



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

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**Date:** November 9, 2022  
**To:** Interested Person  
**From:** Marguerite Feuersanger, 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 mailed copy of this document is only a summary of the decision. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

### **CASE FILE NUMBER: LU 22-125091 CU**

#### **GENERAL INFORMATION**

**Applicant:** Dylan Toomey  
5701 NE 23rd Avenue  
Portland, OR 97211  
[dylanhtoomey@gmail.com](mailto:dylanhtoomey@gmail.com)

**Owners:** Kimberly Toomey and Dylan Toomey  
5701 NE 23rd Avenue  
Portland, OR 97211

**Site Address:** 5701 NE 23<sup>rd</sup> Avenue

**Legal Description:** BLOCK 7 LOT 14&16, IRVINGTON PK  
**Tax Account No.:** R421301220  
**State ID No.:** 1N1E14DD 07400  
**Quarter Section:** 2432

**Neighborhood:** Concordia, contact Ben Taylor at [landuse@concordiapdx.org](mailto:landuse@concordiapdx.org)  
**Business District:** Soul District Business Association, contact at [Info@nnebaportland.org](mailto:Info@nnebaportland.org)  
**District Coalition:** Northeast Coalition of Neighborhoods, contact at [info@necoalition.org](mailto:info@necoalition.org)

**Zoning:** R2.5h, Residential 2,500 zone, within the Aircraft Landing (h) overlay zone

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

**Proposal:** The applicant, also a property owner and a long-term resident of the site, proposes a four-bedroom Type B Accessory Short-Term Rental (ASTR) use at this address for

up to 95 days per year while the residents are away from the site. One bedroom on the main level and three bedrooms on the upper level are proposed for ASTR use. The basement level includes a fifth bedroom, but this level will not be used for the ASTR.

The Type B ASTR is rental of three to five bedrooms inside a resident-occupied dwelling unit and may be requested through the Type II Conditional Use review procedure (Portland Zoning Code Section 33.207.050.A.2). To create the proposed four-bedroom Type B ASTR use, the applicant has requested this Conditional Use Review. The ASTR 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. Note that a Type A ASTR is rental of one or two bedrooms, which requires an administrative permit but does not require Conditional Use review.

No exterior alterations to the house are proposed. No outside employees, food or beverage service, or commercial events are proposed. Proposed house rules would require exterior quiet hours from 10pm to 7am. A maximum of two people per bedroom are proposed, for a maximum of 8 guests. The applicant proposes to operate and manage the ASTR use.

A Transportation Analysis (Exhibit A-3) was submitted with this application to address transportation-related Conditional Use approval criterion D cited below. The Analysis in part states that the applicant will actively promote ride-sharing or for-hire transportation such as Lyft, taxi and Uber. Because there is no dedicated parking on the site for guests, those arriving by car will use available on-street parking.

**Relevant Approval Criteria:**

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

## ANALYSIS

**Site and Vicinity:** The subject site is 5,000 square feet in area, located along the west side NE 23<sup>rd</sup> Avenue between Jarret and Killingworth Streets. A north-south alley is located at the rear of the site. The site is developed with a single house and detached garage with access on the alley. Nearby lots are similarly developed with a single-dwelling residence, interspersed with rowhouses, and duplexes.

Alberta Park is located 200 feet west of the site and Vernon Elementary School is located approximately 420 feet southwest of the site along NE Killingworth Street. Northeast 27<sup>th</sup> Avenue is classified as a Local Service for Transit, Traffic, Bicycles, and Pedestrians.

**Zoning:** The Residential 2,500 (R2.5) single-dwelling zone is intended to preserve land for housing and to provide housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing. Both detached and attached single dwellings are allowed.

**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 **September 23, 2022**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services (Exhibit E.1);
- Water Bureau (Exhibit E.3);
- Fire Bureau (Exhibit E.4);
- Site Development Section of BDS (Exhibit E.5); and
- Urban Forestry Section of Portland Parks and Recreation (Exhibit E.7).

The Bureau of Transportation provided comments related to the approval criteria; their findings are included below in Criterion D (Exhibit E.2).

The Residential Life Safety Plans Examiner did not object to the proposal but notes building permit requirements that may be required (Exhibit E.6).

The Police Bureau responded with comments related to the approval criteria; their findings are included below in criterion D (Exhibit E.8).

