



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

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Date: February 20, 2020
To: Interested Person
From: Marguerite Feuersanger, Land Use Services
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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 19-209507 AD

GENERAL INFORMATION

Applicant: Dan Williams, Faster Permits
2000 SW 1st Avenue Suite 420
Portland, OR 97201
(503) 819-7754 dan@fasterpermits.com

Owners: Gail Johnson and Roger Demuth
430 NW Macleay Boulevard
Portland, OR 97210

Site Address: 430 NW Macleay Boulevard

Legal Description: BLOCK 27 LOT 14, KINGS HTS & RPLT
Tax Account No.: R452005370
State ID No.: 1N1E32DA 05400
Quarter Section: 3026

Neighborhood: Hillside, contact Kevin Kohnstamm at kevin.kohnstamm@comcast.net
Business District: None
District Coalition: Neighbors West/Northwest, contact Mark Sieber at 503-823-4212.

Zoning: R7, Single Dwelling Residential 7,000 Zone

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

Proposal:

The applicant proposes to create a new workshop room below the existing street-level attached garage and deck. An exterior stair and entrance to the workshop will be created at the west (side) elevation. A new interior door will connect the workshop with the existing lower level of the house. An exterior lower-level deck is proposed east of the existing driveway. Only

portions of the new deck and stairs will be visible at the street-level view (see attached Elevation drawings).

The R7 zone requires a minimum 15-foot front setback and minimum 5-foot side setback for buildings. Because the proposed improvements are within these setback areas, Adjustments are requested to waive the minimum front and side setback requirement. A third Adjustment is requested, to increase the maximum building coverage. Portions of the new stair and lower deck will be more than 6 feet above grade and count toward building coverage. The lot is relatively small in area (4,455 square feet) and allows up to 2,045 square feet of building coverage. The applicant is proposing to increase the maximum building coverage to 2,408 square feet.

The applicant states that this proposal does not include creation of an accessory dwelling unit (ADU) or accessory short-term rental (ASTR), and that existing trees will not be pruned or removed as part of this proposal. An existing tree to be preserved is located within the proposed outdoor deck area.

The applicant submitted a survey drawing showing the location of the front property line, existing improvements and existing trees (Exhibit C-3). The survey shows the front property line coinciding with the interior face of the existing retaining wall.

Note that in 2016, the applicant received City approval for a reduced front setback for a similar proposal (#16-231828 AD), without the side yard stair. However, the prior approval has expired (building permits were not issued within 3 years of the approval).

In summary, the requested Adjustments are:

- 1 Reduce the required front building setback from 15 feet to zero feet for an enclosed workshop under the existing garage and driveway bridge, and for portions of a new deck, new exterior stairs and new landing (33.110.220.B);
- 2 Reduce the required west side yard building setback from 5 feet to zero feet for portions of a new exterior stair and new landing (33.110.220.B); and
- 3 Increase the maximum building coverage from 2,045 square feet to 2,408 square feet for portions of the new exterior stairs and new deck (33.110.225.B).

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.

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. This application was submitted on August 13, 2019 and determined to be complete on December 11, 2019.

ANALYSIS

Site and Vicinity: The subject site is 4,455-square feet in area, developed with a house and attached garage located near the front property line at NW Macleay Boulevard. The site contains mature trees and slopes steeply downward from the frontage along the north side of NW Macleay Boulevard. The existing driveway is constructed over a bridge structure leading to the garage.

The surrounding neighborhood is developed with single-dwelling residences along narrow and curving streets. Lots sizes are variable, generally between 4,000 and 10,000 square feet in

area. Due to the steep downward slope, many houses along the north side of NW Macleay Boulevard are generally built close to the front property line, as is the case with the subject site and adjacent sites. From the street view, the houses appear to be no taller than one or one-and-one-half levels, but are often contain two, three or four levels. Lots along the south side of NW Macleay Boulevard have additional street frontage on NW Monte Vista Terrace, which serves as vehicle access to these lots. Houses on these lots are located toward the rear of the lots and generally can't be seen from NW Macleay Boulevard. Due to the steeply sloping terrain, the neighborhood streets are paved roadways without curbs or sidewalks. Mature deciduous and evergreen trees are a defining characteristic of the subject site and the surrounding neighborhood area.

Zoning: The Residential 7,000 (R7) single-dwelling zone is intended to preserve land for housing and to provide housing opportunities for individual households. The R7 Zone implements the Comprehensive Plan policies and designations for single-dwelling housing. Minimum lot size is 4,200 square feet, with a minimum width and depth dimensions of 40 feet and 55 feet, respectively. Maximum densities are 1 lot per 7,000 square feet of site area.

Land Use History: City records indicate the following prior land use reviews for this site:

- LU 16-231828 AD Approval of an Adjustment to reduce the front setback to zero with conditions. This approval has expired.
- 91-00088 SL Land use review approval with conditions for construction of the existing house on a substandard lot (4,455 square foot lot within the R7 Zone).

Staff response: The conditions of this land use review no longer apply to the site because the Site Review (SL), is no longer in effect (per Section 33.700.100.B.5, Other Land Use Actions). Development on the site is subject to the R7 zone regulations.

