



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

FROM CONCEPT TO CONSTRUCTION

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Date: October 27, 2016
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**NOTICE OF A TYPE II DECISION ON A PROPOSAL IN
YOUR NEIGHBORHOOD**

Three- to Five-Bedroom Accessory Short-Term Rental Facility

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 16-122179 CU

GENERAL INFORMATION

**Applicant and
Operator:**

Loretta Spahmer
4227 SW Comus Street
Portland, OR 97219

Resident:

Alan Rousseau
2335 SE 104th Drive
Portland, OR 97216

Owner:

Pensco Trust Custodian (FBO Loretta Spahmer)
P O Box 173859
Denver, CO 80217

Site Address:

2335 SE 104th Drive

**Legal Description:
Tax Account No.:
State ID No.:
Quarter Section:**

BLOCK 20 LOT 8 TL 7600, CHERRY BLOSSOM PK
R152802770
1S2E03CC 07600
3241

**Neighborhood:
Business District:**

Hazelwood, contact Arlene Kimura at 503-252-9429
Gateway Area Business Association, contact Paul Wild at
paul.wild@mhcc.edu

District Coalition:

East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550

Zoning:

R7a, Single Dwelling Residential 7,000 Zone, within the Alternative
Design Density Overlay Zone (a)

**Case Type:
Procedure:**

CU, Conditional Use Review
Type II, an administrative decision with appeal to the Hearings Officer

Proposal:

The applicant (property owner and operator of the ASTR) requests Conditional Use approval to operate a Type B Accessory Short-Term Rental (ASTR) facility within the existing six-bedroom house. The applicant initially proposed to rent the house to groups of up to 14 people, but revised the proposal to limit group size to no more than 10 people. Individual bedrooms are not rented separately.

The ASTR facility is proposed to have up to five guest rooms available for rental no more than 95 days per year: three bedrooms on the main floor and two bedrooms in the basement. Sleeping quarters for the ASTR resident are proposed in an additional sixth bedroom in the basement. The resident's bedroom is used exclusively by the resident at least 270 days per year; it will not be available for ASTR rental. The resident will not be living at the site during the 95 days the house is rented. Alterations or structural updates to the house or site are not proposed.

The operator handles reservations, maintains the website, and pays lodging taxes. The operator visits the site during each guest stay. The resident is responsible for maintaining the landscaping, litter control, trash and recycling, and minor maintenance tasks. An employee (a resident of an adjacent house to the south), is responsible for checking in guests, and securing the property after guests leave.

No commercial events are proposed; these events are not allowed on this site in a residential zone. Check-in time for guests is 4 pm; check-out time is 11:00 am. Evening quiet hours are between 9 pm and 8 am. Guests will be directed to park either in the garage, on the driveway or on the street in front of the house.

A Traffic Impact Study and Transportation Demand Management Plan for the proposed ASTR were submitted by the applicant.

The site is currently approved for a Type A ASTR rental of two bedrooms within the existing house. The proposed Type B Accessory Short-Term Rental (rental of five bedrooms) is allowed in residential zones if the proposal meets all applicable Conditional Use approval criteria and applicable standards. The regulations are intended to allow for efficient use of houses in residential areas if the neighborhood character is maintained. The regulations also provide an alternative form of lodging for visitors who prefer a residential setting. Because the proposed ASTR facility is in the R7 zone, the applicant has requested the necessary Type II Conditional Use Review.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in **Section 33.815.105: Conditional Use Approval Criteria for Institutional and Other Uses in a Residential Zone.**

ANALYSIS

Site and Vicinity: The 7,000-square-foot site is currently developed with a house and attached garage, originally constructed in 1962. The property is part of the 1950s era Cherry Blossom Park subdivision, consisting of approximately 25 blocks with occasional dead-end and curvilinear streets. Most properties surrounding the site are developed with similar ranch or split-level single dwelling residences.

The site has frontage on SE 104th Drive, a local service street. Approximately 400 feet south of the site is SE Division Street, which is classified as a District Collector Street and Major Transit Priority Street. Bus line #4 runs along SE Division Street and is a Frequent Service bus line. Major developments located near the site include:

- Cherry Park Elementary School, approximately 600 feet north of the site,
- a sand and gravel operation, approximately 600 feet east of the site,

- Kelly Butte Nature Park, approximately 1,200 feet south of the site

Zoning: The Residential 7,000 (R7) single-dwelling zone is intended to preserve land for housing and to provide housing opportunities for individual households. The zone implements the Comprehensive Plan policies and designations for single-dwelling housing. Minimum lot size is 4,200 square feet, with minimum width and depth dimensions of 36 and 50 feet, respectively. Minimum densities are based on lot size and street configuration. Maximum densities are 1 lot per 7,000 square feet of site area.

The Alternative Design Density “a” overlay is in place to focus development on vacant sites, preserve existing housing and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. The concept for the zone is to allow increased density for development that meets additional design compatibility requirements. The applicant does not propose to use the provisions of the “a” overlay for this proposal.

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

Public Review: A “Notice of Proposal in Your Neighborhood” was mailed **August 9, 2016**.

Agency Review: The following Bureaus have responded with no issues or concerns:

- Water Bureau (Exhibit E.3);
- Fire Bureau (Exhibit E.4);
- Site Development Section of BDS (Exhibit E.6); and
- Urban Forestry (Exhibit E.7).

The following Bureaus submitted comments:

- The Bureau of Environmental Services provided information about sanitary sewer service and stormwater management. BES does not object to the Conditional Use proposal but notes that proposed development will be subject to BES standards and requirements during the permit review process. (Exhibit E.1)
- The Portland Bureau of Transportation (PBOT) reviewed the applicant’s Transportation Impact Study (TIS) and provided an evaluation of the proposal with respect to approval criterion D of Section 33.815.105. PBOT states that “PBOT supports the conclusions reached in the submitted TIS (Traffic Impact Study) and, as required, the applicant has adequately demonstrated that ‘the transportation system is capable of supporting the proposed use in addition to the existing uses in the area.’” Additionally, PBOT staff “. . . has no objections to the subject Conditional Use request.” (Exhibit E-2)
- The Police Bureau responded with comments regarding visibility of address, lighting and Crime Prevention Through Environmental Design. (Exhibit E-5)
- Review of city records of approved building permits for the property show that the house has only three legal bedrooms. The Life Safety Plans Examiner (Building Code) states that a separate building permit is required to create the proposed three bedrooms in the lower level (Exhibit E.8). A condition must be placed on the proposal that requires final inspection of the building permit prior to the start of operation of the Type B ASTR facility.