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on September 23, 2022. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

### 33.815.010 Conditional Use Purpose

Certain uses are conditional uses instead of being allowed outright, although they may have beneficial effects and serve important public interests. They are subject to the conditional use regulations because they may, but do not necessarily, have significant adverse effects on the environment, overburden public services, change the desired character of an area, or create major nuisances. A review of these uses is necessary due to the potential individual or cumulative impacts they may have on the surrounding area or neighborhood. The conditional use review provides an opportunity to allow the use when there are minimal impacts, to allow the use but impose mitigation measures to address identified concerns, or to deny the use if the concerns cannot be resolved.

### 33.815.105 Institutional and Other Uses in Residential and Campus Institutional

**Zones** These approval criteria apply to all conditional uses in R and campus institutional zones except those specifically listed in sections below. The approval criteria allow institutions and other non-Household Living uses in residential and campus institutional zones that maintain or do not significantly conflict with the appearance and function of residential or campus areas. Criteria A through E apply to institutions and other non-Household Living uses in residential zones. Criteria B through E apply to all other conditional uses in campus institutional zones. The approval criteria are:

- A. Proportion of Household Living uses.** The overall residential appearance and function of the area will not be significantly lessened due to the increased proportion of uses not in the Household Living category in the residential area. Consideration includes the proposal by itself and in combination with other uses in the area not in the Household Living category and is specifically based on:
1. The number, size, and location of other uses not in the Household Living category in the residential area; and
  2. The intensity and scale of the proposed use and of existing Household Living uses and other uses.

**Findings:** The proposal will not add a non-Household Living (nonresidential) use in the residential area, since ASTR facilities are classified as accessory to Household Living use (Zoning Code Section 33.920.110.B). However, because the characteristics of a 4-bedroom ASTR may be different from a typical residential use, the proposed ASTR will be considered a non-Household Living use for purposes of this approval criterion.

For purposes of this criterion, staff considers the “residential area” to be residentially-zoned lots within a 400-foot radius of the subject site. Within this residential area, there are no non-residential uses and no other Type B ASTRs. Type A ASTRs have been approved for 3 properties within this residential area, but this is a small percentage of all lots in the area. Also, since Type A ASTRs are limited to 2 rental bedrooms, they have

lower impacts and operational characteristics that are little different from typical residential uses.

No exterior alterations are proposed to the existing house on this site. The full-time resident (also the applicant) of the site will reside in the house for at least 270 days a year. The ASTR use will occur up to 95 days per year, while the residents are away (Exhibits A-1 through A-5). The ASTR use will be limited to the main and upper levels of the house; the basement area is not part of the ASTR use. Since the residents must reside onsite at least 270 days a year, a condition of approval is warranted limiting the number of nights all four bedrooms can be rented out together to 95 per calendar year.

In addition, to prevent the intensity and scale of the ASTR use from significantly impacting the residential character of the area, a condition is needed to limit on the maximum number of ASTR guests to two guests per bedroom, for a maximum of 8 while 4 bedrooms, and that the four bedrooms are rented to one party. Also, all ASTR advertisements must display prominently in the title of the advertisement the maximum number of bedrooms and the maximum number of people allowed per nightly rental.

To ensure over time that requirements for the numbers of guests are complied with and enforced, a condition of approval is needed that requires the applicant to provide rental data from the rental organization to the City upon request as required by Zoning Code Section 33.207.060, Monitoring.

Consistent with standards for ASTRs in single-dwelling residential zones (Chapter 33.207), a condition of approval is needed to make clear that commercial meetings at the ASTR facility are prohibited. Commercial meetings include luncheons, banquets, parties, weddings, meetings, charitable fundraising, commercial or advertising activities, or other gatherings for direct or indirect compensation.

As there are no exterior alterations proposed to the existing house on this site, staff finds the ASTR facility will not noticeably impact the residential appearance of the area. With the conditions of approval identified above, staff finds the intensity and scale of the ASTR use will not significantly lessen the residential function of the area. Therefore, with the conditions of approval, staff finds this criterion is met.

#### **B. Physical compatibility.**

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

**Findings:** City-designated scenic resources are identified on the official zoning maps with a lower case “s.” The zoning maps show no City-designated scenic resource on or near this site. Therefore, criterion B.1 is not applicable.

2. The proposal will be compatible with adjacent residential developments based on characteristics such as the site size, building scale and style, setbacks, tree preservation, and landscaping; or
3. The proposal will mitigate differences in appearance or scale through such means as setbacks, screening, landscaping, tree preservation, and other design features.

**Findings:** The surrounding residential area has varying house sizes and building styles, but the subject site is compatible with neighboring properties in terms of site size, building scale and style, building setbacks, and landscaping. The ASTR use will take place inside the existing house on the site, and no exterior changes to the house or property are proposed. Since the proposed Conditional Use will not create any differences in appearance or scale between the subject site and neighboring residential properties, staff finds criterion B.2, above, is met. (Since B.2 is found to be met, B.3 does not have to be addressed.)

