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503-588-6173*

## DECISION OF THE PLANNING ADMINISTRATOR

**TREE REGULATION VARIANCE CASE NO.:** TRV22-03

**APPLICATION NO.:** 22-111476-NR

**NOTICE OF DECISION DATE:** July 18, 2022

**SUMMARY:** Tree Regulation Variance for the removal of three significant trees associated with the development of a single-family dwelling.

**REQUEST:** A Tree Regulation Variance to remove ~~three~~ two existing significant trees, a coastal redwood 43 inches dbh and Douglas fir 46 inches dbh ~~located on private property and a coastal redwood 44 inches dbh located in public right-of-way,~~ in order to accommodate construction of a single family dwelling on a lot of 0.2 acre located in the RS (Single Family Residential) zone at 1845 Turnage Street NW - 97304 (Polk County Assessor Map and Tax Lot 073W29AB00400).

**APPLICANT:** Carlos Armas

**LOCATION:** 1845 Turnage St NW

**CRITERIA:** Salem Revised Code (SRC) Chapter 808.045(d) – Tree Regulation Variance

**FINDINGS:** The findings are in the attached Decision dated July 18, 2022.

**DECISION:** The **Planning Administrator APPROVED** Tree Regulation Variance Case No. TRV22-03 subject to the following conditions of approval:

- Condition 1:** The significant trees, a coastal redwood 43 inches dbh and a Douglas fir 46 inches dbh, must be retained until a building permit is issued for construction of a dwelling on the subject property.
- Condition 2:** A minimum of five trees with a minimum caliper of 1.5 inches shall be planted on the lot prior to inspection for final occupancy of any dwelling to be constructed on the lot.

The rights granted by the attached decision must be exercised, or an extension granted, by August 3, 2024, or this approval shall be null and void.

Application Deemed Complete:	<u>June 29, 2022</u>
Notice of Decision Mailing Date:	<u>July 18, 2022</u>
Decision Effective Date:	<u>August 3, 2022</u>
State Mandate Date:	<u>October 21, 2022</u>

**Case Manager:** Olivia Dias, Current Planning Manager, [ODias@cityofsalem.net](mailto:ODias@cityofsalem.net), 503-540-2343

**NOTICE OF DECISION**

PLANNING DIVISION  
555 LIBERTY ST. SE, RM 305  
SALEM, OREGON 97301  
PHONE: 503-588-6173  
FAX: 503-588-6005

**CITY OF Salem**  
AT YOUR SERVICE

This decision is final unless written appeal and associated fee (if applicable) from an aggrieved party is filed with the City of Salem Planning Division, Room 320, 555 Liberty Street SE, Salem OR 97301, or by email at [planning@cityofsalem.net](mailto:planning@cityofsalem.net), no later than 5:00 p.m., Tuesday, August 2, 2022.

The notice of appeal must contain the information required by SRC 300.1020 and must state where the decision failed to conform to the provisions of the applicable code section, SRC Chapter 808. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Hearings Officer will review the appeal at a public hearing. After the hearing, the Hearings Officer may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

The complete case file, including findings, conclusions and conditions of approval, if any, is available for review by contacting the case manager, or at the Planning Desk in the Permit Application Center, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

<http://www.cityofsalem.net/planning>

**BEFORE THE PLANNING ADMINISTRATOR OF THE CITY OF SALEM**

**DECISION**

**IN THE MATTER OF THE ) FINDINGS AND ORDER**  
**APPROVAL OF TREE REGULATION )**  
**VARIANCE CASE NO. TRV22-03 )**  
**1845 TURNAGE STREET NW ) JULY 18, 2022**

**REQUEST**

Summary: Tree Regulation Variance for the removal of three significant trees associated with the development of a single-family dwelling.

Request: A Tree Regulation Variance to remove ~~three~~ two existing significant trees, a coastal redwood 43 inches dbh and Douglas fir 46 inches dbh ~~located on private property and a coastal redwood 44 inches dbh located in public right-of-way~~, in order to accommodate construction of a single family dwelling on a lot of 0.2 acre located in the RS (Single Family Residential) zone at 1845 Turnage Street NW - 97304 (Polk County Assessor Map and Tax Lot 073W29AB00400).

