



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

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Date: March 13, 2018
To: Interested Person
From: David Besley, 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 17-289796 CU

GENERAL INFORMATION

Applicant: Jessica Giannettino
3947 NE Mallory Ave (Unit B) | Portland, OR 97212

Owner/Applicant Rep: Zachery Strachan
3325 SE 12th Ave | Portland, OR 97202

Site Address: 3947 NE MALLORY AVE

Legal Description: LOT 1, PARTITION PLAT 2016-36
Tax Account No.: R649671410
State ID No.: 1N1E22DD 03601
Quarter Section: 2630

Neighborhood: King, contact Andrew Neerman at andrew.neerman@kingneighborhood.org

Business District: Soul District Business Association, contact at outreach@nnebaportland.org

District Coalition: Northeast Coalition of Neighborhoods, contact Jessica Rojas at 503-388-5030

Zoning: R2.5a Single-Dwelling Residential 2,500 with Alternative Design Density ("a") overlay zone

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

Proposal:

The applicant representative, Zachery Strachan, owns two attached houses, each on its own lot: 3943 NE Mallory Avenue and 3947 NE Mallory Ave. The applicant, Jessica Giannettino, is a full-time renter who resides at 3947 NE Mallory Avenue and requests Conditional Use approval to operate a Type B Accessory Short-Term Rental (ASTR) facility at this address. A Type B ASTR is concurrently proposed on the adjacent lot to the south, located at 3943 NE Mallory Avenue (LU 17-289792 CU). The attached 3-story house on the subject site (with partial 4th story) would have 5 ASTR guest rooms that would be rented out to a maximum of two groups at a time. In addition to the 6-bedrooms in the primary dwelling unit, there is a 2-bedroom Accessory Dwelling Unit (ADU) on the ground floor of the house.* 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 quiet hours between 10pm and 9am.

Type B Accessory Short-Term Rentals are allowed in residential zones when the proposal meets the 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.

*Due to a misunderstanding in the plan set, the Notice of Proposal (Exhibit D-1) noted that the primary dwelling unit contains 5 bedrooms and the ADU contains 3 bedrooms. The correct breakdown is noted above (a 6-bedroom primary dwelling and a 2-bedroom ADU).

Relevant Approval Criteria:

In order 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: Conditional Use Approval Criteria for Institutional and Other Uses in a Residential Zone.

ANALYSIS

Site and Vicinity: The 2,500 square foot site is located on the west side of NE Mallory Avenue, between NE Shaver Street to the north and NE Failing Street to the south. The site is developed with a 2,770 square foot 3-story single-dwelling residence with a partial fourth story. This house is nearly identical to 7 adjacent homes in a row on this street. One on-site parking space is provided via an approximately 28-foot-long driveway, accessed from NE Mallory Avenue. Neighboring properties on NE Mallory Avenue are developed with a mix of one-story to four-story single-dwelling houses. The site is located two blocks west of a mixed-use commercial corridor along NE Martin Luther King Jr Boulevard.

Zoning: The R2.5 zoning designation is one of the City's single-dwelling residential zones, which are intended to preserve land for housing and to promote housing opportunities for individual households. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. Type-A ASTRs (allowing the rental of up to two bedrooms for short-term guests) are allowed outright in the single-dwelling zones. Type-B ASTRs (allowing up to 5 bedrooms for rental to short-term guests) are allowed in the R2.5 zone when the proposal meets the Conditional Use approval criteria and applicable standards.

The site is also within the boundaries of the Alternative Design Density ("a") overlay zone, though the "a" overlay regulations are not applicable to this review. The purpose of the "a" overlay zone is 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.

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 January 25, 2018. The following Bureaus have responded as follows:

- The Portland Bureau of Transportation responded with information concerning how the proposal meets transportation-related approval criteria. Details of this response are included below under "Zoning Code Approval Criteria." (Exhibit E-1);
- The Bureau of Environmental Services (BES) stated that BES has no issues related to the public services approval criterion for stormwater and sanitary service. Sanitary sewer service is available via the combined sewer within NE Mallory Avenue. Additionally, as no changes are proposed to the existing building, no BES stormwater requirements are triggered (Exhibit E-2); and
- The Police Bureau responded with no concerns and noted that they are currently able to serve the existing house at the site and will be able to continue providing services to the proposed Type-B ASTR at this address. They note that there are no proposed alterations to the site that would impact the Police Bureau's ability to provide adequate services (Exhibit E-3).

The following Bureaus have responded with no concerns (Exhibit E-4):

- The Fire Bureau
- The Water Bureau
- The Life Safety Review Section of the Bureau of Development Services (BDS); and

- The Site Development Review Section of BDS.

Neighborhood Review: Two written responses have been received from notified property owners in response to the proposal and a third written response was received from the Boise Neighborhood Association, which was also signed by the chair of the King Neighborhood Association. The first letter (Exhibit F-1), from the neighbor located at 3937 NE Mallory to the south, is written in support of the proposal, noting the helpfulness and responsiveness of the owner/applicant's representative, and that a Type-A ASTR operated by the applicant's representative at 3955 NE Mallory Avenue has had no issues. The second letter (Exhibit F-2), from a neighbor on NE Rodney Avenue to the northwest, is written in opposition to the proposal, for the reasons primarily related to livability. A summary of their thoughts and concerns follows:

- The rooftop deck, balconies, floor-to-ceiling windows, and substantial height of the house will allow guests to look into neighboring yards and windows, which will impact privacy.
- The rooftop decks, in combination with the number of available bedrooms, will attract large groups who may throw parties.
- There are concerns that the property owner will not act responsively on behalf of neighbor concerns if issues arise.
- ASTR projects can have a negative effect on affordable housing.

The third letter (Exhibit F-3), from the Boise and King Neighborhood Associations, is written in opposition to the proposal. A summary of their thoughts and concerns follows:

- ASTRs are becoming a profit industry at the expense of affordable housing stock, and this proposal removes a dwelling from long-term residential use during a city-wide housing shortage.
- This site has been listed on AirBnB as 6-bedrooms.
- "The proposal is for 75% of the bedrooms in the building to be short-term, which does not meet the City's intent for the ASTR to be accessory to the primary long-term occupancy."
- The transient nature of so many short-term renters is a burden to the surrounding properties, and not in character with the single family residential zone. It also increases the on-street parking demand.
- The buildings themselves, part of 8 recently developed attached houses, maximized development in terms of building height and building coverage, and this context should be noted because the impact on the neighborhood will be greater, particularly regarding privacy.
- Additional cars parked in front of the building, which negatively impacts the neighborhood character and pedestrian experience.
- The Bureau of Development Services should follow up code violations with enforcement, and AirBnB should follow City Code.

