



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**

FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner  
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[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** October 1, 2012  
**To:** Interested Person  
**From:** Mark Bello, Land Use Services  
503-823-7810 / [Mark.Bello@portlandoregon.gov](mailto:Mark.Bello@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 12-175272 AD**

#### **GENERAL INFORMATION**

**Applicant:** Chris Davis / Chris Davis Design Architecture And Interiors  
3435 NE 45th Ave Suite H / Portland OR 97213

**Owners:** Tim Spofford / Prudence J Spofford  
3106 NE 54th Ave / Portland, OR 97213-2470

**Site Address:** 3106 NE 54TH AVE

**Legal Description:** BLOCK 115 LOT 11, ROSE CITY PK  
**Tax Account No.:** R723113150  
**State ID No.:** 1N2E30AB 12800  
**Quarter Section:** 2736  
**Neighborhood:** Rose City Park, contact Tamara DeRidder at 503-249-6977.  
**District Coalition:** Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.  
**Zoning:** R5h Residential 5,000  
**Case Type:** AD Adjustment with an Aircraft Landing zone overlay  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

#### **Proposal:**

The applicant proposes to demolish an existing single car detached garage and replace it with a new two-story structure - garage and living space above - in the approximate same location. The new structure is approximately 16 ft. wide and 20 ft deep, excluding the staircase to the west. The structure is slightly more than 18 ft. to the ridge line. It will be the same distance from the south/front property line as before -- 15'-5" and located 5' from the east property line. An adjustment is required as the new garage will not conform to the minimum garage setback of 18 ft. (Section 33.110.220). The structure is not intended to be an Accessory Dwelling Unit as no kitchen is proposed.

#### **Relevant Approval Criteria:**

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

## ANALYSIS

**Site and Vicinity:** The applicant's site is located at the northeast corner of NE 54<sup>th</sup> Avenue and NE Siskiyou. The lot has 50' of frontage on NE 54<sup>th</sup> Avenue (front property line and front yard) and has 100' of frontage on NE Siskiyou (side street lot line and side yard). The lot is relatively level and contains a house, existing single-car garage, and small detached accessory structure. The detached accessory structure is located between the house and the NE Siskiyou Street sidewalk. There is also a fence between the detached accessory structure and the sidewalk. It appears that both the fence and a portion of the accessory structure are within the right-of-way and also within the zoning code minimum 5' setback from the property line. [Encroachment issues must be addressed in subsequent reviews.]

The existing garage is located 15'-5" from the south property line, or 17'-5" from the sidewalk. It is also 4'-7" from the east property line and approximately 13 from the north property line.

Lots to the north and east are also developed with single family residences with detached garages. The garage on the lot to the east is a double-car garage located approximately 34 from the NE Siskiyou property line.

The surrounding area is regularly platted with 5,000 sq. ft. lot, with single-family residences, often with detached garage. Corner lots typically have the house oriented to the front yard with the garage behind and accessing from the other street. These garages may or may not be setback 18'. The applicant has submitted a map showing a half dozen nearby examples with garages closer than 18'.

At this location, the subject site has frontage along NE 54th Ave and NE Siskiyou. Both of these streets are classified as Local Service streets for all modes in the City's Transportation System Plan.

**Zoning:** The Residential 5,000 (R5) single-dwelling zone is intended to preserve land for housing and to provide housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing. Minimum lot size is 3,000 square feet, with minimum width and depth dimensions of 36 and 50 feet, respectively. Minimum densities are based on lot size and street configuration. Maximum densities are 1 lot per 5,000 square feet of site area.

The Aircraft Landing Zone "h" overlay provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. A height contour map is available for review in the Development Services Center. The proposal does not impact the requirements of the overlay.

**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 **August 30, 2012**. The following Bureaus have responded with no issues or concerns:

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

The Bureau of Transportation Engineering and Development Review responded with no objection to approval of this adjustment request. However, Transportation notes that the existing accessory structure to the west will need to demonstrate an Encroachment Permit or

apply, and receive approval of such a permit. "This matter must be addressed at the Building Permit review."