Neighborhood Review: A total of four written responses to the proposal were received before the end of the comment period (comment period ended at 5:00 pm August 30, 2016). One resident wrote to express support for the proposal (Exhibit F-4). Two letters were received from nearby residents expressing opposition to the proposal (Exhibits F-1 and F-2). The Hazelwood Neighborhood Association’s land use chair expressed concerns and asked

questions about the proposal (Exhibit F-3). Concerns and questions relevant to this review include the following:

- 1. Fourteen people coming and going for up to 95 days a year, within a residential neighborhood, is incalculable, given the expected turnover of individuals. Impacts of noise and trash must be considered.**

***Staff response:** Neighborhood impacts are considered under the approval criteria below, and include impacts on livability (criterion C below).*

- 2. Traffic is a problem, as drivers speed from SE Division to SE 104th Drive, which has on-street parking on both sides of the street. Congestion will get worse with an additional 14 cars.**

***Staff response:** Traffic impacts and adequacy of the transportation system are addressed under criterion D below. Note that since the proposal is for rental of the whole house by a group of people, as opposed to separate groups renting separate bedrooms, it is anticipated that a typical group will carpool and utilize one to three vehicles.*

- 3. Who is responsible for monitoring that the 95 days have been met and therefore no additional guests can be accommodated in any calendar year? Is this a rolling year?**

***Staff response:** Requirements of accessory short term rentals (ASTRs) state that the owner or resident must reside at the property for at least 270 days. Therefore, the resident need not be present at the site for up to 95 days a year. A guest log is required to be maintained by the operator, in part to confirm that the ASTR regulations are met. This issue is discussed in more detail under criterion A.2 below.*

- 4. Commercial uses should not be allowed in residential neighborhoods. We don't want a motel in our neighborhood.**

***Staff response:** Commercial businesses are prohibited in residential zones. Approval of an ASTR facility with 3-5 bedrooms in a residential zone is allowed only as an accessory residential use if approved through a Conditional Use review. It will not result in commercial uses taking over the residential area if the approval criteria and applicable standards are met. This report reviews the proposed ASTR with respect to these requirements.*

ASTR facilities are required to operate within specific parameters and the operator must keep records to demonstrate compliance. Conditions of approval are also applied to the facility to ensure that negative impacts to the existing neighborhood are minimized.

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

Findings: For this criterion, the term “residential area” is defined as a minimum distance of 400 feet from the site. This distance is reasonable given the notification area for this land use review. A Type II land use review requires that the property owners within 150 feet of the site’s perimeter be mailed a notice of the proposal. The selected residential area of 400 feet from the site is more than twice that of the notification boundary. Note that commercially-zoned properties associated with SE Division Street are not included within the “residential area.”

While the proposal for an ASTR facility will not create a new “non-residential” use, as they are classified as accessory uses to the household living uses, ASTRs have characteristics similar to non-residential uses. Thus, for this criterion, the proposed facility is included in the non-residential category.

The appearance and function of the residential area is predominantly ranch and split-level style houses on lots averaging 7,000 square feet in area. The site is part of the Cherry Blossom Park subdivision, characterized by large lots with front yard lawns and landscaping, and curving streets. The neighborhood streets are generally improved with sidewalks and landscape strips; paved roadways are wide enough to accommodate on-street parking on both sides of the street. Some streets are dead-end streets, with lots clustered around expansive turnarounds.

The applicant states that there are two nearby non-residential uses: the Cherry Park Elementary School, approximately 600 feet north of the site and a quarry operation at SE Division Street, approximately 550 feet east of the site. Both these uses are outside the residential area as they are more than 400 feet from the site.

The applicant did not identify and staff did not find sites with approval for Conditional Use ASTRs in the residential area, or other nonresidential uses.

In consideration of the above information, the overall residential appearance and function of the neighborhood area will not be significantly lessened due to the presence of the proposed ASTR.

This criterion is met.

2. The intensity and scale of the proposed use and of existing Household Living uses and other uses.

Findings: This criterion involves analysis of both the scale and intensity of the proposed ASTR facility and existing Household Living uses.

Scale The scale of the existing split-level house is comparable with the scale of other houses in the residential area and a traditional Household Living use in a large home. Exterior changes to the house or site are not proposed. The house, proposed for six bedrooms, will have the capacity for a higher number of household members than a typical household, but the house size is not unusual for the area and many nearby houses have similarly-sized living areas. This part of the criterion is met.

Intensity Five bedrooms are proposed for the ASTR facility: three bedrooms on the main level and two bedrooms on the lower level. A sixth bedroom is located on the lower level but will not be available for rental as it will be used exclusively by the long-term resident. The Zoning Code allows up to five bedrooms be used for an ASTR if approved through a Conditional Use Review.

The applicant proposes to rent the entire house to one group at a time (sometimes referred to as a whole-house rental), as opposed to individual rental of each of the five

bedrooms. The applicant indicates up to 16 people could be accommodated in the proposed six bedrooms. However, the applicant proposes limiting the group size of ASTR rentals to 10 people, regardless of age.

The Zoning Code defines as a household: “One or more persons related by blood, marriage, domestic partnership, legal adoption or guardianship, plus not more than 5 additional persons.” A group of 14 people is generally more than the number of people in a household, and is a significantly more intensive household living use than the surrounding household living uses. A reasonable approach is to add a condition that limits the group size to 10 people. Averaging two people per bedroom, this intensity fits better with the “household” definition and is an acceptable level of intensity considering the surrounding single-dwelling neighborhood.

The Zoning Code requires and the applicant proposes that the long-term resident reside in the house for at least 270 days per year. Thus, because the long-term resident will not be present on the site when it is rented, the house can be rented the remainder of the year, no more than 95 days per year.

The City’s approach to tracking the rental days per year to ensure compliance with the 95-day rental limit for this type of whole-house rental arrangement (and where the long-term resident is absent) is largely self-monitoring. ASTR operators are required to maintain a guest log book which documents the dates of stay and numbers of guests. Upon request, City staff may inspect the log book. For this site, a two bedroom ASTR (Type A) was issued on February 23, 2016. The guest log book for the Type A ASTR was misplaced or lost, and staff was unable to view it for method and compliance with the 95-day rental limitation. To improve the certainty of compliance, a limitation on the rental timeframe should be applied to the proposal. This way, monitoring is made easier as the rental time frame is short, clear and understandable. It’s important to consider and accommodate the needs of the operator to ensure viability of the ASTR. Therefore, a reasonable rental time frame is to limit overnight stays to Thursday, Friday, and Saturday night stays. With the potential rental time frame reduced from 365 days to approximately 160 days per year, neighbors and the operator are able to more easily track the 95-day rental limit, and the intensity of the ASTR facility will be minimized. Lastly, the long-term resident will be afforded a more predictable living situation.

Because most of the rental activity occurs in summer months, an alternative rental period, between May and September, was also considered. Limiting the time period this way could result in longer rental periods, and therefore reduce the turnover of guests. Because this option could result in a highly intensive ASTR use throughout the summer months, this option was not desirable.

Providing the ASTR Operator a method to request a specific change to the limited rental period is a good practice. If after operating successfully for a year with the limitation of Thursday, Friday and Saturday night rental, the ASTR Operator finds that the rental period is falling short of the allowed 95 days per year, or perhaps a different rental period is desired, instead of revisiting this condition through a Type II Conditional Use review (changes to conditions require that the applicant redo the Conditional Use review process), a request to change the rental period should be reviewed through a less rigorous Type 1x land use review. Approval criteria for the review are limited to the Conditional Use Criterion A and Criterion C, Livability, of Section 33.815.105. This option will give the Operator additional flexibility in the rental period if the ASTR is operating successfully with minimal neighborhood impacts.

