



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

FROM CONCEPT TO CONSTRUCTION

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**Date:** October 7, 2016  
**To:** Interested Person  
**From:** Matt Wickstrom, Land Use Services  
503-823-6825 / [Matt.Wickstrom@portlandoregon.gov](mailto:Matt.Wickstrom@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 16-218102 AD**

#### **GENERAL INFORMATION**

**Applicant:** Scott D Burns  
78 NW Macleay Blvd  
Portland, OR 97210

**Site Address:** 78 NW MACLEAY BLVD

**Legal Description:** LOT 1, LINDSEY'S PLACE CONDOMINIUM  
**Tax Account No.:** R499550050  
**State ID No.:** 1N1E32DA 90001  
**Quarter Section:** 3026

**Neighborhood:** Hillside, contact Peter Stark at 503-274-4331.  
**District Coalition:** Neighbors West/Northwest, contact Mark Sieber at 503-823-4212.

**Zoning:** R7c (Residential 7,000 with an Environmental Conservation Overlay Zone)

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

#### **Proposal:**

The applicant plans to convert a portion of the existing garage to living space. The location of the garage and conversion requires the construction of a new outdoor stairway to reach the entrance. The Portland Zoning Code allows minor building features such as stairs that are no more than 2.5 feet above the ground to extend into required building setbacks. The proposed stairs however are more than 2.5 feet above the ground; therefore, approval through an Adjustment Review is necessary. The applicant proposes two Adjustments to reduce the front and side building setbacks from 15 feet and 5 feet respectively to 0 feet for the new stairs and landing.

**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 roughly 7,000 square foot steeply sloping lot is developed with a house and attached garage fronting on NW MacLeay Boulevard. The surrounding vicinity is developed with other single-dwelling homes often constructed close to the street due to the terrain of the area.

**Zoning:** The site is zoned R7c (Residential 7,000 with an Environmental Conservation Overlay Zone). The R7 zone is a single-dwelling zone. Single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The “c” overlay is intended to conserve important environmental features and resources while still allowing compatible development. New development and exterior modifications to existing development must meet environmental standards or are subject to environmental review. The location of the proposal is not located in the “c” overlay and therefore it does not apply.

**Land Use History:** City records indicate one previous land use review for this site:

- LU 04-045233 AD – 2004 approved Adjustment review to increase the maximum allowed size of an ADU and allow a different roof pitch than required by regulations in effect at that time.

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed August 30, 2016. The following Bureaus have responded:

- The Life Safety Section of the Bureau of Development Services (BDS) responded with information about obtaining a building permit (Exhibit E-1).
- The Bureau of Environmental Services responded that the project creates less than 500 square feet of impervious area and therefore the requirements of the Stormwater Management Manual are not triggered. The response points out that at time of building permit, the applicant must show a safe stormwater disposal location. The response notes no objections to the proposal (Exhibit E-2).
- Site Development Section of BDS responded that the new platform is structurally supported to the existing structure and there will be no new foundation or grade change and therefore the section has no concerns (Exhibit E-3).
- The Portland Bureau of Transportation responded that there are no transportation-related approval criteria and the agency has no objections to the proposal (Exhibit E-4).
- The Fire Bureau responded with no concerns (Exhibit E-5).

**Neighborhood Review:** No written responses have been received from either the Neighborhood Association or notified property owners in response to the Notice of Proposal.

**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 applicant requests one Adjustment to reduce the front setback from 15 feet to 0 feet and the side setback from 5 feet to 0 feet for a new exterior stairway leading to an entrance on a lower level of the home. The purpose for the setback regulations for single-dwelling zones is found in 33.110.220, which states:

*Purpose: 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 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.*

