding no cooking by guests, she was unaware of such requirement.

The Committee was unanimous in rejecting her proposal, at least as currently configured. The Committee offered to re visit the proposal when she got back from her 30 day trip to Europe and had a chance to follow up on the many questions. I believe she left Monday or Tuesday of this week. After the Committee moved on to other topics, Carol did have a discussion with the established b and b operators out in the hallway. However, because the Committee has the June 23 deadline, we must send this response to you.

The Committee strongly recommends that proposal be denied, or at least suspended until the Committee can meet again with the applicant. If suspension is not possible under the City rules, then the proposal should be denied.

In connection with the relevant criteria, the Irvington Neighborhood Association offered the following comments.

- 33.815.105 C Livability. In the opinion of the Committee, the proposal will have a significant adverse impact on the neighborhood due to safety issues, and Applicant's failure to understand and comply with life, safety and health issues. It was clear from Carol's response to the questions, especially those from existing innkeepers, who comply with the numerous rules and regulations, that she did not know of such requirements, and it was unclear if she was motivated to find out. There are good safety and health reasons to keep guests out of the third floor, and to prevent guests from

cooking and using a kitchen in common with the owner and her family. For health, safety, and livability issues alone, the application should be denied.

- The applicable City Code, Section 33.815.105 Institutional and Other Uses in R Zones, allows institutions and other non-household living uses in a residential zone, but only if such uses maintain or do not significantly conflict with the appearance and function of residential areas. It appears to the Committee that Applicant's lack of knowledge about the basic rules and regulations governing the operation of bed and breakfast facilities will bring about significant conflict with the adjoining neighborhood.
- With respect to Criteria A, proportion of household living uses, there were some on the Committee who questioned the number of uses not in the household living category that currently exist in the residential area. This is the second bed and breakfast application within a two block stretch on NE 15th. Both were operated as a "vacation rental" using the web site, Vacation Rentals by Owner or www.vrbo.com without apparent regard to compliance with health and safety issues. The Committee is aware of other such uses in the neighborhood, and plans on taking steps to bring about compliance with the City Code. This application, when considered in conjunction with the b and b application at 2337 NE 15th and the other "vacation rentals" in the neighborhood, raises serious questions about the number, location, intensity and scale of the proposed and existing non household living uses.
- With respect to criteria B, the proposed property has been significantly modified over the years. The house was originally a single family house, Craftsman style. The house was judged a non contributing structure in the application to make Irvington a historic district recognized by the state and federal government. Several Committee members commented by email that the proposed property is not compatible with adjacent residential developments, and the overall historic character of the neighborhood. The applicant proposes no mitigation efforts to deal with these concerns.
- With respect to criteria D, public services, the use is on a transit street, which is well served with the no. 8 bus line, but the applicant clearly indicated that there would be no airport pickup, and was unsure about bus tickets and passes. Parking will be on the streets, and was a concern of some committee members.
- With respect to criteria E, area plans, the fact that applicant must secure a conditional use, suggests that the proposal is not consistent with the neighborhood plan and with a historic district.

For the above reasons, the application should be denied (Exhibit F.1).

Staff comments: *Those of the above listed issues that are relevant to the Conditional Use approval criteria are addressed in detail throughout the approval criterion below. The question has been raised of whether or not registered B&B guests are allowed by the State of Oregon to prepare their own meals. Compliance with such state rules are not part of the approval criteria, and it is the property owner's and applicant's responsibility to insure that all State and locally mandated health requirements are adhered to, and that required licenses for B&B's are obtained. Further permits or licensing beyond the city permitting and land use review process may be required in order to establish the B&B.*

Regarding the "vacation rental" posting, the application makes no mention of current use of the home. BDS has a record of code enforcement inquiries regarding numerous roommates living in the house. BDS code compliance staff explained to the owner that in single-dwelling zones, a family (related by blood, marriage, legal guardianship) plus five un-related persons. Also, the residents must have tenancy for a minimum of 30 days. To provide residence for more than 5 unrelated persons, a Group Living Use must be approved as a Conditional Use at the site. To

provide tenancy for less than 30 days, a Bed and Breakfast Facility must be established at the site as an approved Conditional Use.

ZONING CODE APPROVAL CRITERIA

33.815.105 Institutional and Other Uses in R Zones

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

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

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

Findings: The subject site is located in the center of a large single-dwelling residential area accessed by local service streets (except NE 15th, which is a Neighborhood Collector). Multi-dwelling zoning begins about 600 feet to the south and 2,000 feet to the east, and commercial zoning begins about 1,500 feet to the south.

For the purposes of this review, the residential area is defined as those properties within the boundary of the following local service streets which enclose the immediate residential area most likely to be affected by this proposal: NE Stanton Street, NE Brazee Street, NE 17th Avenue and NE 14th Avenue.

Within this area, the zoning is R5 and most lots are 5,000 or 7,500 square feet in size and are developed with single dwelling homes. Some lots are smaller or larger, and there are several multi-dwelling homes throughout the residential area. The lot immediately north of the site is 6,000 square feet, the eastern abutting lot is 7,000 square feet and the southern abutting lot is 9,000 square feet. The lot to the south contains a home that is a designated historic landmark. Most of the homes in the area are grand turn of the century homes that are set back from the street with generous front porches, and most lots and street planting strips are extensively landscaped, creating a lush residential streetscape.