Staff Response: Many of the Neighborhood Associations' objections appear to be in reaction to the ASTR Type-B regulations themselves, which allow 3 to 5 ASTR bedrooms pending Conditional Use approval, rather than in response to this specific ASTR proposal. In response to the comment that this site has been listed for 6 available ASTR bedrooms, this was done without permits, and was reported as a Code Compliance case, which the applicant is now trying to resolve via this Conditional Use review, with a maximum allowable 5 bedrooms. In response to the claim that 75% of the bedrooms will be used as ASTRs, this percentage is incorrect as a maximum of 5 of the 8 bedrooms are proposed to be used as ASTRs. In response to the claim that the ASTRs do not meet the City's intent to be accessory to the primary long-term occupancy, "Accessory" does not imply that the use with the greater size or percentage of use is the primary use, only that the accessory use cannot operate on its own and independently of the primary use.¹ The ASTR regulations state that a Type B ASTR must be

¹ "Accessory Use" is defined in the Portland Zoning Code as "a use or activity which is a subordinate part of a primary use and which is clearly incidental to a primary use on a site (Section 33.910.030)." Because a Household Living use is proposed as a primary use, ASTRs are allowed in conformance with the use-related regulations.

accessory to a household living use on the site. This means that a resident must occupy the dwelling unit for at least 270 days during each calendar year (33.207.050.A.1). The applicant has provided documentation that a resident, Jessica Giannettino, does reside at this address. In response to the claim that extra cars are parking in front of the house, only one car can be parked in front of the unit driveway, which is reflected in the house rules (Exhibit A-1), which read, "There is one driveway parking space for your use." If more than one car is parked in each driveway, this is a zoning violation and should be reported by calling (503) 823-CODE (2633) or reporting online (<https://www.portlandoregon.gov/bds/42240>).

Relevant concerns are addressed in the Zoning Code Approval Criteria findings below.

ZONING CODE APPROVAL CRITERIA

Conditional Uses

33.815.010 Purpose

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

33.815.105 Institutional and Other Uses in R Zones

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

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

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

Findings: For purposes of this criterion, the "residential area" is considered to be roughly bounded by NE Skidmore Street to the north, NE Fremont Street to the south, N Williams Avenue to the west, and NE Martin Luther King Jr Boulevard to the east (Exhibit A-1, page 3). Within the residentially-zoned portions of this 25-block area are a few uses not in the Household Living category, including four churches and two small schools. There are 11 Type-A ASTRs (allowing the rental of up to two bedrooms for short-term guests) and two other Type-B ASTRs in this area (adjacent to one another and both approved for a maximum of three bedrooms). While Type-A ASTRs are not a Household Living use, they more closely resemble Household Living than churches, schools, and Type-B ASTRs in terms of impact, due to their guest bedroom limitations.

Given that there are 275 residential zoned properties in this defined area, these 19 non-Household Living uses make up less than 7 percent of the residential properties. Along NE Mallory Avenue, between NE Shaver Street and NE Failing Street (the block where the subject property is located), there are four non-Household Living uses, including two Type-A ASTRs and two churches (one of which is oriented toward NE Failing Street). Given that there are 18 residential zoned properties along NE Mallory Avenue (between NE Shaver Street and NE Failing Street), these 4 non-Household Living uses make up approximately only 22 percent

of the residential properties. Otherwise, the non-Household Living uses are generally dispersed throughout the area and a residential appearance and function is maintained within the determined residential area.

A Type-B ASTR is concurrently proposed on the adjacent lot to the south (LU 17-289792 CU at 3943 NE Mallory Avenue), which is also proposed to rent up to 5 bedrooms for short term guests. If all the proposed rooms were rented on both this site and the neighboring site at the same time, a total of 10 bedrooms could be rented out, which could result in 20 or more guests over a relatively small combined site area of 5,000 square feet. Adding two additional Type-B ASTRs along NE Mallory Avenue (between NE Shaver Street and NE Failing Street) as proposed would result in another 11 percent of these properties being used for non-Household Living for a total of 33 percent; 1/3 of this stretch of NE Mallory Avenue would be non-Household Living, despite being residentially zoned. The intensity and scale of these side-by-side ASTRs and the potential volume of guests would negatively impact the residential function of the single dwelling residential area.

Because of the cumulative impact of side-by-side ASTRs in relation to the Household Living uses, BDS Staff initially determined each site could be approved for a maximum of three bedrooms. The owner, however, preferred the option of accepting an approval for a 5-bedroom ASTR for this site, and a denial for the southern property (LU 17-289792 CU at 3943 NE Mallory Avenue). This option results in a significant reduction to rentable bedrooms between these two sites. The number of occupants of the ASTR facility will be similar to the number of people who could reside in the house on a long-term basis, given the size of the house and the number of existing bedrooms.

There are no alterations proposed to the attached house on this site, and the house will retain the appearance of a long-term residence for a household, staff finds the Type B ASTR facility will not noticeably impact the appearance of the residential area.

A condition of approval will ensure that the five ASTR guest rooms be rented to only one group or family at a time, and a maximum of 10 guests at a time, rather than rented individually, to limit the number of vehicle trips coming and going from the property, and thereby limit the intensity of the use.

For these reasons, and with the denial of the adjacent Type-B ASTR to the south, and a condition of approval limiting the number of groups and guests, 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.” There are no City-designated scenic resources on the site or in the surrounding neighborhood. Therefore, this criterion 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

Findings: While the single dwelling unit design is somewhat taller than many houses in the defined area, it meets all development standards of the R2.5 zone, and it is nearly identical in design to the two lots directly to the north and the five lots directly to the south. Additionally, the site’s lot size, building setbacks, and landscaping are comparable to other properties in the surrounding neighborhood and in the R2.5 zone generally. In any event, the proposed ASTR facility will operate inside the existing house, and no physical changes to the house or to the landscaping on the site are proposed with this application. This criterion is met.

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 applicant is not proposing any physical changes to the house or lot to accommodate the ASTR facility. Existing development on the site meets the setbacks, height, building coverage, and tree requirements of the applicable codes. Therefore, the proposed Conditional Use will not create any differences in appearance or scale between the subject property and neighboring properties that require mitigation. This criterion is not applicable.

