



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

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[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** March 15, 2013  
**To:** Interested Person  
**From:** Shawn Burgett, Land Use Services  
503-823-7618 / [shawn.burgett@portlandoregon.gov](mailto:shawn.burgett@portlandoregon.gov)

## **NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

The Bureau of Development Services has approved a proposal in your neighborhood. The 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 13-107629 AD**

#### **GENERAL INFORMATION**

**Applicant:** Michael A Schwarzenberger  
3257 SE Sherman St / Portland, OR 97214

**Site Address:** 3257 SE SHERMAN ST

**Legal Description:** BLOCK 1 TL 18200, VAN HOOMISSEN  
**Tax Account No.:** R854900100  
**State ID No.:** 1S1E01CD 18200  
**Quarter Section:** 3233  
**Neighborhood:** Richmond, contact Douglas Klotz at 503-233-9161.  
**Business District:** Division-Clinton Business Assoc, Darice Robinson at 503-233-1888.  
**District Coalition:** Southeast Uplift, contact Bob Kellett at 503-232-0010.  
**Zoning:** R5 (Single Family Residential 5,000 sq. ft.)  
**Case Type:** AD (Adjustment)  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

#### **Proposal:**

The owner has converted the existing garage on this site into living area. The conversion of the garage into living area moves the parking pad on the site out of conformance with the Zoning Code's setback standards. Zoning Code section 33.266.120.C.1.a states that required parking spaces are not allowed within a required front setback. In this case the front setback required is 10 ft. Also, Zoning Code section 33.266.120.D.1 states that a parking space must be at least 9 feet wide by 18 feet in depth.

The Zoning Code requires a garage with an associated driveway to be set back a minimum of 18 ft. from a front property line in this zone. The garage was located 16'10" from the front property line and was considered a pre-existing non-conforming situation since it was less than 18 ft. in depth. However, if a garage is not located at the end of a driveway, the Zoning Code requires the parking pad to be located entirely outside of the required 10 ft. front setback. This standard requires driveway parking pads not leading to garages in the R5 zone to be at least 28 ft. in depth.

In this case, the applicant's driveway is approximately 16'10" in depth between the garage that has been converted to living area and the front property line. Since 28 feet is required, the applicant has requested an adjustment to this standard.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are located in Section 33.805.040 of the Zoning Code.

## ANALYSIS

**Site and Vicinity:** The area is made up of predominantly single family homes built in a variety of eras. The home on the subject site and the home to the north were both built in 1941. The homes located to the east and south (across SE Sherman St.) were all built in 1914. Many of the homes located along SE Sherman Street at this location have tuck under garages with sloped driveways providing access to the garage doors.

**Zoning:** The R5 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

**Land Use History:** City records indicate that VZ 306-78 was approved in 1978 to reduce the minimum lot dimensions required at the time for the subject site and the abutting lot to the north.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **February 12, 2013**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Bureau of Parks-Forestry Division
- Life Safety

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on February 12, 2013. Two written responses have been received from notified property owners in response to the proposal; both letters expressed support for the proposed adjustment request (exhibits F-1 and F-2).

## ZONING CODE APPROVAL CRITERIA

### 33.805.010 Purpose (Adjustments)

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue providing certainty and rapid processing for land use applications.

### 33.805.040 Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. below have been met.

- A.** Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

**Findings:** The purpose of the standards for parking and loading standards related to the development of houses and duplexes is explained under Section 33.266.120.a as follows:

*The size and placement of vehicle parking areas are regulated in order to enhance the appearance of neighborhoods.*

The proposed adjustment is for existing development. The applicant has converted the existing garage into living area. The conversion of the garage into living area moves the parking pad on the site out of conformance with the Zoning Code's setback standards. A parking pad must be located beyond the 10 foot front setback and it must be at least 18 feet long. Therefore the driveway and parking pad must be a minimum of 28 feet. In this case, it is 16 feet 10 inches.

Parking will be maintained in-between the converted space and the front property line. It should also be noted that there is approximately 1 foot between the sidewalk along the public street and the front property line, which then equals 17'10" between the northern edge of the sidewalk and the end of the driveway.

Converting the garage into living space allowed french doors to replace the garage door. A better connection between the residence and the sidewalk results from this change. In addition, the front yard of the home will become more open and visually pleasing.

For the reasons stated above, this criterion is met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

**Findings:** The proposed adjustment will not detract from the livability or appearance of the area. There is adequate room to allow the existing driveway to continue to function as a parking space, which is consistent with the character in the area. This criterion is met.

