



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

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**Date:** April 15, 2016  
**To:** Interested Person  
**From:** David Besley, Land Use Services  
503-823-7282 / [David.Besley@portlandoregon.gov](mailto:David.Besley@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 mailed copy of this document is only a summary of the decision. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

### **CASE FILE NUMBER: LU 16-119353 AD**

#### **GENERAL INFORMATION**

**Applicant:** Terry Hellem  
Projective Construction Design  
Po Box 6542  
Beaverton, OR 97007

**Owners:** Simon M Martin and Vena Rainwater  
4548 NE Simpson St  
Portland, OR 97218-1448

**Site Address:** 4548 NE SIMPSON ST

**Legal Description:** BLOCK 3 E 80' OF N 160' OF LOT 2, ENGLEWOOD PK  
**Tax Account No.:** R252800600  
**State ID No.:** 1N2E18CC 06100  
**Quarter Section:** 2435

**Neighborhood:** Cully, contact David Sweet at 503-493-9434  
**District Coalition:** Central Northeast Neighbors, contact Alison Stoll at 503-823-3156

**Zoning:** R10h (Single Dwelling Residential 10,000 with Aircraft Landing Zone overlay)

**Case Type:** AD (Adjustment Review)  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

#### **Proposal:**

The applicant is proposing to construct a new 2-story, approximately 1,240 square foot detached accessory structure with a garage and office on the ground floor and living area on the second floor, connected externally with stairs and a porch. The Portland Zoning Code requires that detached accessory structures that exceed 15 feet in height must meet design

requirements including materials, roof pitch, trim, windows, and eaves (Section 33.110.250.C.4). The proposed structure will meet all of these standards except for roof pitch. The roof will be a shed roof which will neither match the predominant roof pitch of the house nor have a minimum roof pitch of 6/12 (as required in Section 33.110.250.C.4.b); Therefore, an Adjustment is required to waive the roof pitch standard.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

**ANALYSIS**

**Site and Vicinity:** The 12,800 square foot lot is on the southwest corner of the intersection of SE Simpson Street and NE 46<sup>th</sup> Avenue. The relatively flat site contains a 1,750 square foot two-story residence. The surrounding vicinity is developed with a mix of single-dwelling residences, multi-dwelling residential buildings, and commercial buildings.

**Zoning:** The R10 zone is a single-dwelling zone that is intended to preserve land for housing, and to provide housing opportunities for individual households. Development standards are intended to allow for flexibility of development while maintaining compatibility within the City's various neighborhoods. The "h" zone overlay (Aircraft Landing Zone) is not impacted by the Adjustment 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 March 10, 2016. The following Bureaus have responded with the following information:

- The Water Bureau responded with information on water service, including the requirement that Title violations be resolved before any building permits will be issued (Exhibit E-1).
- The Life Safety Section of the Bureau of Development Services (BDS) responded with Building Code information (Exhibit E-2).
- The Bureau of Environmental Services responded with stormwater management information (Exhibit E-3).

The following Bureaus have responded with no concerns:

- The Fire Bureau;
- The Site Development Section of BDS; and
- The Bureau of Transportation.

**Neighborhood Review:** No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal; however, the applicant included a list of four neighbors who signed in support of the project (Exhibit A-2).

**ZONING CODE APPROVAL CRITERIA****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 applicant has requested an Adjustment to waive the roof pitch standard to construct a new detached accessory structure. The accessory structure will have a shed roof, which will neither match the predominant roof pitch of the house nor have a minimum roof pitch of 6/12.

**33.110.250 Detached Accessory Structures**

*This section regulates detached structures that are incidental to primary buildings to prevent them from becoming the predominant element of the site. The standards limit the height and bulk of the structures, promote compatibility of design for larger structures, provide for necessary access around larger structures, help maintain privacy to abutting lots, and maintain open front setbacks.*

The existing house has a gabled roof and the accessory structure is proposed to have a shallower-pitched shed roof. The lower wall of the proposed structure will be facing NE 46<sup>th</sup> Avenue and the taller wall will be facing the yard. The structure will also be built 20 feet behind the house; therefore, the shed roof design will be discreet from both streets. While the accessory structure's roof style differs from that of the house, the structure itself will be more than 500 square feet smaller than the house, have a roof high-point 3 feet lower than that of the house, and will be located over 90 feet from the front property line; it will therefore appear accessory to the house. Granting this Adjustment will not impact the privacy to abutting lots or impact the front setback.