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: Parties, work retreats, and large gatherings (in excess of 10 people) are not permitted per the proposed “house rules” (Exhibit C of Exhibit A-1), which also require quiet hours between 10pm and 9 am. Since use of the rooftop deck and balcony areas has the potential for significant noise and late-night impacts to neighbors, a condition of approval will require that guests do not access the rooftop deck and balcony areas during the 10pm to 9am quiet hours, and that any visitors of the short-term rental guests (*i.e.* visitors not staying on the property) do not access the rooftop deck or balcony areas at any time. By preventing late-night and early-morning use of these areas by short-term rental guests, and by preventing short-term rental guests from holding parties or other gatherings, this condition of approval will limit negative impacts attributable to the ASTR facility. Another condition of approval will require the applicant or operator of the ASTR to annually provide contact information to the Neighborhood Association and abutting neighbors and to neighbors across the street, so that any nuisance issues that may arise can be dealt with quickly. With these conditions of approval, no significant adverse impacts related to noise or late-night operations are anticipated.

No physical changes such as new exterior lighting are proposed, and the proposed “house rules” (Exhibit C of Exhibit A-1) include instructions for dealing with guests’ garbage that will help prevent litter. No aspect of the ASTR operation is likely to produce odors that are different from a standard residential use, or that would adversely impact neighbors.

With conditions of approval that quiet hours between 10pm and 9am are continually implemented and enforced, that use of the rooftop deck and balcony areas is limited as discussed above, and that contact information is provided to neighbors, staff finds this criterion is met.

2. Privacy and safety issues.

Findings: The back yard of the subject property is enclosed by a 5.5-foot tall wooden fence, promoting privacy for abutting neighbors if short-term rental guests use the back yard. As noted above, since use of the rooftop deck and balcony areas have the potential for significant privacy impacts to neighbors, a condition of approval will require that guests do not access these areas during the 10pm to 9am quiet hours, and that any visitors of the short-term rental guests (*i.e.* visitors not staying on the property) do not access these areas at any time. By preventing late-night and early-morning use of the rooftop deck and balcony areas by short-term rental guests, and by preventing short-term rental guests from holding parties or other gatherings (on the rooftop deck or elsewhere), this condition of approval will limit negative impacts attributable to the ASTR facility.

Additionally, the rooftop decks are located a minimum of 5 feet from side lot lines, and 10 feet from the rear lot line. These setbacks meet (or in the case of the rear setback, exceed) the minimums required by the R2.5 zone. Their use by ASTR guests should have no greater impact on privacy for adjacent neighbors than if used by residents of this 6-bedroom house.

No adverse safety impacts are anticipated. The Police Bureau noted that they are currently able to serve the existing house at the site and will be able to continue providing services to the proposed Type-B ASTR at this address (Exhibit E-3). The

Fire Bureau has reviewed the proposal and responded that they have no concerns with their ability to serve the ASTR, as they recently reviewed and signed off on a building permit for this house which was constructed in 2017 (Building Permit 16-137381 RS) and no changes are proposed to the building (Exhibit E-4).

With condition of approval that use of the rooftop deck and balcony areas are limited as discussed above, staff finds this criterion is met.

D. Public services.

1. The proposal is supportive of the street designations of the Transportation Element of the Comprehensive Plan;
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 (PBOT) submitted the following response (Exhibit E-1):

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

Proposed Development

The applicant proposes an Accessory Short-Term Rental (ASTR) facility, to include five rental rooms to be rented to no more than two parties at one time. [BDS Note: Through a condition of approval, this will further be limited to one group.] The ASTR is to be located in a single-family attached dwelling with one Accessory Dwelling Unit (ADU) on the subject parcel. No outside employees, food or beverage service, or commercial events are proposed. Proposed house rules would require quiet hours between 10pm and 9am.

Conditional Use Approval Criteria

The transportation related approval criteria related to the proposed Conditional Use that must be addressed are found in Code Section 33.815.105.D.1 and D.2, and are stated as follows:

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

At this location, the City's Transportation System Plan (TSP) classifies NE Mallory as a Local Service Street for all modes. The TSP states that, "Local Service streets provide local circulation for traffic, pedestrians and bicyclists" and that "Local Service Traffic Streets are intended to distribute local traffic and provide access to local residences or commercial uses." The proposed accessory short-term rental (ASTR) is supportive of the designations of the adjacent street. The development of the site with an ASTR will not impact the distribution of local traffic throughout the area. The proposed use will not be inconsistent with or negatively impact the adjacent residential street network or necessitate changes in the street designations.

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

Street Capacity/Level of Service

To address the transportation evaluation factors, the applicant submitted a Transportation Impact Analysis prepared by Lancaster Engineering dated February

12, 2018. The TIS used the Motel trip category within Trip Generation, 9th Edition, published by the Institute of Transportation Engineers (ITS), to estimate the trips generated by the proposed use. The applicant proposes an Accessory Short Term Rental (ASTR) facility, to include five rental rooms to be rented to no more than two parties at one time. The ASTR will be unlikely to house single occupants generating work trips at peak hours. Services provided to operate the ASTR-- such as landscaping, regular maintenance, or cleaning-- will be consistent with a typical single-family home.

The TIS states “The proposed conditional use of both homes will generate four additional trips during both the morning and evening peak hours. The simultaneous short-term rental of both homes will have a negligible impact on operation of any of the study area intersections, which will continue to operate acceptably either with or without the addition of site traffic... the study roadways and intersections meet the City of Portland’s operational standards and are capable of safely supporting the existing uses as well as the proposed use of the site.”

Access to Arterials

The site is within close proximity to arterials and the greater transportation system. Martin Luther King Jr Blvd (Highway 99E) is approximately 700 feet from the proposed development. The entry ramp to I-5 is approximately 2.7 miles from the proposed development.

Connectivity

The proposed development is in an area with established block patterns and development. PBOT has no concerns relative to connectivity and this proposed Conditional Use request.

Transit Availability

The proposed development is within close proximity to transit. Stops for Trimet buses #6, #44, #4, #24, #8 and #72 are within less than a mile of the proposed development. Improved sidewalk corridors that exceed the city standard provide direct pedestrian access from the site to area transit facilities.

On-Street Parking Impacts

Based on the site plans provided, one legal parking spot is provided on the subject parcel. The TIS provided an analysis of existing on-street parking and compared that analysis to the expected parking demand of the proposed use. The estimated parking demand was provided using demand rates from the Institute of Transportation Engineer’s Parking Generation. It estimated the parking demand to be four spaces per ASTR use. However, given the proposed use-- in which five rooms are provided together for rent as one unit-- the motel parking generation rate that was used to calculate the average number of parked vehicles is likely to be an overestimate of the actual parking demand. PBOT considers 80% approaching full (heavily parked) and 85% full. The TIS estimated the occupancy level of parking in the site vicinity to be 69.5% and therefore well below levels that PBOT considers heavily parked. The TIS states “Based on the observations and analysis, the available on-street parking in the site vicinity is adequate to safely support the proposed use in addition to the existing uses in the site vicinity.” PBOT concurs with this assessment.

Access Restrictions

Vehicle access to the existing house will continue to be provided via a driveway/curb-cut on NE Mallory. PBOT has no access restriction concerns.