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

**Findings:** Not applicable, only one adjustment has been requested.

- D.** City-designated scenic resources and historic resources are preserved; and

**Findings:** City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. Therefore, this criterion is not applicable.

- E.** Any impacts resulting from the adjustment are mitigated to the extent practical; and

**Findings:** As found under criterion A and B, the requested Adjustment will not create impacts and therefore does not require mitigation to lessen their effect. However, because the driveway is flanked by retaining walls, the appearance of a car parked in the driveway will be mitigated. This approval criterion is satisfied.

- F.** If in an environmental zone, the proposal has as few significant detrimental

environmental impacts on the resource and resource values as is practicable;

**Findings:** The site is not within an environmental zone. This criterion is not applicable.

## 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

All of the approval criteria have been met for the requested Adjustment. The proposed adjustment will not detract from the livability or appearance of the neighborhood because residential use of the garage will not reduce the amount of on-site parking provided. For these reasons, the Adjustment should be approved.

## ADMINISTRATIVE DECISION

In order to allow conversion of the existing garage space to living space, approval of an Adjustment to 33.266.120.C.1.a to allow the 16' 10" long parking pad to be partially located within the 10 foot front setback in substantial conformance with the approved site plan Exhibits C.1 and C.2, signed and dated March 12, 2013 subject to the following conditions:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the setback approved by this land use review as indicated in Exhibits C.1 and C.2. The sheets on which this information appears must be labeled, "Proposal as approved in Case File # LU 13-107629 AD."

**Staff Planner: Shawn Burgett**

**Decision rendered by:**  **on March 12, 2013**

By authority of the Director of the Bureau of Development Services

**Decision mailed: March 15, 2013**

**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 January 22, 2013, and was determined to be complete on **February 6, 2013**.

*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 January 22, 2013.

*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.

**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 Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on March 29, 2013** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. 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](http://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 Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

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

**Recording the final decision.**

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed,* The final decision may be recorded on or after **April 1, 2013**.
- A building or zoning permit will be issued only after the final decision is recorded.

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

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

For further information on recording, please call the County Recorder at 503-988-3034  
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

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

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

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

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

#### **EXHIBITS**

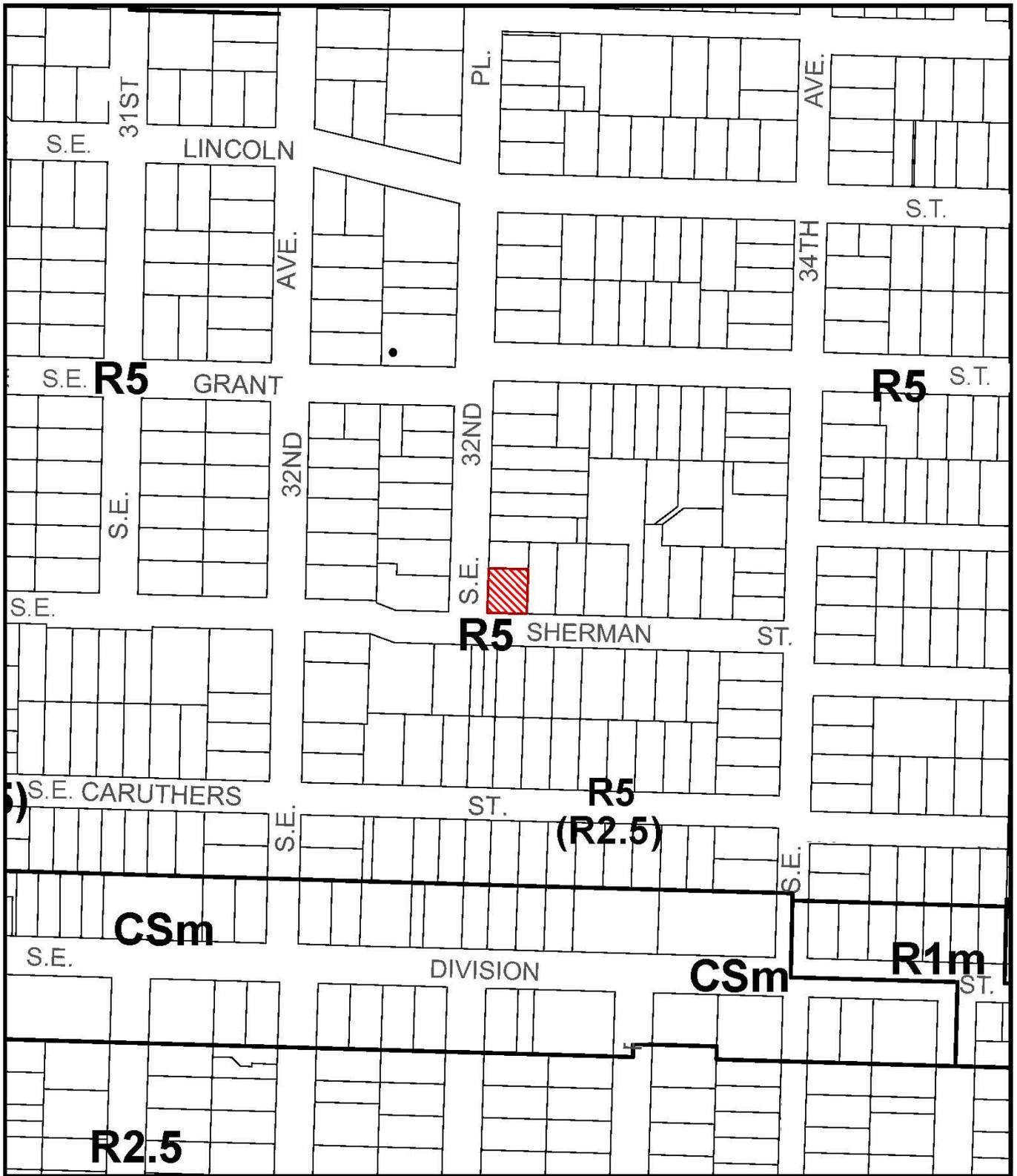
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Applicants Narrative
  - 2. Photos of site
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Elevation (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Bureau of Parks, Forestry Division
  - 7. Life Safety
- F. Correspondence:
  - 1. Al Wasser
  - 2. Tom Hard & Mary Lane Stevens

