



**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:** May 30, 2013  
**To:** Interested Person  
**From:** Kathleen Stokes, Land Use Services  
503-823-7843 / [Kathleen.Stokes@portlandoregon.gov](mailto:Kathleen.Stokes@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 13-136473 AD**

#### **GENERAL INFORMATION**

**Applicant:** David B Hinckley  
4805 NE 106th Ave / Portland, OR 97220

**Site Address:** 4805 NE 106TH AVE

**Legal Description:** BLOCK 7 LOT 18, PARKROSE & RPLT  
**Tax Account No.:** R647301270  
**State ID No.:** 1N2E22BC 01700  
**Quarter Section:** 2541  
**Neighborhood:** Parkrose Neighborhood Assoc., contact EPNO at 503-823-4550.  
**Business District:** Parkrose Business Association, David Ableidinger at 503-258-2607.  
**District Coalition:** East Portland Neighborhood Office, Richard Bixby at 503-823-4550.  
**Zoning:** CGh, General Commercial, with an Aircraft Landing (height) Overlay  
**Case Type:** Adjustment Review  
**Procedure:** Type II, administrative decision with appeal to Adjustment Committee.

**Proposal:** The applicant is proposing to construct a new garage on this site. The proposed structure would be about 195 to 200 square feet in size, with a height of 10 feet, to the ridge point. The proposed location is in the southwest corner of the property, about one-foot away from both the south side and rear or west property lines. In the commercial zones, residential uses are allowed, but for most development, the same commercial standards apply, whether the use is residential or commercial. In the CG zone, there are no building setback requirements except for instances where the property is abutting the property line of a residentially-zoned lot. In those instances, a 5-foot building setback is required, for building walls that are no more than 15 feet tall. This site abuts a residentially-zoned property on the south side. Exceptions to this setback standard are approved through Adjustment Reviews, when all of the relevant approval criteria are met, or if the criteria can be met through conditions of approval. Therefore, the applicant is requesting approval of an Adjustment to Code Section 33.130.215, to reduce the minimum 5-foot setback from the south side property line to one-foot for the wall of the proposed garage and zero feet for the roof eave.

**Relevant Approval Criteria:** To be approved, this proposal must comply with the approval criteria of 33.805.040 A.-F., Adjustments, cited below.

## ANALYSIS

**Site and Vicinity:** The applicant's site is a 5,000 square-foot lot that is located on the east side of NE 106<sup>th</sup> Avenue, approximately midway between the intersections with NE Sandy Boulevard, to the north, and NE Wygant Street, to the south. The site is developed with a one-story, single-dwelling residence that was constructed in 1914. The area around the site is developed with a mixture that includes commercial uses along the Sandy Boulevard corridor to the north and mainly other residential development to the south and the east and west. At the south end of the block, on the north side of NE Wygant Street, there is a church that was built in 1938. While some of the broader residentially developed area consists of multi-dwelling development, the area along the block of NE 106<sup>th</sup> Avenue, to the south of the applicant's site and the properties that are abutting to the west and also those that are located on the east side of the street are other single-dwelling homes that were built in the early part of the 1900s.

**Zoning:** The site is zoned CG, General Commercial. This zone is intended to allow auto-accommodating commercial development in areas already predominantly built in this manner and in most newer commercial areas. The zone allows a full range of retail and service businesses with a local or regional market. Industrial uses are allowed but are limited in size to avoid adverse effects different in kind or amount than commercial uses and to ensure that they do not dominate the character of the commercial area. Development is expected to be generally auto-accommodating, except where the site is adjacent to a transit street. The zone's development standards promote attractive development, an open and pleasant street appearance, and compatibility with adjacent residential areas. Development is intended to be aesthetically pleasing for motorists, transit users, pedestrians, and the businesses themselves.

The site also has an "h" or Aircraft Landing Overlay. The purpose of this zoning designation is to provide safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. The regulations of this overlay are not relevant to this proposal.