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on August 30, 2012. 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

#### 33.110.220 Setbacks

**A. Purpose.** The setback regulations for buildings and garage entrances serve several purposes:

- They maintain light, air, separation for fire protection, and access for fire fighting;
- They reflect the general building scale and placement of houses in the city's neighborhoods;
- They promote a reasonable physical relationship between residences;
- They promote options for privacy for neighboring properties;
- They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;
- They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and
- They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street; and

**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

**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

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

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

**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 AND CONCLUSIONS

The applicants' proposal meets all of the relevant approval criteria:

The proposed structure will be a minimum of 5' from the nearest property line, the east property line. The neighbor's driveway is adjacent to the common property line. The corner of the neighbor's garage will be approximately 10' away, which allows access to all sides of the proposed structure. The Fire Bureau has reviewed the proposal and has no concerns.

The applicant is replacing the existing garage with a structure only slightly wider; that is, the proposed structure will be about five feet wider and two feet deeper than existing. The existing garage is a one story garage with a gable roof with a shallow pitch. The proposed garage/living space structure has a much steeper pitch and two dormers, approximately 18' to the ridgeline. However, this structure will retain an accessory relationship to the primary structure and the adjacent houses due to its small footprint.

The structure orients to the interior of the lot with windows and doors facing west. There is one window on the east elevation but no adjustment is requested or necessary for the side setback as the proposed location of the new structure meets the code minimum side setback.

The proposed structure is to be located in the same general location as the existing structure. This preserves the common development pattern in the neighborhood. On a corner lot the garage is located to the rear of the house with access across the side street lot line. This structure is closer than 18' but there are a half-dozen examples like this within a few blocks.

Transportation has no objections to the adjustment proposal:

*"As shown on the submitted site plan, the proposed garage on the subject site will be placed in alignment with the front of the existing garage, which is located 15'-5" from the front property line. The proposed structure may cause potential impacts to the public right-of-way if a vehicle was parked across the side yard property line and into the improved right-of-way (sidewalk).*

*This is unlikely to occur given the following:*

- *The proposed project includes a replacement garage within which a vehicle could be stored.*
- *The 15'-5" distance between the face of the new garage and the southern property line of the site is sufficient to accommodate a conventional sized passenger vehicle.*
- *With regard to a vehicle backing onto the street from the proposed garage, exiting speeds from the garage onto the abutting NE Siskiyou will be slower than if there was a full-length driveway that a vehicle would have to also cross (if the 18-foot garage setback was being provided)."*

Only one adjustment is requested and the site is outside scenic, historic or environmental zones and is not a designated historic resource.

Staff has received no responses from the neighborhood or neighbors.

## **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, including other minimum setbacks, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

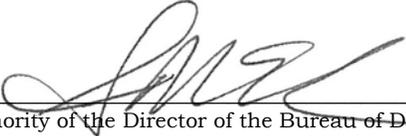
Other review may be required for encroachments, driveways, services, etc.

## **ADMINISTRATIVE DECISION**

Approval of an Adjustment to Section 33.110.220, to allow an approximately 16' wide by 20' deep garage to be located 15'-5" from a side street property line, per the approved site plans, Exhibits C-1 through C-5, signed and dated September 27, 2012, 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 information and design approved by this land use review as indicated in Exhibits C.1-C.5. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 12-175272 AD.

**Staff Planner: Mark Bello**

**Decision rendered by:**  **on September 27, 2012**

By authority of the Director of the Bureau of Development Services

**Decision mailed: October 1, 2012**

**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 August 23, 2012, and was determined to be complete on **August 27, 2012**.

*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 August 23, 2012.

*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: December 21, 2012**.