- MP 010-90 Approved three-lot partition.
- VZ 056-90 Approved reductions in lot depths for three lots.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **December 26, 2019**. The Fire Bureau responded with no issues or concerns (Exhibit E-4). Other city service bureaus responded with no objection to the proposed Adjustments but provided comments regarding building permit requirements:

- The Bureau of Environmental Services (BES) notes that additional information about stormwater disposal for the proposed improvements will be required at the building permit review stage (Exhibit E-1).
- The Bureau of Transportation (PBOT) notes that a portion of the new stairs and landing is proposed within the NW Macleay public right of way. An application for an encroachment permit for this work has been submitted by the applicant (20-106540 TR). PBOT requires that the work proposed in the encroachment permit match the work shown on the building permit plans. The encroachment permit must be approved prior to approval of the building permit plans (Exhibit E-2).
- The Water Bureau identifies requirements that apply during the building permit review (Exhibit E-3).
- The Site Development Section of BDS will require a geotechnical/geohazard report with the building permit application, which must include recommendations for slope stability, excavation, and shoring (Exhibit E-5).
- The Life Safety Residential Plans Examiner notes requirements that will apply at the time of building permit review (Exhibit E-6).

Neighborhood Review: One written response was received in response to the Notice of Proposal. A notified property owner's representative states that the proposal does not satisfy the Adjustment approval criteria A, B and C of Section 33.805.040. The approval criteria findings in this report address these issues raised in the neighbor's letter.

The neighbor is also concerned that in the event the Adjustments are granted, their ability to develop their property will be impaired as a result. The neighbor's property is immediately west of the subject site; it is currently undeveloped and slightly smaller in size than the subject site. The neighbor does not identify a timeline for development of their site.

Staff response: The Zoning Code regulations are updated or changed over time. Development of the neighbor's site will be subject to the Zoning Code regulations in place at the time development is proposed (the development will be subject to other regulations such as those contained in the building and fire codes). If the site is a legal lot or lot of record (as defined in Chapter 33.910), proposed development must comply with Zoning Code regulations. If the developer cannot or chooses not to meet one or more development standards, they may have the option to request an Adjustment (per Chapter 33.805). The purpose of the Adjustment review process (Section 33.805.100) is:

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. They also 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.

As identified in the purpose statement, Adjustment requests can be considered for a variety of development proposals and site conditions. For example, the steeply sloping wooded terrain of both the subject site and the neighbor's site, could be considered an "unusual situation" to be considered under an Adjustment request.

While uncertainty is part of future development scenarios, the Zoning Code provides two options for proposed development: an objective option (implemented through a building permit review) which provides a high-level of certainty to property owners as it requires that objective standards be met; and a discretionary option (a land use review such as an Adjustment), which may allow for alternative options that do not meet objective development standards. These options are currently available for development proposals on the neighbor's site.

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.

Proposed Adjustments:

1. Reduce the required front building setback from 15 feet to 0 feet for an enclosed workshop under the existing garage and driveway bridge, and for portions of a new deck, new exterior stairs and new landing (33.110.220.B);
2. Reduce the required west side yard building setback from 5 feet to zero feet for portions of a new exterior stair and new landing (33.110.220.B); and
3. Increase the maximum building coverage from 2,045 square feet to 2,408 square feet for portions of the new exterior stairs and new deck (33.110.225.B).

A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and**Findings:**

Adjustments 1 and 2, The purpose for minimum building setbacks is as follows (Section 33.110.220):

The building setback regulations serve several purposes:

- *They maintain light, air, separation for fire protection, and access for firefighting;*

Findings: The setback standards maintain air and fire-fighting access and separation by helping to ensure that there is space maintained between structures. The front setback Adjustment requested does not move the structure closer to its neighbors. The lower level of the house, under the driveway deck and garage, is proposed to be enclosed for living space. This creates living area closer to the street, but because it is well below the street level and because there is an existing concrete retaining wall that is located at the front property line, the proposal will not constrict air flow, light or fire access/separation.

Within the side setback, a new 4-foot-wide stairway is proposed, made of metal and open above and below the stairway. It will be 1 foot or less from the side property line but because it is only 10 feet in length, it will not constrict air flow, light, or fire access separation.

The Fire Bureau responded to the notice of proposal with no concerns (Exhibit E-4). This criterion is met.

- *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;*

Findings: Existing houses east and west of the site along the north side of NW Macleay Boulevard are located near the front property line, a direct result of the downward sloping sites. Generally, locating houses near the street lot line is a reasonable response to slope conditions, and the benefits include less site disturbance from construction, and less front yard paving for driveways than a house located 15 feet from the front property line. Additionally, the Zoning Code allows for a partial reduction of the front setback for steeply sloping sites, down to 10 feet for the house and 5 feet for a garage (Section 33.110.220.D). For this proposal and site, the new workshop is located well below street level and thus will have minimal impact from the street view. The height and scale of the existing

house will not be altered and the applicant states that existing trees on the site will be preserved. Existing trees help to promote the purposes of setbacks, and therefore a condition requiring on-site tree preservation is needed. In addition, a certified arborist's report must be provided with the building permit application describing how to protect trees during construction, particularly the maple tree within the area of the new low deck, shown on the site plan (Exhibit C-1).

