



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

FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner
Paul L. Scarlett, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portlandoregon.gov/bds

Date: January 28, 2014
To: Interested Person
From: Sylvia Cate, Land Use Services
503-823-7771 / Sylvia.Cate@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 13-234742 AD

GENERAL INFORMATION

Applicant/Owner: Eleanor Godfrey
2728 SW Sherwood Dr / Portland, OR 97201-2251

Site Address: 2728 SW SHERWOOD DR

Legal Description: LOT 18 EXC PT IN ST, PORTLAND HTS PK
Tax Account No.: R668500450
State ID No.: 1S1E09BA 01800 **Quarter Section:** 3327
Neighborhood: Southwest Hills Residential League, Nancy Seton at 503-224-3840.
District Coalition: Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.
Zoning: R7c, Single Dwelling Residential 7,000 was Environmental Conservation overlay zone

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

Proposal:

The applicant recently added a new exterior stairway leading from an existing elevated deck to a new deck constructed at grade. The zoning code allows minor projections, such as stairs to encroach 20% into a required setback, however such encroachments cannot result in a structure closer than 3 feet to the property line. [33.110.220.C.1.]. The subject stairs are allowed to be located 4 feet from the property line [20% of the required 5 foot side setback]. However, the stairs are located 3 feet 6 inches from the side property line. Therefore, the applicant is requesting an Adjustment to allow the stairs to extend an additional 6 inches beyond what is allowed.

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 site is a 10,500 square foot lot developed with a 2,956 square foot home built circa 1953. The site is steeply sloping, with at least a 20% grade, and the Environmental Conservation overlay zone covers the northerly 3/4s of the lot. The immediate vicinity in all directions are residential uses and development; to the north of the site is the Marquam Nature Park zoned Open Space with Environmental Protection overlay zone.

Zoning: The site is zoned R7 and R7c. The R7 zone is a medium density single-dwelling zone. The R7 Zone allows attached and detached single-dwelling structures and duplexes. The R7 zone is one of several that implement the Comprehensive Plan for single dwelling residential.

The Environmental Conservation zone is intended to protect resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to be sensitive to the site's protected resources. These regulations also help meet other City goals, along with other regional, state, and federal goals and regulations. The environmental regulations also carry out Comprehensive Plan policies and objectives.

Staff Note: A small portion of the new deck located at grade protrudes approximately 5 feet into the 'c' zone. However, the applicant has documented, and staff has verified, that this small area was previously disturbed. Therefore, the deck extension is allowed per 33.430.080.C.3.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed January 3, 2014. The following Bureaus have responded with no issues or concerns:

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

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on January 3, 2014. One written response has been received from either a notified property owner in response to the proposal. The neighbor notes that they live next door to the site and fully support the landscaping, deck and stairs. The neighbor adds that the applicant has "...done a beautiful job and we have no objection to the extent of their project." [Exhibit F-1].

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 for building setbacks is found at 33.110.220.A, Setbacks, which states:

The building setback regulations 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 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*

The applicant recently added a new exterior stairway leading from an existing elevated deck to a new deck constructed at grade. The zoning code allows minor projections, such as stairs to encroach 20% into a required setback, however such encroachments cannot result in a structure closer than 3 feet to the property line. The subject stairs are allowed by right to be at 4 feet from the property line. However, the stairs are located 3 feet 6 inches from the side property line. Therefore, the applicant is requesting an Adjustment to allow the stairs to extend an additional 6 inches beyond what is allowed.

The 6-inch encroachment into the side setback does not impinge light or air because of the 13.5 foot separation between the two houses. A row of arborvitae provides a visual buffer between the stairway and the adjacent neighbor, who supports the proposal. The Fire Bureau has no objections, thus the 6 inch encroachment will not prevent access for fire fighting, due to the 13.5 foot separation between the site and the adjacent home.

The 6-inch encroachment has no impact on the general placement of homes in this area, and the existing physical relationship between the home on the subject site and neighboring homes will remain unchanged. The 6-inch encroachment of the stairway will have no impact on privacy of the adjacent home. A row of shrubbery provides a visual buffer between the residences, and the location of the portion of the stairway in the setback does not provide views into the adjacent neighbor's windows.

The requested Adjustment provides flexibility for the stairway, which allows access to the new deck at grade, without impacting the Environmental Conservation zone and does not disturb the steep topography of the backyard.

For these reasons, 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 proposal will improve the livability for the applicant, due to additional outdoor area to enjoy without impinging into undisturbed areas within the Environmental zone. Because the new deck is behind the house, only a small portion of the stairway is visible from the street. The stairs and the deck are well designed and

constructed and thus will have no impact on the appearance of the residential 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 requested. This criterion is not applicable.

- 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: There are no discernible impacts that would result from granting the requested adjustment. 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 Maps with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). As the Adjustment area/project 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.