Four non-household living uses exist in the surveyed area. These include the Augustana Lutheran Church, the Westminister Pre-School on NE Knott and NE 15th, Foster and Dobbs, a nonconforming retail use at NE Brazee and NE 15th, and the Irvington School, on NE Brazee and NE 14th. Adding a B&B in an existing residential structure will not significantly lessen the residential character of the area. In their written response, the Irvington Neighborhood Association identified a B&B at 2337 NE 15th Avenue as another non-household living use in the area. The Zoning Code classifies B&Bs as residential uses. Specifically, Section 33.212.020 states:

33.212.020 Description

A. Bed and breakfast facility. *A bed and breakfast facility is one where an individual or family resides in a house and rents bedrooms to overnight guests. A bed and breakfast facility may also have visitors and non-resident employees.*

B. Retail Sales And Service use. *In zones where Retail Sales And Service uses are allowed, limited or conditional uses, a bed and breakfast facility is defined as a hotel and is included in the Retail Sales And Service category.*

Therefore, other Bed and Breakfast uses cannot be considered when addressing proportion of non-household living uses in an area. There will be no external changes to the existing home. The proposed capacity of the B&B is 8 guests in 5 bedrooms plus the household residents which include the owner and 2 other family members (3 bedrooms). The intensity of the use will include daily comings and goings, including foot traffic, vehicle traffic, outdoor activity of up to 8 guests and the residents of the house. The B&B is expected to attract guests of neighborhood residents or guests who specifically want to experience or conduct business in the Irvington area. Existing non-household uses (church, school, food market and café) support and enhance the greater Irvington neighborhood and are not likely to be large attractors of outside traffic.

The residence has a double-car garage and 28-foot deep driveway. This provides on-site parking for up to 4 standard size vehicles. The applicant states that one of the spaces will be reserved for the owner. It is anticipated that parking for guests will be provided on-street. Three bicycles will be available for use by guests, and Zipcar and transit information and maps will be provided on-site. To facilitate transit use, a condition will require the owner to provide Tri-Met all-day passes to the B&B guests.

With conditions of approval, the intensity and scale of the proposed use will not introduce a significantly higher intensity of activity to the site and surrounding area. Because no exterior changes are proposed and any interior changes will retain the residential function of the home, the proposed B&B, alone and in combination with the existing non-household uses, will not significantly lessen the residential appearance or function of the area. With conditions, this criterion is met.

B. Physical compatibility.

1. The proposal will preserve any City-designated scenic resources; and
2. The proposal will be compatible with adjacent residential developments based on characteristics such as the site size, building scale and style, setbacks, and landscaping; or
3. The proposal will mitigate differences in appearance or scale through such means as setbacks, screening, landscaping, and other design features.

Findings: City designated scenic resources are shown on the zoning map by the 's' overlay. The site is not designated as a scenic resource. The site is located within the Irvington Conservation District, and the subject home is listed in the Irvington Historic Design Zone as being a contributing structure. Given that no exterior changes are proposed, the existing structure will remain compatible. The neighborhood association wrote that the property has been significantly modified over the years. The house was originally a Craftsman-style house (single-dwelling residence). Mr. Griswold notes that the house was judged as a non-contributing structure in the application to make Irvington a Historic District recognized by the State and Federal government. Further, he states that several Committee members commented by email that the proposed property is not compatible with adjacent residential developments, and the overall historic character of the neighborhood. He notes that the applicant proposes no mitigation efforts to deal with these concerns.

The site is currently in a designated historic Conservation District. Design review or conformance to Community Design Standards is required for exterior alterations. The proposed Irvington Historic District has not been approved/adopted. Until the district is created and officially mapped by the Bureau of Planning and Sustainability, the current regulations apply. Even if the Historic District were in place, only future exterior improvements/alterations will be subject to the architectural review requirements.

Building scale, setbacks, and landscaping are all consistent with the type and scale of development that is allowed in the R5 zone, and none of these characteristics will change with this proposal. No exterior changes are proposed to the existing home, therefore the appearance and size of the residence will remain unchanged. The proposal will remain physically consistent with the adjacent residential development in the area. No mitigation is necessary. This criterion is 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.

Findings: The proposal does not include exterior lighting or odors. No odors or significant litter beyond that generated by a large household use are anticipated from this proposal. Regular recycling and garbage service is expected to be sufficient. Late night operations could include occasional check-ins, check-outs, or guests returning or departing from outside activities. No commercial meetings or social gatherings are allowed on the premises (private social gatherings are allowed to be hosted by and for the resident manager(s) and ADU residents, with limitations outlined under 33.212.040.E).

As noted above, the proposed B&B includes a total of 8 bedrooms, of which 5 will be available for B&B guests, with a potential for up to 8 guests per night. The property owner will reside on the site with other family members. The owner's primary function will be to oversee the B&B guests and operations. The owner will be responsible for ensuring that the B&B operations will not have significant adverse impacts on the livability, specifically including safety, privacy, and quiet, of the nearby residential area.

Noise generated at the site by B&B guests may increase to the point that a maximum of 8 guests per day could be entering or leaving the home, bringing luggage to or from vehicles on the street, talking as they walk or bike through the streets, or operating motor vehicles in the neighborhood, all of which are activities that occur with a residential use. The anticipated increases in noise generated from outdoor use by the guests are not significant. However, given the guests are visitors who may not be sensitive to neighbors needs, the level of noise should be managed. To ensure that noise generated from the B&B remains in character with the residential area, a condition of approval (Condition D) is warranted to require that outdoor noise must comply with the required "Quiet Hours" between the hours of 9 p.m. and 8 a.m. Sunday through Thursday, and between the hours of 10 p.m. and 8 a.m. Friday and Saturday. This condition does not prohibit outdoor use, nor does it prohibit quiet outdoor noise, such as quiet talking, and it does not apply to private social gatherings hosted by and for the enjoyment of the owner of the B&B as allowed by right under section 33.212.040.E. The owner will be the first line of enforcement, and therefore should provide their contact information to all abutting property owners and to those property owners directly across NE 15th Avenue from the site.

Furthermore, late night noise that is generated by guests checking in or out and their associated luggage, vehicle, and voice noises could be a problem. In order to limit the amount of late night disturbance associated with B&B guest check-in/check-out operations, a condition of approval (Condition E) is warranted requiring that check-in and check-out times for registered guests shall be restricted to between the hours of 8 a.m. and 8 p.m. as a standard practice, with exceptions made only when necessary and by prior arrangement, and business advertising should include a statement to this effect.

The owner, who will reside at the B&B will be charged with addressing any livability issues that arise to ensure that quiet, safety and privacy are maintained for neighbors, residents, and guests. Restrictions to the guests such as quiet hours, check-in time and information regarding alternative transportation options will be required to be shared with guests prior to reserving the rooms and at arrive of the B&B.