The existing house is set back 4.7 feet from both the west and east side yard property lines. At the east side property line, a new uncovered deck, incorporating an existing mature maple tree, would be set back 5 feet in full compliance with the R7 zone minimum side setback. At the west side property line, a new wall would be extended for a workshop room. While this wall will be set back 4.7 feet (4 inches shy of the 5-foot setback), it follows the wall of the existing house and is acceptable even though it is not set back the full 5 feet because it is an extension of the existing house wall and does not result in a taller wall within the setback. Note an exception to minimum setbacks allows this situation for nonconforming building walls (Section 33.110.220.D.5, Established building lines). An exterior metal stairway is also proposed within the west setback, 4 feet in width and 10 feet in length, which leaves 0.3-foot setback at this location. The stairway would provide access from an existing person door at the west house wall to the street level. The proposal meets these setback purpose statements because the stairway extends only 10 feet along the 87-foot-long property line (or 12 percent of the property line length), and it is uncovered above the stairs, and is an open structure below the stairs. These elements combined work to significantly minimize the bulk of the structure the stairway fits with general building scale and placement of nearby houses, maintain a reasonable physical relationship between residences. Privacy issues are not affected as the stairway merely provides a path for pedestrian travel between an existing person door and the street level. To ensure continued compliance with these purposes, a condition of approval is needed that requires the stairway to be open above and below the stairs.

The distance between houses on the north side of NW Macleay Boulevard will not change as a result of the proposal. Nearby houses south of the site are set back 80 feet or more from NW Macleay Boulevard, and are oriented toward NW Monte Vista Terrace. Thus, the proposal to add living space, deck and stairs within the front setback will not impact the physical relationship or privacy between the subject house and residences to the south.

- *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*

Findings: Given the steep terrain of the area, most homes along the north side of NW Macleay Boulevard are set back 10 feet or less from their respective front property lines. The existing house is consistent with this pattern. Most of the work proposed will occur well below the street level. Only a small part of the new workshop wall, new uncovered deck and stairs will be visible from the street view. Given that the proposal will not alter the height of the existing house or its architectural style and responds to the site topography while providing for adequate outdoor area, this criterion is met.

- *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.*

The existing driveway structure and attached garage entrance will not be altered.

With the conditions regarding preservation and protection of existing trees and requiring the new stairway structure to remain open below the stairs, this criterion is met for Adjustments 1 and 2.

Adjustment 3 The purpose for maximum building coverage is as follows (Section 33.110.225.A):

The building coverage standards, together with the height and setback standards, control the overall bulk of structures. They are intended to assure that taller buildings will not have such a large footprint that their total bulk will overwhelm adjacent houses. Additionally, the standards help define the character of the different zones by limiting the amount of buildings allowed on a site.

Building coverage is defined in Chapter 33.910 and includes “. . . areas covered by buildings or other roofed structures. A roofed structure includes any structure more than 6 feet above grade at any point, and that provides an impervious cover over what is below. Building coverage also includes uncovered horizontal structures such as decks, stairways and entry bridges that are more than 6 feet above grade. Eaves are not included in building coverage.” The requested increase in building coverage is due to the proposed uncovered lower deck and uncovered west stairway, as portions of the stairway and deck are more than 6 feet in height and therefore count toward building coverage.

The proposed improvements are almost entirely below the street level and will not be seen from the street view (Exhibit C-2). While the house contains three levels, it appears to be only one-and-one-half stories in height as seen from the street view. This is largely a result of the house’s modest size and height and the site’s steep downward slope from the street.

Due to the above reasons, this criterion is met for Adjustment 3.

- B.** If in a residential zone, CI1 or IR zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, I or CI2 zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: The site is located within the R7 residential zone. The NW Macleay Boulevard right-of-way is improved with a narrow roadway only, without curbs or sidewalks. The narrow street and steeply sloped terrain accommodate stands of mature trees, which contribute to the overall livability and appearance of the residential street and individual houses. Numerous mature trees border both sides of the roadway; most of these trees are located within the street right-of-way and are considered public trees. Also, many lots contain mature trees within the shallow front yard areas, providing an expanded canopy and forest-like character along the street.

The applicant provided a site survey which identifies trees on the site and within the adjacent public right-of-way (Exhibit C-3). The applicant states that these trees will be preserved. A new uncovered deck at the lower level will incorporate an existing 18-inch maple tree, and the deck will not be visible from the street view (Exhibit C-1).

While the lower level of the house under the existing driveway bridge and garage will be enclosed, only a small portion of the new wall for the workshop room will be visible from the street view. The new stairway near the west property line will have minimal impact because it is an open design, is only 4 feet in width and 10 feet in length and is uncovered above and below the stairs and landing. Additionally, no changes are proposed to the house and attached garage.

This proposal allows for the creation of a new workshop to be added within the footprint of the existing house. This option avoids the adverse impacts of tree removal and significant site disturbance on a steep slope, not to mention increased bulk, if the workshop were to be added to the rear of the house instead. Additional outdoor area (front uncovered deck) and a new exterior stairway to connect the workshop area with the street, are improvements with small footprints but provide significant amenity for the residents.