A permit for a Type A ASTR was issued in March of this year, allowing short-term accessory rental for two bedrooms on the main level of the house. Nonetheless, the house potentially has six bedrooms and could accommodate a large household of that size. Physical changes are not proposed to the existing house. The House Rules state that guests will be directed to park either in the garage, on the driveway or on the street in front of the house. It’s expected that no more than three vehicles will be present for

each stay, as the group members often carpool and the long-term resident will not be present. This type of “whole-house” ASTR arrangement often results in fewer vehicle trips to and from the site than a separate bedroom ASTR arrangement where up to 5 separate parties rent separate bedrooms. Transportation staff has reviewed the proposal and have no concerns about the on-street parking supply (Exhibit E-2).

Note that because the site is in a single-dwelling zone, no commercial meetings such as luncheons, banquets, parties, weddings, or other gatherings for which either direct or indirect compensation is received are allowed.

With the conditions stated above that limit group size to 2 people per bedroom, with a maximum of 10 people for five bedrooms, the yearly rental period is limited to Thursday through Saturday stays, and that these requirements be included in all advertisements for the ASTR, this criterion is met.

B. Physical compatibility.

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

Findings: City-designated scenic resources are designated on the Zoning Map with a lower case “s”. As there are no such designations on the site, this criterion does not apply.

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

Findings: Below is an analysis of the compatibility of the proposed ASTR with adjacent residential developments, based on the following characteristics:

Site Size

The subject site is 7,000 square feet in area. This is consistent with the surrounding lots, which range from 7,000 to 8,000 square feet in area. The size of the subject site is consistent and compatible with adjacent development and meets this criterion.

Building Scale

The subject house is a split-level style house with living space above an attached 2-car garage. Exterior changes are not proposed. Houses adjacent to the subject site are similar in style and building scale to the subject house. This criterion is met.

Setbacks

The site and adjacent houses appear to have been built around the same time, and have similar setbacks: front setbacks are approximately 20 feet in length, side setbacks vary between 5 and 10 feet, and rear setbacks average 25 feet. This criterion is met.

Landscaping

The front yard of the subject site is landscaped with lawn and shrubs, and is well-maintained. Mature trees are located in the front and rear yards. Landscaping is similar on adjacent residential lots. This criterion is met.

Building Style

3. The proposal will mitigate differences in appearance or scale through such means as setbacks, screening, landscaping, tree preservation, and other design features.

The subject site and house are well-maintained and are compatible and complimentary with nearby houses and lots, in terms of appearance and scale. 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

Findings: The applicant has provided a copy of “House Rules” and “Rental Agreement” (Exhibit G-5) for guests that include the following:

- The number of guests is limited to 10 persons.
- Check-in is no earlier than 4 pm and check-out time is by 11 am.
- Quiet hours to be maintained between 9 pm and 8 am.
- No pets are allowed on the premises.
- No smoking is allowed on the premises.

Late-night operations and noise The primary livability concerns of the proposed ASTR facility are late-night operations, or activities, and noise. The house has a large rear deck, accessed via the kitchen and main living area on the main level. Because the site slopes downward toward the rear yard, the deck is elevated more than 10 feet above the rear yard. The deck can be seen from neighboring lots downhill from and next to the site. When in use, sound travels from the deck down the hill to neighboring lots. In addition to the upper rear deck, an outdoor patio (under the upper deck) is accessed by a door at the lower level. The applicant states that she has responded to past noise complaints from neighbors, by deeming the upper deck off-limits to guests and locking its doors to prevent access.

While placing the deck off-limits to guests resolved the noise issue temporarily, it is not realistic to expect that the outdoor deck will not be available to guests. Although the proposed ASTR with use of the outdoor deck has the potential to adversely impact livability of nearby residences, some amount of noise and late-night activities is expected and is a normal part of household living uses. The applicant initially proposed quiet hours to begin at 9 pm Sunday through Thursday, and at 10 pm Friday and Saturday. To further reduce noise and late-night activity impacts on neighbors, the applicant has revised the proposed quiet hours to 9 pm to 8 am all days of the week. The earlier quiet time will minimize impacts on neighbors while allow reasonable use of the outdoor deck.

The rental agreement states that if the group is loud, the neighboring manager will “call me or knock on your door which will result in the forfeiture of your security deposit, and the remainder of your stay will be cancelled.” Additionally, the rental agreement states that the “. . . upstairs deck is generally not available for guest use and is not listed as an amenity. If you would like access to the deck please contact owner through the website for details.” This statement of the rental agreement must be amended so that information about the upper deck use is provided in all advertising, and so that the rental agreement information complies with the conditions of approval.

Conditions are required to help ensure that the house rules and rental agreement requirements are enforced, that the upper deck and lower patio be off-limits to guest during quiet hours, and that this information be included in all advertising for the ASTR. Note that conditions of approval will help ensure that the quiet hours remain in the effect as part of the House Rules and Rental Contract. If the conditions of approval are not met, this constitutes a Zoning Code violation which can be addressed through a neighborhood complaint or code compliance process.

To further address noise and other neighborhood impact issues quickly and effectively, it is imperative that neighbors are able to readily contact a responsible party. Providing neighbors with contact information is especially relevant for the proposed type of rental arrangement where the operator or resident is not present during guest stays. A condition of approval is necessary that requires the applicant to provide residents of

abutting lots and any additional neighbors who request it from her, with her personal contact information and the contact information for the long-term resident, and the designated manager, so that issues or problems that come up during a short-term rental can be resolved quickly.

With the above conditions regarding enforcement of house rules and rental agreement requirements, limitation on use of the outdoor deck, advertising requirements, and provision of contact information to neighbors, this criterion is met.

Glare from lights The applicant states that a motion sensor light is installed over the front garage door, and a porch light is installed at the main entrance. The applicant states that the backyard does not have lights. This is to address neighbor's complaints by discouraging guests from using the backyard in the evening. Glare from lights is not expected to be a significant adverse impact on neighboring properties. This criterion is met.

Odors and litter Significant issues associated with odors or litter are not expected to result from the proposal. The Zoning Code limits ASTR uses to 5 bedrooms to in part limit the impacts from the use. An additional condition limiting the number of guests to 10 people will help ensure that any odor or litter impacts are minimal. Odor and litter is not expected to be a significant adverse impact on neighboring properties. This criterion is met.

2. Privacy and Safety issues.

Findings: The Police Bureau recommends ensuring that the foliage does not block the visibility of the street address marker, and exploring Crime Prevention Through Environmental Design standards for landscaping to prevent concealment of trespassers and provide greater visibility for officers passing by (Exhibit E.5). Because the Portland Zoning Code requires on-going maintenance of required landscaping (Section 33.248.040.B), an additional condition is not needed.

Based on this information and the conditions of approval placed on the use, this criterion can be met.

D. Public services.

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

Findings: The Portland Bureau of Transportation reviewed the proposal for compliance with this criterion (Exhibit E-2). Below is their analysis and findings:

At this location, SE 104th Drive is classified in the Transportation System Plan (TSP) as a Local Service street for all modes, except one – it is also classified as a City Walkway. The TSP states that City Walkways “are intended to provide safe, convenient, and attractive pedestrian access to activities along major streets and to recreation and institutions; provide connections between neighborhoods; and provide access to transit.” The TSP also states that “Local Service streets are intended to distribute local traffic and provide access to local residences or commercial uses.” The proposed project will have no impacts on the stated functions or objectives of the roadway classifications noted above. The proposed Conditional Use request is supportive of the aforementioned street classifications from the Transportation Element of the Comprehensive Plan (TSP). This criterion is met.