The Bureau of Transportation has reviewed the proposal and stated that safety will not be decreased by the additional vehicles, bicycles, or pedestrians using the street.

To ensure that the structure meets Building Code requirements a condition requires the applicant to request an inspection and to obtain building permits for the third floor living space and to verify that safety requirements are met for the B&B guests. The building code requirements must be satisfied prior to establishing and operating the B&B facility.

For the reasons described above and in conjunction with the above listed conditions of approval the proposal will not have significant adverse impacts on the livability and safety of the residential area. Therefore, this criterion is met.

D. Public services.

1. The proposed use is in conformance with the street designations of the Transportation Element of the Comprehensive Plan;
2. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street capacity, level of service, and other performance measures; access to arterials; connectivity; transit availability; on-street parking impacts; access restrictions; neighborhood impacts; impacts on pedestrian, bicycle, and transit circulation; safety for all modes; and adequate transportation demand management strategies;

Findings: The Portland Bureau of Transportation (PBOT) has reviewed the proposal. PBOT staff offer the following findings:

Parking is allowed on both sides of 15th, except in front of the church/school immediately across the street due to a bus zone. It also appears the church/school across the street has very few on-site parking spaces relative to the size of the institutional use.

The applicant states their desire to open a B&B with five bedrooms with a maximum of eight guests. There will be no employees. The only other residents are family members. Vegetation/landscaping on the northern edge of the driveway appears to only leave room for one car to park in the driveway. Even with the landscaping trimmed back, only two on-site parking spaces are proposed with one of those reserved for the owner. PBOT does not have any strong concerns about the amount of traffic potentially generated by the proposed use. Most of the associated vehicle trips will likely occur outside of the AM and PM peak hours.

The impact on on-street parking is the most common concern with this type of use in a residential neighborhood. The applicant has provided a parking survey showing the number of available parking spots and their usage within a block of the property. The survey was taken on a weekday in the morning, at noon and in the evening, as well as on Sunday afternoon when the majority of residents would be at home. The survey shows that on average, only 20% of the on-street spaces are in use at any given time within 1 block of the subject property. This suggests that on-street parking availability is ample to accommodate overflow parking from the B&B.

In addition to the on-street parking survey, the applicant has provided a Transportation Demand Management (TDM) plan outlining options for B&B patrons to reduce single occupant vehicles coming to the site. The applicant will provide information to guests about airport transportation options, including busses and light rail. The applicant will provide a kiosk or bulletin board with Tri-Met information and brochures, taxi cab information, Zip Car information, town car services and bicycle and walking route maps. Note that Tri-Met bus line #8 stops within 150 feet of this site and a Zip Car (car sharing) is located 1 block away. The applicant will provide two bicycles to guests at no charge. Adequate bike parking is available in a locked garage and in side and rear yards.

The applicant has further indicated that no special events or gatherings will be held at the site and the use will be limited to a bed and breakfast.

Based on information provided by the applicant, it appears that the transportation services are adequate to serve this proposal. However, to further reduce reliance on autos and minimize on-street parking impacts, the applicant should make Tri-Met day passes available to guests.

With conditions that require the owner to promote alternative transportation options, and for the reasons described above, this criterion is met.

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

Findings: The residence is currently served with public services. No objections or concerns were raised by the Bureau of Environmental Services, Water Bureau, Fire Bureau and Police Bureau.

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 project site is located in the Irvington neighborhood, which has an adopted neighborhood plan (adopted September 1993). The Irvington Neighborhood Association commented that because the applicant must secure a conditional use, this suggests that the proposal is not consistent with the neighborhood plan and with a historic district.

As noted above, the Historic District is not currently in effect (and was not in effect at the date this Conditional Use application was submitted). Zoning Code Section 33.815.010 describes certain uses that “instead of being allowed outright, although they may have beneficial effect and serve important public interests are conditional uses.” This criterion requires that the proposal does not conflict with an adopted plan. Applicable components of the Irvington Plan are discussed below.

The Irvington Neighborhood Plan vision statement describes retaining the neighborhood’s diverse population and emphasizes retaining the present physical character of the neighborhood.

Goals for Irvington’s future outline desired attributes such as livability, vitality, and diversity. Goal 1, Neighborhood Livability, describes Irvington as a neighborhood where distinctive residential properties are preserved and enhanced, property is cared for and maintained, residents and businesses have access to private services and amenities, and neighbors have a sense of security and confidence in the future of their neighborhood. Goal 2, Neighborhood Diversity, describes Irvington as a neighborhood composed of diverse people. Goal 4, Neighborhood Safety, describes Irvington as a peaceful place where residents can walk, play, and travel safely. Goal 5, Neighborhood Vitality, describes Irvington as a place where businesses serving the neighborhood are patronized by residents thereby supporting the economic health, well-being, and stability of the neighborhood.

Policies applicable to this proposal include Policy 2: Historic and Neighborhood Preservation; Policy 3: Housing; Policy 5: Transportation; and Policy 6: Retail and Commercial. Policy 2 calls for promoting, restoring, and maintaining architecturally or historically significant resources. Policy 3 calls for ensuring the maintenance of at least the amount of housing opportunity presently available in Irvington. Policy 5 calls for encouraging the use of bicycles and mass transit. Policy 6 supports commercial development that serves the neighborhood and is compatible with Irvington’s scale and character.

The proposed B&B meets the plan goals because it preserves the existing architecture of the historically significant home, retains the single-dwelling character and will encourage continued maintenance of the home. The B&B will not adversely affect transportation safety, and offers a business that serves the neighborhood as well as providing potential customers for neighborhood.

The proposed B&B also meets these policies because it will not modify the home which is identified as a contributing structure in the conservation district. It does not remove housing opportunities from the neighborhood and it encourages bicycle and mass transit use, and will support the neighborhood commercial uses. The proposal maintains the use as a primary residence, and therefore does not significantly change the residential scale and character of the property.