Although the stairs are more than 2.5 feet above grade, they follow the downward slope of the site and will not block light or air for adjacent properties. The Life Safety Section of BDS provided a response to the land use review proposal and did not express concerns about separation for fire protection. The Fire Bureau also responded with "no concerns" indicating access for fire fighting is adequate. The stairs are a minor feature and do no change the general scale or placement of the house. In addition, the stairs are exterior and will not change the physical relationship between residences. The stairs are only designed to provide access to a lower level of the home, not provide an area for outdoor recreation; therefore, they will not impact privacy for neighboring properties. The terrain of the vicinity prohibits many of the homes from providing a typical open front yard; and the stairs located in the front setback at this site do not remove front yard area. As mentioned previously, the location of the stairway at a height above the 2.5-foot allowance of the Portland Zoning Code is a result of the topography of the site and because the topography extends throughout the vicinity, the proposal is compatible with the neighborhood. The location of the stairway does not restrict with the location of the garage entrance. Based on this information, 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 is located in a residential zone. The proposed stairway follows the downward slope of the site and will not result in a loss of privacy, light or air for the adjacent lot. Most of the stairway will not be visible from the street. The stairway

provides access to a lower level of the house and does not provide an area for outdoor recreation that could be disruptive if located on the property line. Based on this information, the proposal will not significantly detract from the livability or 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:** Two Adjustments are requested as part of this land use review. The overall purpose of the R7 (Residential 7,000) zone is to provide land for housing for individual households. The requested Adjustment does not conflict with this purpose. As such, the proposal is consistent with the use standards for the Single-Dwelling Zones because it maintains the single-dwelling nature of the area. Furthermore, the proposal is consistent with the development standards, other than those requested for Adjustment as part of this land use review, and will not detract from the aesthetically pleasing environment in the vicinity. This criterion is met.

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

**Findings:** No City-designated scenic or historic resources are located on this 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 adjustments. This criterion is met.

- F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

**Findings:** The portion of the site where the Adjustment is requested 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

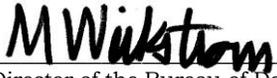
The applicant requests two Adjustments to allow an exterior stairway leading to a lower level of the home to extend into the front and side setbacks. Most of the stairway will not be visible from the street and the stairway will not detract from the livability or appearance of the residential area. Based on the findings above, the proposal meets the applicable approval criteria and should be approved.

## ADMINISTRATIVE DECISION

Approval of two Adjustments to reduce the front building for an exterior stairway from 15 feet to 0 feet and to reduce the side building setback from 5 feet to 0 feet (33.110.220.B), per the approved site plans, Exhibits C-1 through C-2, signed and dated October 3, 2016, subject to the following condition:

- 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.2. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 16-218102 AD."

**Staff Planner: Matt Wickstrom**

**Decision rendered by:**  **on October 3, 2016**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: October 7, 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 August 5, 2016, and was determined to be complete on August 19, 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 August 5, 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: December 16, 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 October 21, 2016** at 1900 SW Fourth Ave. Appeals can be filed at the 5<sup>th</sup> floor reception desk of 1900 SW 4<sup>th</sup> Avenue Monday through Friday between 8:00 am and 4:30 pm. **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 **October 24, 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:

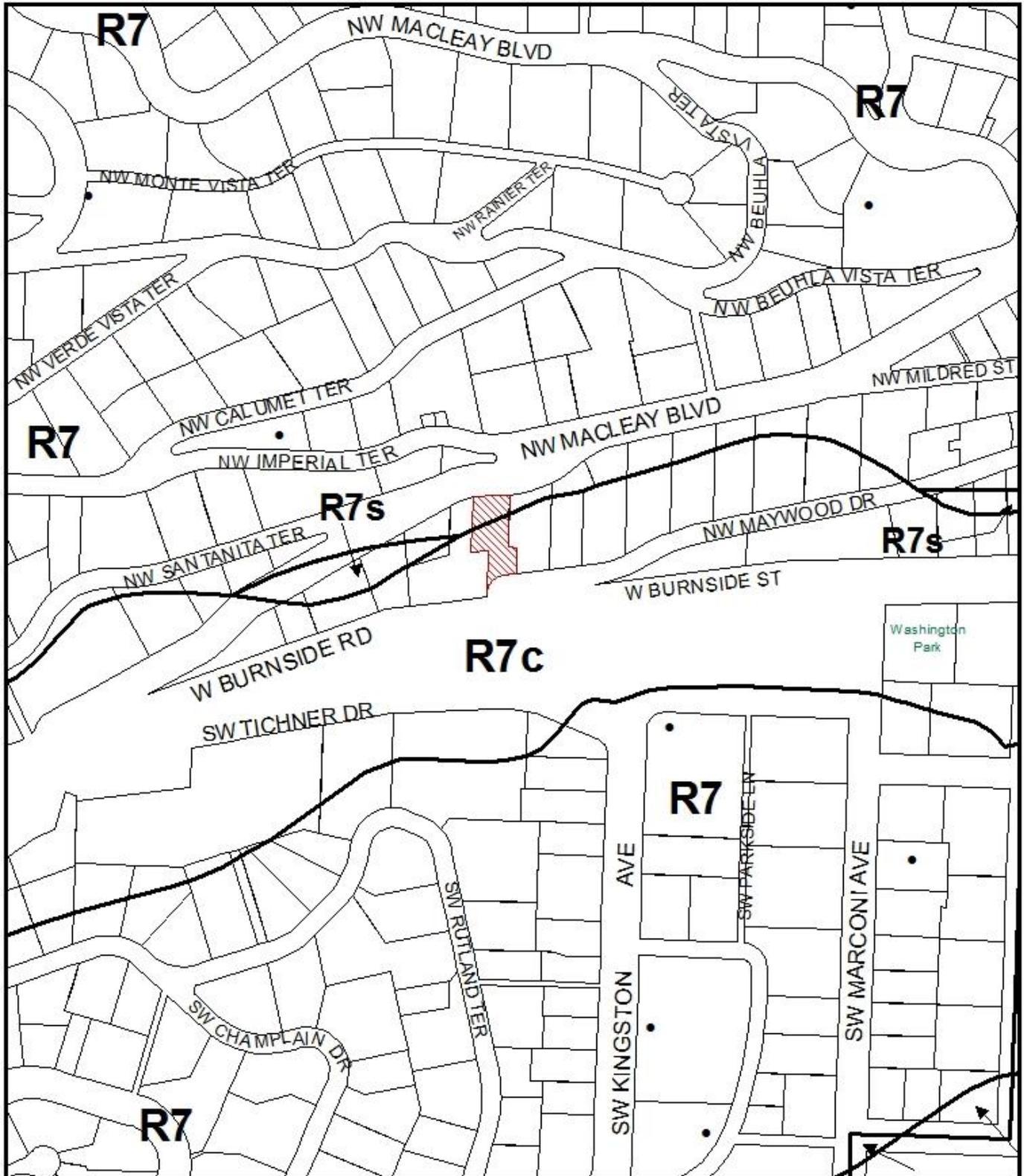
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement and Original LU Application
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Elevation Drawings (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Life Safety Section of BDS
  - 2. Bureau of Environmental Services
  - 3. Site Development Section of BDS
  - 4. Portland Bureau of Transportation
  - 5. Summary of agency responses
- F. Correspondence: None