2. The transportation system is capable of supporting the proposal 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 offers the following response:

The applicant hired a professional traffic consultant to prepare a Transportation Impact Study (TIS) to address this particular approval criterion. PBOT has reviewed the submitted TIS and offers the following assessment:

- Utilizing acceptable industry standards, methodologies, references and analyses, the TIS adequately addresses each of the above referenced evaluation factors.
- The TIS includes typically prepared trip generation/trip distribution analyses which conclude that the minimal expected vehicle trips associated with the proposed ASTR (1 AM peak trip/1 PM peak trip and 28 total daily trips) will not have adverse impacts to the operations of the studied intersections, including SE 104th Dr/SE Division. Said intersections currently operate within City of Portland performance measures based on conducted observations and will continue to do so after the proposed ASTR is operating.
- The TIS includes a thorough on-street parking analysis which involved observations conducted during the peak parking demand period associated with both the residential uses in the immediate area. During the late night observation period, there were minimal demands for on-street parking throughout the parking survey area.

The parking demand that will be generated as a result of the proposed land division was estimated using peak parking demand rates from the Institute of Transportation Engineers *Parking Generation*. Again, similar to the trip generation analysis, the data utilized to determine the parking demand for the proposed Conditional Use were for land use #320, *Motel*. Based upon the data, the mean peak parking demand for a five-room motel is 4 parking spaces with an 85th-percentile peak parking demand of 4 spaces. It should be noted, however, that operation of a typical motel would result in rental of 5 rooms to 5 different parties, each of which would travel separately. In this instance, since the 5 rooms are rented together, it is likely that the typical parking demand will be 1 to 2 vehicles.

Under existing conditions, a total of 37 parking spaces remain available (out of the 48 total spaces within the study area) during the late-night peak parking demand period. It is estimated that 33 parking spaces will remain available within one block of the site assuming all vehicles associated with the proposed use forgo the two off-street parking spaces and park on the street.

- The TIS adequately addresses the remaining evaluation factors, including the provision of available crash data to demonstrate that there are no safety concerns related to traffic at nearby intersections.

The subject site is located near bus stops served by a Tri-Met bus route #4, *Division/Fessenden*, a frequent service bus line. Additional transit service is available at the SE Division Street MAX Station via Tri-Met's *MAX Green Line*, which runs between Clackamas Town Center and Portland State University in Downtown Portland. The nearest bus stops for route #4 are located at the intersection of SE Division St/SE 104th Dr, approximately 600-ft from the site. The Division Street MAX Station is located approximately 0.6 miles west of the property.

Existing pedestrian and bicycle facilities, which are robust in the area, will not be compromised by the proposed ASTR. Sidewalks throughout the area provide a safe means for pedestrians to travel; the existing bicycle facilities are identified on the Portland Bike/Walk Map and include Bike Lanes (painted) along SE Division (south of the subject site) and “Shared Roadways” along SE 101st Ave and SE 106th Ave, west and east of the site, respectively.

- With respect to adequate transportation demand management strategies, the applicant has proposed a number of measures to be taken to minimize impacts related to the proposed ASTR. Transportation Demand Management Plans (TDMP) are generally required when impacts to the transportation system are identified and measures must be taken to mitigate said impacts. As identified previously in this response, PBOT does not expect any impacts to the transportation system in relation to this proposed Conditional Use request. Accordingly, PBOT recommends that the applicant implement the proposed transportation demand management strategies on a voluntary basis.

PBOT supports the conclusions reached in the submitted TIS and as required, the applicant has adequately demonstrated that “the transportation system is capable of supporting the proposed use in addition to the existing uses in the area”.

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: Written responses were received from the Water Bureau (Exhibit E-3) and the Fire Bureau (Exhibit E-4) expressing no concerns in the ability to provide service to the site.

The Bureau of Environmental Services (BES) provided a written response stating no objection to the proposed ASTR facility regarding adequacy of public sanitary sewer service and stormwater management (Exhibit E-1). New development on the site will be subject to BES standards and requirements during the permit review process.

The Police Bureau provided a written response stating that police services are adequate and available to serve the proposal and the site (Exhibit E-5). However, the Police Bureau identified the following concerns and recommendations:

- CONCERNS
 - A) Visibility of address and signage for emergency response.
 - B) Maintaining the site and perimeter foliage.
- RECOMMENDATIONS
 - A) Make any necessary adaptations so that the site address is easily identified. Ensure that the foliage or lack of lighting does not block or hinder the visibility of the street address marker.
 - B) As this is a business and a residence, have your professional service keep the foliage and trees maintained per Crime Prevention Through Environmental Design (CPTED) standards. This will assist in preventing concealment of trespassers, provide greater visibility for officers passing by, and as such increase the safety and security for guests. CPTED standard for hedge height is no more than three feet and for trees a ground clearance of six feet or more.

Based on the responses from the relevant City service bureaus, 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.

Findings: The site is within the boundaries of the adopted Hazelwood Neighborhood Plan and the adopted Outer Southeast Community Plan.

Hazelwood Neighborhood Plan The applicant states that Policy 5, Housing, is relevant to the proposal. The following two Housing Objectives are considered:

- Objective 1 promotes development of a variety of housing types. The proposal for an ASTR with five bedrooms adds to the diversity of housing types in the neighborhood by providing short-term rental opportunity but maintaining the residential use of the house, since a long-term resident will occupy the house for at least 270 days each year. Staff finds that the proposal is consistent with this objective.
- Objective 4 calls for rehabilitation of dilapidated and derelict houses. The applicant states: “The property was the eyesore of the neighborhood, abandoned and in foreclosure with squatters in place. . . . After purchasing it the clean-up took almost six months” Staff reviewed the permit and neighborhood complaint history that is documented on the property. Between 2009 and 2012, five complaints were logged against the property, relating to abandoned vehicles, trash and unmaintained landscaping. Staff visited the site on August 26, 2016, and found that the house and yard are in good condition and well-maintained. Staff agrees that the proposal is consistent with this objective.

Outer Southeast Community Plan This adopted Community Plan calls for “preserving existing housing and retaining affordability.” Specifically the housing policy aims to provide a variety of housing choices for outer southeast community residents of all income levels by maintaining the existing sound housing stock” The applicant states that after she purchased the house, extensive renovation was completed. The once-abandoned house is now restored and the landscaping is well-maintained, improving the appearance of the neighborhood. For these reasons, the proposal is consistent with the Outer Southeast Community Plan.

In consideration of the above findings, 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.

Although not part of the Conditional Use approval criteria, Type B ASTRs must meet the development standards of Section 33.207.050 and 33.207.060. The applicant has submitted documentation about how these standards are met (Exhibit G-6).

