



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

Dan Saltzman, Commissioner  
Paul L. Scarlett, Director  
Phone: (503) 823-7300  
Fax: (503) 823-5630  
TTY: (503) 823-6868  
[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** October 4, 2012  
**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 12-172215 AD**

#### **GENERAL INFORMATION**

**Applicant/Owner:** Matthew Ashford & Chandra Noble-Ashford  
4654 SW Martha St / Portland, OR 97221

**Site Address:** 4654 SW MARTHA ST

**Legal Description:** BLOCK 20 LOT 9, FAIRVALE  
**Tax Account No.:** R268406790  
**State ID No.:** 1S1E18AD 06800  
**Quarter Section:** 3524  
**Neighborhood:** Hayhurst, contact Janet Hawkins at 503-988-3707.  
**Business District:** None  
**District Coalition:** Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.  
**Zoning:** R7 (Single Family Residential)  
**Case Type:** AD (Adjustment)  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

#### **Proposal:**

The applicant has constructed a tree house structure over 6 ft. in height around a Fir Tree that is located within the public right of way and within the required setback along the western edge of the site. Zoning Code section 33.110.250.4.B states that covered accessory structures over 6 ft. in height are not allowed in the setback.

The site is located adjacent to the intersection of SW Martha St., SW Fairvale Ct. and SW 49<sup>th</sup> Ave. The existing house on the site currently faces SW Martha St.

The western property line is considered the front property line per the Zoning Code definition in 33.910. Since the structure is located within the 15 ft. front setback required on this site by Zoning Code section 33.110.220.B (Table 110-3), 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. 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 8,700 square foot lot is developed with a single dwelling residence that was built in 1928. The home is located on a corner lot with three street frontages (SW Martha St., SW 49<sup>th</sup> Dr. and SW Fairvale Ct.), the primary entrance to the home faces SW Martha St. The homes located at this intersection have a variety of architectural styles and were built between 1927 and 2007 in distinctive eras with homes built in the 1930's, 50's and 60's. SW Martha St. is improved with sidewalks and a paved road adjacent to the home on the subject site. The intersection of SW Martha St., SW 49<sup>th</sup> Dr. and SW Fairvale Ct. has a paved street but no sidewalk or curbs.

**Zoning:** The R7 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 there are no prior land use reviews for this site.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **September 6, 2012**. The following Bureaus have responded:

The **Bureau of Transportation Engineering (PBOT)** responded with the following comments:

There are no transportation related approval criteria that the deck/tree house structure is subject to; therefore, PBOT has no objections to the proposed Adjustment. However, it should be noted that the applicant has already submitted an Encroachment Permit application (12-174832 TR) for the tree house structure (since it's located within the public right-of-way) that was approved by PBOT last month. At this location, the subject site has frontage along SW Martha, SW Fairvale Ct and SW 49<sup>th</sup> Dr. The City's Transportation System Plan (TSP) classifies each of these streets as Local Service streets for all modes; each street is also classified as a City Walkway. Exhibit E-1 contains additional details.

The **Bureau of Parks-Forestry Division** responded with the following comment:

Urban Forestry inspected the tree house on 9/5/12. There is no damage or any immediate problems regarding the impacts of the tree-house on the street tree. Urban Forestry would like the property owners to be aware of the following:

1. Any future pruning or cutting of the tree requires a permit from the Urban Forestry Program
2. The roof of the tree-house will require continual modification in subsequent years to prevent damage to the trunk of this tree
3. Inspectors from the Urban Forestry Program are available to inspect this tree if any future problems occur

Exhibit E-2 contains additional details.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on September 6, 2012. One written response has been received from a property owner in response to the proposal.