**C. Livability.** The proposal will not have significant adverse impacts on the livability of nearby residential zoned lands due to:

1. Noise, glare from lights, late-night operations, odors, and litter; and

**Findings:** The proposed house rules include quiet hours between 10 pm and 7 am daily (Exhibit A.4). These quiet hours are consistent with, and will comply with, the requirements of Title 18 (Noise Control), and a condition of approval will prohibit noise impacts that violate Title 18. Another condition of approval will require the house rules to be posted within the house and on any website in which the ASTR is advertised.

To help prevent noise or other livability impacts since the long term resident (applicant) will not be on the site while it is used for the ASTR, a second condition of approval is needed to require the applicant to provide a telephone number and e-mail address of the full-time resident (who must occupy the property at least 270 days each year, per Zoning Code Section 33.207.050.A.1) and a local company or local person involved in managing the business, to the immediate neighbors at least once each calendar year. Notification to the following four properties is required:

- o 5631 NE 23<sup>rd</sup> Avenue
- o 5634 NE 23<sup>rd</sup> Avenue
- o 5704 NE 23<sup>rd</sup> Avenue
- o 5709 NE 23<sup>rd</sup> Avenue

The current House Rules state do not include rules about smoking. However, smoke from guests has been consistently raised as a livability issue for ASTR sites, and smoke can have odor impacts on neighboring properties. Therefore, a condition of approval will require the applicant to include a House Rule that no smoking is allowed anywhere on the premises – the ASTR is a nonsmoking facility. This condition will not apply to the long term resident but is limited to all ASTR guests.

The property has exterior lighting typical for a residential use, and no new exterior lighting is proposed for the ASTR. No aspect of the short-term rental operation is likely to produce glare or litter impacts that are different from a typical residential use or that would adversely impact neighbors. For these reasons, and with the conditions of approval mentioned above, staff finds there will be no significant adverse impacts related to noise, glare from lights, late-night operations, odors, or litter. With the conditions of approval, criterion C.1 is met.

## **2. Privacy and safety issues.**

**Findings:** The bedrooms proposed for ASTR rentals are inside the existing house on the site, and guests' use of these bedrooms will not have unusual or significant impacts on neighbors' privacy. The property has a front porch and a backyard that may be used by guests for socializing or recreation (Exhibit C.1). However, the back yard is enclosed on its sides by a fence which will minimize impacts on adjacent neighbors' privacy. An alley, 14 feet in width, is located at the rear property line and provides additional separation and privacy for the neighbor to the west.

No adverse safety impacts are anticipated. The Fire Bureau reviewed the proposal and responded with no concerns (Exhibit E.4). The Police Bureau reviewed the proposal and found that police services are adequate for the ASTR use (Exhibit E.8). PBOT reviewed the proposal for adverse safety impacts on nearby streets and has no concerns (Exhibit E.2). To address other potential safety issues, staff finds a condition of approval is warranted for an inspection verifying the building code, smoke detector, and carbon monoxide alarm requirements in Zoning Code Section 33.207.050.B.4 are met for all

bedrooms to be used for short-term rentals. For these reasons, and with the conditions of approval mentioned above, criterion C.2 is met.

**D. Public services.**

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

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

*At this location, the City's Transportation System Plan (TSP) classifies NE 23<sup>rd</sup> Avenue as Local Service for all modes, which is improved with a 28-ft wide paved roadway with a 16-ft wide pedestrian corridor (9-6-1) configuration within a 60-ft wide Right-of-Way (ROW). The proposed Accessory Short-Term Rental (ASTR) is supportive of the Transportation System Plan (TSP) classifications. (Exhibit E-2)*

2. Transportation system:

- a. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include safety, street capacity, level of service, connectivity, transit availability, availability of pedestrian and bicycle networks, on-street parking impacts, access restrictions, neighborhood impacts, impacts on pedestrian, bicycle, and transit circulation. Evaluation factors may be balanced; a finding of failure in one or more factors may be acceptable if the failure is not a result of the proposed development, and any additional impacts on the system from the proposed development are mitigated;
- b. Measures proportional to the impacts of the proposed use are proposed to mitigate on- and off-site transportation impacts. Measures may include transportation improvements to on-site circulation, public street dedication and improvement, private street improvements, intersection improvements, signal or other traffic management improvements, additional transportation and parking demand management actions, street crossing improvements, improvements to the local pedestrian and bicycle networks, and transit improvements;
- c. Transportation improvements adjacent to the development and in the vicinity needed to support the development are available or will be made available when the development is complete or, if the development is phased, will be available as each phase of the development is completed;