For the above reasons, although the proposed improvements are located close to the front and west side property lines, and increase the building coverage of the site, the resulting development will have minimal impact on appearance and livability, as seen from the street view and nearby properties. With conditions requiring the new front deck and stair remain uncovered, along with preservation of the existing trees and protection of the 18-inch maple tree located in front yard, 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: Three Adjustments are requested to the minimum front and side building setbacks and to the maximum building coverage. The overall purpose of the R7 single-dwelling zone is found in Section 33.110.010:

The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing.

- A. Use regulations.** *The use regulations are intended to create, maintain and promote single-dwelling neighborhoods. They allow for some non-household living uses but not to such an extent as to sacrifice the overall image and character of the single-dwelling neighborhood.*
- B. Development standards.** *The development standards preserve the character of neighborhoods by providing six different zones with different densities and development standards. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. The site development standards allow for flexibility of development while maintaining compatibility within the City's various neighborhoods. In addition, the regulations provide certainty to property owners, developers, and neighbors about the limits of what is allowed. The development standards are generally written for houses on flat, regularly shaped lots. Other situations are addressed through special regulations or exceptions.*

The proposal adds workshop space in the lower level of the house, which includes new exterior walls below street grade. An exterior uncovered stairway and an uncovered lower deck provide direct access the new workshop space. The proposal's merits are evident in that it uses "open" area under the existing house to create the new workshop. This allows for preservation of mature trees on the steeply sloping rear yard. An existing 18-inch tree in the front yard is located within the footprint of the new lower deck but will be incorporated into the deck's design and protected during construction. The exterior stairway will be an open design and made of durable metal. It will be uncovered above and below the stairs, which will reduce its bulk and minimize impacts within the side setback area.

Overall, the proposal is compatible with nearby existing development, and will have minimal impact from the street view, as most of the improvements will be hidden below the grade of the street. Privacy impacts of the stairway are negligible as it simply provides a safe pedestrian access across a steep slope, between the workshop and street. Further, the stairway footprint is small (4 feet by 10 feet, or 40 square feet in area). The applicant proposes and is required to preserve existing trees on the site through a condition of approval.

Because of the above elements of the proposal, the proposal is consistent with the overall purpose of the R7 single dwelling zone; this criterion is met.

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 does not apply.

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

Findings: The new lower level workshop, associated exterior stairway and lower deck will have minimal impact on the street view and neighborhood appearance. Existing trees on the site will be preserved, including the existing 18-inch maple tree in the front yard within the lower deck footprint. The addition’s design is sensitive to the surrounding homes and minimizes impacts on privacy and building scale. The result is a proposal that will match the existing home and fit the context of the existing neighborhood and topography of the site. A condition of approval requires the new stairway and lower deck to remain uncovered. In consideration of the above, 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). The site is not within an environmental overlay zone. This criterion does not apply.

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 proposes to create a workshop room under the house’s existing attached garage and driveway bridge structure. In addition, a new lower uncovered deck will be added at the southeast corner of the lot and a new metal exterior stairway with landing will be added at the southwest corner of the lot to provide a connection between an existing side door and the street. The requested Adjustments are to reduce the front and side setbacks, and to increase the building coverage.

The site is located along the north side of NW Macleay Boulevard. Due to the steep downward slope condition along the north side, the subject house and nearby houses are located close to the front property line. While the proposed improvements will be within the front and side

building setbacks, only a small portion of the improvements will be seen from street view due to the steep downward sloping grade of the site.

Existing mature trees contribute greatly to the character of the street and nearby residential lots, and therefore the proposal is subject to a condition that requires preservation of the existing trees in order to fully satisfy the approval criteria. A second condition is needed that requires the new lower deck and exterior stairway to remain uncovered, to limit the bulk of improvements on this relatively small lot. With these conditions, the proposal meets the applicable approval criteria and should be approved.

ADMINISTRATIVE DECISION

Approval of the following Adjustments:

- 4 Reduce the required front building setback from 15 feet to zero feet for an enclosed workshop under the existing garage and driveway bridge, and for portions of a new deck, new exterior stairs and new landing (33.110.220.B);
- 5 Reduce the required west side yard building setback from 5 feet to zero feet for portions of a new exterior stair and new landing (33.110.220.B); and
- 6 Increase the maximum building coverage from 2,045 square feet to 2,408 square feet for portions of the new exterior stairs and new deck (33.110.225.B).

All Adjustment approvals are per the approved site plans, Exhibits C.1, C.2 and C.3, signed and dated February 18, 2020, subject to the following conditions:

- A. As part of the building permit application submittal, the following development-related Conditions B and C must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 19-209507 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
- B. Existing trees on the site as shown on Exhibit C-3 must be preserved. At the time of building permit application, the applicant must submit:
 - A tree plan in compliance with Section 11.50.070, that confirms all existing trees will be preserved, excepting trees determined to be dead, dying or dangerous by a certified arborist; and
 - A certified arborist's report using the Performance Path of Section 11.60.030.C.2 for protection of the existing 18-inch maple tree located in the front setback area of the site.
- C. The new west stairway must remain uncovered above the stairs and open below the stairs. The new front lower deck must remain uncovered.