**PROCEDURAL FINDINGS**

1. On April 1, 2022, Israel Cervantes of Tree North LLC, applied for a Tree Removal Permit (22-107213-NR) to remove three significant trees and stated that the trees would impede construction according to drawn floorplans, construction could not be done around the trees, and the owner was requesting permission to cut them down prior to construction.
2. On April 6, 2022, staff informed Mr. Cervantes that no evidence had been presented that the significant trees are hazardous trees or that removal is necessary for repair, alteration, or replacement of existing structures. Therefore, removal would not meet the approval criteria for a tree and vegetation removal permit (SRC 808.030(d)) and removal of these three trees would require a Tree Variance under SRC 808.045. On April 11, 2022, Mr. Cervantes withdrew the Tree Removal Permit application.
3. On June 1, 2022, an application for a Tree Regulation Variance was filed and the fee was paid for a proposal to remove three significant trees at 1845 Turnage Street NW (**Attachment A**) in order to develop a single-family dwelling on an existing lot.
4. On June 6, 2022, the Tree Regulation Variance application was accepted for processing when required materials were submitted.
5. On June 23, 2022, after receiving additional materials from the applicant, staff deemed the Tree Regulation Variance application complete for processing. On June 29, 2022, notice to surrounding property owners and tenants was mailed pursuant to Salem Revised Code requirements.
6. On July 13, 2022, Public Works staff confirmed that a third significant tree, a coastal redwood 44 inches dbh located in right-of-way, is a City tree as defined under SRC 86.010,

is subject to the requirements of SRC chapter 86, and qualifies under SRC 808.030(a)(2)(C) for an exception to the requirement for a tree and vegetation removal permit. Public Works is reviewing a Street Tree Removal Permit (22-113037-TR) that was submitted June 23, 2022 for that tree.

7. The 120-day state-mandated local decision deadline for the application is October 21, 2022.

## **SUBSTANTIVE FINDINGS**

### **1. Proposal**

The applicant seeks a Tree Regulation Variance to remove three significant trees so that a dwelling may be constructed on the subject property.

### **2. Existing Conditions**

The subject property is nearly rectangular, approximately 0.2 acres (8,635 square feet), and currently vacant. It is approximately 114 feet deep from east to west and approximately 78 feet wide from north to south. The site generally slopes uphill from the northeastern corner to the southwestern corner, with an elevation increasing from approximately 272 feet to 287 feet. The adjacent, unpaved right-of-way also slopes uphill from northeast to southwest, with an elevation increasing from approximately 268 feet to 283 feet.

Two significant trees, a coastal redwood 43 inches dbh and Douglas fir 46 inches dbh, are located on private property within the lot boundary. The property is described as Lot 3, Block 16, College Subdivision No 4, together with a portion of vacated College Drive, save and except the easterly portion of Lot 3, which was conveyed to the City for street purposes. The current lot boundary and dimensions were established prior to 1987, according to deeds submitted by the applicant.

The subject property has frontage on Turnage Street NW, which is classified as a Local street in the Salem Transportation Systems Plan. The existing right-of-way is approximately 57 feet wide, and the existing pavement is approximately 20 feet wide. A significant tree, a coastal redwood 44 inches dbh, is located within the right-of-way abutting the subject property and is subject to SRC Chapter 86 regulations for street trees.

Environmental resource and natural hazard maps show no wetland channels, streams, floodplains, or landslide hazard areas mapped on the property.

### **3. Applicant's Plans and Statement**

Land use applications must include a statement addressing the applicable approval criteria and be supported by proof they conform to all applicable standards and criteria of the Salem Revised Code. The written statement provided by the applicant summarizing the request and addressing the applicable approval criteria, as well as an existing conditions plan illustrating the trees and a preliminary site plan for the dwelling, are attached to this report as follows:

- Existing Conditions Plan: **Attachment B**
- Preliminary Plans for Dwelling: **Attachment C**
- Applicant's Written Statement: **Attachment D**

#### **4. Summary of Record**

The following items are submitted to the record and are available: 1) all materials and testimony submitted by the applicant, including any applicable professional studies such as traffic impact analysis, geologic assessments, stormwater reports, and; 2) materials, testimony, and comments from public agencies, City Departments, neighborhood associations, and the public. All application materials are available on the City's online Permit Application Center at <https://permits.cityofsalem.net>. You may use the search function without registering and enter the permit number listed here: 22 111476.