**Findings:** PBOT reviewed the proposal and provided the following response (Exhibit E.2):

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

*To support the transportation-related approval criteria, the applicant submitted a professional Transportation Analysis prepared by Clemow Associates, dated June 22, 2022 (Exhibit A-3). The Portland Bureau of Transportation (PBOT) Development Review has performed a review of the submitted professionally prepared analysis agrees with the methodologies, analyses, and conclusions to confirm that the transportation-related approval criteria are satisfied.*

*Trip Generation and Distribution: To estimate vehicle trips generated by the proposed ASTR, information from the Trip Generation Manual, 11<sup>th</sup> Edition, published by the Institute of Transportation Engineers (ITE) was utilized. ITE does not have specific code for ASTRs, therefore ITE land use code 320, Motel to calculate trip rates for the proposed use. Utilizing this data, that applicant has shown in Table 1 of the submitted traffic study, that under the*

*maximum rental scenario, that the proposed ASTR is expected to generate four additional daily trips and zero additional trips during the AM and PM peak hours. However, the applicant has proposed to only offer a whole-house rental to families and groups. Data indicates these groups typically travel together and consolidate vehicles to minimize travel expenses. Therefore, the anticipated additional trips are expected to be much less than the maximum rental scenario as analyzed. These additional trips will likely use a combination of NE 15<sup>th</sup> Ave as the main north/south connection and NE Killingsworth St the main east/west connections. Therefore, development of the site with an ASTR will not impact the distribution of local traffic throughout the area.*

*Street Capacity/Level of Service:* *To address the street capacity and Level of Service (LOS) evaluation factors, the applicant's traffic engineer conducted traffic observed two intersections of significance that may be impacted by the proposed short-term rental; NE Killingsworth and NE 23<sup>rd</sup>, and NE 23<sup>rd</sup> Ave and NE Jarrett. Results of the field observations indicate that all study intersections are currently operating acceptably during the peak hour periods of LOS C or better. Based these observations, the applicant concludes that Short-term rental of the home will have a negligible impact on existing vehicle delays, and intersections will continue to maintain acceptable operations. Therefore, the existing intersections are able to manage the nominal increase in traffic and will not negatively affect City of Portland's operational standards.*

*Safety for All Modes:* *For vehicle safety, the applicant's traffic engineer obtained from the Oregon Department of Transportation's (ODOT) Crash Data System, a review of approximately five years of the most recent available crash history (January 2016 through December 2020) was performed at the study intersections. Based on the review of historical crash data at the two intersections previously noted, there were no recorded crashes at either intersection; therefore, the intersections are considered safe, and no further evaluation of safety deficiencies is necessary. For bicycles, the site is in a location with complete roadways in the typical grid which provides safe and low-volume streets, in which the surrounding bicycle infrastructure provides a safe and comfortable traveling environment for bicyclists. For pedestrians, sidewalks are complete along both sides of nearby area roadways. The proposed short-term rental will not remove or block any existing walkways within the area, whereby pedestrian safety and connectivity in the immediate vicinity will be maintained.*

*Pedestrian, Cycling, and Transit Availability:* *The subject site is surrounded by fully developed infrastructure and transit options within walking distance in all directions of the site. Complete sidewalks and adequate crossing measures across vicinity roadways are available between the site and the nearest stops which serve the transit lines. The neighborhood street grid provides abundant pedestrian routing options to a variety of local destinations, and sidewalks are provided on both sides of the streets.*

*Connectivity:* *The subject site is located in a well-established typical grid network of ROW connections, which the system provides multiple routes to and from the site for all modes. Therefore, the property is adequately accessed by all modes, providing connectivity and access to support existing uses as well as the proposed ASTR at the subject property.*

*Access Restrictions:* *There are no access restrictions affecting the site.*

*On-Street Parking Impacts:* *The applicant's traffic engineer conducted site observations for on-street parking demand on May 26, 2022, a mid-weeknight, between 11:00 PM and 5:00 AM. As summarized in Table 4 of the applicant's traffic analysis, The total amount of available parking along the studied roadways was 93 spaces. The total observed on-street parking demand was 35 passenger cars during the observation period, of 38%.*

*The parking demand generated from the proposed development was estimated using parking demand rates from Parking Generation, 4<sup>th</sup> Edition, published by the Institute of Transportation Engineers (ITE), using land use code 320, Motel as it represents the closest*