Staff Planner: Marguerite Feuersanger

Decision rendered by:  **on February 18, 2020.**

By authority of the Director of the Bureau of Development Services

Decision mailed: February 20, 2020.

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 13, 2019 and was determined to be complete on December 11, 2019.

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 13, 2019.

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 requested that the 120-day review period be extended for an additional 60 days, as stated in Exhibit G-3. Unless further extended by the applicant, **the 180 days will expire on June 8, 2020.**

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 several 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 March 5, 2020** at 1900 SW Fourth Ave. Appeals can be filed at the 5th floor reception desk of 1900 SW 4th 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.

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 will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded after March 5, 2020 by the Bureau of Development Services.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

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.

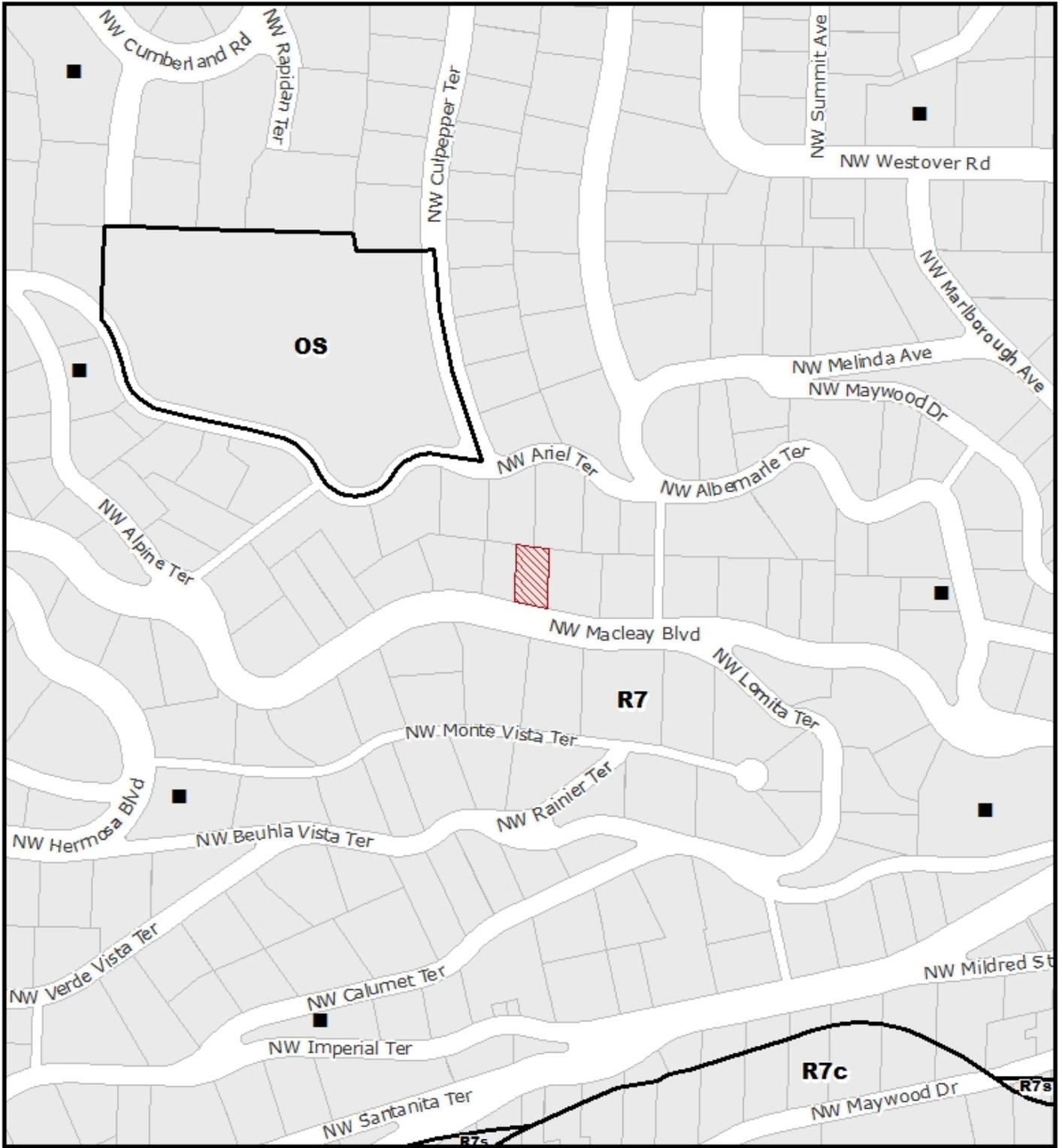
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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. Original Submittal, August 13, 2019
 - 2. Updated Submittal, November 26, 2019
 - 3. Geotechnical Engineering Evaluation Report, November 26, 2019
 - 4. Updated Submittal, December 11, 2019
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Elevations (attached)
 - 3. Tree Preservation Plan and Site Survey
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Life Safety Residential Plan Review Section of BDS
- F. Correspondence:
 - 1. Peggy Hennessey, attorney representing Timothy J. Walters, writing in opposition to the proposal, January 16, 2020.
- G. Other:
 - 1. Original LU Application
 - 2. Letter to applicant indicating information needed to complete the LU application, August 29, 2019
 - 3. Applicant's request for an extension of the 120-day review period, February 5, 2020