**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 **April 26, 2013**. The following Bureaus have responded with no issues or concerns related to approval of the requested Adjustment. Agencies that provided written comments are noted with exhibit numbers:

- Bureau of Environmental Services noted that the plans submitted for zoning permit review will need to show that the stormwater runoff from the garage roof is in compliance with the requirements of the City's Stormwater Management Manual (Exhibit E-1).
- Transportation Engineering
- Water Bureau provided information on the water service to the site (Exhibit E-2).
- Fire Bureau
- Site Development Section of BDS noted that an old cess pool exists on the site and must be located to ensure that the proposed structure will not be built over it or, that if it would be over the cess pool, that the cess pool is properly decommissioned. Details were provided on how to meet this requirement. Advice was also provided regarding erosion control requirements (Exhibit E-3).
- Life Safety Plan Review Section of BDS
- Parks-Forestry Division noted requirements for preserving trees and reviews when building permits are required (Exhibit E-4).

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on April 26, 2013. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

**33.805.010 Purpose of 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 to provide certainty and rapid processing for land use applications.

### **33.805.040 Adjustment Approval Criteria**

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. stated 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 statement for the setback regulation in the commercial zones states that, *“The required building setbacks promote streetscapes that are consistent with the desired character of the different commercial zones. The setback requirements for areas that abut residential zones promote commercial development that will maintain light, air and the potential for privacy for adjacent residential zones.”*

The single-dwelling residence on this site was constructed in 1914, when garages were not always included with the development. There is adequate space on-site to accommodate a single-car, detached garage to the rear of the house. The Single Dwelling development standards direct property owners to place detached garages to the side and behind the house, whenever possible, and in order to accommodate this goal, allow small garages to be located within the side and rear setbacks, by right. Many of the other residential properties in the immediate vicinity have similar small detached garages that are set behind or beside the dwelling units. Due to its small footprint, low height and location at the rear of the lot, the garage that is being proposed by the applicant would be allowed in the proposed location in either a single or a multi-dwelling residential zone. Therefore, the proposed structure is in keeping with the character of the existing development on the site and the adjacent residentially developed properties. The Commercial Zone mapping which captured this vintage home within its boundaries requires buildings to be set back 5 feet from adjacent residential properties, so that the impacts on the residential property from the commercial development will be lessened. This proposal is not for commercial development, but is for a structure that is accessory to the existing residential development and use on the site. With a condition that the structure may not be used for commercial purposes without approval through a further review, this purpose is equally achieved by this proposal. Therefore, the purposes of the regulation are equally fulfilled and 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:** As noted in the findings for the previous approval criteria, the site is located in a commercial zone, but abuts a residential zone to the south, where the Adjustment to the building setback has been requested. A discussion of impacts on the livability or appearance of the residential area would be more appropriate in this situation, as it is a case of two abutting single-dwelling properties and not a case of a commercial development that abuts a residential property. As no impacts have been noted from the location of a single-car garage that would be allowed by right in the residential zones, the only potential impact would be conversion to a commercial use that could be allowed in the CG zone. With a condition that prevents this, the adjustment will not have a negative impact on the neighboring property.

Having discussed and explained these actual circumstances, we can now take up the portion of this criteria that technically applies, no matter how implausible it may be. Northeast 106<sup>th</sup> Avenue is the only abutting street frontage and it is classified as a Local Service Street for all transportation modes. The request to reduce the setback for the garage will allow better accommodation of onsite parking, which will be in keeping with the quiet and uncongested character of these types of neighborhood streets. The proposal will have no impact at all on the character of the commercial area as the property is not part of the commercial business corridor. Therefore, 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:** Only one Adjustment has been requested. Therefore, this criterion does not apply.

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

**Findings:** There are no scenic or historic resources on the site. Therefore, this criterion does not apply.

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

**Findings:** No impacts are expected to result from approval of the requested Adjustment. Therefore, no mitigation is required and this criterion is met.