**Summary of Neighbor Response** (Exhibit F-1): One neighbor wrote a letter of opposition to the adjustment request stating that he was in opposition to the tree house due to the following

reasons (which have been summarized): 1) The tree house only benefits the property owner; 2) the tree house is built on public land; 3) the tree house blocks views of the west hills; 3) the tree house is located where 3 to 4 vehicles could be parked; 4) The tree house is too tall, exceeding the height requirement; 5) The structure is located in the setback; 6) the applicants fence also extends into the right of way; 6) the applicant parks their car on Fairvale Ct. blocking clearance for emergency vehicles to travel down Fairvale Ct.

**BDS response:** The tree house is built around a large fir tree and behind an existing mature hedge at the intersection of SW Martha St. and SW 49<sup>th</sup> Drive, which indicates prior to the construction of the tree house, the area where the tree house was built was not used for off street vehicle parking and visually appeared to be associated with the home located at 4654 SW Martha St. The approval criteria that is required to be addressed as part of this adjustment request does not address opposition items raised by the neighbor related to who benefits from the tree house in question, where the applicants fence is constructed in relation to the property line and the relationship between the applicants tree house and where the applicant parks private vehicles along Fairvale Ct. Please see the findings below for additional details.

## 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 accessory structures is explained under Section 33.110.250.A as follows:

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

Further, the purposes of the setback standard requested for Adjustment are found in Section 33.110.220, Setbacks. The setback regulations for Garages 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.*

The applicant has constructed a tree house (approximately 12 ft. by 12 ft.) structure over 6 ft. in height around a Fir Tree that is located within the public right of way and within the required setback along the western edge of the site. Zoning Code section 33.110.250.4.B states that covered accessory structures over 6 ft. in height are not allowed in the setback.

This situation is somewhat unique because the lot has frontage on three streets. The site is located adjacent to the intersection of SW Martha St., SW Fairvale Ct. and SW 49<sup>th</sup> Ave. The existing house on the site currently faces SW Martha St. The western property line is technically considered the front property line per the Zoning Code definition in 33.910, even though the front setback appears to be visually located along the northern property line between the front door of the existing house on the site and SW Martha St. Thus the tree house is technically located in the front setback, even though it appears to be located visually in the side setback. Since the structure is located within the 15 ft. front setback required on this site by Zoning Code section 33.110.220.B (Table 110-3), the applicant has requested an adjustment to this standard to reduce, from 15 feet to zero, the front (west) setback requirement for the existing tree house located on the site.

It should be noted that based on the applicants survey the tree house encroaches into the public right of way (regulated by the Portland Bureau of Transportation) approximately 7.6 ft. In addition, the Fir tree that the tree house is built around is also located in the public right of way and is therefore regulated by the City of Portland's Urban Forestry Division. Both agencies were contacted as part of this review process, both agencies provided comments (exhibits E-1 & E-2) that supported the location of the tree house within the public right of way built around a tree regulated by Urban Forestry.

Based on the photographs provided (exhibit A-2) and the site visit conducted, the tree house appears to be visually located entirely on the property associated with the existing home located at 4654 SW Martha St. Although the survey indicated the encroachment into the public right of way, visually, based on the location on the mature hedge between the tree house and the right of way and the lack of curb and sidewalk along the street frontage adjacent to the tree house, the tree house appears to be located fully on private property, approximately 12 ft. from the edge of pavement along the public street adjacent to the tree house. The tree house has the appearance visually as a side lot line which would require a 5 ft. setback in the R7 zone. The existing home is setback approximately 23 ft. from SW Martha St., which visually appears as the main entrance to the primary residence on the site and provides an open, visually pleasing front yard (see exhibit G-4).

As indicated above, the tree house is approximately 12 ft. from the edge of pavement within the public right of way along the western property line, behind a mature hedge and appears visually as a side lot line. Thus, the location of the existing tree house maintains light, air, separation for fire protection, and access for fire fighting. It also reflects the general building scale and placement of houses in the City's neighborhoods. The tree house appears to be visually outside the setback, and is not adjacent to any private residences. Based on the location of the tree house next to the intersection of three public streets (SW Martha St., SW 49<sup>th</sup> Dr. and SW Fairvale Ct.) the closest homes are all located across the public right of way from the tree house, which provides a buffer.