For these reasons, the proposal is compatible with the Irvington Neighborhood Plan. Therefore, this criterion is met.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

Below, are development standards that apply to B& B Facilities.

33.212.030 Where These Regulations Apply

The regulations of Sections 33.212.040 through 33.212.080 apply to bed and breakfast facilities in the R zones. In the RX and RH zone, where a limited amount of commercial uses are allowed by right or by conditional use, a bed and breakfast facility may be regulated either as a Retail Sales And Service use, or as a bed and breakfast facility under the regulations of this chapter. The decision is up to the applicant.

33.212.040 Use-Related Regulations

- A. Accessory use.** A bed and breakfast facility must be accessory to a Household Living use on a site. This means that the individual or family who operate the facility must occupy the house as their primary residence. The house must be at least 5 years old before a bed and breakfast facility is allowed.

Findings: The owner and other family members will reside in the home, which will serve as their primary residence. The house was built in 1910 and therefore is more than 5 years old.

- B. Maximum size.** Bed and breakfast facilities are limited to a maximum of 5 bedrooms for guests. In the single-dwelling zones, a bed and breakfast facility over this size limit is prohibited.

Findings: The applicant notes that five of the eight bedrooms will be utilized for guests.

- C. Employees.** Bed and breakfast facilities may have nonresident employees for such activities as booking rooms and food preparation, if approved as part of the conditional use review. Hired service for normal maintenance, repair and care of the residence or site such as yard maintenance may also be approved. The number of employees and the frequency of employee auto trips to the facility may be limited or monitored as part of a conditional use approval.

Findings: The applicant states that no non-resident employees will be utilized for the bed and breakfast. Hired service or those who maintain or repair the house are allowed.

D. Services to guests and visitors. Serving alcohol and food to guests and visitors is allowed. The proprietor may need Oregon Liquor Control Commission approval to serve alcohol at a bed and breakfast facility.

Findings: The applicant notes that food will not be offered to guests. The kitchen will be available for guest use to prepare their own food. The owner is responsible for meeting Multnomah County food service requirements, if applicable.

E. Meetings and social gatherings.

1. Commercial meetings. Commercial meetings include luncheons, banquets, parties, weddings, meetings, charitable fund raising, commercial or advertising activities, or other gatherings for direct or indirect compensation. Commercial meetings in bed and breakfast facilities are regulated as follows:

In the single-dwelling zones, commercial meetings are prohibited at a bed and breakfast facility;

In the multi-dwelling zones, the residents of a bed and breakfast facility may request up to 24 commercial meetings per year as part of a Conditional Use Review. The maximum number of visitors or guests per event will be determined through the Conditional Use Review. Adjustments to the maximum number of meetings per year are prohibited.

2. Private social gatherings. The residents of a bed and breakfast facility are allowed to have only 12 private social gatherings, parties, or meetings per year, for more than 8 guests or visitors. The private social gatherings must be hosted by and for the enjoyment of the residents. Private social gatherings for 8 or fewer guests are allowed without limit as part of a normal Household Living use at the site.
3. Historical landmarks. A bed and breakfast facility which is located in a historical landmark and which receives special assessment from the State, may be open to the public for 4 hours one day each year. This does not count as either a commercial meeting or a private social gathering.
4. The bed and breakfast operator must log the dates that private social gatherings for more than 8 visitors or guests are held, and the number of visitors or guests at each event. The operator must also log the dates of all commercial meetings held, and the number of visitors or guests at each event.

Findings: Because the property is located within a residential zone, no commercial meetings are allowed. Private social gatherings hosted by and for the enjoyment of the owner and family members are limited to 12 per year for more than 8 guests or visitors. Private social gatherings hosted by and for the enjoyment of the residents with 8 or less guests are not regulated by the Zoning Code.

33.212.050 Site-Related Standards

A. Development standards. Bed and breakfast facilities must comply with the development standards of the base zone, overlay zone, and plan district, if applicable.

B. Appearance. Residential structures may be remodeled for the development of a bed and breakfast facility. However, structural alterations may not be made which prevent the structure being used as a residence in the future. Internal or external changes

that will make the dwelling appear less residential in nature or function are not allowed. Examples of such alterations include installation of more than three parking spaces, paving of required setbacks, and commercial-type exterior lighting.

C. Signs. The sign standards are stated in Title 32, Signs and Related Regulations.

D. Accessory dwelling units. Accessory dwelling units must meet all requirements of Chapter 33.205, Accessory Dwelling Units.

Findings: Any signage will be required to meet the applicable regulations. No structural alterations are proposed that would prevent the structure being used as a residence in the future, and no external or internal changes are proposed that would result in the dwelling being less residential in nature or function. An Accessory Dwelling Unit is not proposed at this residence. Exterior alterations must be reviewed under permit to determine if historic design standards and/or design guidelines are applicable.

CONCLUSIONS

The proposed use is for a B&B that provides overnight accommodations and self-serve kitchen facilities only for up to eight guests. No exterior changes are proposed to the existing home. The owner and her family members will reside in the home and will oversee the operations of the facility.

In order for the proposal to meet all of the applicable approval criteria, and to insure that the proposal remains small in scale and intensity and does not significantly alter the existing privacy or residential character of the neighborhood beyond what could occur in the home conditions of approval are necessary. The conditions address the scope of the use, noise, safety, privacy, and transportation. With these conditions, and for the reasons listed above, this proposal meets the development standards for Bed and Breakfasts, and meets the approval criteria for Conditional Uses. With these conditions, all approval criteria are met and this proposal should be approved.

ADMINISTRATIVE DECISION

Approval of a Conditional Use for a Bed and Breakfast (B&B) facility that provides overnight accommodations for up to 8 registered guests in 5 guest rooms, in significant conformance with the approved plans, Exhibits C.1 through C.4, signed and dated July 27, 2010, subject to the following conditions:

- A. To establish the Bed and Breakfast, the facility must comply with Building Code requirements, through a Building Permit Review. In order to operate the bed and breakfast, a fee-paid inspection is required. For this inspection, the Residential Inspector arranges field visit with the owner to check:
- Existing living space is legal
 - Egress windows
 - Hard-wired smoke alarms

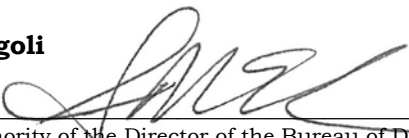
The Residential Inspector will identify required corrections/permits.