- 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 located in an environmental zone. Therefore, this criterion does not apply.

## 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 relevant approval criteria have been met. The purpose of the regulation is to prevent significant impacts to adjacent residential properties. This structure will not have any such impacts and, in a residential zone, would be allowed by right. The structure would meet the criteria regarding appearance and livability for abutting residential zones and is not inconsistent with the criteria regarding the classification of streets and the desired character of the commercial area. The requested Adjustment can be approved, with requirements that the proposal be reviewed under a Zoning Permit and that the structure only be allowed in this location as long as it is accessory to a residential use and not dedicated to a commercial use.

## ADMINISTRATIVE DECISION

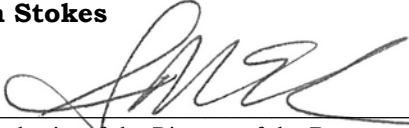
Approval of an Adjustment to Code Section 33.130.215, to reduce the minimum 5-foot setback from the south side property line to one-foot for the wall of the proposed garage and zero feet for the roof eave, in general compliance with the approved site plan and elevation drawings, Exhibits C-1 through C-2, signed and dated May 24, 2013, and subject to the following conditions:

- A. A Zoning Permit is required for this proposal. As part of the zoning permit application submittal, the following development-related condition (B) must be noted on each of the 4

required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 13-136473 AD ." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."

- B. Approval of this structure is for uses that are accessory to the residential use of this property, only, and do not apply to use of the structure for commercial uses. If a commercial use were proposed to occupy the building in the future, the reduced setback for the structure must be reconsidered.

**Staff Planner: Kathleen Stokes**

**Decision rendered by:**  **on May 24, 2013**

By authority of the Director of the Bureau of Development Services

**Decision mailed: May 30, 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 April 5, 2013, and was determined to be complete on April 24, 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 April 5, 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. Unless extended by the applicant, **the 120 days will expire on: August 23, 2013.**

**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 June 13, 2013** at 1900 SW

Fourth Avenue. 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 **June 14, 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:

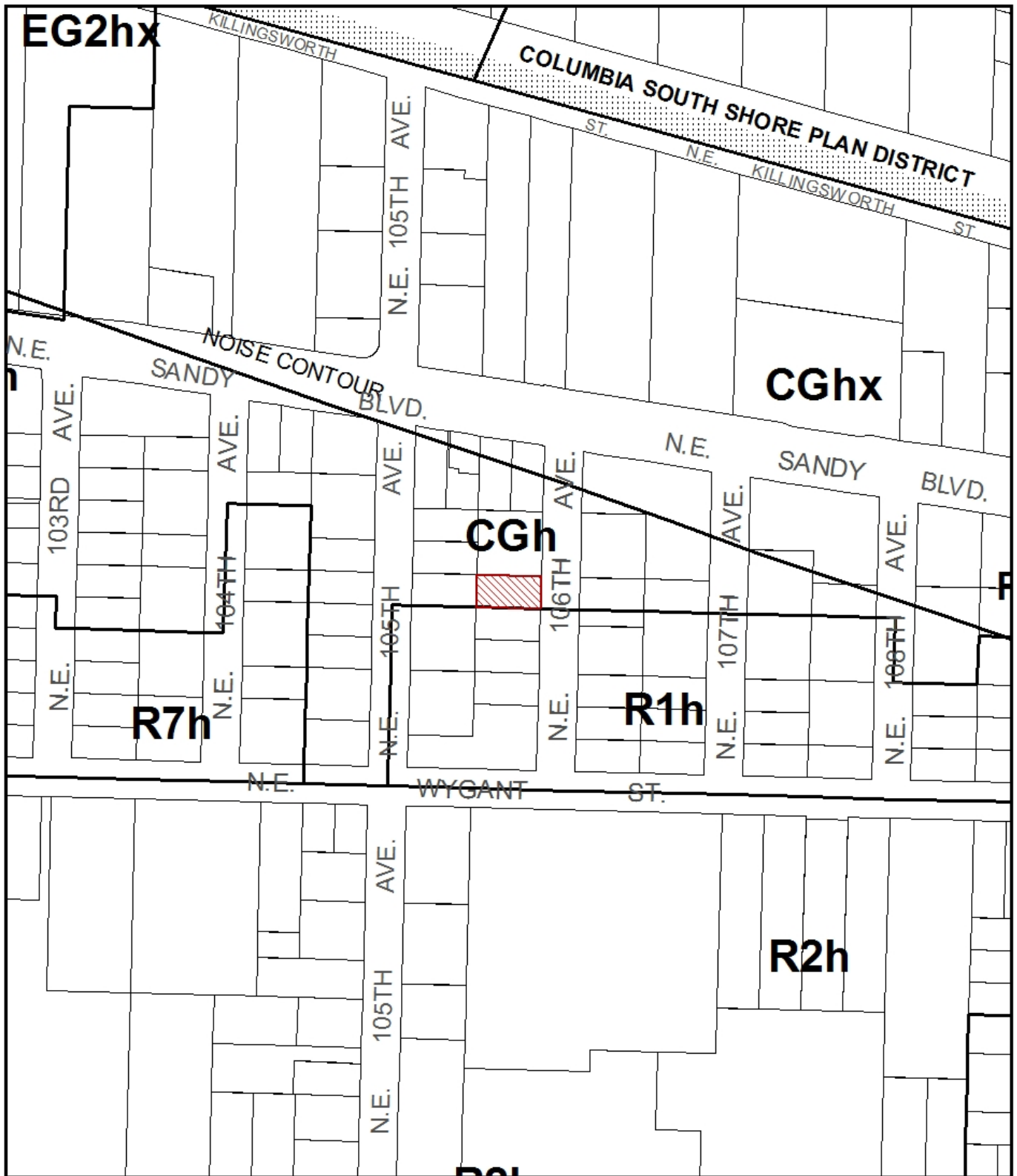
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Application, narrative and original plans
  - 2. Supplemental information, with narrative and plans received April 23, 2013
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Elevation Drawings
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Water Bureau
  - 3. Site Development Review Section of BDS
  - 4. Bureau of Parks, Forestry Division
  - 5. Summary of electronic responses from City service agencies
- F. Correspondence: (none received)
- G. Other:
  - 1. Letter from Kathleen Stokes to David Hinckley, April 17, 2013

**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

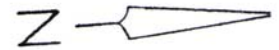
 Site



File No. LU 13-136473 AD  
 1/4 Section 2541  
 Scale 1 inch = 200 feet  
 State\_Id 1N2E22BC 1700  
 Exhibit B (Apr 09, 2013)