Neighborhood Impacts

As stated previously, the increase in vehicle trips from the proposed development is not expected to correspond with peak hours, and not expected to negatively impact the operations of area intersections. The proposed use, in an existing dwelling, keeps with the residential character of the neighborhood. The TIS states “The proposed use will have negligible impacts felt by the neighborhood and will not impact the circulation of pedestrians, bicycles, or transit.” The Transportation

Demand Plan addressed below will encourage guests to use modes of transportation other than cars.

Impacts on Pedestrian, Bicycle, and Transit Circulation

The site is located on street that is developed with 12-ft sidewalk corridors on both sides. The subject frontage was recently reconstructed in relation to construction of the subject attached dwelling. The TIS asserts that dedicated bicycle facilities are provided on N. Williams and N. Vancouver that can be accessed from the proposed development via Local Service Streets. There is no reason to believe that the proposed ASTR will result in any negative impacts to pedestrian, bicycle, or transit circulation in the area.

Safety for All Modes

The TIS provides information about safety for all modes with which PBOT concurs. Staff identified no outstanding safety issues in the vicinity, and no adverse impacts are anticipated as the result of the proposed development. No mitigation measures are needed or recommended.

Adequate Transportation Demand Management Strategies

Transportation Demand Management (TDM) strategies are actions designed to change travel behavior in order to reduce the use of single-occupant vehicles to the site and, in turn, improve the performance of transportation facilities. To reduce the use of single-occupant vehicles, the applicant provided a Transportation Demand Management Plan, and proposed to provide:

- Schedules and maps describing the available transit within the site vicinity.
- Information regarding bicycle and carshare opportunities.
- Information and maps of local destinations and amenities in the area.

The applicant is encouraged to provide guests with additional active transportation maps, bus schedules and maps, guidebooks, and local restaurant menus to encourage guests to explore the city on foot and by bicycle. The applicant is also encouraged to provide guests information about transit access to the airport and train stations, and airport shuttles that depart from downtown Portland. As a condition of Conditional Use Permit approval, the applicant shall maintain a current and active Transportation Demand Management Plan, as proposed for this land use review (pages 8-9 of Exhibit C included in Exhibit A-1).

PBOT acknowledges and supports the applicant's efforts to minimize single-occupancy vehicle trips to the site. In summary, PBOT staff finds that the transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Accordingly, PBOT has no objections to the proposed ASTR with five guest rooms.

Title 17 Requirements

Transportation System Development Charges (Chapter 17.15) may be assessed for this development. The applicant is advised to leave a voicemail message to include the case file number, at (503) 823-7002, Option 2. Additional information about PBOT SDCs can be located at this link:

<https://www.portlandoregon.gov/transportation/46210>

Driveways and Curb Cuts (Section 17.28)

Curb cuts and driveway construction must meet the requirements in Title 17. The Title 17 driveway requirements will be enforced during the review of Building Permits.

Street Improvements (Section 17.88.010)

No ROW improvements or property dedication are required in relation to the proposed development.

Street Trees: The applicant is advised to contact Urban Forestry, City of Portland, at 503-823-8733 or trees@portlandoregon.gov regarding the requirements related to trees adjacent to the subject property. More information can be found at this link:

<https://www.portlandoregon.gov/trees/article/560288>

Recommendation

PBOT has no objection to the proposed Conditional Use, subject to the following:

1. The applicant shall maintain a current and active Transportation Demand Management Plan, as proposed for this land use review.

Based on PBOT's analysis, and with a condition of approval limiting rental of the home to single-tenancy, these criteria are met.

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

Findings: The Bureau of Environmental Services notes that sanitary sewer service is available via the combined sewer within NE Mallory Avenue. Additionally, as no changes are proposed to the existing building, no BES stormwater requirements are triggered (Exhibit E-2). The Police Bureau noted that they are currently able to serve the existing house at the site and will be able to continue providing services to the proposed Type-B ASTR at this address (Exhibit E-3). The Water Bureau and the Fire Bureau reviewed the proposal and responded that they have no concerns with their abilities to serve the proposed ASTR (Exhibit E-4), as they recently reviewed and signed off on a building permit for this house which was constructed in 2017 and no changes are proposed to the building.

For these reasons, 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 King Neighborhood Plan and Albina Neighborhood Plan. The King Neighborhood Plan notes objectives for economic development (Policy IV, Page 16). The first is to support the formation of new businesses and investments within the King Neighborhood which are linked to the Convention Center and Lloyd Center area development. As a 5-bedroom ASTR in close proximity to the Convention Center and Lloyd Center, it is likely to be booked by groups attending conventions and supporting area businesses within the Convention Center and Lloyd Center area, as well as the broader King Neighborhood. The ASTR itself would be the formation of a new business and investment within the King Neighborhood linked to Convention Center and Lloyd Center area development, given that it will likely be booked by groups attending conventions.

The second objective is to provide opportunities for home based businesses. The owner hopes to run the ASTR from their home as a business, which would be accessory to a Household Living use. The fourth economic objective is to support the growth of existing businesses within the King Neighborhood. Short term guests are likely to make extensive use of local businesses for shopping, dining, and other goods and services, thus directly supporting the growth of existing local businesses.

The Albina Neighborhood Plan includes Business Growth and Development objectives including encouraging the creation of economic activities which broaden and diversify the commercial base of the Albina Community; promoting local entrepreneurship and business expansion; and strengthening the markets for local goods and services by encouraging business growth, tourism development, residential rehabilitation, and new housing construction (Policy III, Objectives 1, 7, and 14; page 39-40). The newly build subject house, operating as an ASTR, will broaden and diversify the commercial base, promote local entrepreneurship, and strengthen the markets for local goods and services by providing lodging for tourists.

For these reasons, 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.

Given residential development on the property (via Building Permit 16-137381 RS) was inspected as recently as last fall, there is no need to conduct a separate fee paid inspection for any ASTR established here to confirm that the building code, smoke detector, and carbon monoxide alarm requirements of Zoning Code Section 33.207.050.B.4 are met.

CONCLUSIONS

The applicant proposes to operate a Type B ASTR facility with five guest rooms. A Type B ASTR is concurrently proposed on the adjacent lot to the south (LU 17-289792 CU at 3943 NE Mallory Avenue), which is also proposed to have 5 bedrooms. The intensity and scale of these side-by-side ASTRs and the subsequent volume of guests would negatively impact the residential function of this single dwelling residential area. The applicant opted to accept an approval for a 5-bedroom ASTR for this site and a denial for the southern site. This option results in a significant reduction to rentable bedrooms between these two sites and on this blockfront. No exterior alterations to the house or property are proposed. No non-resident employees are proposed, and no parties or commercial meetings will be held. With conditions of approval, and the denial of the adjacent ASTR proposal, the proposed Type B ASTR facility meets all of the applicable approval criteria and therefore should be approved.