To establish legal living space on the third floor, one of the following two options must be completed: (1) Submit a permit application for an attic conversion with drawings that show that this level meets the structural and habitable space standards in Brochure 9, "Converting Attics, Basements and Garages to Living Space" or (2) request a residential fee paid attic inspection, in which a building inspector will visit the house in order to visually determine if the attic space appears to be original living space.

The permit application submittal must include the approved site plan (Exhibit C.1) and the floor plans (Exhibit C.2-C.4). The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 10-114662 CU." All conditions must be labeled "REQUIRED." The B&B facility may not operate until the permit(s) is/are final.

- B. The owner of the property or a residential manager must occupy an area within the B&B as their primary residence at all times.
- C. All printed and web advertising of the B&B shall portray the accommodations and services proposed and approved within this Decision, and shall portray all programmatic restrictions or "house rules" set forth by Conditions of Approval D through G.
- D. Outdoor noise generated by B&B guests must comply with the "quiet hours" which restricts noise between the hours of 9 p.m. and 8 a.m., Sunday through Thursday, and restricts noise between the hours of 10:00 p.m. and 8:00 a.m., Friday and Saturday. Quiet outdoor use is allowed during quiet hours. This condition is intended to limit the impacts to the residential area generated from the B&B use and does not apply to private social gatherings hosted by and for the enjoyment of the property owner/residents.
- E. Check-in and check-out times for registered guests shall be restricted to between the hours of 8 a.m. to 8 p.m. as a standard practice, with exceptions made only when necessary and by prior arrangement, and business advertising should include a statement to this effect.
- F. Transit day passes (Tri-Met) must be offered, free of charge, to all registered B&B guests for the duration of their stay. In addition, public transit information, including current schedules, routes and maps, for Tri-Met buses and light rail, and information about Zip Cars, must be offered to all guests at the time of registration. Advertising for the B&B should indicate the availability of public transit and alternative transportation modes.
- G. A minimum of three bicycles shall be provided free of charge for use by registered guests.

Staff Planner: Sheila Frugoli

Decision rendered by:  **on July 27, 2010**

By authority of the Director of the Bureau of Development Services

Decision mailed: July 30, 2010

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on February 26, 2010, and was determined to be complete on May 28, 2010.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on February 26, 2010.

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: September 25, 2010.**

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term “applicant” includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on August 13, 2010** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, 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 must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, The final decision may be recorded on or after **August 16, 2010 – (the day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034

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

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

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

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

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

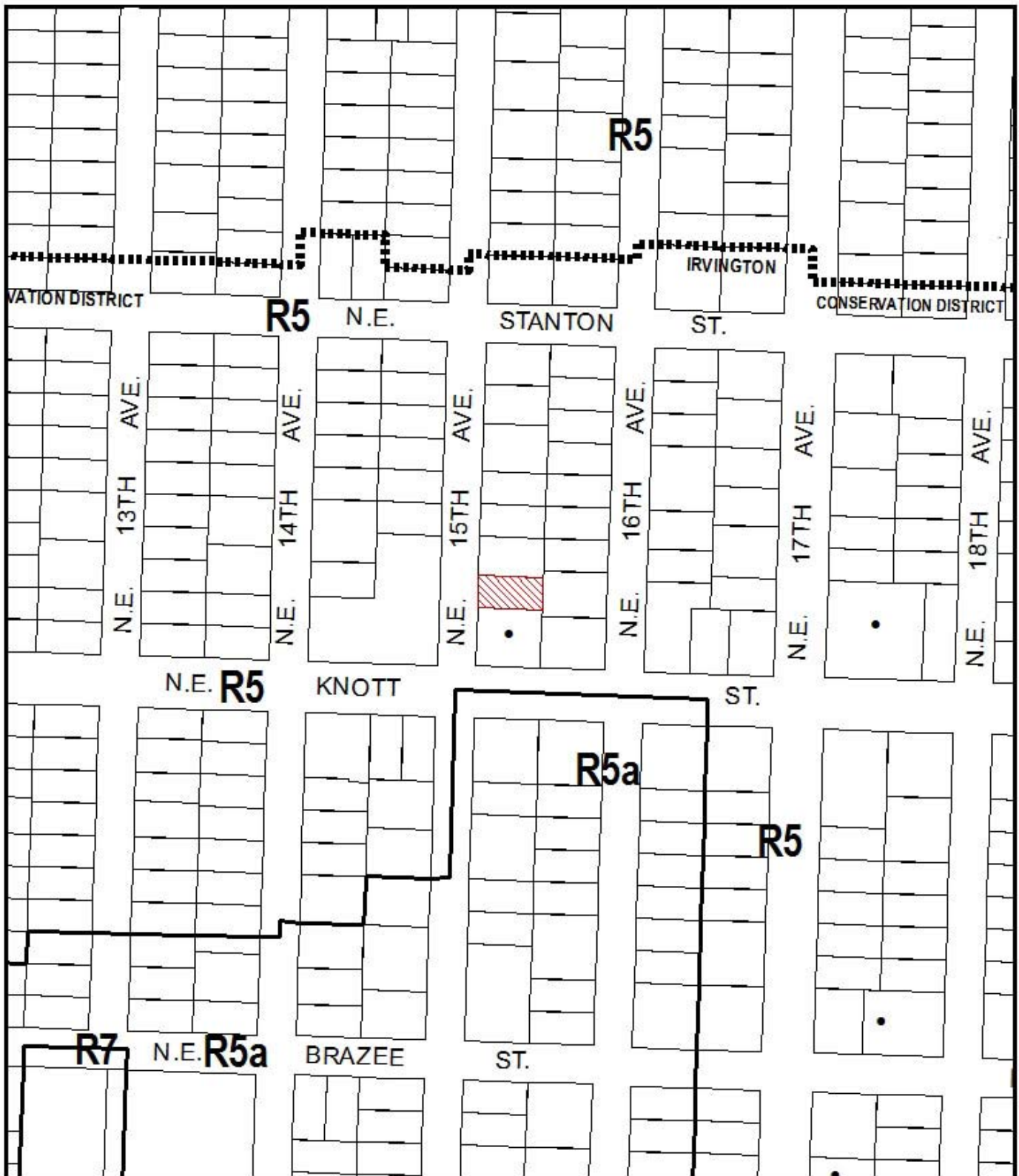
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 1. Written Description of Proposal and Response to Approval Criteria
 2. Proposed Transportation Demand Management Plan
 3. On-Street Parking Survey
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. Floor Plan – First Floor (attached)
 3. Floor Plan – Second Floor (attached)