*use to the proposed ASTR use. Under the maximum rental scenario Based on the Parking Generation Manual data, the proposed short-term rental, in addition to the long-term tenant, is expected to increase the average peak parking demand of the site by four vehicles. Because the site has no on-site parking spaces available, the users of the proposed ASTR are to use the available on-street parking. However, the applicant has specifically noted that rentals will be to a single group or family traveling together and rooms will not be rented individually, thus on-street parking is expected to be less than the maximum scenario. The applicant has proposed several Transportation Demand Management (TDM) measures intended to reduce the number of vehicles accessing the site. The site is conveniently located in an urban area with access to alternative modes of travel and amenities.*

*Neighborhood Impacts: The transportation-related neighborhood impacts associated with the proposed use typically involve impacts to on-street parking and potential increases in traffic at area intersections. As documented by the applicant's analysis, the proposal to rent to a single party or family will dramatically reduce the impact on the on-street parking demand, plus the proposed TDM to offset the potential increase is consistent with the established residential character of the neighborhood, and therefore will have minimal impacts felt by the neighborhood. Services for the ASTR such as landscaping, regular maintenance, and/or cleaning will be consistent with a typical single-family home. Therefore, transportation-related impacts as a result of the proposed ASTR will be negligible.*

*In conclusion, based on the evidence included in the record, and primarily, the applicant has demonstrated to PBOT's satisfaction, with the condition below, that "the transportation system is capable of supporting the proposed use in addition to the existing uses in the area".*

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

- *Rentals will be to a single group or family traveling together with no more than 8 people, and rooms will not be rented individually.*

In addition to PBOT's recommended condition above, a second condition is needed to encourage alternative modes of travel to the site, and limit single-occupancy vehicle trips and on-street parking impacts:

- The ASTR operator must provide all ASTR guests with information on transit, ride sharing, and bike sharing services, biking and walking maps, and restaurants and attractions within walking distance.

Based on the findings from PBOT above, and with the two conditions of approval above, staff finds Criterion D.2 is met.

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

**Findings:** The Water Bureau and the Fire Bureau reviewed the proposal and responded with no concerns (Exhibits E.3 and E.4, respectively). The Portland Police Bureau reviewed the proposal and responded that police services are adequate for the proposed use (Exhibit E.8). The Bureau of Environmental Services reviewed the application and found that existing sanitary waste disposal and stormwater disposal from the property are adequate for the proposal (Exhibit E.1). For these reasons, criterion D.3 is met.

**E. Area plans.** The proposal is consistent with any area plans adopted by the City Council as part of the Comprehensive Plan, such as neighborhood or community plans.



**Findings:** The subject site is within the boundaries of the Albina Community Plan and the Concordia Neighborhood Plan. The numbered policies and objectives in these plans have been adopted by the City Council as part of the Comprehensive Plan.

Albina Community Plan Among the 10 policies of the Albina Community Plan, one policy directly relates to the conditional use proposal. Policy IX, Community Image and Character, builds a positive identity for the Albina Community throughout the metropolitan area, reinforces Albina's identity as a part of Portland and celebrates its special diverse architectural and cultural character, provides opportunities for people outside of the district to experience the positive characteristics of the Albina Community, and strengthens the Albina Community's sense of place through the promotion of its art, history, and culture. The proposed ASTR will provide an opportunity for visitors to explore various cultural attractions within the Albina Community. Therefore, the proposal is consistent with the Community Image and Character Policy of the Albina Community Plan.

Concordia Neighborhood Plan Among the 8 area-wide and 8 sub-area policies of the Concordia Neighborhood Plan, Policy 2: Housing, is directly related to the conditional use proposal. Policy 3, Housing, which states:

Strengthen the residential base of the Concordia Neighborhood. Provide choices in housing which are responsive to the needs of present and future generations of households. Preserve viable existing housing. Support the construction of new housing within the neighborhood which is affordable and expands the diversity of housing opportunities.

The proposal maintains and reinforces Eliot's residential areas as a home to families with children, young adults, and seniors who appreciate a close-in urban setting; ensures that non-household activities in designated residential areas are adapted to reinforce the residential character of these areas; and maintains the clear boundaries that were presented in the Comprehensive Plan between business areas and lower density residential areas within the Eliot Neighborhood. As stated above in the findings for Approval Criterion B, no changes are proposed to the exterior of the existing house as part of this proposal. The site appearance, setbacks, landscaping, and other site features will remain the same as they are today. Because the house will retain its residential character, the proposal is consistent with the Housing Policy of the Eliot Neighborhood Plan. This criterion is met.