ADMINISTRATIVE DECISION

Approval of a Conditional Use to allow a Type B ASTR facility within the existing single-dwelling, attached house on this site, with a maximum of five guest rooms available for rent at a time, as shown on the approved plans, Exhibits C.1 and C.2, signed and dated March 5, 2018, and subject to the following conditions:

- A. The five or fewer bedrooms used for short-term rental must be rented together as one unit to a single group or family, rather than rented separately. The maximum number of total guests per group or family shall be limited to 10, and the house rules shall be amended to reflect this.
- B. Prior to operation of the five-bedroom ASTR facility, and at least once annually thereafter as long as the ASTR use is in operation, the applicant must provide the name and contact phone number for the resident at the site, or the operator if the operator is not the resident, to the recognized Neighborhood Association whose boundaries include the site (currently the King Neighborhood Association), as well as to all residents and owners of property abutting or across the street from the site. The applicant shall keep a hard copy of these initial and ongoing notifications, including the list of who was notified and when, for inspection by City of Portland staff upon request.
- C. Whenever short-term rental use occurs on the site, quiet hours between 10pm on and 9am must be continually implemented and enforced. ASTR guests must not access the rooftop deck or balcony areas during these quiet hours, and any visitors of the short-term rental guests (*i.e.* visitors not staying on the property) may not access the rooftop deck or balcony areas at any time. The requirements of this condition shall be included in the "house rules" (Exhibit C of Exhibit A-1), with a copy of the "house rules" provided to all groups prior to their arrival, and posted on any website advertising the ASTR.
- D. The applicant shall maintain a current and active Transportation Demand Management Plan, as described on pages 8 and 9 of Exhibit C included in Exhibit A-1.

Staff Planner: David Besley



Decision rendered by: _____ **on March 5, 2018.**

By authority of the Director of the Bureau of Development Services

Decision mailed: March 13, 2018

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 December 29, 2017, and was determined to be complete on January 23, 2018.

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 December 29, 2017.

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: May 23, 2018.**

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 March 27, 2018** 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 will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded after **March 27, 2018** 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 submittal
 1. Applicant's Statement
 2. Applicant ID
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
 2. Floor Plans (attached)
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Bureau of Transportation Engineering and Development Review
 2. Bureau of Environmental Services
 3. The Police Bureau
 4. Bureaus responding with no concerns

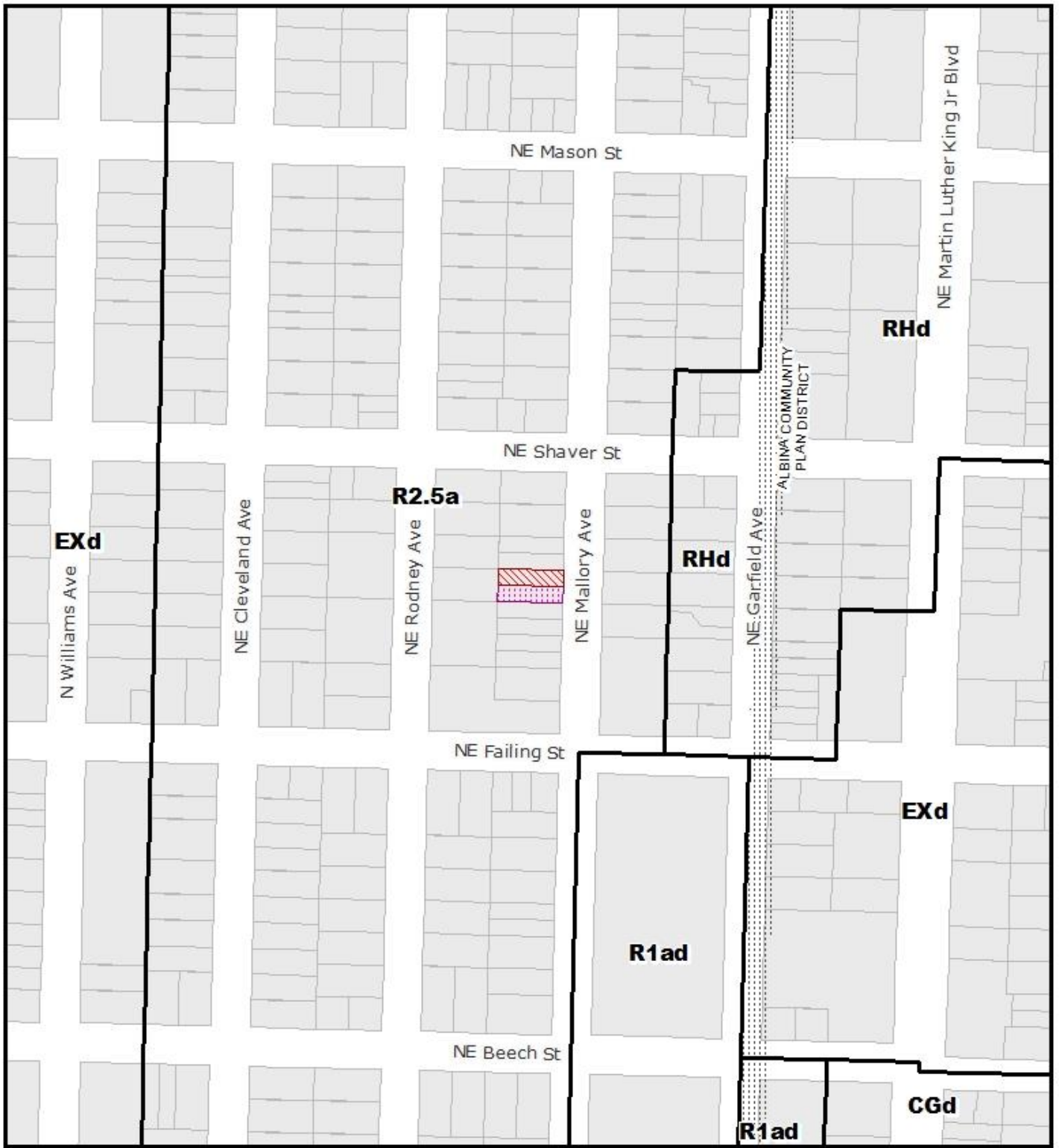
F. Correspondence:

1. Jonah Luzier, February 13, 2018, letter in support of proposal
2. Kate Lyman and Kalin Schmoldt, February 13, 2018, letter in opposition to proposal
3. David de la Rocha (Boise Neighborhood Association) and David Kennedy (King Neighborhood Association), February 15, 2018, letter in opposition to proposal

G. Other:

1. Original LU Application and Receipt
2. Incompleteness determination letter, dated January 11, 2018

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).