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 
NORTH

 Site
 Historic Landmark

File No.	LU 19-209507 AD
1/4 Section	3026
Scale	1 inch = 200 feet
State ID	1N1E32DA 5400
Exhibit	B Aug 15, 2019

Approved

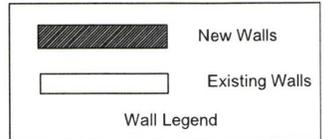
City of Portland - Bureau of Development Services

Planner *[Signature]* Date *Feb 18, 2020*

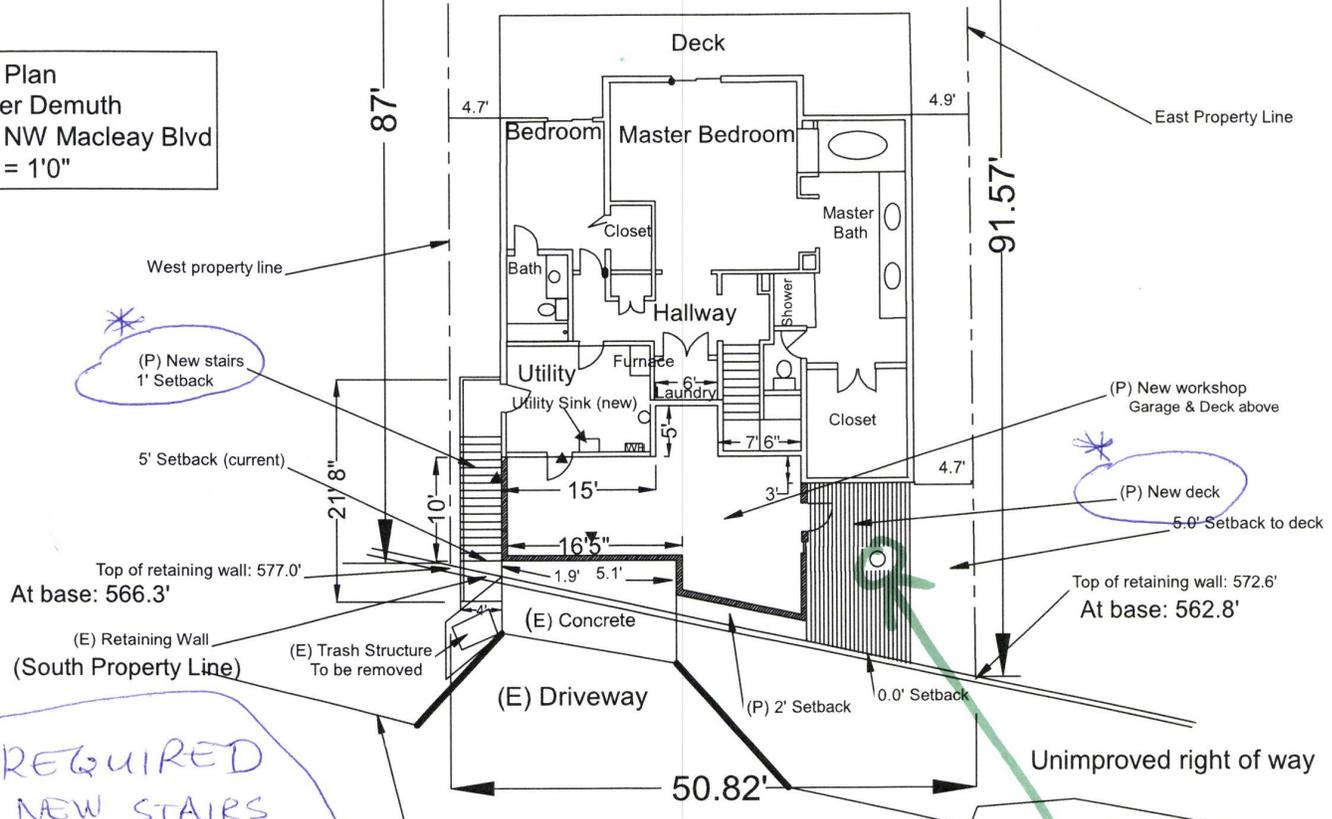
* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.



Site Plan
Roger Demuth
430 NW Macleay Blvd
1/4" = 1'0"