## **DEVELOPMENT STANDARDS**

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

## **CONCLUSIONS**

The applicant (also the property owner and the long-term resident of the site) proposes to operate a Type B ASTR facility within the existing house on this site. The ASTR will include rental of four bedrooms on the main and upper floors of the house and will occur up to 95 days per year while the long term residents are away. Staff finds that with conditions of approval, the proposal will maintain the residential appearance and function of the area, maintain physical compatibility, and limit livability impacts on neighbors. Public services are available to serve the proposal and site. The proposal is also consistent with relevant policies of the Albina Community Plan and the Concordia Neighborhood Plan. With

conditions of approval, the proposal meets the applicable approval criteria and therefore must be approved.

### **ADMINISTRATIVE DECISION**

Approval of a Conditional Use to allow a Type B Accessory Short-Term Rental facility within the existing single dwelling with up to a maximum of four bedrooms available for rent for up to 95 days out of the year. Approval is per Exhibit C.1 and is subject to the following conditions:

- A. Since a long-term resident who occupies the dwelling unit at least 270 days each year (per Zoning Code Section 33.207.050.A.1) is always required for ASTR use to occur, short-term rentals of the 4 bedrooms in the house main and upper floors are limited to a maximum of 95 days per calendar year.
- B. No more than 2 ASTR guests per bedroom (regardless of age) are allowed. When all four bedrooms are rented out, they must be rented to a single party of no more than 8 guests.
- C. All advertisements for the ASTR must display prominently in the title of the advertisement the maximum number of bedrooms rented to ASTR guests (four or fewer, pursuant to condition of approval A, above) and the maximum number of ASTR guests allowed per bedroom (2).
- D. The applicant or operator must maintain a guest log per Zoning Code Section 33.207.060. The guest log must include the names and home addresses of guests, guests' license plate numbers if traveling by car, dates of stay, and the room assigned to each guest. The log must be available for inspection by City staff upon request. Confirmation of this data from the authorized rental organization (such as Airbnb or VRBO) must also be provided to City staff upon request.
- E. Commercial meetings, including luncheons, banquets, parties, weddings, meetings, charitable fund raising, commercial or advertising activities, or other gatherings for direct or indirect compensation, are prohibited.
- F. The ASTR facility may not create noise impacts in violation of Title 18 (Noise Control), which prohibits the following:
  - Operating or permitting the use or operation of any device designed for sound production or reproduction in such a manner as to cause a noise disturbance; or
  - Operating or permitting the use or operation of any such device between the hours of 10pm and 7am to be plainly audible within any dwelling unit which is not the source of the sound.
- G. The "House Rules" in Exhibit A-4, must be updated to include the conditions of this approval, and must be posted in a visible location in the rental and posted on any website on which the ASTR is advertised.
- H. At least once each calendar year, the applicant or operator of the ASTR must provide a telephone number and e-mail address for the full-time resident (who must reside on the site at least 270 days each year, per Zoning Code Section 33.207.050.A.1) AND the ASTR operator, to residents of the following neighboring properties:
- I. The "House Rules" in Exhibit A.5 must be edited to state that no smoking is allowed on the property, inside or outside. Smoking by guests is prohibited.
- J. Before the ASTR facility can operate, the applicant must obtain approval of a fee paid inspection from BDS to confirm that the building code, smoke detector, and carbon

monoxide alarm requirements of Zoning Code Section 33.207.050.B.4 are met for each bedroom to be rented to ASTR guests.

- L. To limit single-occupancy vehicle trips and on-street parking impacts, the ASTR operator must provide all ASTR guests with information on transit, ride sharing, and bike sharing services, biking and walking maps, and restaurants and attractions within walking distance.

**Staff Planner: Marguerite Feuersanger**

**Decision rendered by:**  **on November 7, 2022.**

By authority of the Director of the Bureau of Development Services

**Decision mailed: November 9, 2022**

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

**Procedural Information.** The application for this land use review was submitted on March 22, 2022 and was determined to be complete on September 19, 2022.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore, this application was reviewed against the Zoning Code in effect on March 22, 2022.

*ORS 227.178* states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on January 17, 2023.**

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

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

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

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

**Appealing this decision.** This decision may be appealed to the Hearings Officer, and if appealed a hearing will be held. The appeal application form can be accessed at

<https://www.portlandoregon.gov/bds/45477>. Appeals must be received **by 4:30 PM on November 23, 2022**. **The completed appeal application form must be emailed to [LandUseIntake@portlandoregon.gov](mailto:LandUseIntake@portlandoregon.gov) and to the planner listed on the first page of this decision**. If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. **An appeal fee of \$250 will be charged**. Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for Office of Community and Civic Life recognized organizations for the appeal of Type II and IIX decisions on property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