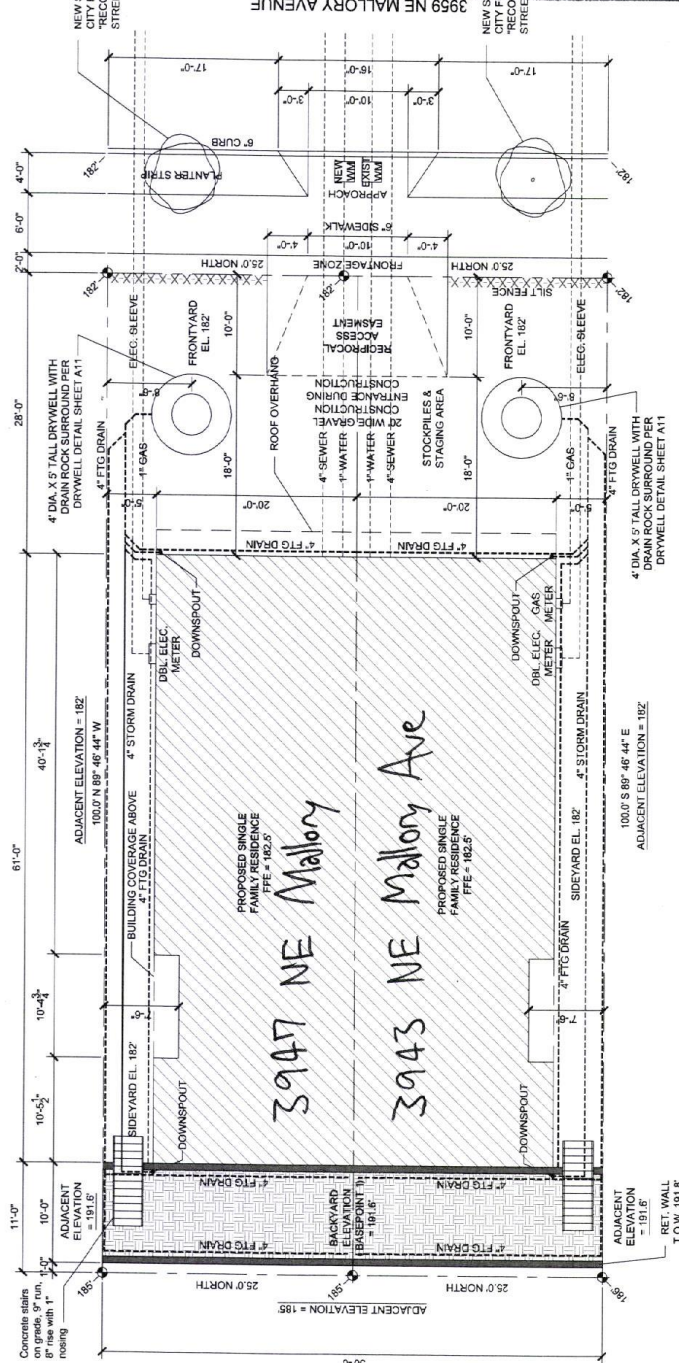
ZONING  NORTH

-  Site
-  Also Owned Parcels

File No.	LU 17-289796 CU
1/4 Section	2630
Scale	1 inch = 200 feet
State ID	1N1E22DD 3601
Exhibit	B Jan 03, 2018

Planner David Besley Date 3.5.18
* This approval applies only to reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

NORTH



SITE PLAN / EROSION CONTROL PLAN
1/8" = 1'-0"

SEE LANDSCAPE PLAN THIS SHEET FOR ADDITIONAL LANDSCAPING AND HARDSCAPING DETAILS

REQUIRED INFORMATION

LOT AREA 2,500 S.F.
IMPERVIOUS AREA 1,280 S.F. ROOF & ROOF DECK AREA INCLUDING EAVES
282 S.F. VEHICLE AREA (WITH OPTIONAL PERVIOUS GRASS DRIVEWAY SYSTEM
1,482 S.F. TOTAL

LANDSCAPING REQUIREMENTS

MIN. REQUIRED GROUND COVER LANDSCAPE AREA PER SIDE 25' WIDE X 28' DEEP YARD = 700 S.F.
60% REQUIRED LANDSCAPE AREA THAT CAN BE USED FOR PEDESTRIANS, PATIOS, ETC. = 140 S.F.
MIN. REQUIRED LANDSCAPING IS 420 S.F. MINUS 140 S.F. = 280 S.F.
REQUIRED FOUNDATION SHRUBS PER SIDE 20' WIDE FOUNDATION LINE DIVIDED BY (1) 3 GAL. SHRUB PER 3 LF OF FOUNDATION = 7 SHRUBS

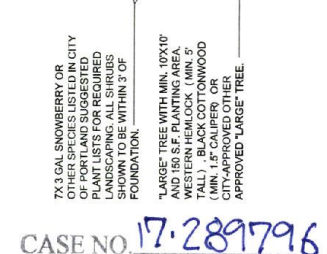
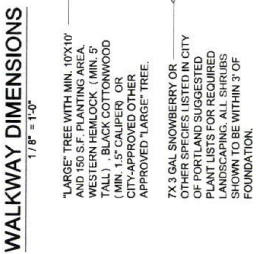
EROSION CONTROL NOTES

1. BACK AND SIDE PROPERTY LINES WILL HAVE RETAINING WALLS CONSTRUCTED DURING THE EXCAVATION AND FOUNDATION STAGE AND MEASURES WILL NOT REQUIRE SILT FENCING OR OTHER EROSION CONTROL MEASURES.
2. FRONT PROPERTY LINE WILL HAVE SILT FENCING ON EACH SIDE OF CONSTRUCTION ENTRANCE AS SHOWN ON PLAN.
3. NO OTHER EROSION CONTROL MEASURES ARE ANTICIPATED TO BE NECESSARY.
4. TEMPORARY CHAIN LINK CONSTRUCTION FENCE TO BE MAINTAINED AT FRONT LOT LINE DURING CONSTRUCTION.