#### **5. Land Use History**

- No previous land use applications affecting the subject property have been identified.

#### **6. Public and Private Agency Review**

**Public Works Department** – The City of Salem Public Works Department, Development Services Section has reviewed the proposal and has no concerns.

#### **7. Neighborhood Association Comments and Public Comments**

The subject property is located within the boundaries of the West Salem Neighborhood Association.

Applicant Neighborhood Association Contact. SRC 300.310 requires an applicant to contact the neighborhood association(s) whose boundaries include, and are adjacent to, property subject to specific land use application requests. Pursuant to SRC 300.310(b)(1), this land use application does not require neighborhood association contact.

Neighborhood Association Comment: Notice of the application was provided to West Salem Neighborhood Association pursuant to SRC 300.520(b)(1)(B)(v), which requires notice to be sent to any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property. Prior to the close of the comment period, no comments were received from the neighborhood association.

#### Public Comment

Notice was also provided, pursuant to SRC 300.520(b)(1)(B)(iii), (vi), & (vii), to all property owners and tenants within 250 feet of the subject property.

Staff received two public comments prior to the end of the comment period. Both indicated no objections.

Homeowners Association.

The subject property is not located within a Homeowners Association.

**DECISION CRITERIA FINDINGS**

**8. Analysis of Tree Regulation Variance Approval Criteria**

The purpose of a Tree Variance is to provide a process to allow for deviations from the requirements of Salem Revised Code Chapter 808 where the deviation is reasonably necessary to permit the otherwise lawful development of a property.

SRC 808.045(d) sets forth approval criteria for a Tree Regulation Variance; a tree variance shall be granted if either of the criteria are met. The following subsections are organized with approval criteria underlined, followed by findings evaluating the proposed development's conformance with the criteria. Lack of compliance with the following criteria is grounds for denial of the Tree Variance application, or for the issuance of certain conditions to ensure the criteria are met.

The applicant has provided a written statement addressing the hardship criterion.

**SRC 808.045(d)(1)(A): There are special conditions that apply to the property which create unreasonable hardships or practical difficulties which can be most effectively relieved by a variance.**

**Finding:** The applicant submitted a tree plan in conjunction with the proposal identifying a total of two trees on the property, a coastal redwood 43 inches dbh and a Douglas fir 46 inches dbh. Because both trees have a dbh or 30 inches or greater, they meet the SRC 808.005 definition of a significant tree according to amendments effective March 16, 2022. Significant trees may be removed under a tree and vegetation removal permit issued under SRC 808.030, a tree conservation plan approved under SRC 808.035, or a tree variance granted under SRC 808.045.

In the written statement for the Tree Variance, the applicant states that the trees are an obstruction for a new home proposed for construction on the property and must be removed. The 43-inch coastal redwood is located near the center of the property, and the 46-inch Douglas fir is located near the front lot line. The preliminary plans submitted for the single-family dwelling (**Attachment C**) indicate a footprint 49 feet in width and 46 feet 6 inches in depth within the lot that is approximately 78 feet wide and 114 feet deep. [Please note: The preliminary plans in Attachment C were prepared before the applicant obtained a boundary survey, and the locations of the trees are incorrect with relation to the property boundaries. The tree locations on **Attachment B**, the existing conditions plan, are presumed to be correct.]

Required protective measures for significant trees during construction (SRC 808.046) include an above-ground silt fence encompassing 100 percent of the critical root zone of the tree; no grading, placement of fill, storage of building materials, or parking of vehicles would be allowed within that area. *Critical root zone* means the circular area beneath a tree established to

protect the tree's trunk, roots, branches, and soil to ensure the health and stability of the tree. The critical root zone measures one-foot in radius for every one-inch of dbh of the tree. Therefore, the protective fences would have a radius of 43 feet for the 43-inch coastal redwood and 46 inches for the Douglas fir.

For the existing lot approximately 78 feet wide and 114 feet deep, the required radii for the protective fences, as shown on **Attachment B**, would leave only a small area at the rear of the lot that could be developed; much of that area would fall within required minimum rear setbacks for a single-family dwelling of 14 feet for portions of one story or 20 feet for portions taller than one story. Therefore, the required protective measures for the existing large-diameter trees, in combination with the existing lot dimensions, create a practical difficulty that prevents the construction of an otherwise permitted single-family dwelling. Because the trees are not hazardous and do not meet criteria for a tree removal permit, this practical difficulty can be most effectively relieved by a variance.