***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 applicant has noted that the established hedge vegetation and fencing east of the proposed accessory structure will remain. These features will provide screening which will help soften the visual impact of the new structure. In order to ensure the vegetation and fencing will remain, a condition of approval will require that the submitted plans be in substantial conformance with the drawing shown in Exhibit C-1. The existing fencing and vegetation are fully sight obscuring, so if they cannot be maintained and need to be replaced, they must meet L3 *high screen* and F2 *fully sight-obscuring fence* standards (Portland Zoning Code Section 33.248). This accessory structure will be consistent with the development pattern in this residential area which includes many detached accessory structures. As conditioned, granting this Adjustment will not significantly detract from the livability or appearance of 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:** Only one Adjustment is proposed; therefore, this criterion is not applicable.

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

**Findings:** City designated scenic resources are identified on the Official Zoning Map with a lower case "s" and historic resources are designated by a large dot or as being within the boundaries of a Historic or Conservation district. 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 noted above, the orientation of the structure will result in the shed roof being a discreet design feature from both SE Simpson Street and NE 46<sup>th</sup> Avenue. The established vegetation and fencing along the eastern lot line will remain (as conditioned below), which will further help mitigate the visual impact of the proposed structure. Impacts resulting from the adjustment are mitigated to the extent practical.

***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:** Environmental overlay zones are designated on the Official Zoning Map with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). No environmental zoning is applied to the site; therefore, 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.

The structure proposed is not an Accessory Dwelling Unit; therefore the owners will be required to provide a second sink covenant during permitting.

**CONCLUSIONS**

The applicant has requested an Adjustment to waive the roof pitch standard to construct a new detached accessory structure. While the accessory structure’s roof style differs from that of the house, the structure itself will be more than 500 square feet smaller than the house, have a roof high-point 3 feet lower than that of the house, and will be located over 90 feet from the front property line; it will therefore appear accessory to the house. The orientation of the structure will result in the shed roof being a discreet design feature from both SE Simpson Street and NE 46<sup>th</sup> Avenue. The established vegetation and fencing along the eastern lot line will remain or be replaced (as conditioned below), which will further help mitigate the visual impact of the proposed structure. The proposal meets the applicable approval criteria and should therefore be approved.

**ADMINISTRATIVE DECISION**

Approval of an Adjustment to waive the roof pitch standard (Section 33.110.250.C.4.b) for the construction of a new detached accessory structure, per the approved site plans, Exhibits C-1 through C-3, signed and dated April 12, 2016, subject to the following conditions:

- A. As part of the building 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 16-119353 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. Maintain established fencing and landscaping/hedges as indicated in Exhibit C-1. If the vegetation/fencing is removed or damaged, replacement landscaping meeting L3 *high screen* and F2 *fully sight-obscuring fence* standards of the Portland Zoning Code Section 33.248 will be required in the same approximate location.

**Staff Planner: David Besley**



**Decision rendered by:** \_\_\_\_\_ **on April 12, 2016.**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: April 15, 2016**

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

**Procedural Information.** The application for this land use review was submitted on February 10, 2016, and was determined to be complete on **March 3, 2016**.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on February 10, 2016.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: July 1, 2016.**

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

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

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

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

**Appealing this decision.** This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on April 29, 2016** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5<sup>th</sup> 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 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 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 **May 2, 2016 – (the day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

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

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

For further information on recording, please call the County Recorder at 503-988-3034