(E) House Lower Level



REQUIRED
 * NEW STAIRS
 AND NEW DECK
 MUST BE UNCOVERED -
 PER
 CONDITION C

REQUIRED:
 EXISTING
 18" MAPLE TO
 BE PRESERVED
 AND PROTECTED
 PER CONDITION B

rec 1/9/19

SITE PLAN

*EXHIBIT C-1
19-209507 AD*

Approved

City of Portland - Bureau of Development Services

Planner: *W. [Signature]*

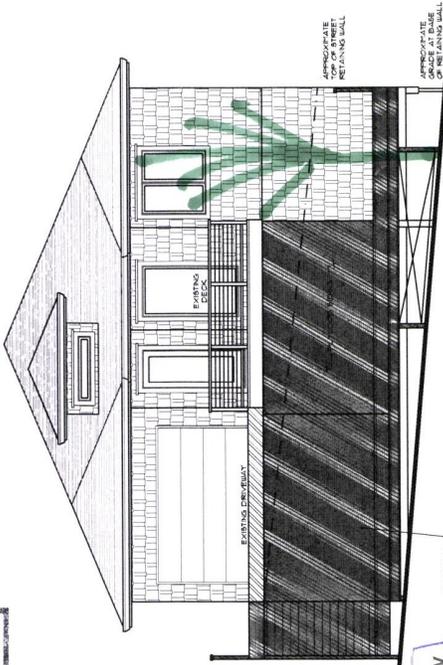
Date: *Feb 18, 2020*

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

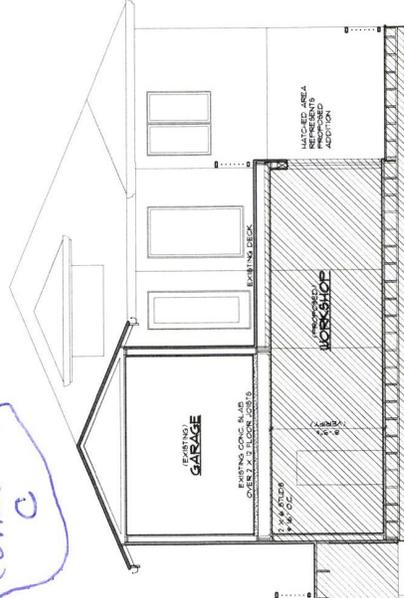
127 NE 7th Street, Suite #207
Portland, OR 97232
503.241.2700
www.stevengruber.com

Stevengruber
Home Design

OWNER ROBERT DEPTY & GAIL JOHNSON	DATE 20 FEB 2020	PROJECT 19-209507 AD	DETAILED MODEL 02-2
ARCHITECT STEVEN GRUBER	DATE 20 FEB 2020	PROJECT 19-209507 AD	DETAILED MODEL 02-2

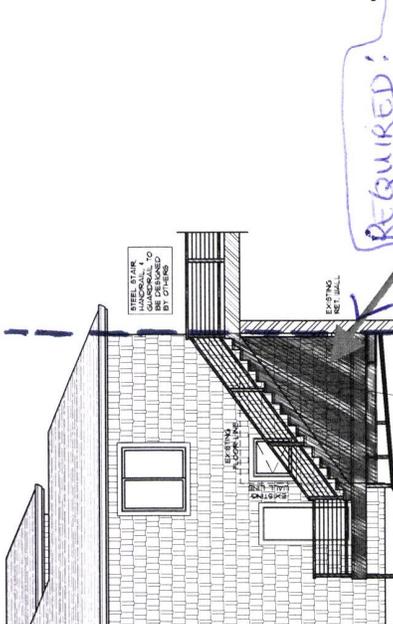


SOUTH ELEVATION
SCALE: 1/4" = 1'-0"
(VIEW FROM RETAINING WALL NORTH)



NOTE:
CONTRACTOR TO VERIFY
ALL DIMENSIONS AND
SITE CONDITIONS PRIOR
TO CONSTRUCTION.

(A) BUILDING SECTION
SCALE: 1/4" = 1'-0"

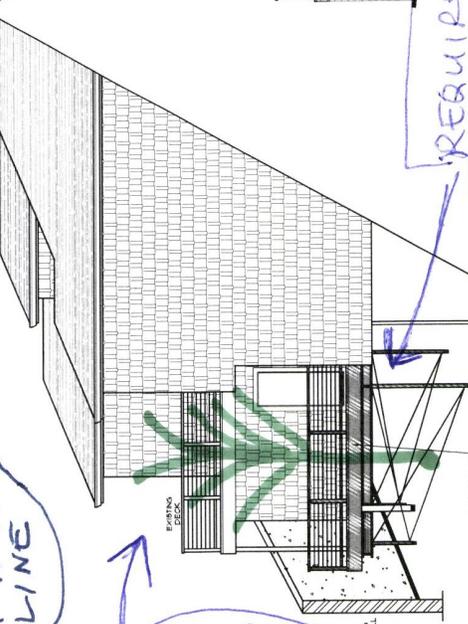


WEST ELEVATION
SCALE: 1/4" = 1'-0"

REQUIRED: Under side of stairway will not be enclosed, and will not be covered per Condition C

FRONT PROPERTY LINE

REQUIRED EXISTING 18" MAPLE TO BE PROTECTED PER CONDITION B



EAST ELEVATION
SCALE: 1/4" = 1'-0"