**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 October 15, 2012** 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 **October 16, 2012**
- 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
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Garage and Bedroom Exterior Elevations (attached)
  - 3. Existing Residence with Garage Exterior Elevations
  - 4. Garage Floor Plan
  - 5. Bedroom Floor Plan
- 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, BDS
- F. Correspondence: (none)
- G. Other:
  - 1. Original LU Application

**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).**



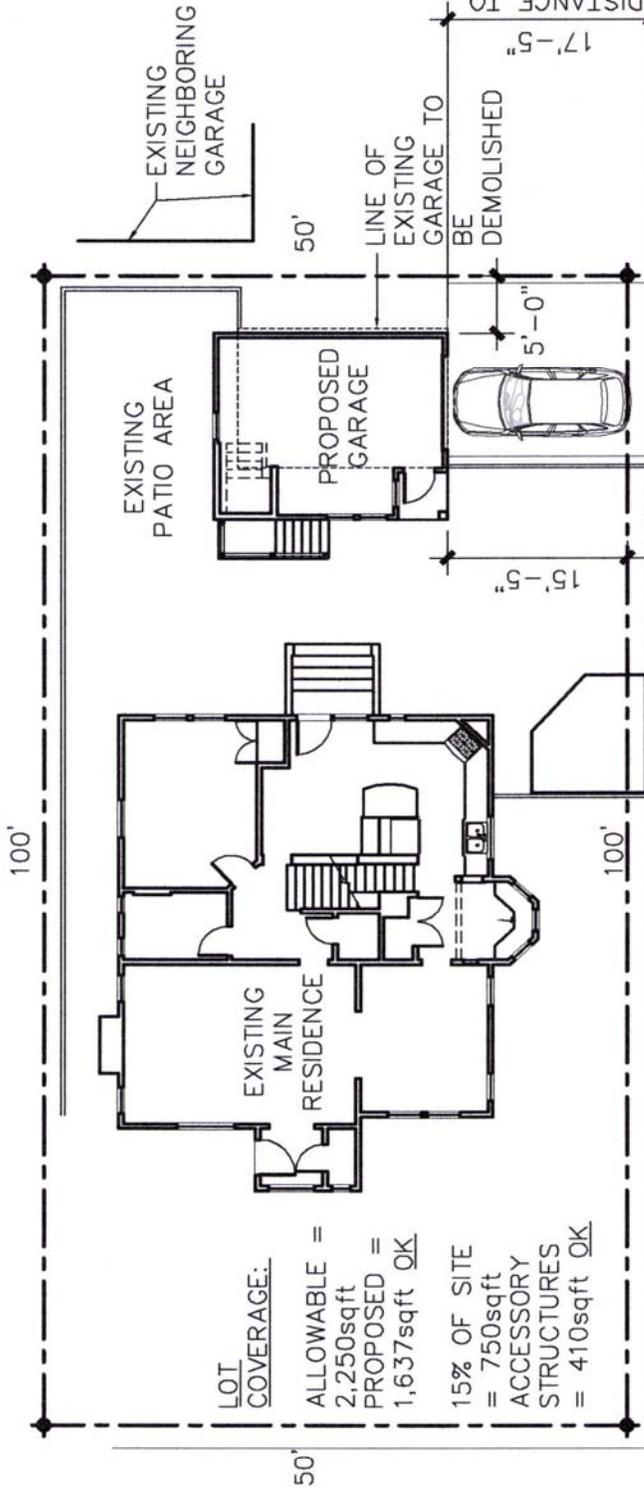
# ZONING



File No. LU 12-175272 AD  
 1/4 Section 2736  
 Scale 1 inch = 200 feet  
 State\_Id 1N2E30AB 12800  
 Exhibit B (Aug 23, 2012)

AD 2725272-21 M7

NE 54TH AVENUE



**\*Approved\***  
 City of Portland  
 Bureau of Development Services  
 Planner MB  
 Date 9/22/12  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval.  
 Additional zoning requirements may apply.



NE SISKIYOU STREET

SITE PLAN

SCALE: 1/16" = 1'-0"  
3106 NE 54TH AVE.

CASE NO. \_\_\_\_\_  
EXHIBIT 12



SOUTH



EAST



NORTH



WEST

GARAGE & BEDROOM EXTERIOR ELEVATIONS

SCALE:  $\frac{1}{8}'' = 1'-0''$   
 3106 NE 54th AVE.