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

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

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

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

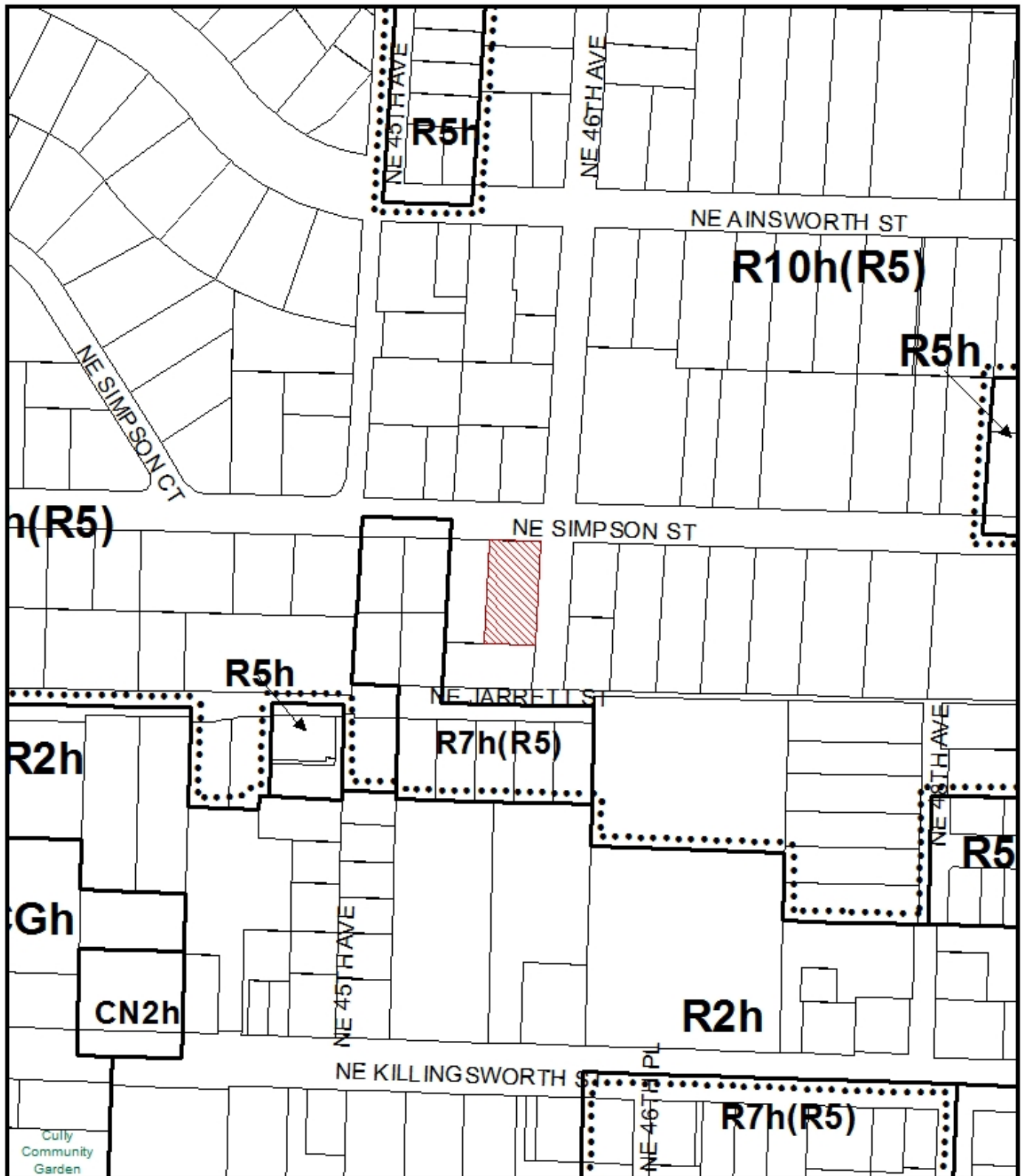
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**


NOT ATTACHED UNLESS INDICATED

- A. Applicant's Submittal
  - 1. Applicant's Statement
  - 2. Neighbor signatures in support of project
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Elevations (attached)
  - 3. Floor Plans (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Water Bureau
  - 2. Life Safety Section of BDS
  - 3. Bureau of Environmental Services
- F. Correspondence: None
- G. Other:
  - 1. Original LU Application Form and Receipt
  - 2. Incomplete letter from staff to applicant, sent February 23, 2016