Based on GIS mapping software, the single family homes to the south of the tree house are located approximately 110 feet away, while the closest home to the west is approximately 150 feet from the tree house. The closest home to the north is approximately 140 feet from the tree house, while the nearest home to the east is approximately 150 feet from the tree house and buffered from the tree house by the existing house on the subject site (exhibit G-3). The public street provides an additional buffer between the tree house and the existing residences in the vicinity of the site. Overall, the distance between the tree house and adjacent homes promotes a reasonable physical relationship between residences with privacy for neighboring properties. The location of the tree house, built around a large fir tree behind a mature hedge, allows it to fit the topography of the site. The tree house has been painted a dark brown, an earth tone color which allows it to blend in well with the surrounding natural environment.

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:** As stated above, the reduced front setback for the tree house will not detract from the livability of nearby residences. The tree house blends in nicely with the existing neighborhood at this location. For these reasons, the 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 Adjustments will not create impacts and therefore do not require mitigation to lessen their effect. 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.

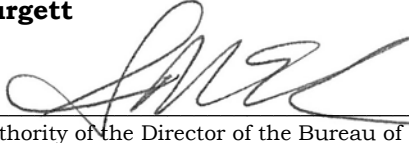
## **CONCLUSIONS**

Based upon the findings of this report, each applicable approval criterion is met.

## **ADMINISTRATIVE DECISION**

Approval of an Adjustment to: reduce the required front (western) building setback from 15 feet to zero, for the tree house (Section 33.110.220) per the approved site plans, Exhibits C.1 and C.2 signed and dated October 2, 2012.

**Staff Planner: Shawn Burgett**

**Decision rendered by:**  **on October 2, 2012**

By authority of the Director of the Bureau of Development Services

**Decision mailed: October 4, 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 15, 2012, and was determined to be complete on **August 30, 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 15, 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.

**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 18, 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 19, 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
  - 1. Narrative
  - 2. Pictures of tree house
  - 3. Statement documenting cost of tree house
  - 4. Aerial of site
  - 5. Signed statements from Neighbors indicating support of tree house
  - 6. Letter from applicants family member
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Survey of tree house in relation to property line (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Transportation Engineering and Development Review
  - 2. Bureau of Parks, Forestry Division
- F. Correspondence:
  - 1. SR Hellenthal, PO Box 8637, Portland, OR 97207
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research
  - 3. GIS aerial view of site documenting distance from tree house to adjacent homes
  - 4. Google street view image of primary home on site (4653 SW Martha St.)