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

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

**Recording the final decision.**

If this Land Use Review is approved the final decision will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded after **November 23, 2022**, by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

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

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

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

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

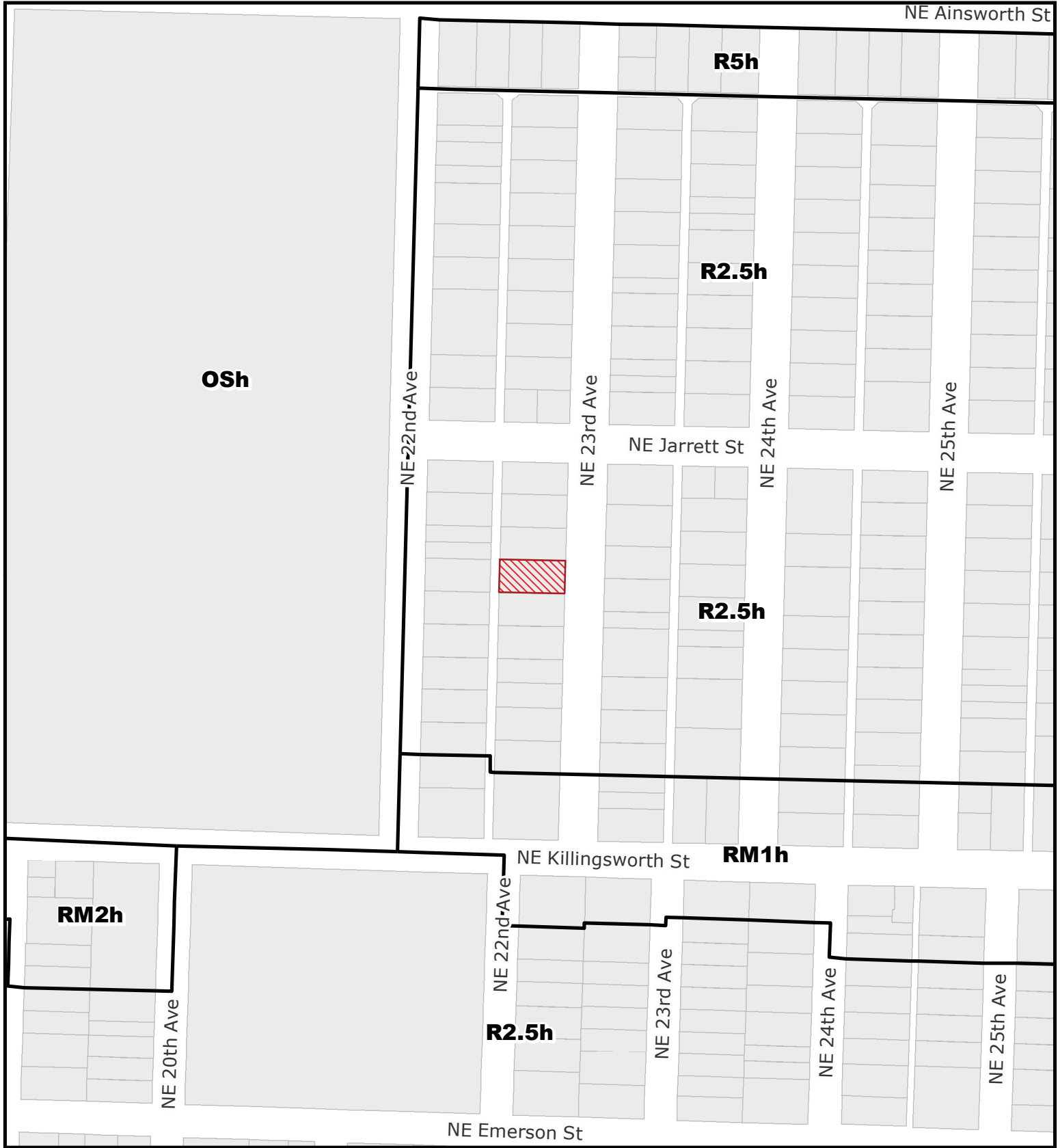
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Original Submittal
  - 2. Updated Submittal, September 12, 2022
  - 3. Transportation Analysis, June 22, 2022
  - 4. Updated Submittal, September 15, 2022
  - 5. Updated Submittal, September 19, 2022
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Front Elevation of Existing House
  - 3. Main Floor Plan of Existing House
  - 4. Upper Floor Plan of Existing House
  - 5. Basement Floor Plan of Existing House
- 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. Site Development Review Section of BDS
  - 6. Residential Life Safety Plan Review of BDS
  - 7. Forestry Division, Bureau of Parks and Recreation
  - 8. Police Bureau
- F. Correspondence:
  - None.
- G. Other:
  - 1. Incomplete application letter to applicant, April 12, 2022