CONCLUSIONS

The applicant proposes to operate a Type B Accessory Short-Term Rental facility (ASTR) at the current residence. The applicant will be the operator but will not live at the site. Instead, a long-term resident will occupy one of the house’s six bedrooms for at least 270 days a year, and will maintain the landscaping and take care of the trash and recycling for the ASTR. Per the ASTR rules, rental is limited to 95 days because the long-term resident will not be present during rental periods. The operator will designate a manager to assist with handling questions or complaints from neighbors. No commercial meetings will be held.

Exterior alterations to the existing house are not proposed. Of note, however, the current owner has accomplished renovation work on the interior and exterior. The house and yard are well-maintained, and retain a residential appearance. The existing driveway and adjacent on-street parking are available adequate to serve guests.

Central issues of this proposal are its intensity, given that the site is within a moderately dense single dwelling neighborhood with large lots, and given that rental of the whole house is proposed to large, single groups. Also of concern is the potential noise and late-night activity impacts on neighboring properties. A large outdoor rear deck looks out onto neighbor's side and back yards, and its use has been a subject of neighborhood complaints. Conditions are needed to minimize these potential adverse impacts. Limiting groups to 10 people, limiting the potential rental period, and ensuring that neighbors are able to contact a responsible party, will work toward effectively promoting good neighbor attributes of the ASTR.

Other conditions are needed before the start of operation, namely a building permit to legalize three of the proposed six bedrooms.

With the conditions identified in this report and listed below, the proposed ASTR will meet all of the applicable approval criteria and the Conditional Use request should be approved.

ADMINISTRATIVE DECISION

Conditional Use approval of a Type B Accessory Short-Term Rental (ASTR) facility, limited to three bedrooms on the main level and up to two proposed bedrooms on the lower level. A proposed sixth bedroom on the lower level is designated for the long-term resident only, per the approved plans, Exhibits C.1 through C.5, signed and dated October 25, 2016, subject to the following conditions:

- A) Prior to the start of operation of the Type B Accessory Short-Term Rental, the ASTR Operator must meet the following conditions:
 - 1. Obtain final approval of a building permit to legalize three additional bedrooms within the house. If one or more of these bedrooms cannot or are not be legalized, the maximum allowed bedrooms that can be rented for an ASTR will be reduced by that number, and the maximum number of guests will be reduced by 2 people per bedroom. One legal bedroom must accommodate a long-term resident.
 - 2. 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 five bedrooms. This inspection must be requested after Condition A.1 above is satisfied.
- B) For the duration of operation of the Type B ASTR facility, the ASTR operator will meet the following conditions:
 - 1. Provide rental arrangements limited to single groups only, with a maximum of 2 guests per legal bedroom at any one time, regardless of age. If the maximum number of five bedrooms are rented, group size is limited to 10 people.
 - 2. Provide rental arrangements not more than 95 days per calendar year. Rental period is limited to Thursday, Friday, and Saturday night stays only. The ASTR Operator is prohibited to provide rental arrangements on Monday, Tuesday, Wednesday, and Sunday night stays.
 - 3. 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.

4. Quiet hours during rental stays are between 9 pm and 8 am. Use of the outdoor upper deck and lower patio are prohibited during quiet hours.
5. The ASTR operator must provide current phone numbers and current email addresses of the operator, the designated manager, and the long-term resident, to abutting neighbors, neighbors directly across from the site along SE 104th Drive, and any additional residents within 150 feet of the site who request this contact information.
6. The ASTR operator will include Conditions B1 through B5 of this approval and the House Rules and Rental Agreement in all advertisements for the ASTR facility.
7. The House Rules and Rental Agreement (House Rules) included in Exhibit G-5, must be amended to comply with this decision and conditions, and must be maintained by the ASTR Operator 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 be displayed prominently within a common area of the house.
8. After the ASTR has operated for more than one year, the ASTR Operator may request an amendment to Condition B2. This request will be processed as a Type 1x Land Use Review (Unassigned Review Fee for Type 1x). The Approval Criteria for this review are Criteria A and C of Section 33.815.105 Institutional and Other Uses in R Zones. All other amendments to this land use decision will be reviewed and processed as described in the Zoning Code.

Staff Planner: Marguerite Feuersanger

Decision rendered by:  **on October 25, 2016.**

By authority of the Director of the Bureau of Development Services

Decision mailed: October 27, 2016.

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 17, 2016, and was determined to be complete on August 3, 2016.

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 17, 2016.

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: December 1, 2016.**

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 November 10, 2016**, at 1900 SW Fourth Ave. Appeals can be filed at the 5th floor reception desk of 1900 SW 4th Avenue Monday through Friday between 8:00 am and 4:30 pm. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at 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 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 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 November 11, 2016 – **(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.

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.