Staff Note: A small portion of the new deck located at grade protrudes approximately 5 feet into the ‘c’ zone. However, the applicant has documented, and staff has verified, that this small area was previously disturbed. Therefore, the deck extension is allowed per 33.430.080.C.3. The applicant has removed invasive ivy, and has replanted approximately 1500 sq ft in native plants.

CONCLUSIONS

The applicant requests an Adjustment to allow an exterior stairway encroach into the side setback an additional 6-inches beyond what the code allows. The proposal meets all applicable approval criteria and therefore should be approved.

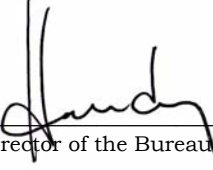
ADMINISTRATIVE DECISION

Approval of:

- An Adjustment to 33.110.220.C.1 to allow an exterior stairway to be 3-feet 6-inches from the side property line, per Exhibit C-1, signed and dated January 24, 2014, 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. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 13-234742 AD."

Staff Planner: Sylvia Cate

Decision rendered by:  **on January 24, 2014**
By authority of the Director of the Bureau of Development Services

Decision mailed: January 28, 2014

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 December 5, 2013, and was determined to be complete on December 31, 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 December 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 further extended by the applicant, **the 120 days will expire on: April 30, 2014.**

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 February 11, 2014** 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.

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 **February 12, 2014**.
- 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:

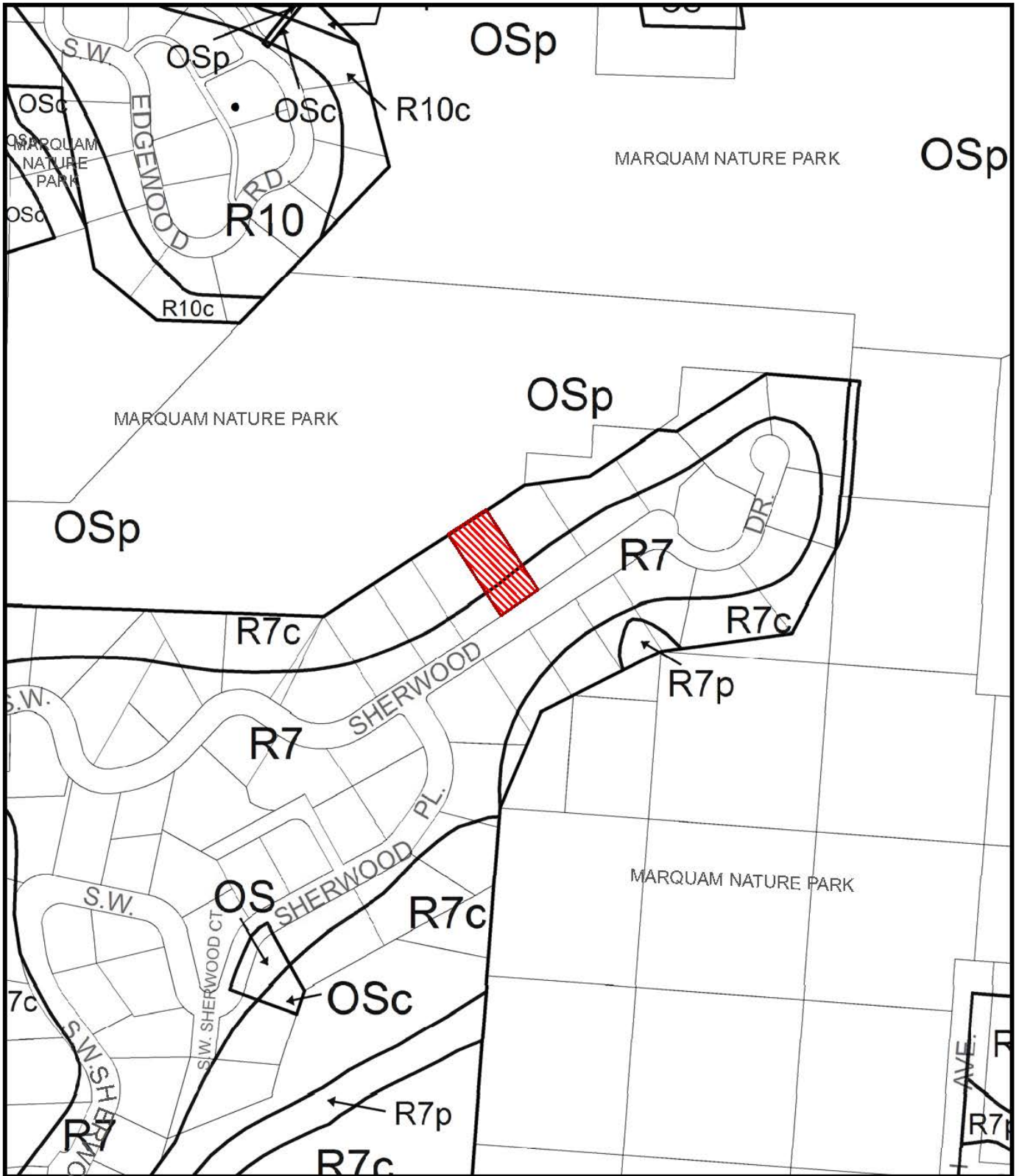
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- 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 Plans Examiner Section of BDS
- F. Correspondence:
 - 1. Pei-Li Wang, January 22, 2014; In full support
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete letter