Conditions may be imposed on the approval of a tree variance to ensure compliance with the approval criteria and to limit any adverse impacts that may result from granting the tree variance.

Because the request to remove the trees is associated with construction of a single-family dwelling, the following condition applies to ensure that the trees are retained until the dwelling permit is issued:

**Condition 1:** The significant trees, a coastal redwood 43 inches dbh and a Douglas fir 46 inches dbh, must be retained until a building permit is issued for construction of a dwelling on the subject property.

To mitigate removal of the two significant trees on the previously undeveloped lot, the following applies to require replanting equivalent to the SRC 808.050, Table 808-1, planting requirements for a newly created 8,635-square foot lot:

**Condition 2:** A minimum of five trees with a minimum caliper of 1.5 inches shall be planted on the lot prior to inspection for final occupancy of any dwelling to be constructed on the lot.

Staff finds that there are special conditions that apply to the property which create reasonable hardships or practical difficulties which can be most effectively relieved by a variance, and the proposed conditions limit the adverse impacts of granting the tree variance. The proposal meets this criterion.

**SRC 808.045(d)(1)(B): The proposed variance is the minimum necessary to allow the otherwise lawful proposed development or activity.**

**Finding:** The applicant states that the land is inclined in a way that the highest point begins on the southwestern side and the slope falls to the lowest point on the northeast side, and they have designed the plans of the house accordingly to the land so that the house can fit in the

correct way. The applicant states that the front area of the property will need to be excavated in order to align the house and accommodate a driveway and porch.

The applicant's proposal to place the dwelling near the front of the lot minimizes grading and other disturbances to the lot, while meeting the applicable standards of the UDC.

Because the required protective measures for the significant trees would effectively prohibit construction on the lot, removal of both trees through the variance process is the minimum necessary in order to allow the otherwise lawful development of a single-family dwelling.

Staff finds the proposed variance is the minimum necessary to allow the otherwise lawful proposed development or activity. The proposal meets the criterion.

### CONCLUSION

Based upon review of SRC chapter 808, the applicable standards of the Salem Revised Code, the findings contained herein, and due consideration of comments received, the application complies with the requirements for an affirmative decision.

### IT IS HEREBY ORDERED

Tree Regulation Variance case no. TRV22-03 is hereby **APPROVED** subject to SRC chapter 808, the applicable standards of the Salem Revised Code, the findings contained herein, and the conditions of approval listed below, which must be completed prior to final occupancy, unless otherwise indicated:

- Condition 1:** The significant trees, a coastal redwood 43 inches dbh and a Douglas fir 46 inches dbh, must be retained until a building permit is issued for construction of a dwelling on the subject property.
- Condition 2:** A minimum of five trees with a minimum caliper of 1.5 inches shall be planted on the lot prior to inspection for final occupancy of any dwelling to be constructed on the lot.