4. Floor Plan – Third Floor (attached)
 5. Front (Street-Facing) Exterior Elevation
- D. Notification information:
1. Mailing list
 2. Mailed notice
- E. Agency Responses:
1. Bureau of Transportation Engineering and Development Review
 2. Life Safety (Building Code) Plan Review Section of BDS
- F. Correspondence:
1. Dean Gisvold, Land Use Chair, Irvington Neighborhood Association, letter identifies numerous issues and objects to proposal.
- G. Other:
1. Original LU Application
 2. Site History Research
 3. Incomplete Application Letter to Applicant



ZONING



Site



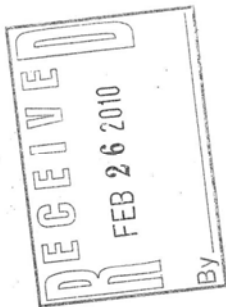
Historic Landmark



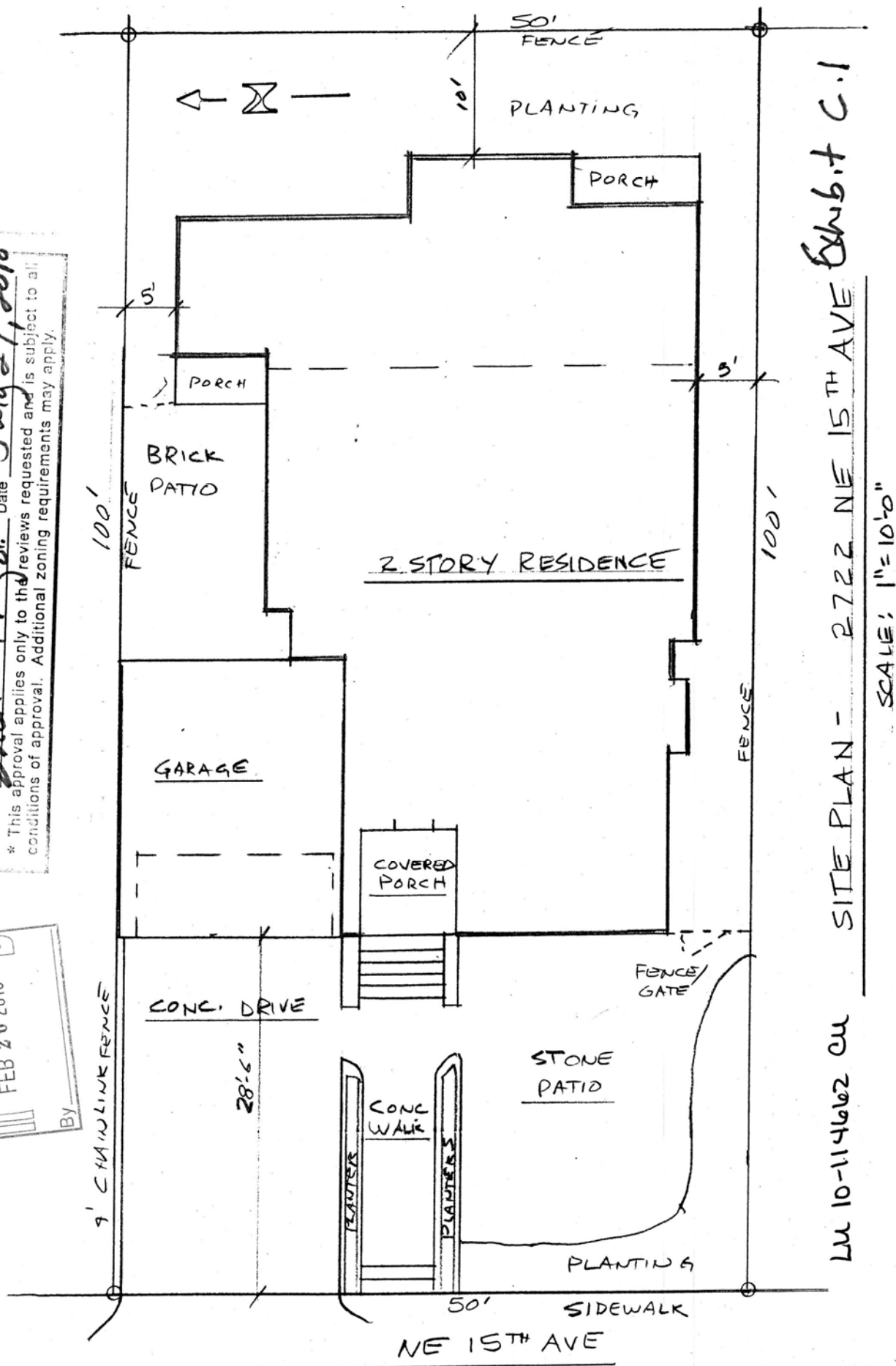
NORTH

This site lies within the:
IRVINGTON CONSERVATION DISTRICT

File No.	LU 10-114662 CU
1/4 Section	2732
Scale	1 inch = 200 feet
State Id	1N1E26AC 8200
Exhibit	B (Mar 01,2010)