SITE PLAN  
 HINCKLEY  
 503 309 L981



4805 NE 106 AV  
 97220

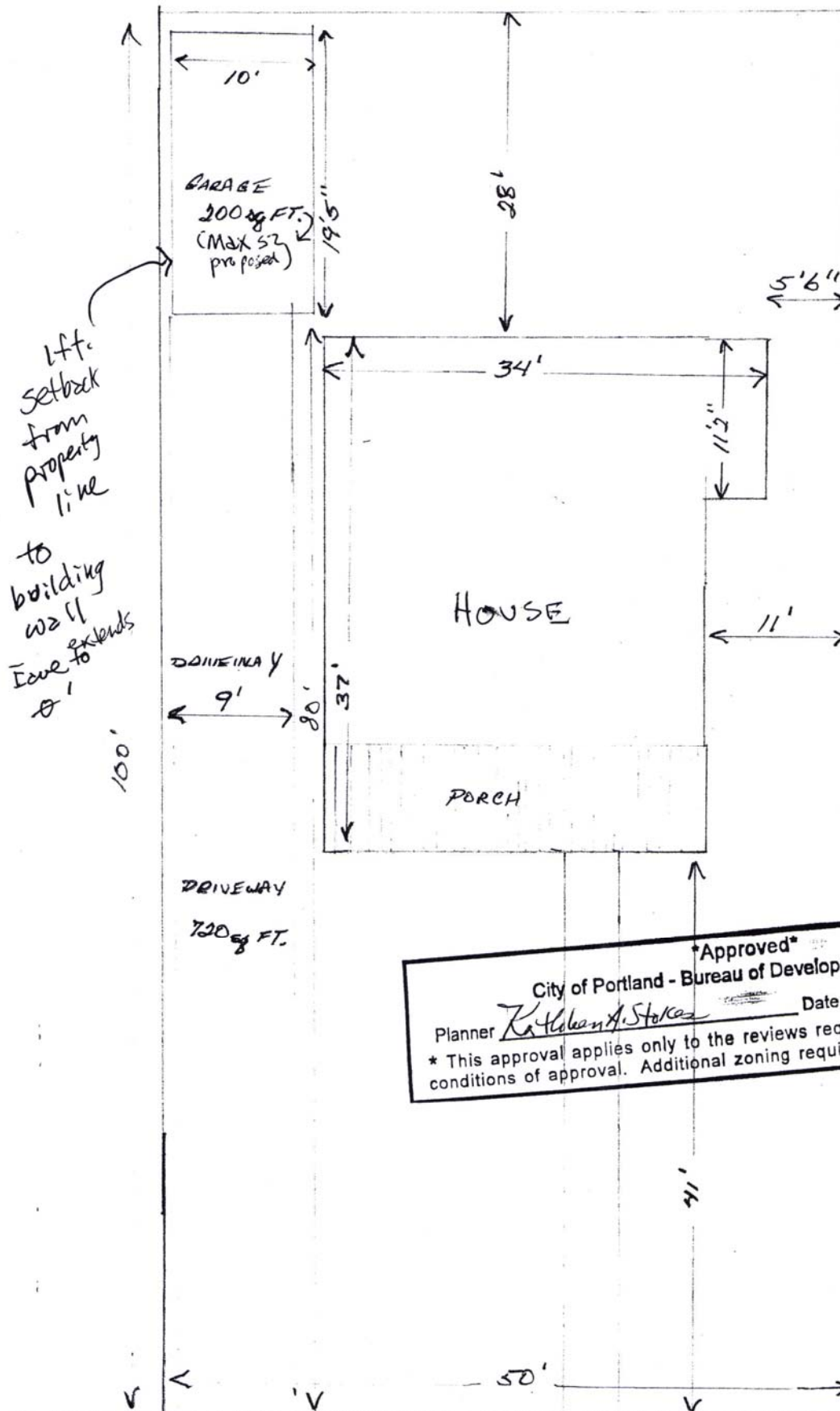
LOT AREA 5000 :

HOUSE COVERAGE  
 1318 sq FT.

SIDEWALK 250 sq FT

R235067  
 PARKROSE BLOCK 7  
 LOT 18

ROOF 58 FT. 178



**\*Approved\***  
 City of Portland - Bureau of Development Services  
 Planner Kathleen A. Stokes Date May 24, 2013  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