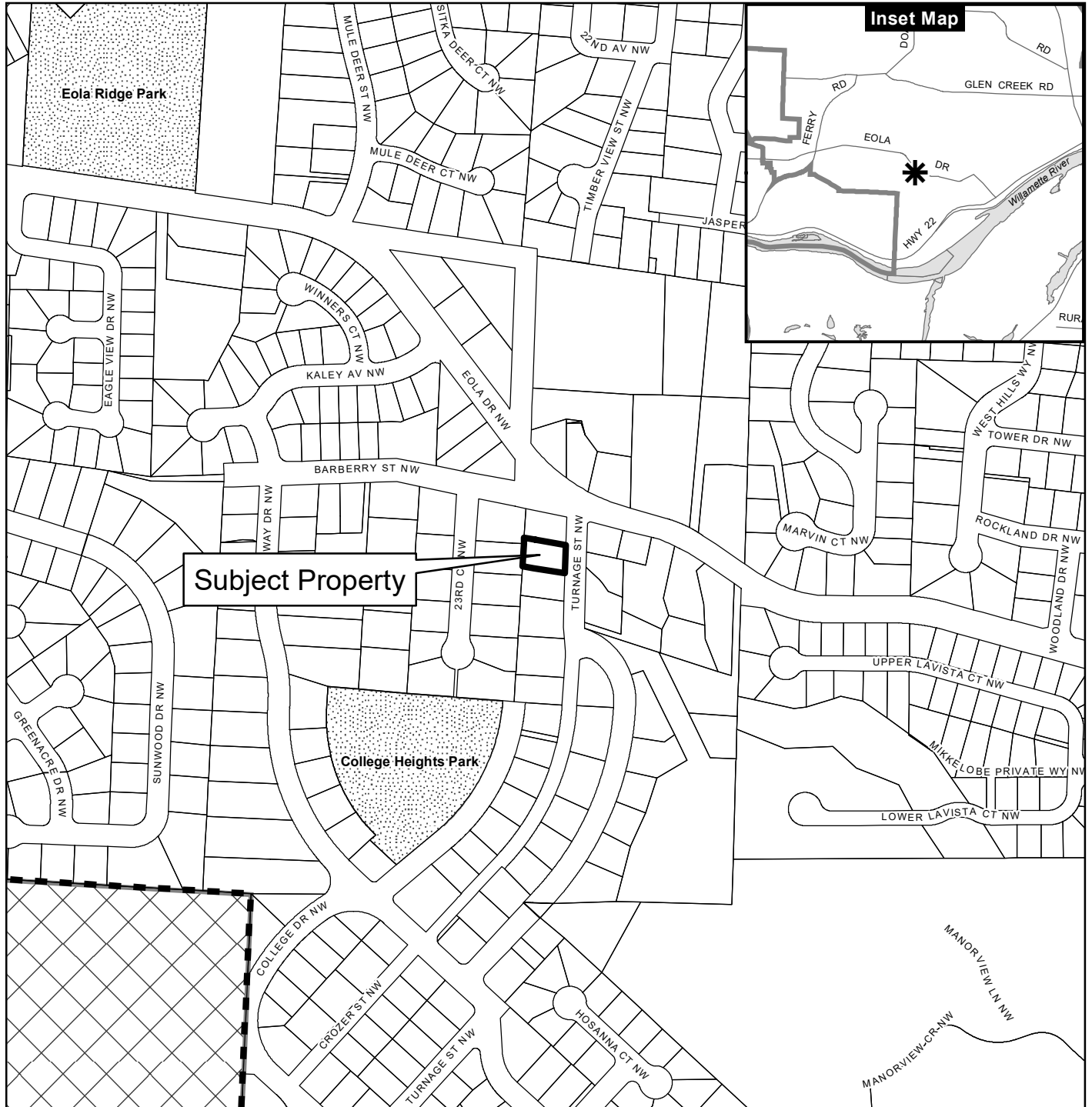


Olivia Dias, Current Planning Manager,  
on behalf of Lisa Anderson-Ogilvie, AICP  
Planning Administrator








- Attachments: A. Vicinity Map  
B. Existing Conditions Plan  
C. Preliminary Plans for Dwelling  
D. Applicant's Written Statement

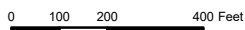


# Vicinity Map 1845 Turnage Street NW



**Legend**

-  Taxlots
-  Urban Growth Boundary
-  City Limits
-  Outside Salem City Limits
-  Historic District
-  Schools
-  Parks