ON-SITE TREE DENSITY REQUIREMENTS

TREE REQUIREMENTS PER SIDE
REQUIRED TREE AREA (OPTION A) = 2,500 S.F. X 40% = 1,000 S.F.
ONE LARGE TREE REQUIRED PER 1,000 S.F. (TABLE F 60-2)
MIN. 10X10' REQUIRED PLANTING AREA PER TREE (TABLE 50-2)

SUMMARY:
(1) LARGE TREE WITH 10X10' PLANTING AREA PER SIDE REQUIRED AND PROVIDED



CASE NO. 17-289796
EXHIBIT C.1

Owner: 3959 NE Mallory, LLC <small>(C) Brooklyn's Best Design Company, LLC. Protected by Copyright and Architectural Copyright. All rights reserved.</small>	3945 NE Mallory Avenue Portland, OR 97212	SITE PLANS	A2
		REV: 1	DATE: 5-18-16

LU 17-289796

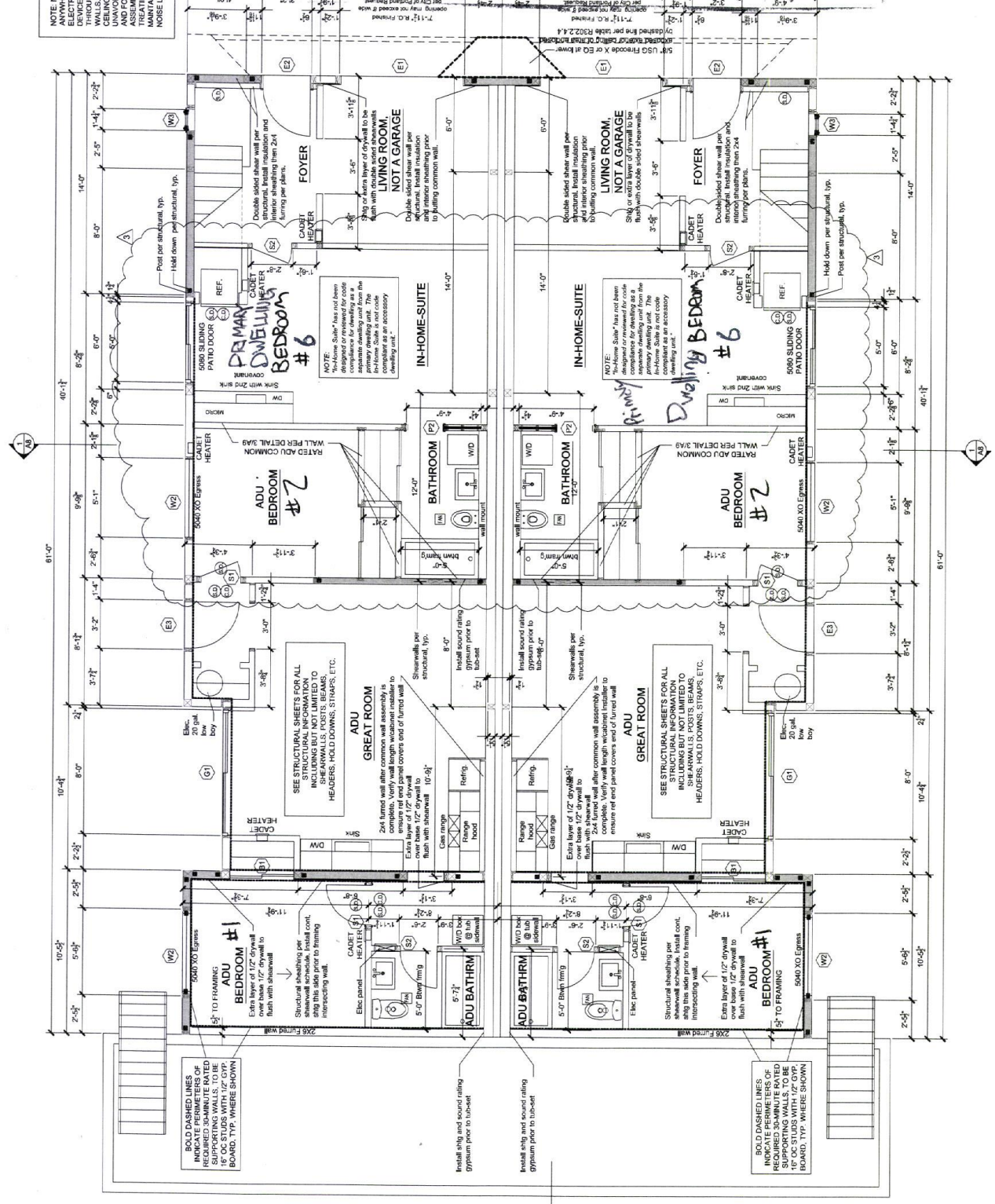
NOTE: NO CEILING PENETRATIONS TO BE MADE WITHOUT THE APPROVAL OF THE ELECTRICAL MECHANICAL AND OTHER TRADES. PENETRATIONS TO BE MADE THROUGH NON-SOUND-RATED WALLS, CEILING OR WALL PENETRATIONS ARE UNACCEPTABLE. VERIFY WITH OWNER ASSEMBLY MANUFACTURER'S INSTRUCTIONS FOR TREATING PENETRATIONS TO MINIMIZE AIR LEAKAGE & CONDENSATION PENETRATIONS TO MINIMIZE NOISE LEAKAGE.