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



# ZONING

 Site

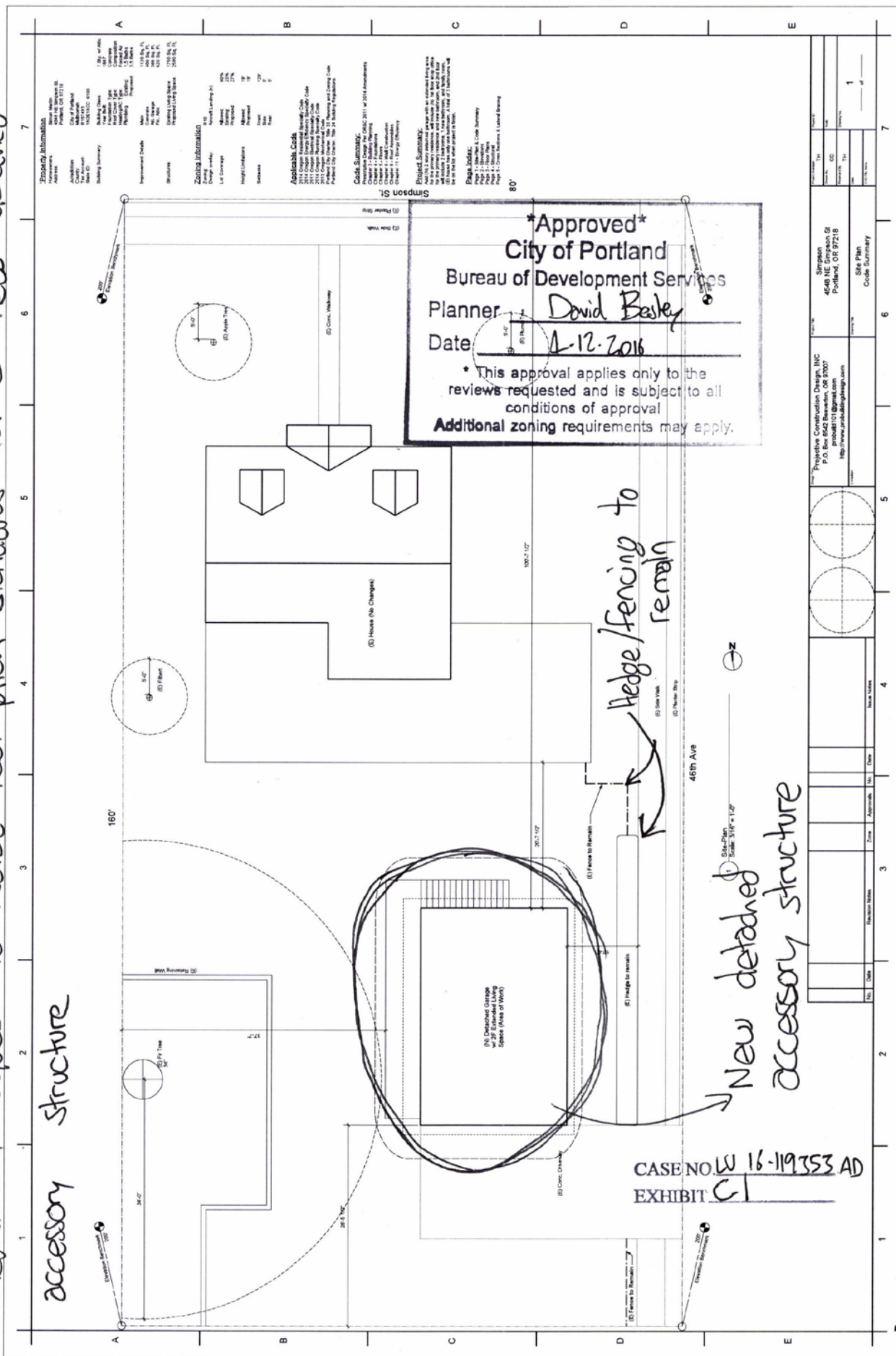


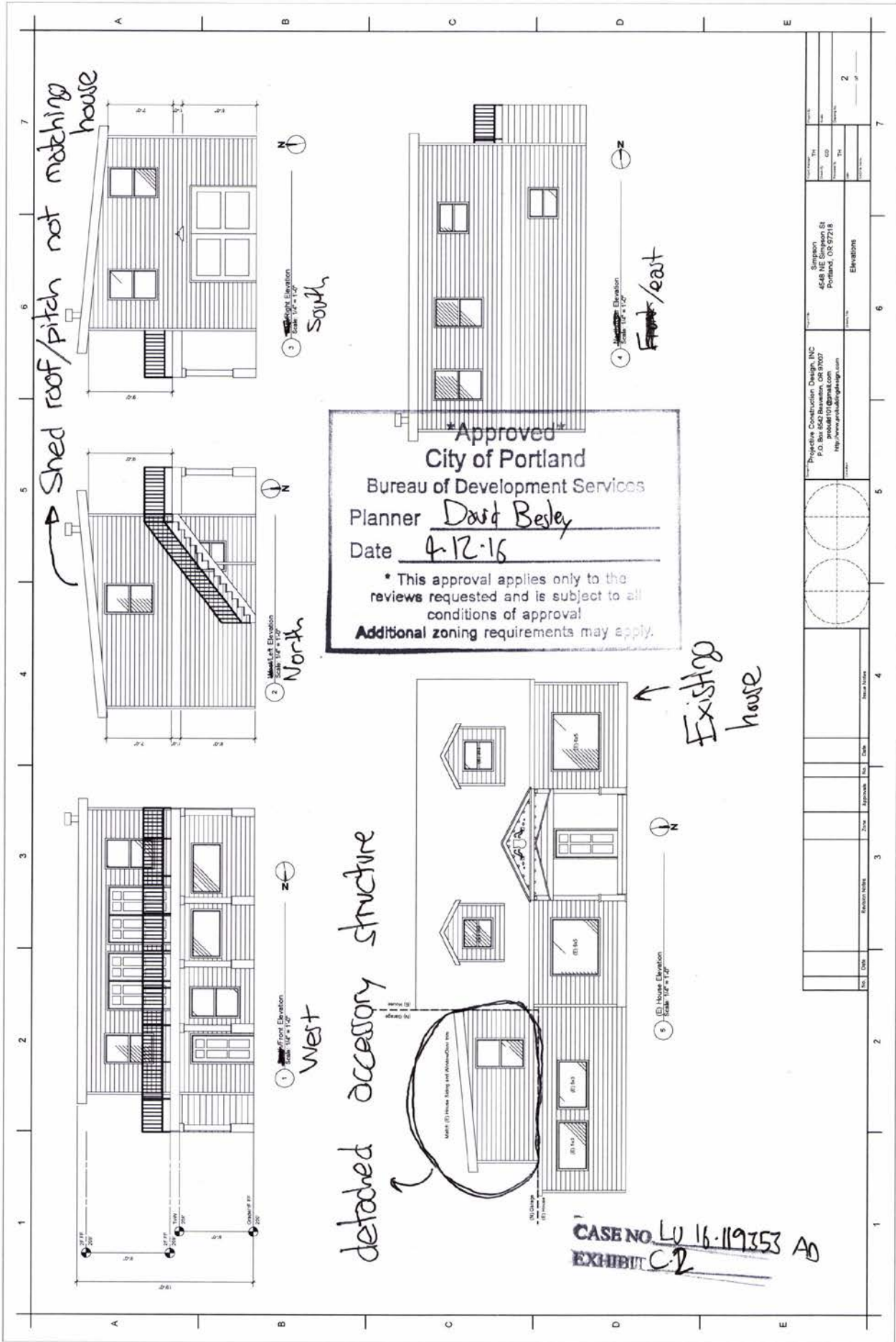
NORTH

File No. LU 16-119353 AD  
 1/4 Section 2435  
 Scale 1 inch = 200 feet  
 State\_Id 1N2E18CC 6100  
 Exhibit B (Feb 16, 2016)



accessory structure





LU 16 - 119353 AD