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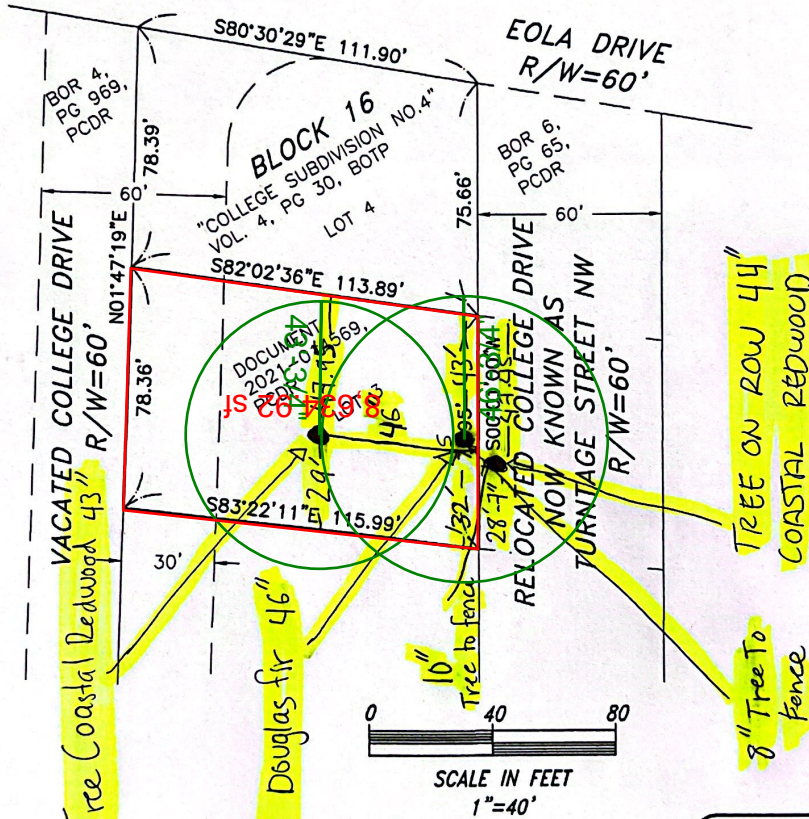
LAND MARKERS SURVEYING  
4068 HUDSON AVE. NE  
SALEM, OR 97301  
OFFICE (503) 581-0911



SITE PLAN

PREPARED FOR: CARLOS ARMAS JOB #22-092  
DATE: JUNE 7, 2022

LOCATED IN THE NORTHEAST QUARTER OF SECTION 29,  
TOWNSHIP 7 SOUTH, RANGE 3 WEST, WILLAMETTE MERIDIAN,  
POLK COUNTY, OREGON



**NARRATIVE:**  
The purpose of this map is to illustrate dimensions of that real property described in Document 2021-014569. No monuments were set for this map. Basis of Bearing for this project was from Polk County Survey 4949.

**LEGEND:**  
R/W - RIGHT OF WAY  
VOL. - VOLUME  
BOTP - BOOK OF TOWN PLATS  
PCDR - POLK COUNTY DEED RECORDS  
BOR - BOOK OF RECORDS

**NOTE:**  
ALL BOUNDARY INFORMATION SHOWN HEREON IS RECORD INFORMATION FROM POLK COUNTY SURVEY 4949.

REGISTERED PROFESSIONAL LAND SURVEYOR

*Troy F. Petersen*

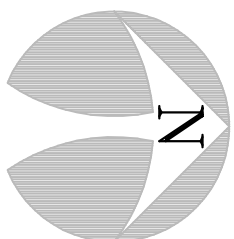
OREGON  
JANUARY 10, 2008  
TROY F. PETERSEN  
61408