**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).**

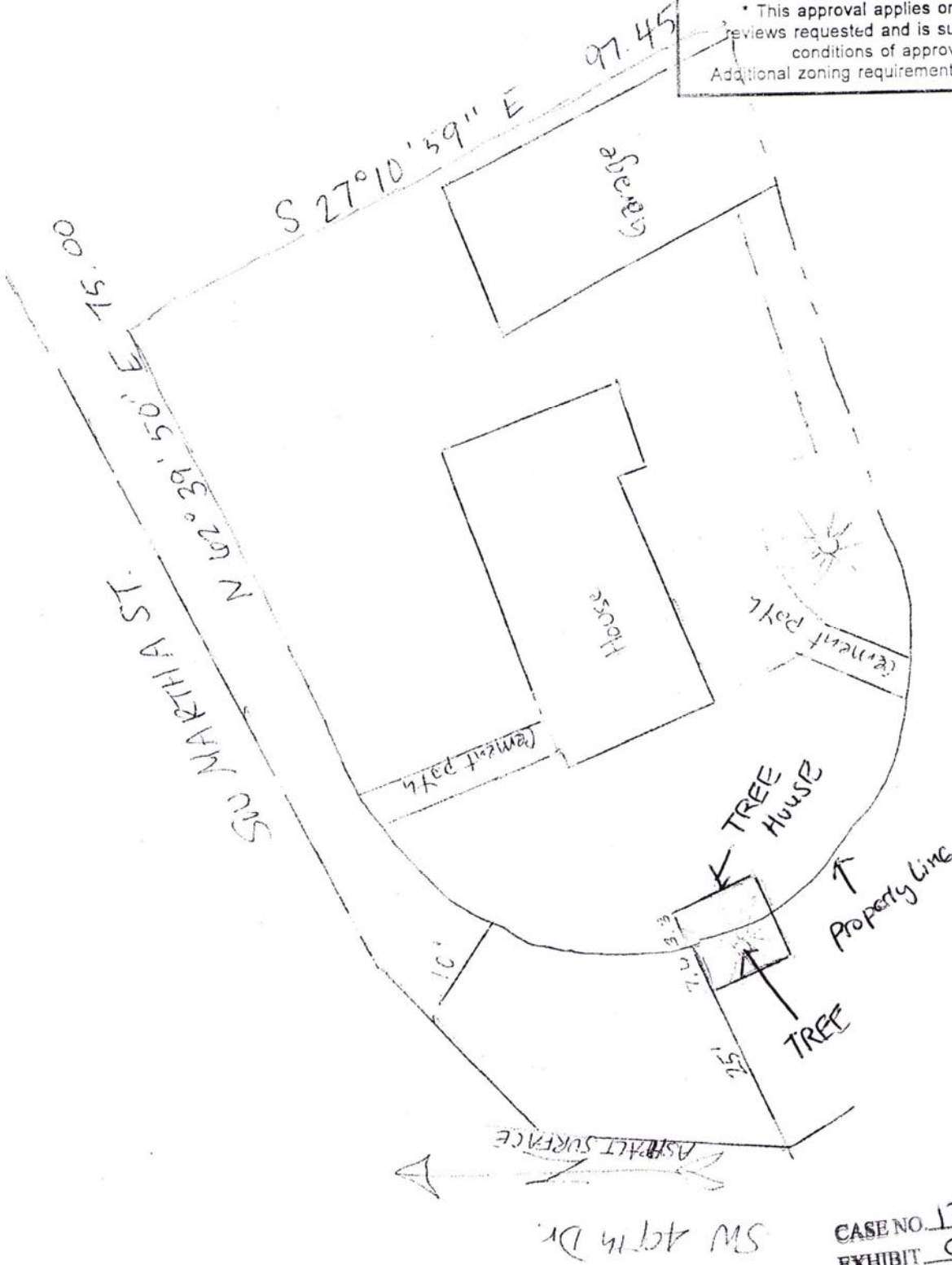




tree

\*Approved\*  
 City of Portland  
 Bureau of Development Services  
 Planner: SBwqch  
 Date: 10/2/12