\*Approved\*

City of Portland  
 Bureau of Development Services

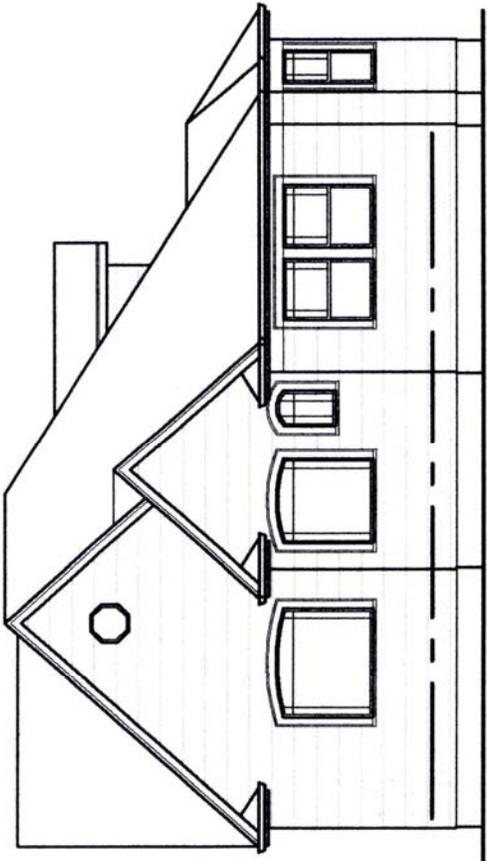
Planner WB

Date 9/27/12

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 Additional zoning requirements may apply.