Approved

City of Portland - Bureau of Development Services

Planner David Besley Date 3.5.18

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



A5

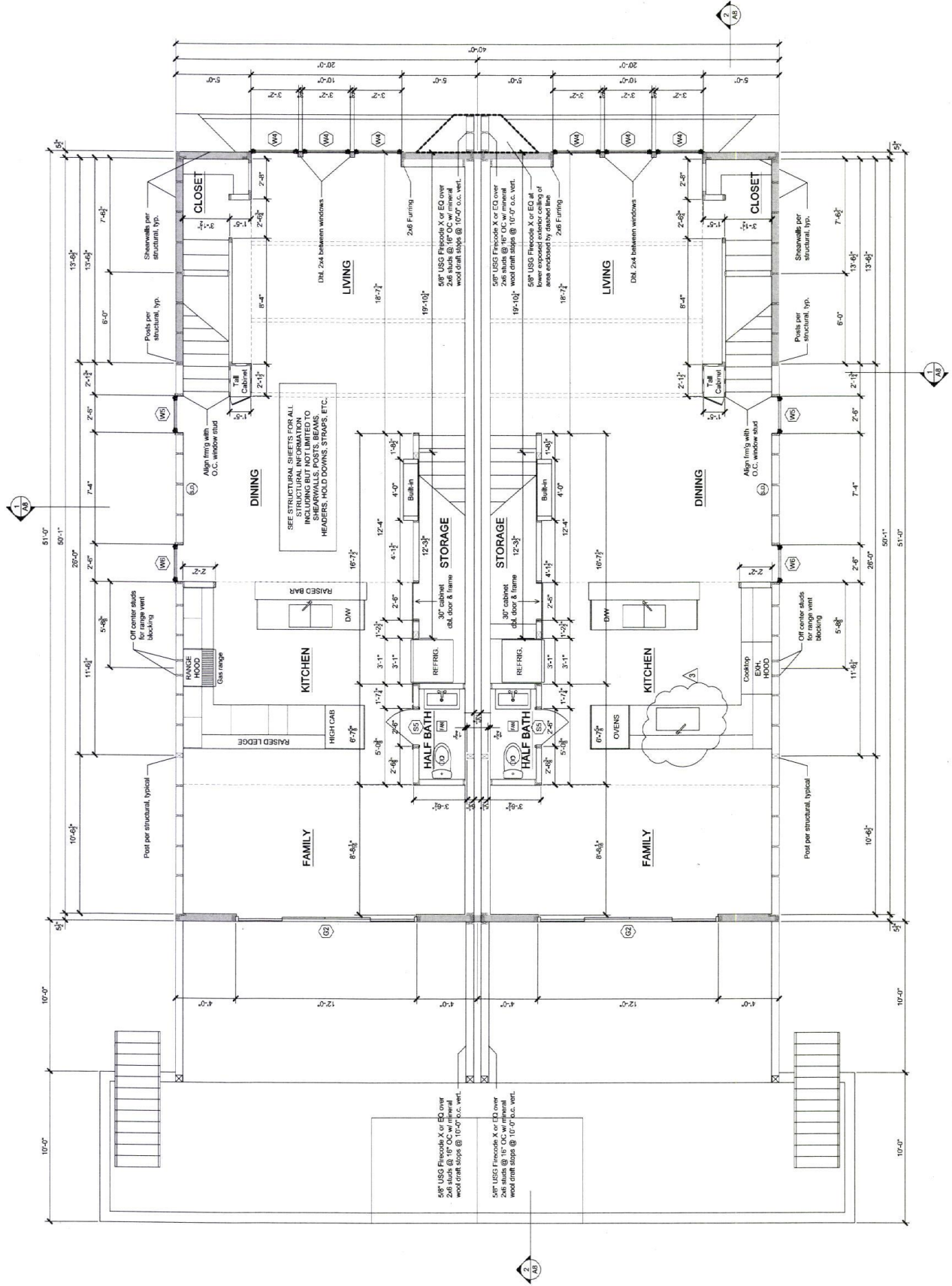
1st FLOOR PLAN

3945 NE Mallory Avenue
Portland, OR 97212

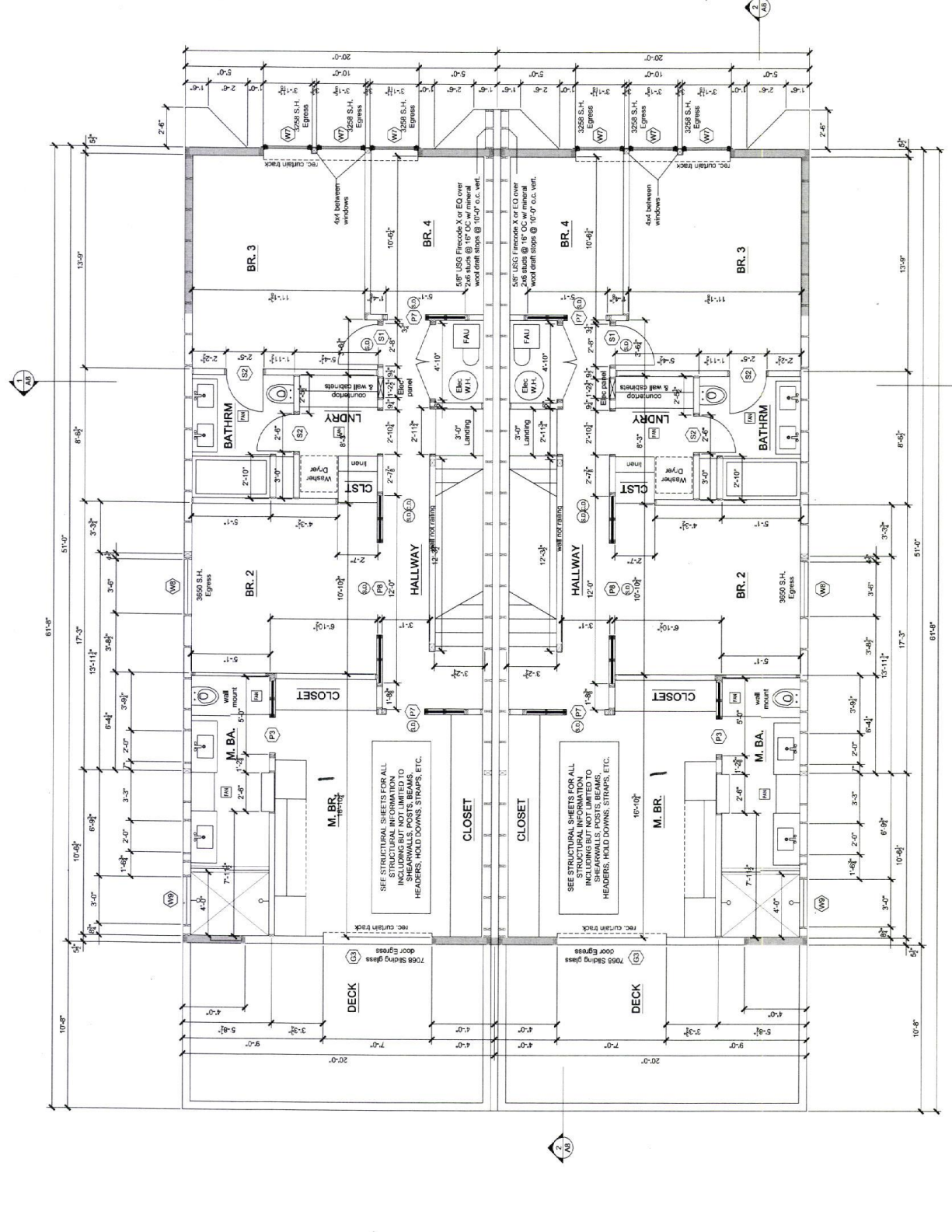
Owner: 3959 NE Mallory, LLC
(C) Brooklyn's Best Design Company, LLC. Protected by Copyright and Architectural Copyright. All rights reserved.

REV: 3 - Changed ADU to 2 br & adjusted w/c bar layout
DATE: 3-1-18

CASE NO. 17-289796 w
EXHIBIT C.2 1/4



C-2 2/4



3rd FLOOR PLAN

REV. 2 - Non-structural revisions to 3rd floor interior layout. DATE: 11-27-16

Owner: 3945 NE Mallory Avenue
Portland, OR 97212

3945 NE Mallory Avenue
Portland, OR 97212
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C-2 3/4