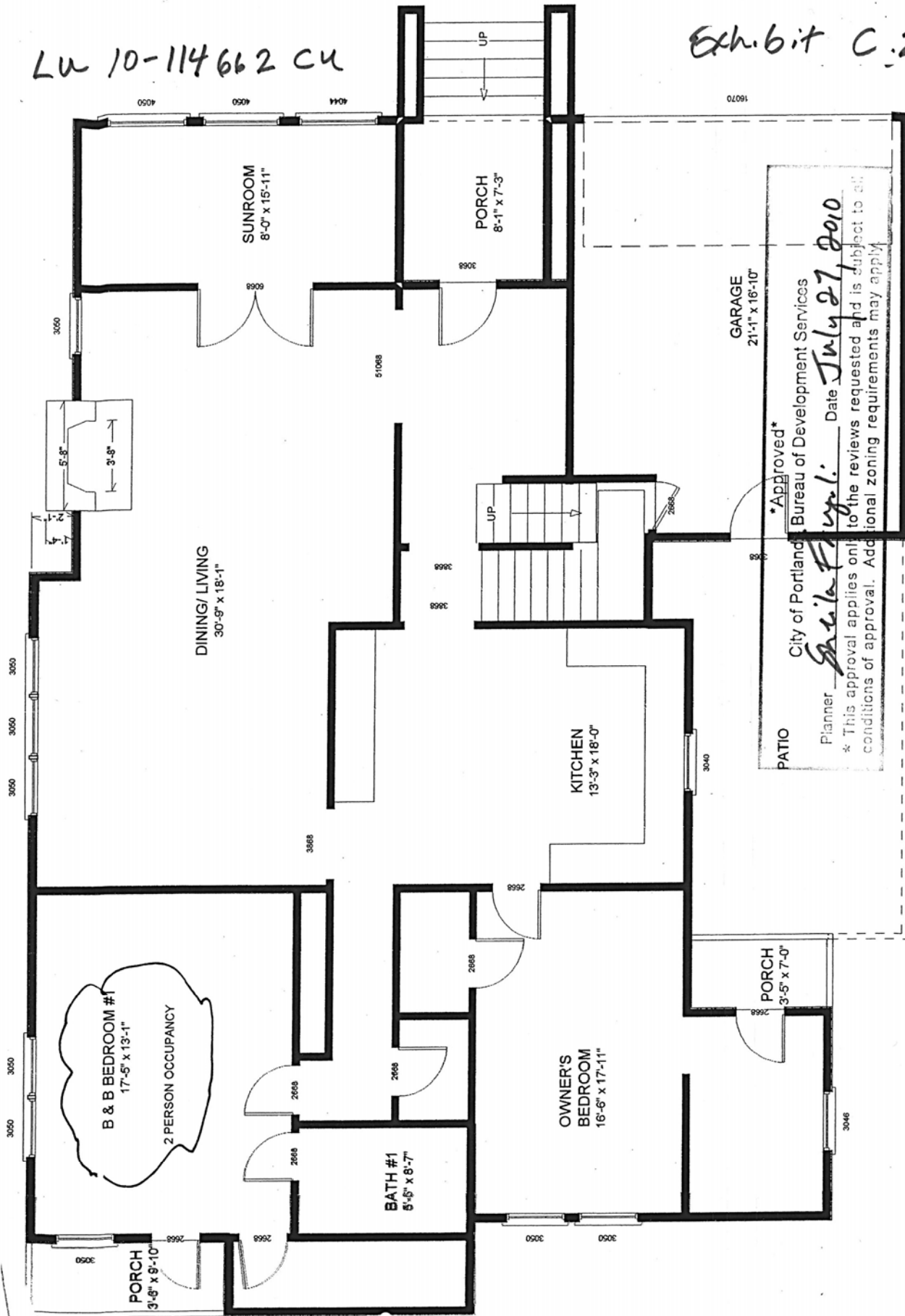


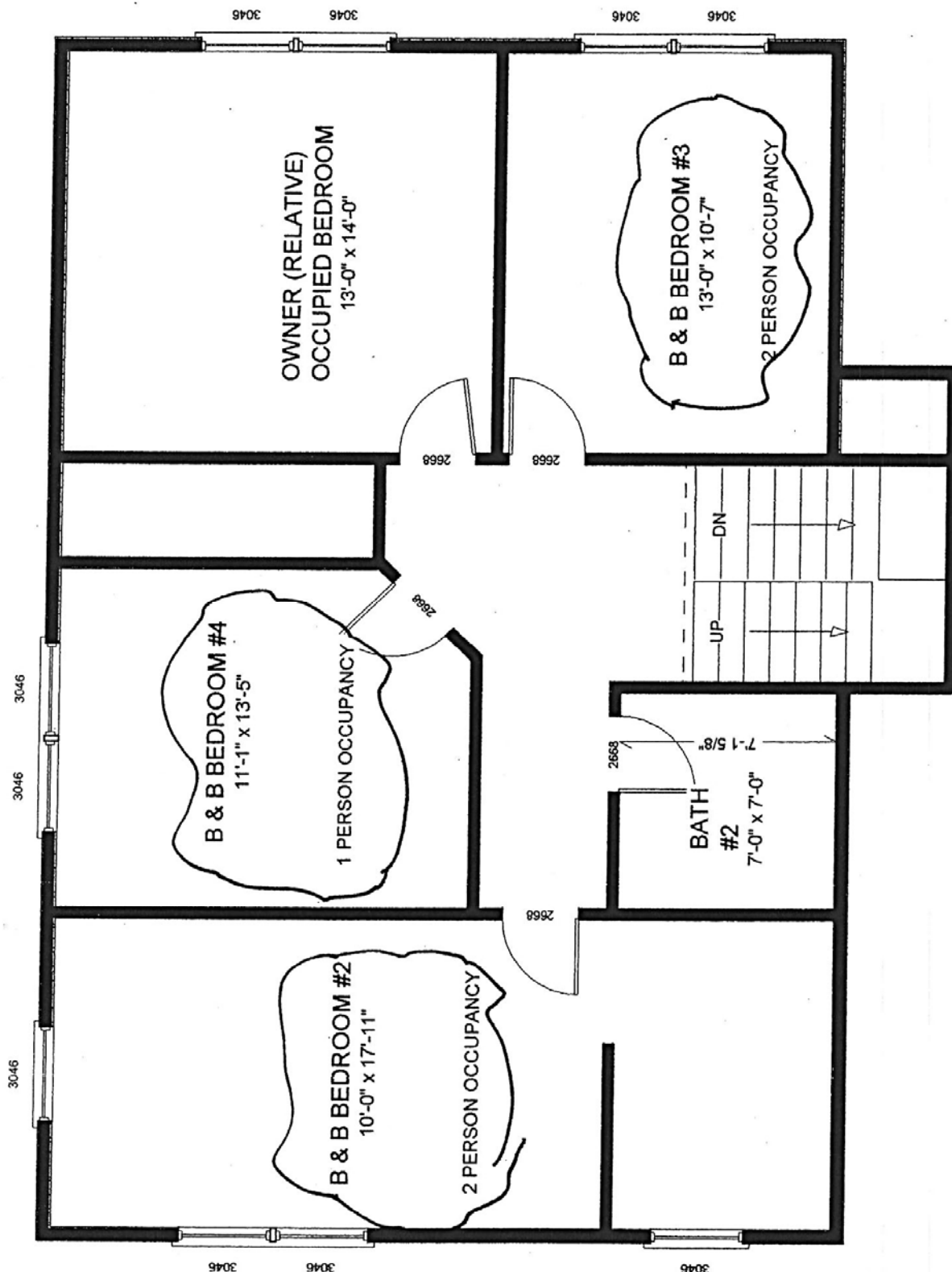
Approved
City of Portland - Bureau of Development Services
Planner: Sheila Frey Date: July 27, 2010
* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