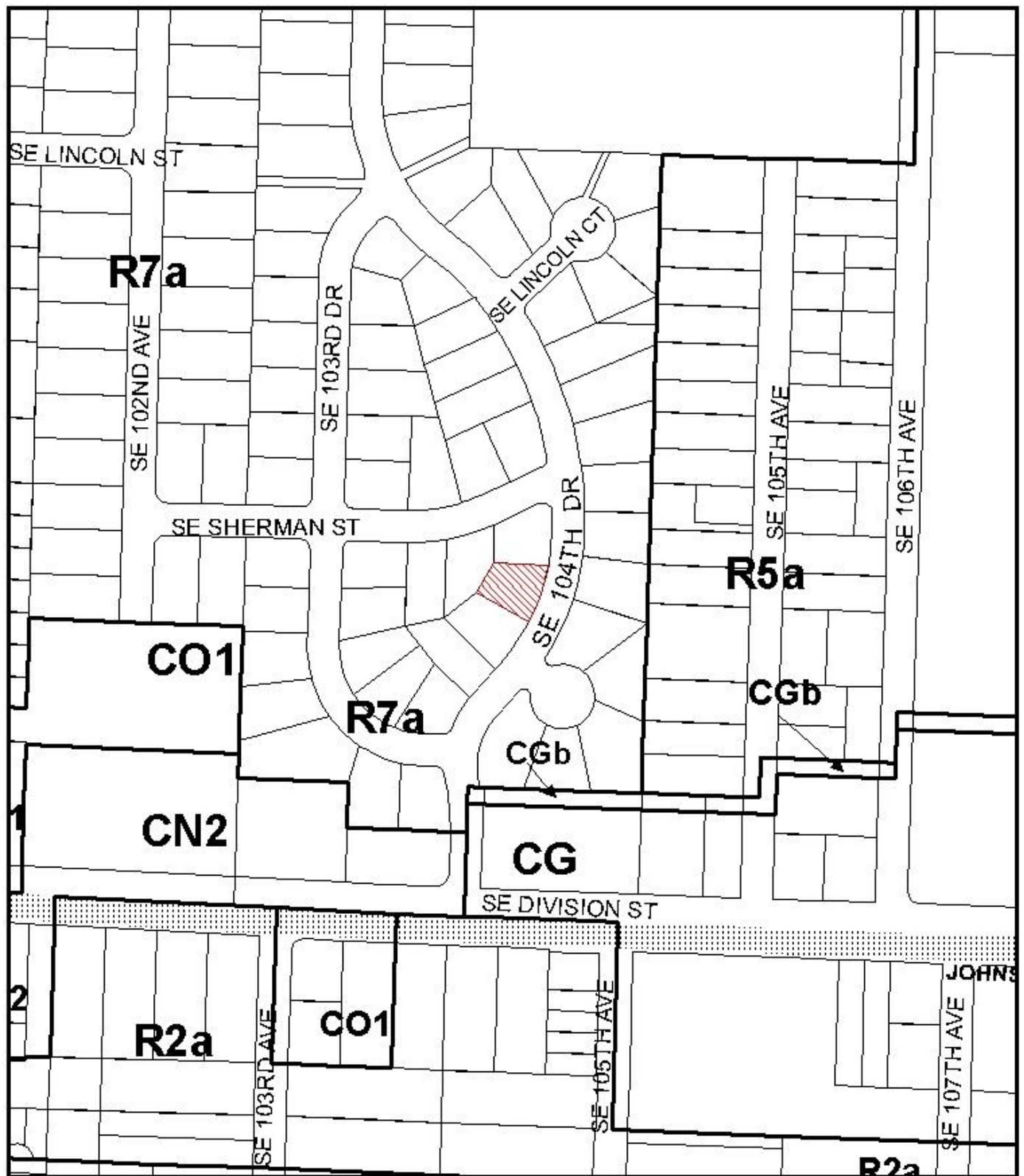
EXHIBITS

NOT ATTACHED UNLESS INDICATED


- A. Applicant's Statement
 1. Original Submittal, February 17, 2016
 2. Revised Submittal, August 3, 2016
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. Enlarged Site Plan (attached)
 3. Main and Upper Level Plan (attached)
 4. Basement Floor Plan (attached)
 5. Existing Elevations (attached)
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Bureau of Environmental Services
 2. Bureau of Transportation Engineering and Development Review
 3. Water Bureau
 4. Fire Bureau
 5. Police Bureau
 6. Site Development Review Section of BDS
 7. Bureau of Parks, Forestry Division
 8. Life Safety Plans Examiner of BDS
- F. Correspondence:

1. Michael and Martha Lemon, received August 17, 2016, in opposition to proposal
 2. Darrell Cochran, Kim McBride Cochran, Louise McBride, received August 29, 2016, in opposition to proposal
 3. Arlene Kimura, Hazelwood Neighborhood Association, raising concerns and questions about the proposal, received 7:58 am on August 30, 2016
 4. Robert English, received 11:05 am on August 30, 2016, in support of proposal
- G. Other:
1. Original LU Application
 2. Additional information about proposed operation of the ASTR, from Loretta Spahmer, August 3 and August 4, 2016
 3. Traffic Impact Study, August 3, 2016
 4. Traffic Demand Management Plan
 5. House Rules, Rental Agreement, updated October 4, 2016
 6. Applicant's response to the Type B ASTR Use and Development Standards, Sections 33.207.050 and 33.207.050.

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING

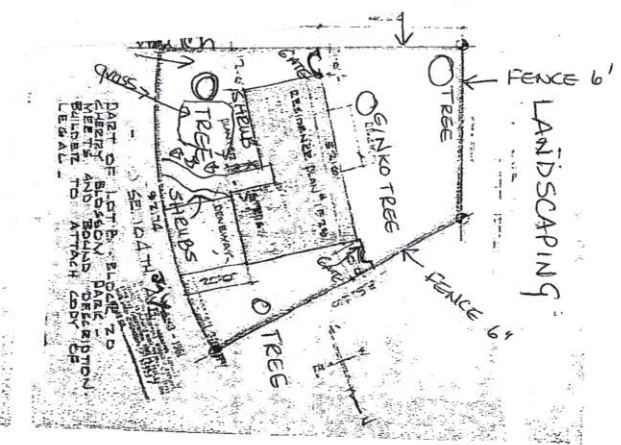
 Site



NORTH

File No.	LU 16-122179 CU
1/4 Section	3241
Scale	1 inch = 200 feet
State_Id	1S2E03CC 7600
Exhibit	B (Feb 19, 2016)

City of Holland
Bureau of
Development Services
By WLF Date 10/25/16
Approved by
Planning & Zoning Review



SITE PLAN

2335 SE 104th Dr
LU 16-122179-CU

EXISTING SITE PLAN

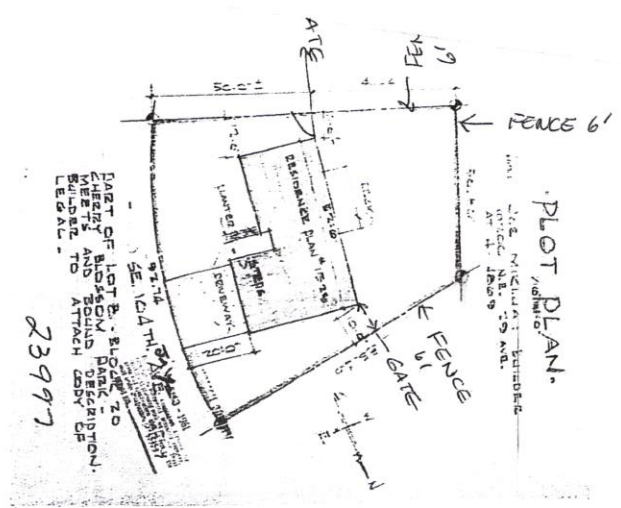
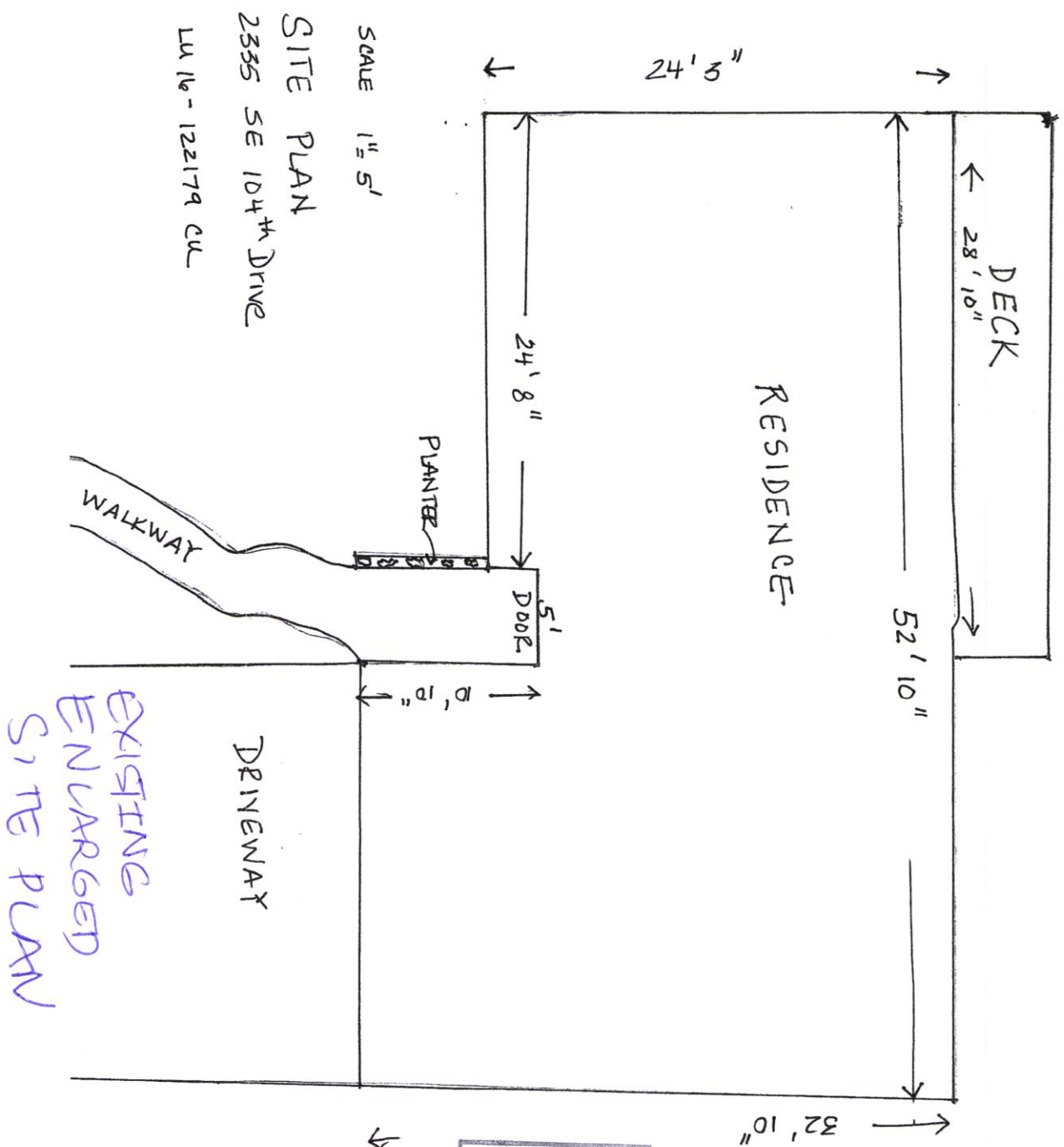