G. Other:

1. Original LU Application
2. Site History Research

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



# ZONING



Site



Historic Landmark



File No. LU 13-107629 AD  
 1/4 Section 3233  
 Scale 1 inch = 200 feet  
 State\_Id 1S1E01CD 18200  
 Exhibit B (Jan 22, 2013)

**IMPERVIOUS AREA**

DRIVEWAY 163 <sup>sq ft</sup> or 173 <sup>sq ft</sup>

PATIO 91.4 <sup>sq ft</sup>

WALK \_\_\_\_\_

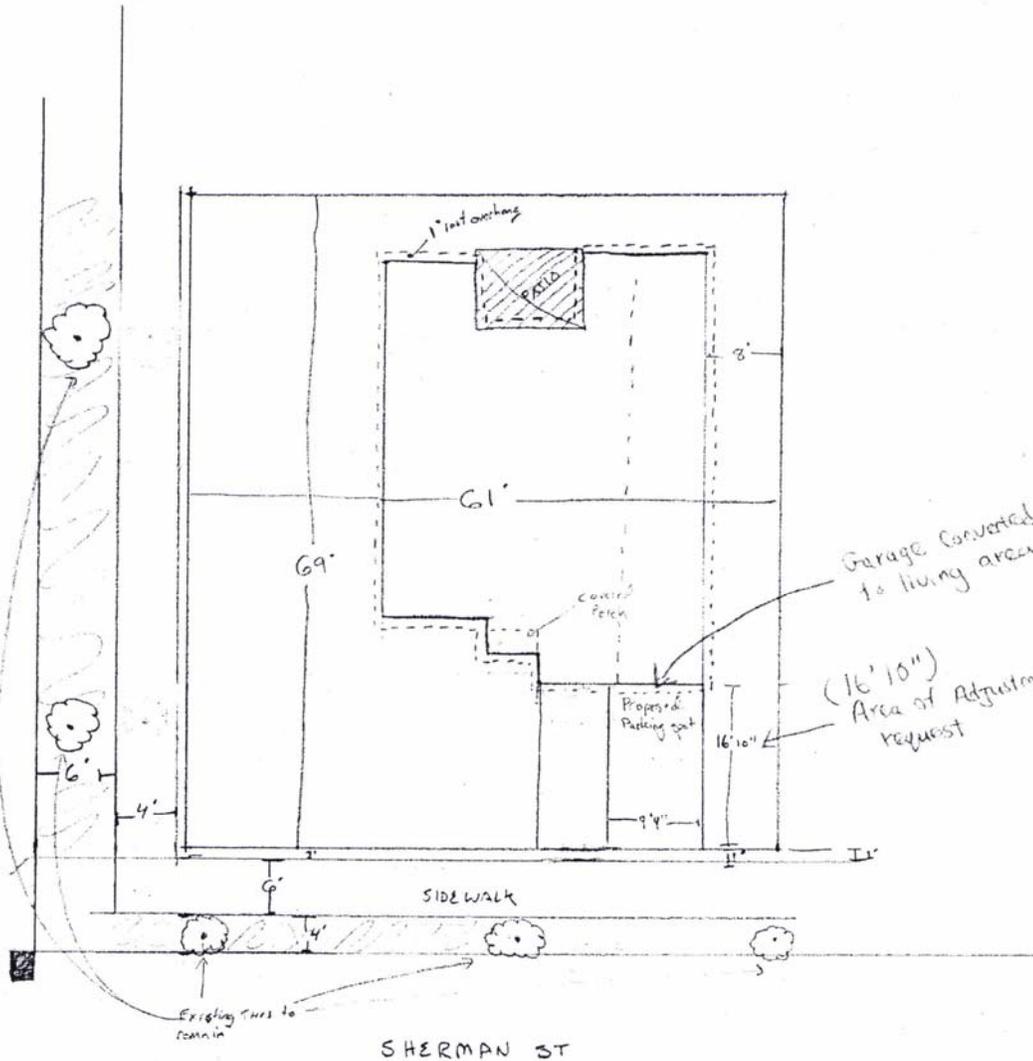
ROOF AREA (INCL. OVERHANG) \_\_\_\_\_

TOTAL \_\_\_\_\_

**BUILDING COVERAGE**

BUILDING FOOTPRINT \_\_\_\_\_

**LOT AREA** 4209 <sup>sq ft</sup>



**\*Approved\***  
 City of Portland - Bureau of Development Services  
 Planner S Burgett Date 3/12/13  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

**PROJECT LEGAL**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**PROJECT ADDRESS**

3254 SE Sherman St  