REQUIRED LOWER DECK WILL NOT BE COVERED PER CONDITION C

*19-209507 AD
EXHIBIT C-2*

*HOUSE ELEVATIONS
430 NW Macleay*

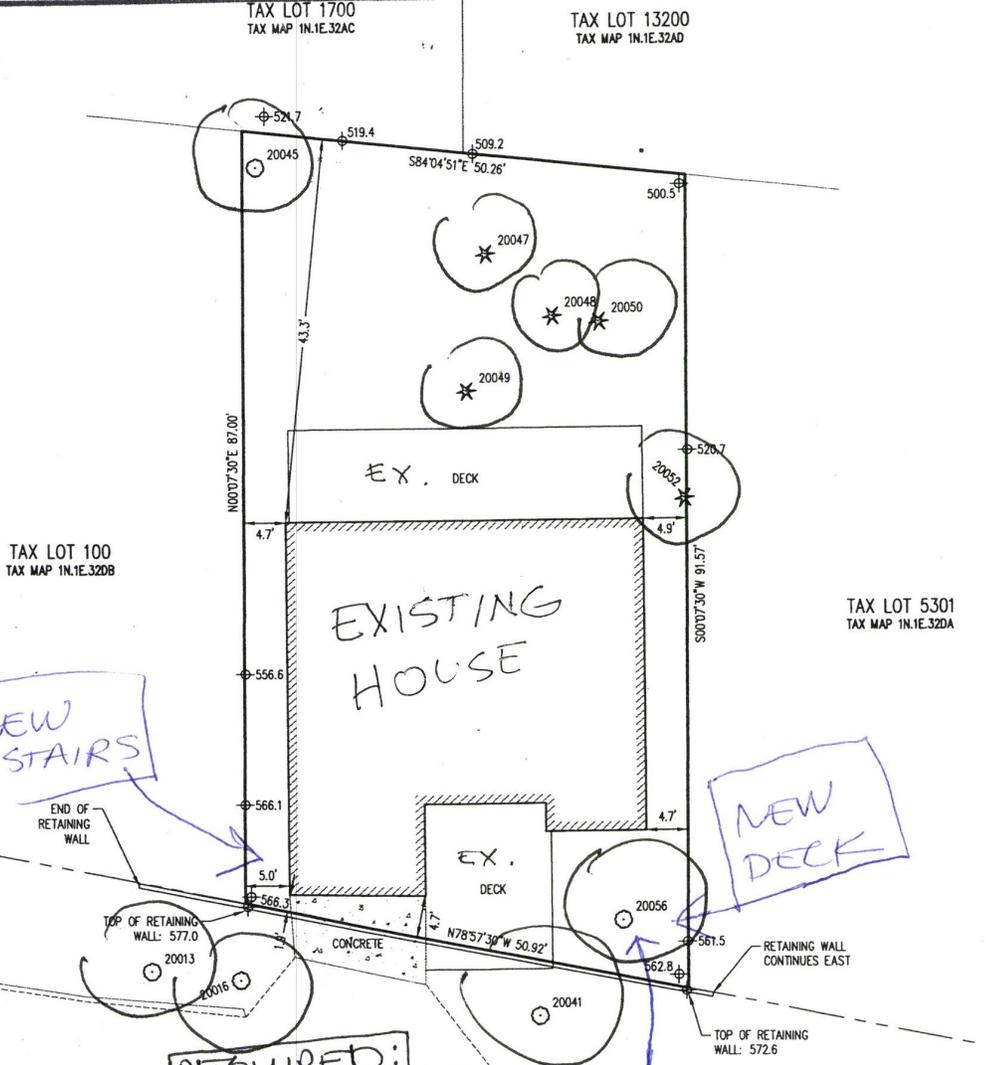
rec 12/11/19

Approved
City of Portland - Bureau of Development Services
 Planner [Signature] Date Feb 18, 2020
 * This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

- NOTES:**
1. THE PURPOSE OF THIS SURVEY WAS TO PROVIDE LOCALIZED SITE SPOT ELEVATIONS AND TREE LOCATIONS.
 2. FIELD WORK WAS CONDUCTED OCTOBER 4 - NOVEMBER 11, 2019.
 3. VERTICAL DATUM: ELEVATIONS ARE BASED ON CITY OF PORTLAND BENCHMARK NO. 1181, LOCATED IN THE CONCRETE RETAINING WALL IN FRONT OF 502 NW MACLEAY BOULEVARD. ELEVATION = 596.211 FEET (CITY OF PORTLAND DATUM).
 4. BUILDING FOOTPRINTS ARE MEASURED TO SIDING UNLESS NOTED OTHERWISE. CONTACT SURVEYOR WITH QUESTIONS REGARDING BUILDING TIES.
 5. TREES WITH DIAMETER OF 6" AND GREATER ARE SHOWN. TREE DIAMETERS WERE DETERMINED BY VISUAL INSPECTION. TREE INFORMATION IS SUBJECT TO CHANGE UPON ARBORIST INSPECTION.

EXISTING TREE INVENTORY

TREE TABLE		
TREE NUMBER	TYPE	DBH (IN.)
20012	DECIDUOUS	17
20013	DECIDUOUS	16
20016	DECIDUOUS	16,17
20041	DECIDUOUS	18
20045	DECIDUOUS	6
20047	CONIFEROUS	9
20048	CONIFEROUS	14
20049	CONIFEROUS	14
20050	CONIFEROUS	7
20052	CONIFEROUS	23
20056	DECIDUOUS	18



REQUIRED:
 CERTIFIED ARBORIST REPORT REQUIRED FOR TREE PROTECTION PER CONDITION B

REQUIRED:
 EXISTING TREES REQUIRED TO BE PRESERVED PER CONDITION B

TREE PRESERVATION PLAN AND SITE SURVEY

430 NW Macleay

19.209507AD
 EXHIBIT C-3