EXHIBIT C-1

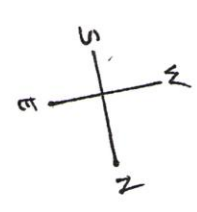
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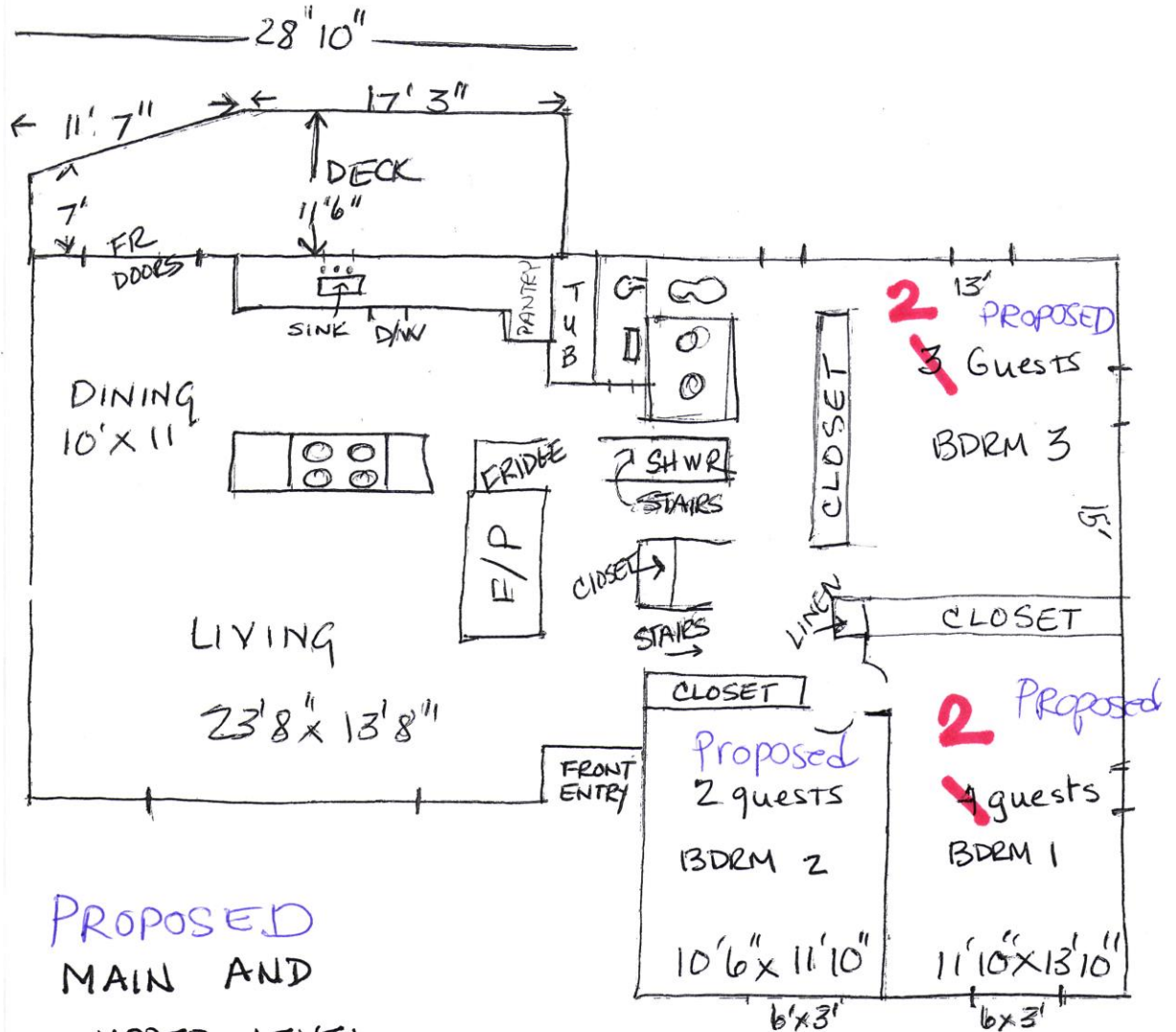
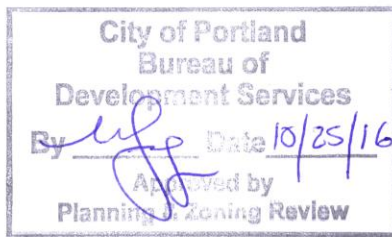