CASE NO. \_\_\_\_\_  
 EXHIBIT C2

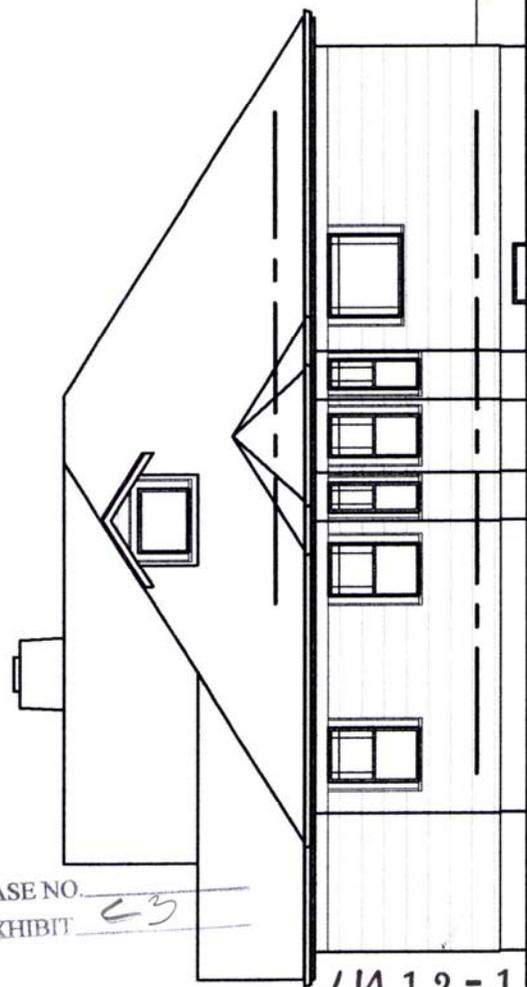
LU 12-175272 AD



WEST

CASE NO.  
EXHIBIT

12-175272  
CB



SOUTH

LU 12-175272

EXISTING RESIDENCE WITH GARAGE EXTERIOR ELEVATIONS

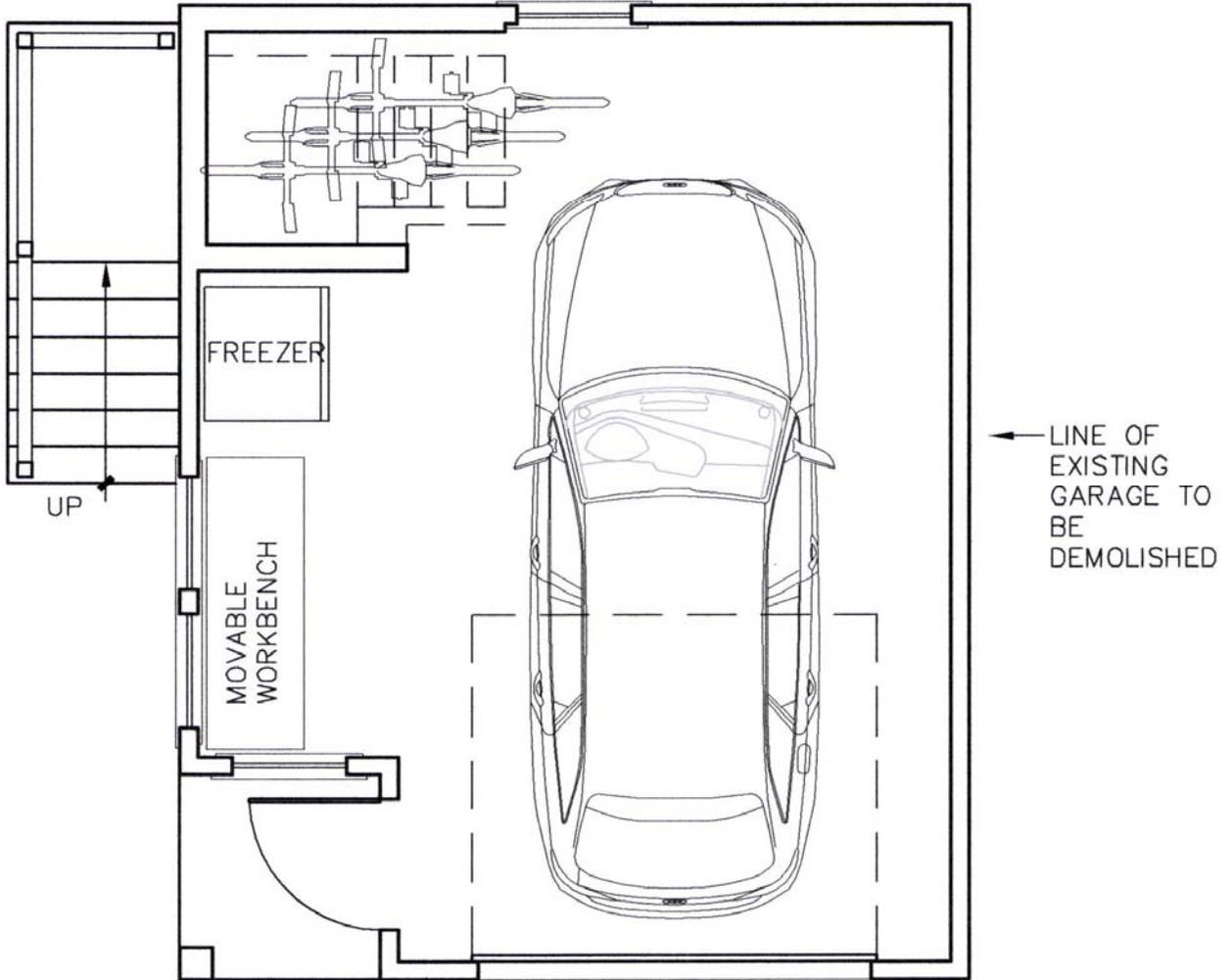
SCALE: 1/8" = 1'-0"  
3106 NE 54th AVE.

AD

**\*Approved\***  
 City of Portland  
 Bureau of Development Services  
 Planner MB  
 Date 9/27/12  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



CASE NO. 12-175272  
 EXHIBIT CB



GARAGE FLOOR PLAN

SCALE:  $\frac{1}{4}$ " = 1'-0"  
 3106 NE 54TH AVE.