Portland OR 97214

**SITE PLAN**

SCALE 1" = 10'  
 12' | 10'



NORTH  
ARROW

CASE NO. 13-107629  
 EXHIBIT C-1

IMPERVIOUS AREA

DRIVEWAY \_\_\_\_\_

PATIO \_\_\_\_\_

WALK \_\_\_\_\_

ROOF AREA  
(INCL. OVERHANG) \_\_\_\_\_

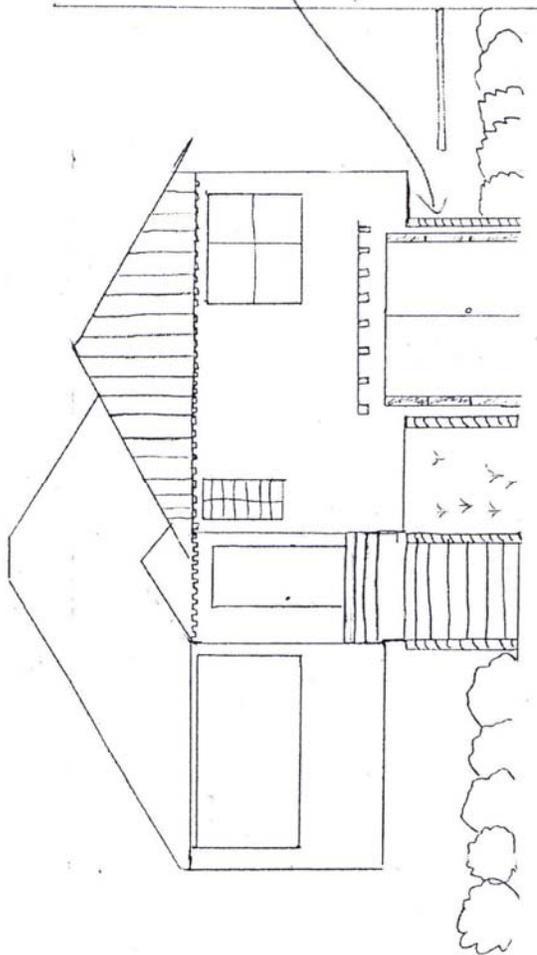
TOTAL \_\_\_\_\_

BUILDING COVERAGE

BUILDING FOOTPRINT \_\_\_\_\_

LOT AREA

Garage converted  
to living area



PROJECT LEGAL

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PROJECT ADDRESS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SITE PLAN**

SCALE 1" = 10' 5"  
1" | 10' 5"



NORTH  
ARROW

**\*Approved\***  
City of Portland - Bureau of Development Services  
Planner S. Buryat Date 3/12/13  
\* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

CASE NO. 13-107629  
EXHIBIT C-2