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



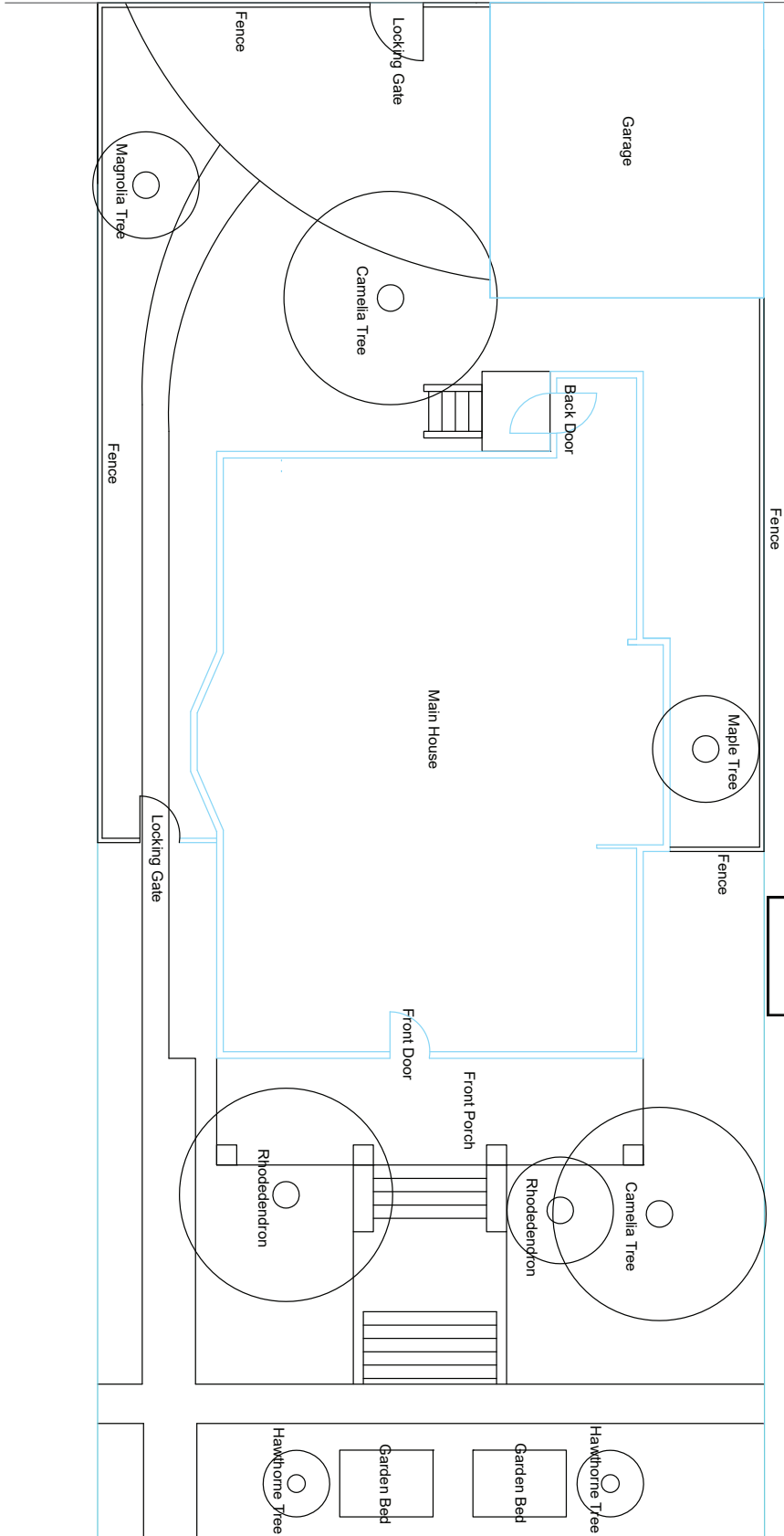
# ZONING



For Zoning Code in effect Post August 1, 2021

File No.	LU 22 - 125091 CU
1/4 Section	2432
Scale	1 inch = 200 feet
State ID	1N1E14DD 7400
Exhibit	B Mar 22, 2022

Alley



\*Approved\*  
 City of Portland  
 Bureau of Development Services  
 Planner M Feuersanger  
 Date November 5, 2022  
 \*This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

SITE PLAN



**Exhibit C-1**  
 Site Plan  
 22-125091 CU

5701 NE 23rd Ave

NE 23rd Ave