Exhibit C-1  
 LU13-136473AD

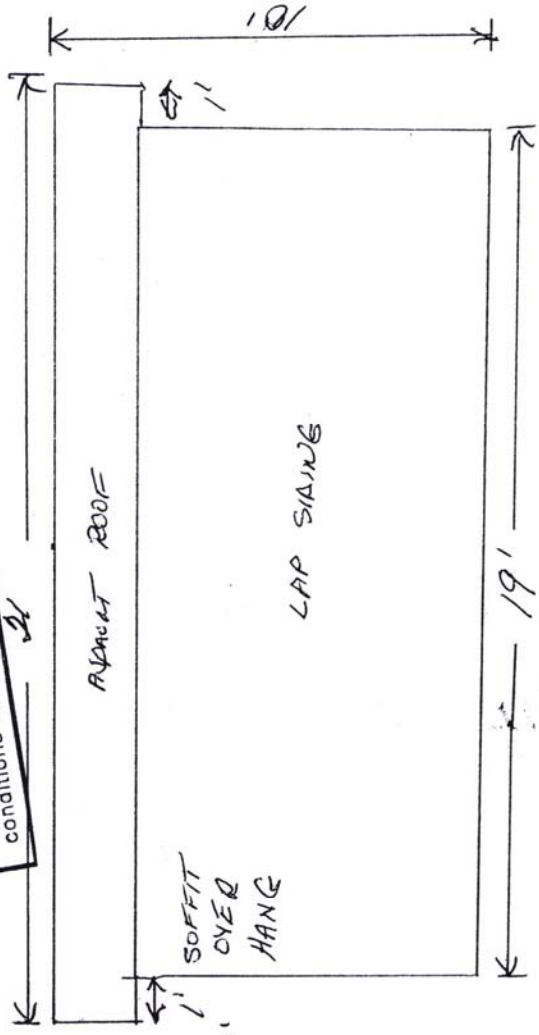
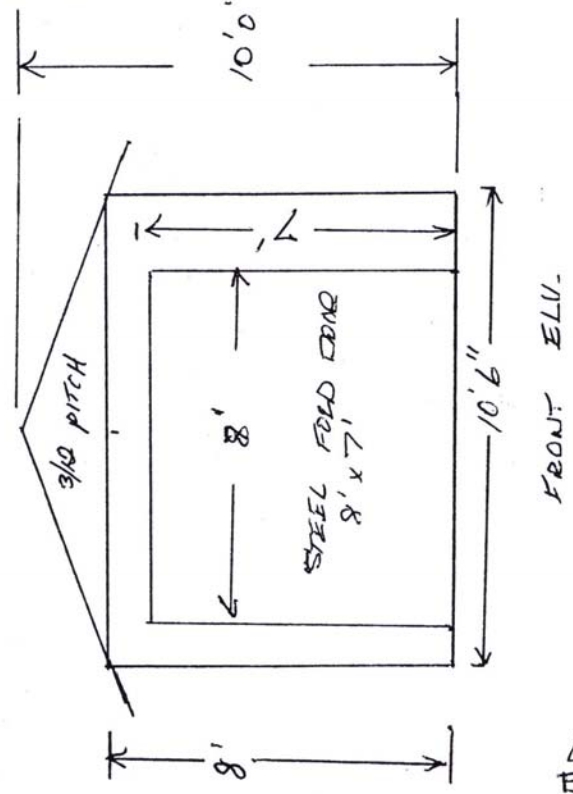
SCALE 1" = 10'

SIDEWALK  
 NE 106 AVENUE  
 LU13 136473AD

199 SQ FT GARAGE

10'6" x 19' DEEP\*

\* Approved\*  
 City of Portland - Bureau of Development Services  
 Planner: Kathleen A. Stokes Date: May 24, 2013  
 \* This approval applies only to the reviews requested and is subject to conditions of approval. Additional zoning requirements may apply.



\* Applicant shows  
 Varying width E  
 depth 10 to 10.5'  
 by 14 to 14.5'  
 but max proposed  
 size is 200 sq. ft.  
 and height is 10 ft.

2x4 FRAMING 16" O.C.  
 SCALE  
 1/4" = 1 FOOT

ON 6" CONCRETE PAD  
 LU13-136473 AD  
 DAVID HINCKLEY  
 4805 NE 106 AVE  
 PORTLAND 97220

LU13-136473 AD  
 Exhibit C-2