LU 10-114662 CU

Exhibit C.2





LU 10-114662 CU
Exhibit C.3

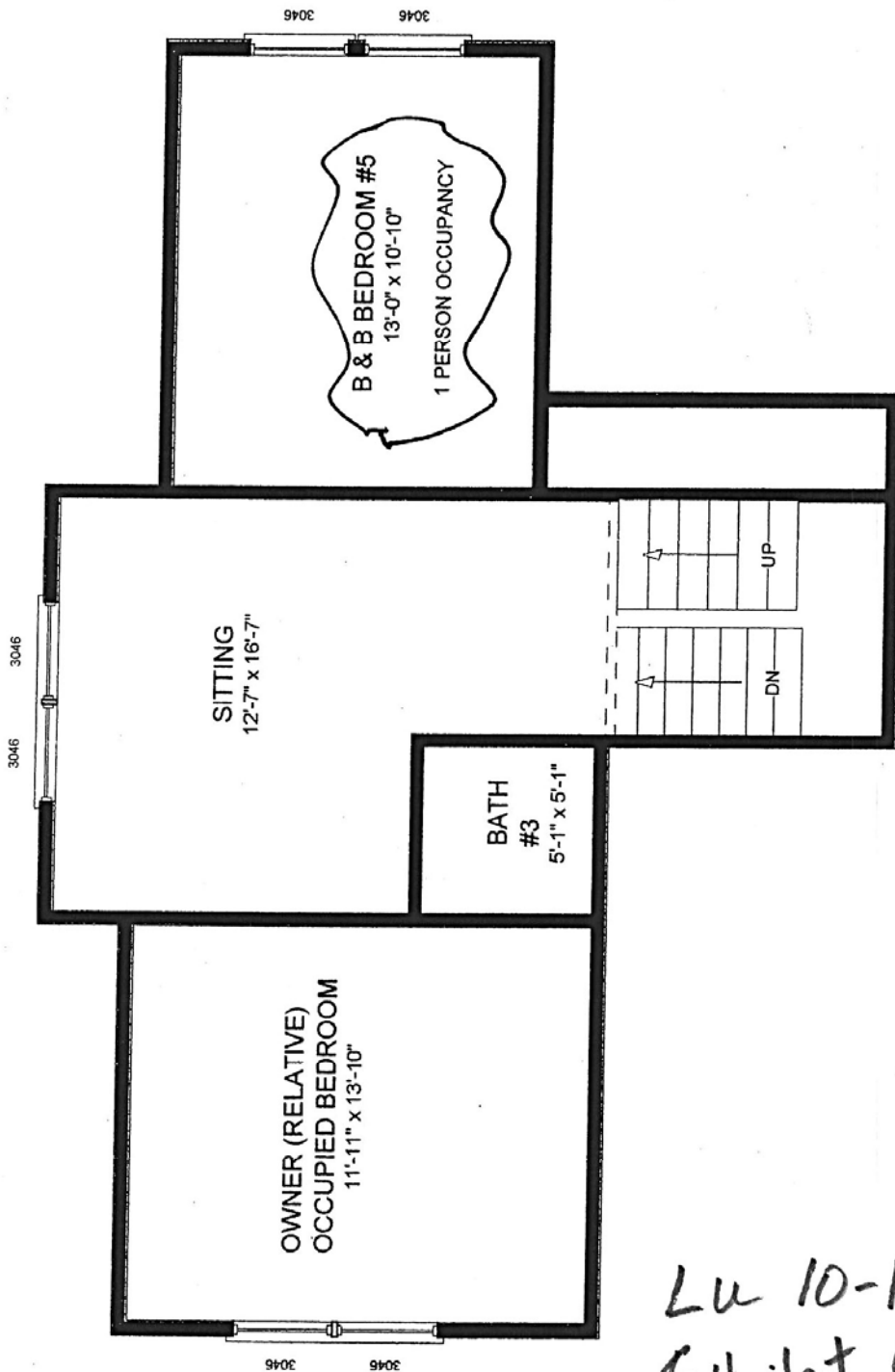
SECOND FLOOR

Approved

City of Portland Bureau of Development Services

Planner *Shirley* Date *July 27, 2010*

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



THIRD FLOOR

Lu 10-114662 Cu
Exhibit C. 4

Approved

City of Portland Bureau of Development Services

Planner Shirley Foye Date July 27, 2010

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