NORTH



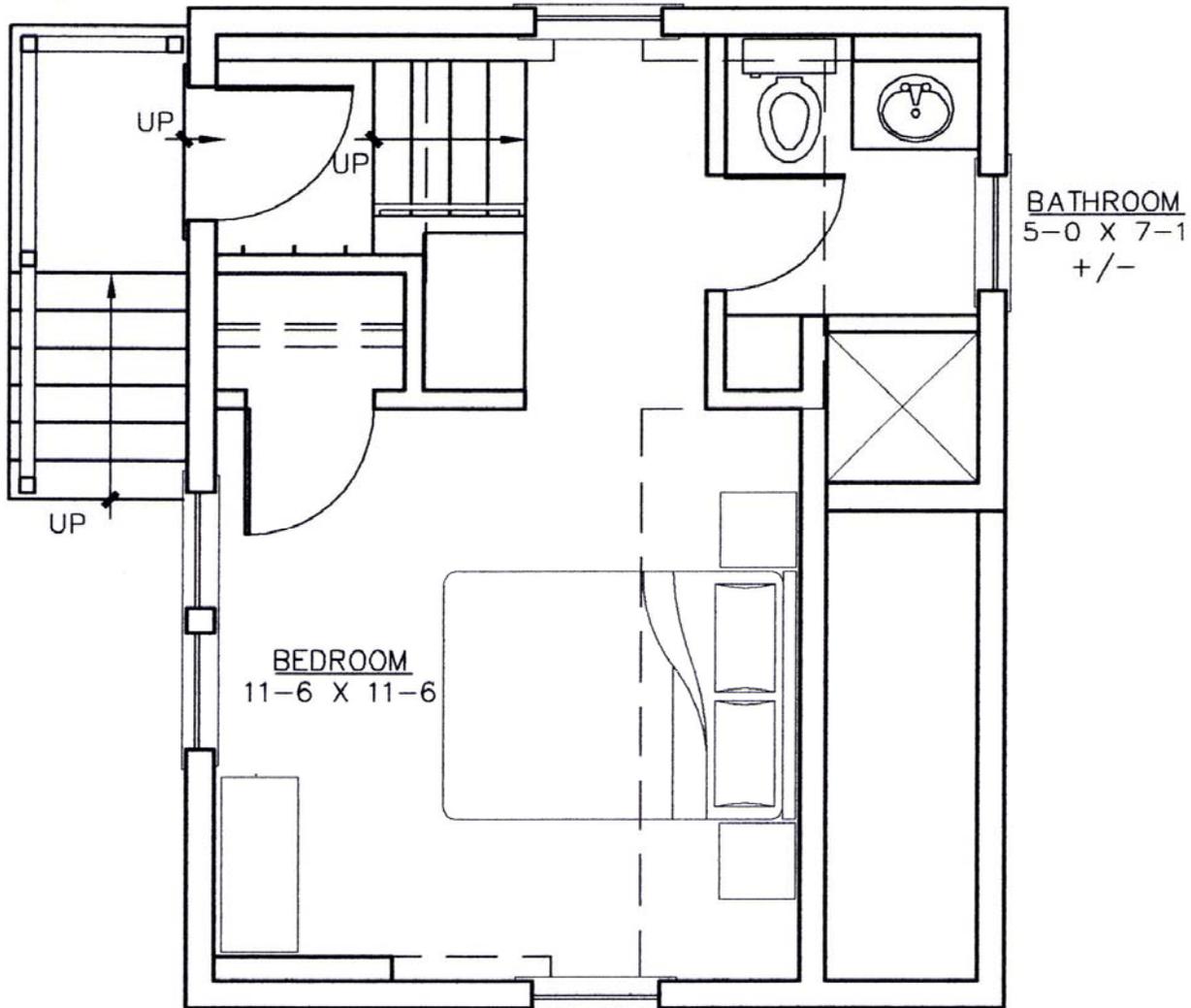
**\*Approved\***  
**City of Portland**  
 Bureau of Development Services

Planner WB

Date 9/27/12

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

CASE NO. 12-175272  
 EXHIBIT C4



BEDROOM FLOOR PLAN

SCALE:  $\frac{1}{4}$ " = 1'-0"  
3106 NE 54TH AVE.

**\*Approved\***  
**City of Portland**  
 Bureau of Development Services  
 Planner VB  
 Date 9/27/12

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

CASE NO 11  
 EXHIBIT CS

LU 12-175272 AD