EXISTING
ENLARGED
SITE PLAN

EXHIBIT C-2
16-122179 CU

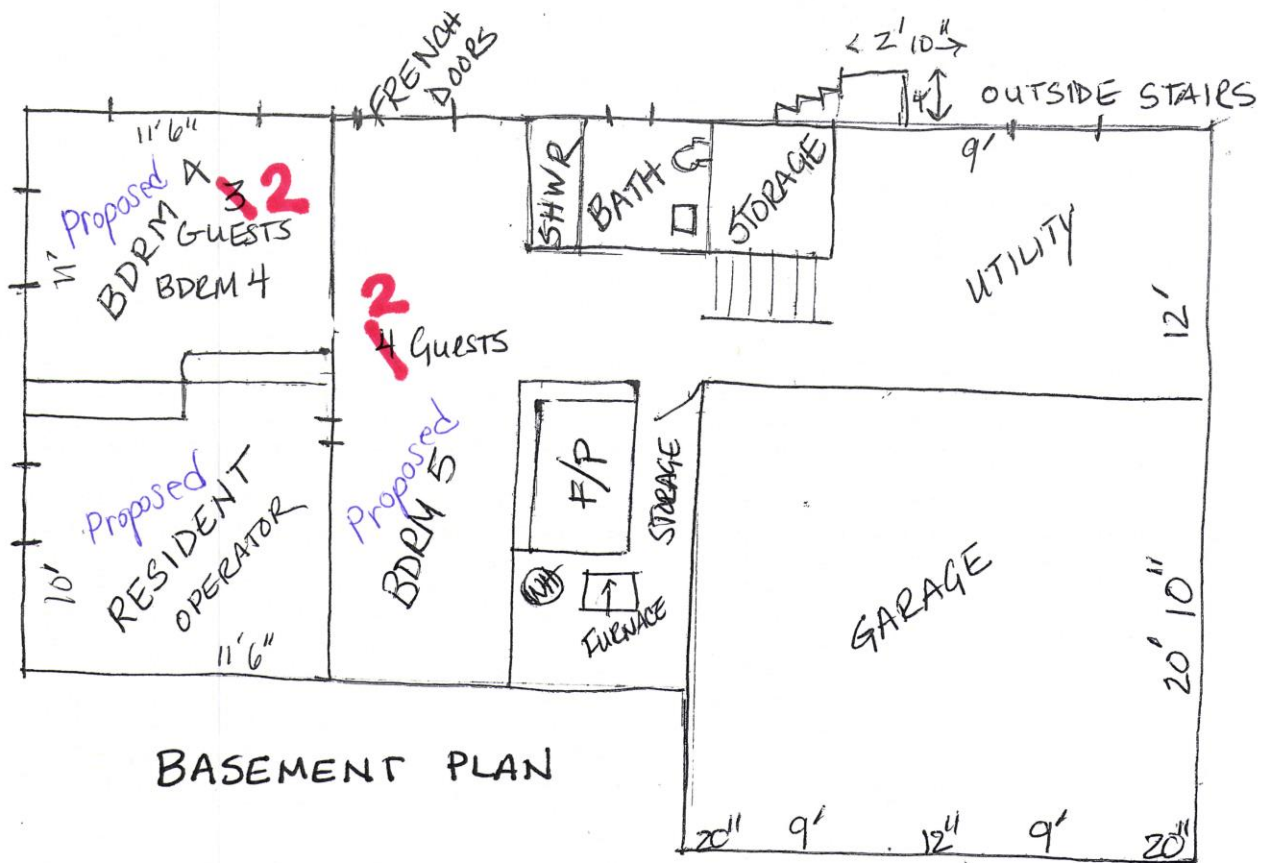
City of Portland
Bureau of
Development Services
By WLF Date 10/25/16
Reviewed by
Planning & Land Use Division



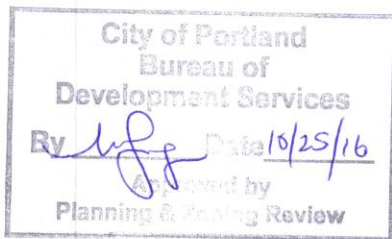


PROPOSED
MAIN AND
UPPER LEVEL
PLAN

2335 SE 104th Dr.
16-122179 CU
EXHIBIT C-3



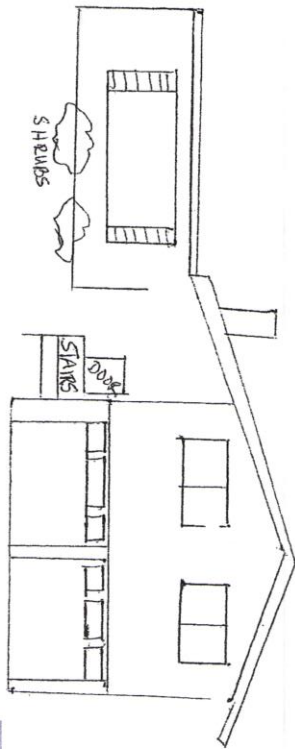
BASEMENT PLAN



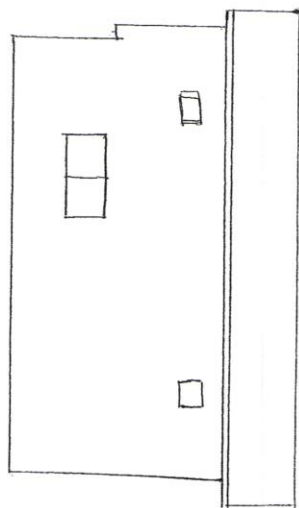
PROPOSED
BASEMENT
FLOOR PLAN
2335 SE 104TH DRIVE

LU 16-122179 CU

EXHIBIT C-4
16-122179 CU

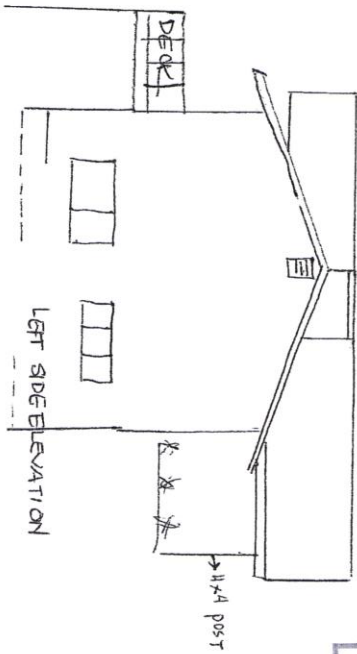


FRONT ELEVATION.

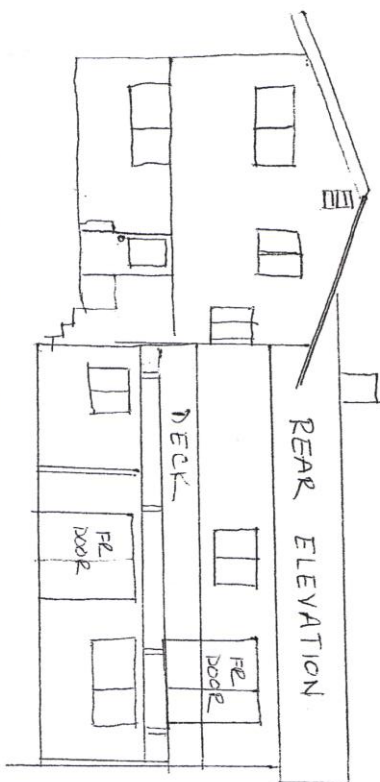


RIGHT SIDE ELEVATION

City of Portland
Bureau of
Development Services
By *[Signature]* Date 10/25/16
Approved by
Planning & Zoning Review



LEFT SIDE ELEVATION



REAR ELEVATION

"ELEVATIONS"

2335 SE 104th DR
LU 16- 122179 CU

1/4" = 1.0'

EXISTING ELEVATIONS

EXH B.17 C.5
16- 122179 CU