**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).**

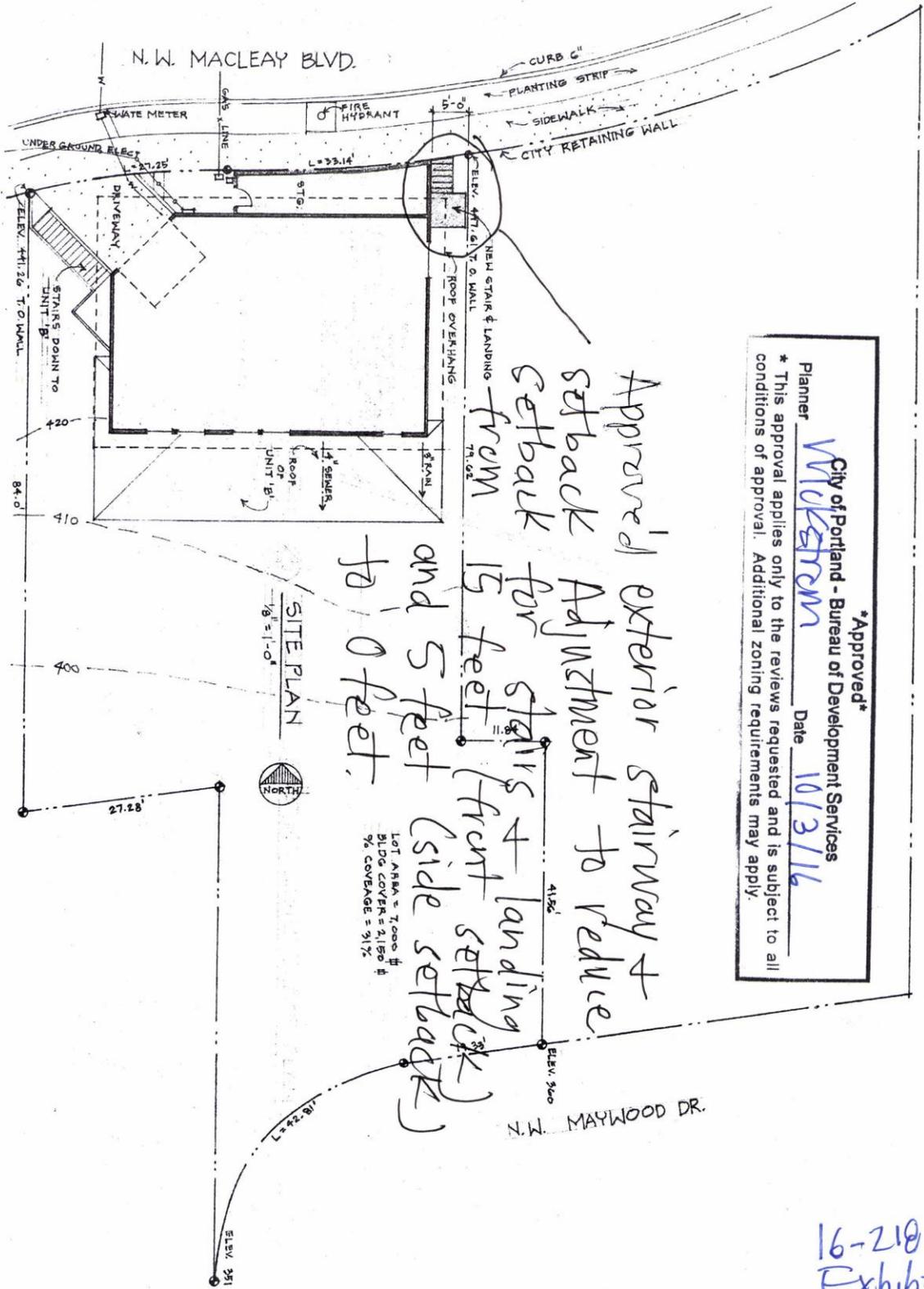


# ZONING



- Site
- Historic Landmark

File No.	<u>LU 16-218102 AD</u>
1/4 Section	<u>3026</u>
Scale	<u>1 inch = 200 feet</u>
State Id	<u>1N1E32DA 90001</u>
Exhibit	<u>B</u> (Aug 08, 2016)



\*Approved\*  
 City of Portland - Bureau of Development Services  
 Planner Wickstrom Date 10/3/16  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

Approved exterior stairway & setback Adjustment to reduce set back for stairs & landing from 15 feet (front setback) and 5 feet (side setback) to 0 feet.

LU 16 - 218102 AD

16-218102  
 Exhibit C-1

SHEET # 1 of 2	RESIDENCE REMODEL FOR:	78A N.W. MACLEAY BLVD	BATHROOM & GUESTROOM	DATE: 7/29/16
	SCOTT BURNS	PORTLAND, OREGON	CONVERSION @ LOWER LEVEL	