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



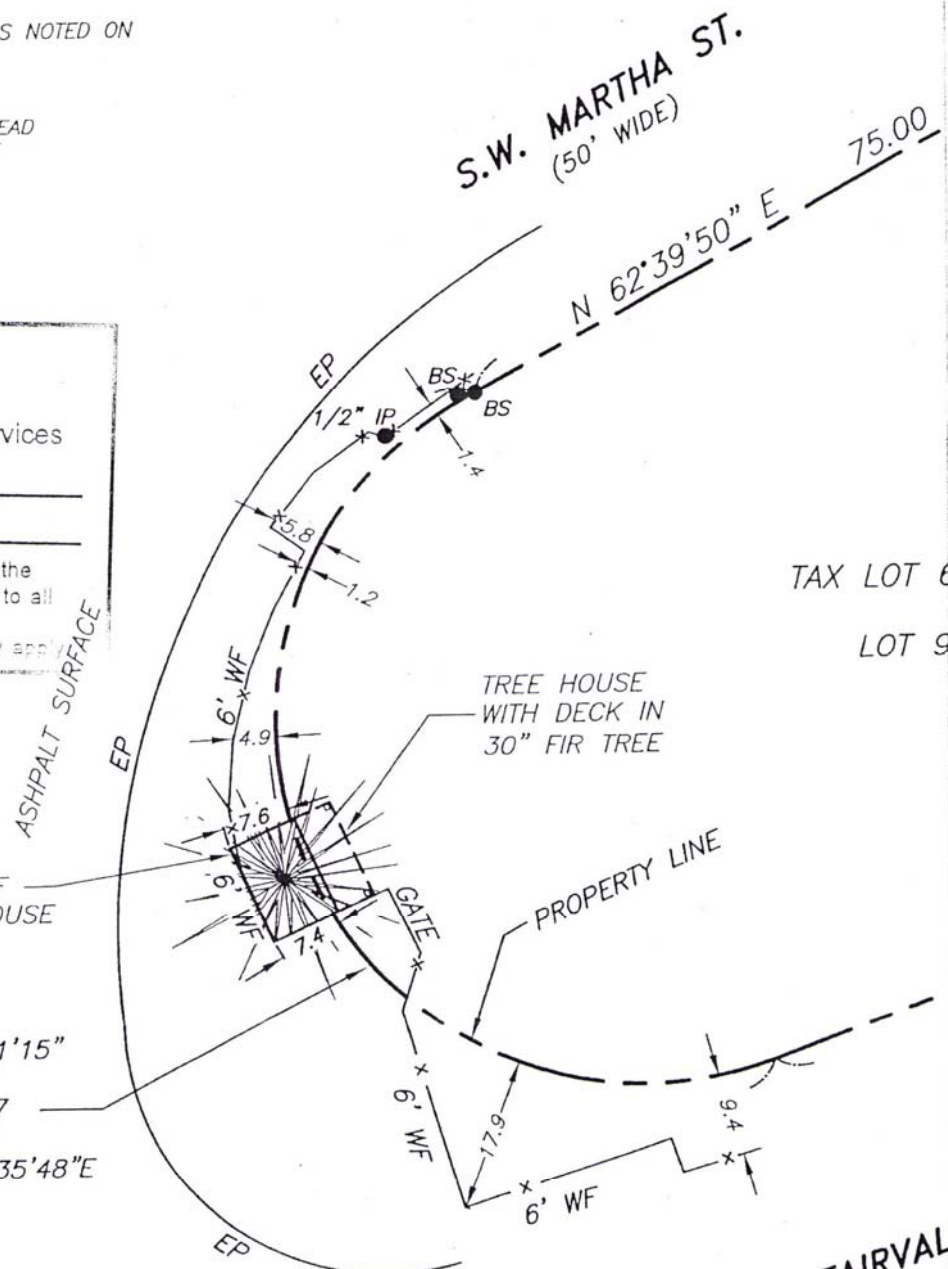
CASE NO. 12-172215  
 EXHIBIT C-1

**LEGEND**

- = MONUMENT FOUND AS NOTED ON SURVEY MAP.
- ☼ = CONIFEROUS TREE
- BS = BRASS SCREW IN LEAD
- EP = EDGE OF PAVEMENT
- IP = IRON PIPE
- SF = SQUARE FEET
- WF = WOOD FENCE

**\*Approved\***  
**City of Portland**  
 Bureau of Development Services  
 Planner SBWacht  
 Date 10/2/12

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



**S.W. MARTHA ST.**  
 (50' WIDE)

TAX LOT 6  
 LOT 9

**S.W. FAIRVAL**  
 (50' WIDE)

REGISTERED  
 PROFESSIONAL  
 LAND SURVEYOR

*Steven P. Buckles*

OREGON  
 JULY 17, 1986  
 STEVEN P. BUCKLES  
 2231

RENEWABLE: 12/31/13

CASE NO. 12-172215  
 EXHIBIT C-2