SIGNED: 06/10/22

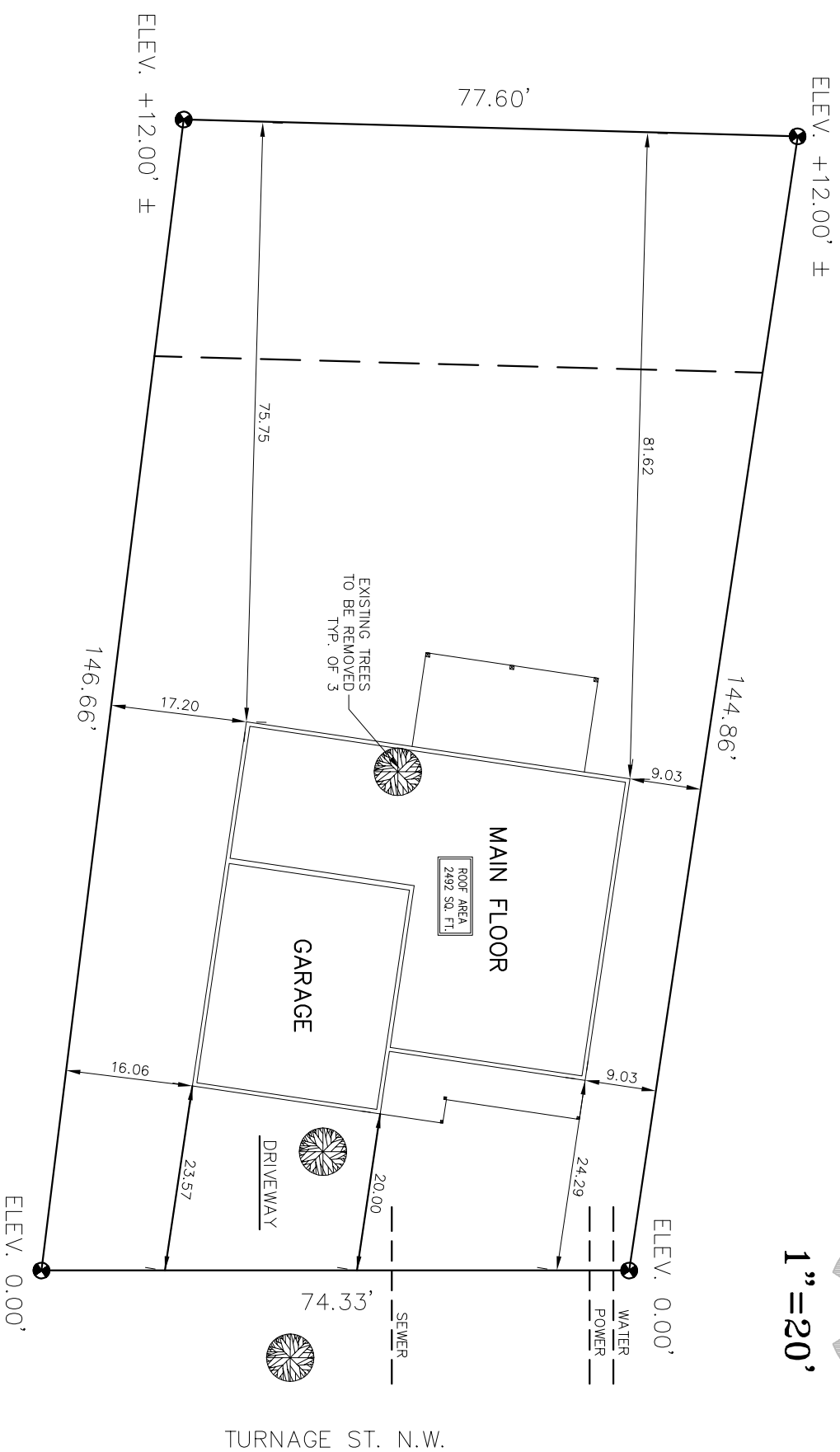
EXPIRES: 12/31/22

CONTRACTOR:  
PDX CARPENTRY  
(503) 602-5355

# SITE PLAN



1"=20'



\* CONTRACTOR TO VERIFY ALL DIMENSIONS IN FIELD\*  
 \* ALL UTILITY LOCATIONS ARE TO BE DETERMINED BY CONTRACTOR.\*  
 \* ALL PROPERTY ELEVATIONS ARE TO BE DETERMINED BY CONTRACTOR.\*

SITE PLAN  
1845 TURNAGE ST. N.W.  
SALEM, OREGON  
SCALE: 1" = 20.00'

SUBDIVISION: \_\_\_\_\_ LOT: \_\_\_\_\_ BLK: \_\_\_\_\_  
 NAME: \_\_\_\_\_ PH: # 503-602-5355  
 ADDRESS: \_\_\_\_\_ CDA: \_\_\_\_\_  
 ASBUILT # \_\_\_\_\_ MAP # \_\_\_\_\_  
 STORM DRAINAGE: \_\_\_\_\_  
 WATER SERVICE LEVEL: \_\_\_\_\_ CODE: \_\_\_\_\_ PS: \_\_\_\_\_  
 SIDEWALK: \_\_\_\_\_

APPROVAL STAMPS

6 jun 2022

1845 Turnage st. NW. Salem, OR. 97304

## NOTICE OF TREES REMOVAL

Off on Eola Drive on 1845 Turnage st. Nw Salem, Oregon

Arturo Armas & Carlos Armas we respectfully inform you that due to the building of a new home construction there is a Coastal Redwood tree with 44" DBH. And a Douglas Fir with 43" DBH respectively in the property.

Considering this issue (trees) as an obstruction for such a project, we will need to remove them ASAP.

Mindful of years of life and grateful for the shelter that they have selflessly provided to all, we wish their spirit to move on .

all beings who have made their home in those trees, please find another lodgings their new home,