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 13-234742 AD
 1/4 Section 3327
 Scale 1 inch = 200 feet
 State_Id 1S1E09BA 1800
 Exhibit B (Dec 10, 2013)

LU13 - 234742 AD

MARGUAM WOODS

PROJECT ADDRESS
2728 SW SHERWOOD DRIVE
PORTLAND, OR 97201

SITE PLAN
SCALE 1" = 10'-0"



ADJUSTMENT
TO 3' 6"

Approved*
City of Portland
Bureau of Development Services
Planner [Signature]
Date 1/24/2014
*This approval applies only to the
conditions of approval.
Review zone requirements may apply.

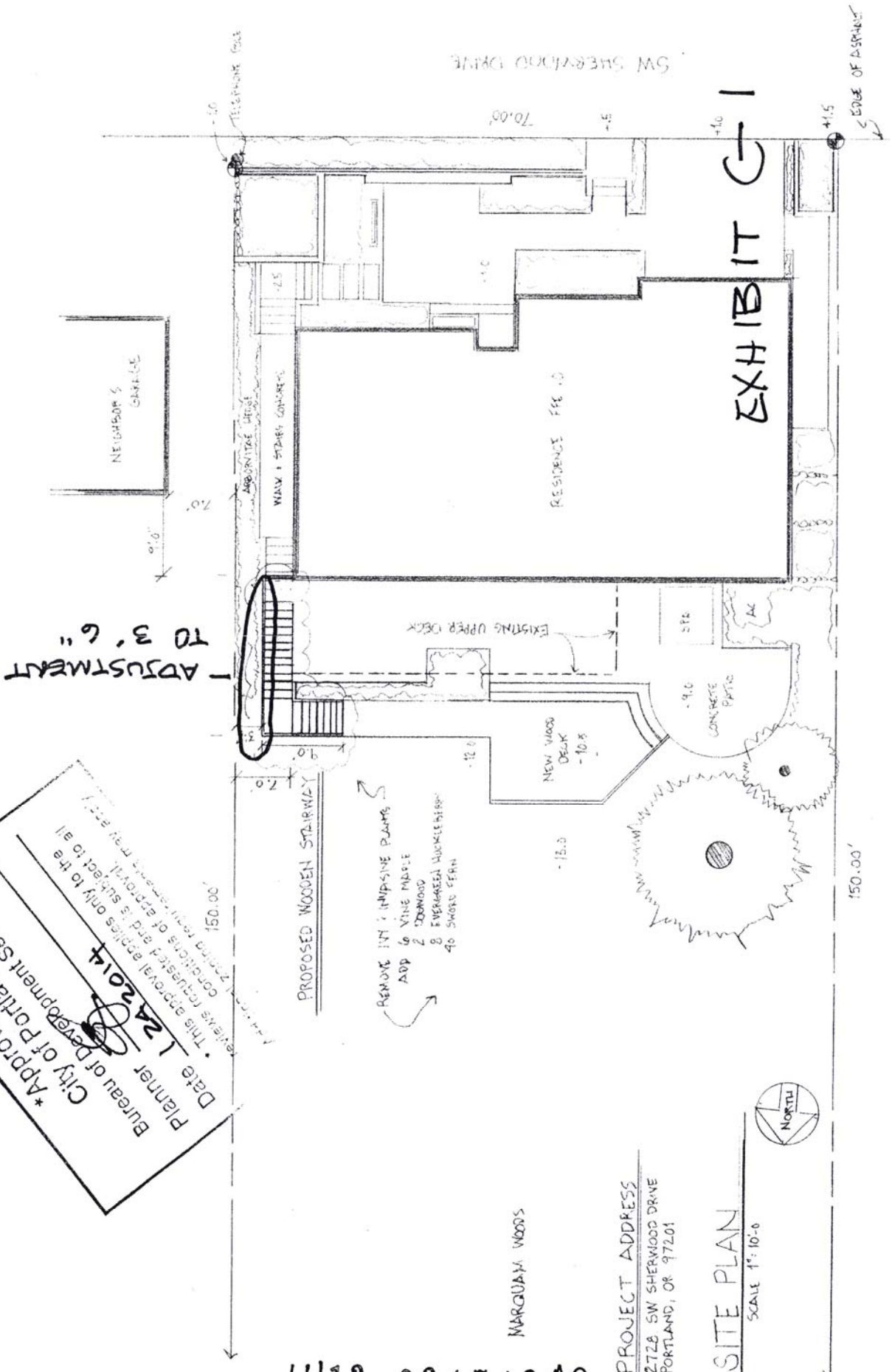


EXHIBIT C-1

SW SHERWOOD DRIVE

EDGE OF ASPHALT